

[Note: This mark-up does not include QRC's proposed Expansion funding obligation for AN.]

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Part 8 Network development and Expansions

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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), 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.

- (b) Aurizon Network is obliged to fund, construct or permit an Expansion of all or part of the Rail Infrastructure only to the extent that:
- (i) Aurizon Network is satisfied (acting reasonably) that the Expansion is technically and economically feasible and consistent with the safe and reliable operation of the Rail Infrastructure.
 - (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);
 - (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.
- (c) For clarity, notwithstanding any other provision of this **Part 8**, 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.]
- (d) Aurizon Network is not obliged to fund or construct a Customer Specific Branch Line (subject to its obligations in relation to Connecting Infrastructure). However, nothing in this Undertaking prevents Aurizon Network from doing so at its discretion by agreement with the Customer seeking to have the Customer Specific Branch Line constructed.
- (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.
- (f) Aurizon Network will not unnecessarily and unreasonably delay any Expansion that it is obliged to construct in accordance with this

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<#>if Aurizon Network is the operator but not the owner of the Expansion, Aurizon Network's legitimate business interests are protected.¶¶
in relation to the funding of the

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<#>the following objectives will be considered:¶¶
<#>ensuring that Aurizon Network's revenue adequacy requirements are met (as described in **clause 6.4.2**); ¶¶
<#>the allocation of Capacity is made to its highest marginal value; and¶¶
<#>the promoting of efficient investment in and use of the Rail Infrastructure having regard to:¶¶
<#>the expected duration of the facility or business whose inputs or outputs will be transported on the Rail Infrastructure (for example, the mine production life);¶¶
<#>the quality and saleability of the product proposed to be transported on the Rail Infrastructure;¶¶
<#>the capital efficiency of rail infrastructure and the density of network utilisation;¶¶
<#>the contribution of the relevant Access Rights sought to the long-term demand for Access; and¶¶
<#>the current and future competitiveness of the relevant supply chain; and¶¶
<#>Aurizon Network may treat a proposed Access Agreement for a coal carrying Train Service as being more favourable to Aurizon Network's legitimate business interests than a proposed Access Agreement for ... [1]

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.

- (g) Aurizon Network must enter into Access Agreements for the capacity to be created by the Expansion.
- (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)).
- (i) Subject to the requirements of this **Part 8**, the person responsible for the investigation and design of any Expansion or 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?**
- (j) In this **Part 8** where an Access Seeker has submitted more than one Access Application for different hauls or different capacity in relation to a particular Expansion, it will be treated as a different Access Seeker in respect of each such Access Application.

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Deleted: <#>Nothing in this **Part 8**¶ <#>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¶ <#>prevents Aurizon Network from electing to fund and construct Expansions or Customer Specific Branch Lines and otherwise invest in the Rail Infrastructure on its own account.¶

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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;

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(iv) similarly, to the extent that any Coal Systems overlap, Expansions on one Coal System may affect Expansions on another Coal System;

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(v) subject to clause 8.2.2(a)(vi), the Capacity expected to be created by an Expansion later in a sequence of Expansions cannot be unconditionally allocated until the Capacity of the Expansions earlier in the sequence is determined in accordance with this Undertaking; and

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(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 be a reprioritisation of Expansions, provided that reprioritisation is approved by the QCA.

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(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 timeline that meets the reasonably likely time that output capacity will be required by the Expansion.

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:

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(i) the operator of an existing or proposed coal terminal formerly 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

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(ii) an Access Seeker submits an Access Application for Access that Aurizon Network concludes cannot be satisfied without Aurizon Network undertaking an Expansion and that Access Seeker requests in writing that Aurizon Network carry out a Concept Study for that Expansion; or

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(iii) an Access Seeker makes a written request to Aurizon Network for it to conduct a Demand Assessment.

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(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:

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(i) the Access Applications it has received;

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- (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 the last EOI process.]***
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- (iii) Liaison and consultation with participants in coal supply chains and Supply Chain Groups ***within the relevant Coal System;*** and
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- (iv) analysis or advice from ***relevantly experienced and prudent*** expert advisors.
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- (c) Subject to **clause 8.2.3(d)**, where a ***Demand Assessment*** is triggered by one of the circumstances referred to in **clauses 8.2.3(a)(i), (a)(ii) or (a)(iii)**, Aurizon Network will ***promptly*** conduct, complete and prepare a ***detailed*** report of the results of its ***Demand Assessment***:
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 - (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
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 - (ii) in all other cases, within ***[20]*** Business Days of the commencement of the assessment study.
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- (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.
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- (e) In order to carry out a ***Demand Assessment*** Aurizon Network may ***(where reasonable to do so)*** request ***the following*** information from Access Seekers and potential access seekers identified by Aurizon Network as potential users of the potential Expansion:
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- (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?]***
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- (ii) status of project development;
- (iii) current project development program;
- (iv) status of mining tenure; ***and***
- (v) status of out-loading capacity assets or rights.
- (f) Once a ***Demand Assessment*** report has been provided, Access Seekers wishing to dispute the outcome of a ***Demand Assessment***
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must notify Aurizon Network ~~and the QCA~~ within [20] Business Days of the provision of the ~~Demand Assessment~~ report to them.

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(g) Unless otherwise settled, disputes notified in accordance with **clause 8.2.3(f)** 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 shall promptly provide each Access Seeker that was the subject of the relevant ~~Demand Assessment~~:

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(i) where the expert decides that the ~~Demand Assessment~~ conclusions should differ from those originally proposed by Aurizon Network, a final ~~Demand Assessment~~ report reflecting the expert's preferred conclusions; or

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(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.

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(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(g)**. 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 ~~the expert will be borne by~~ such party or parties 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 8.4 to 8.6**, if a Customer wishes to fund the cost of:

(i) a Pre-feasibility Study, as a Pre-feasibility Funder under **clause 8.4**;

(ii) a Feasibility Study, as a Feasibility Funder under **clause 8.5**; or

(iii) an Expansion, as a User under **clause 8.6**.

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.

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(b) Where Aurizon Network does not receive a notice from a Customer under **clause 8.2.4(a)** in respect of a proposed Pre-feasibility Study, Feasibility Study or Expansion (as applicable), then Aurizon Network may refuse to negotiate agreements in relation to such matters with that Customer or to otherwise treat that Customer as a proposed Pre-feasibility Funder, or Feasibility Funder,

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(c) Where Aurizon Network considers, acting reasonably, that a Customer has materially failed to comply with any provision of this Undertaking relating to the funding of the cost of a Pre-feasibility Study, Feasibility Study or an Expansion (as applicable), then Aurizon Network may, without prejudice to any other rights it may have, do either or both of the following:

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(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 a Demand Assessment or any process in relation to an Expansion or proposed Expansion it must ensure that all relevant Customers are invited 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.

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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 is already underway or completed.

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(b) Aurizon Network will publish on the Website general details of:

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(i) each Concept Study it is undertaking promptly after commencement of work on the Concept Study; and

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(ii) the conclusions reached in respect of each Concept Study promptly after its completion.

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(c) Aurizon Network will promptly following completion of a Concept Study, provide relevant Access Seekers with 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.

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(d) Aurizon Network must fund all Concept Studies.

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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.]

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(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

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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.

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

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(b) The Access Seekers (or, as applicable, Customers) to be given an opportunity to fund a Pre-feasibility Study under **clause 8.5(a)**, for an Expansion, as proposed Pre-feasibility Funders, will be:

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(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, satisfy all of the following requirements:

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
- (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.]***~~

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- (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.
- (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 be binding on all potential Pre-feasibility Funders (and their Customers) and Aurizon Network as to the issues in dispute.

(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.

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(f) Unless otherwise agreed by Aurizon Network and relevant proposed Pre-feasibility Funder, a Studies Funding Agreement for a Pre-feasibility Study will be in the form of the Standard Studies Funding Agreement (Pre-feasibility). 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.

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(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 of the Pre-feasibility Funder.

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(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 8.4(c)** is referred for dispute resolution as contemplated by **clause 8.4(d)**, 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 8.4(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 the scope and information in the schedules to the Pre-feasibility Funding Agreement to be included.

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

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(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(d) 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:~~

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(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 8.4(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 8.4(l)~~

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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.

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8.5 Feasibility Studies

- (a) Following a Pre-Feasibility Study Aurizon Network must promptly undertake and complete the detailed scoping, design and definition of the preferred scheme selected in the relevant Pre-feasibility Study for that Expansion, including planning and preparation for procurement and construction, (**Feasibility Study**) if [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.]

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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) with Aurizon Network to fund the Feasibility Study.

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- (b) The Access Seekers (or, as applicable, Customers) to be given an opportunity to fund a Feasibility Study under **clause 8.5(a)** for an Expansion, as proposed Feasibility Funders, will be:

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- (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

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<#>if no unconditional Studies Funding Agreement comes into effect as contemplated by **clause 8.5(a)(i)** and no agreement is reached as contemplated by **clause 8.5(a)(ii)**, Aurizon Network chooses, at its discretion, to fund the Feasibility Study itself. ¶

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

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Subject to **clause 8.5(b)(iii)**, whether 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 a Mineral Development Licence 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);
- (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;
- (6) has the ability to meet the funding obligation under the terms of the proposed Studies Funding Agreement. **Note: See note above**

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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 for all the relevant Access Seekers, 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 having regard to the following criteria:

- (iii) those Access Seekers who meet the requirements set out in clause 8.5(b)(ii) to a greater extent than other Access Seekers;
- (iv) the Access Seekers who funded the Pre-feasibility Study;
- (v) maximisation of the allocation of capacity;
- (vi) maximisation of the duration of the expected Access having regard to:

- (1) the ratio of coal reserves to the Access capacity sought; and
- (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.

- (c) Following a decision under **clause 8.5(b)**, Aurizon Network will advise:
 - (i) each Access Seeker (or, as applicable, Customer) who was not selected to fund the Feasibility Study of that fact; and
 - (ii) each Access Seeker (or, as applicable, Customer) who was selected to fund the Feasibility Study of that fact and of the Access Rights for which the Access Seeker has been selected to participate in the funding of the Feasibility Study.
- (d) Any Access Seeker (or, as applicable, its Customer) that disagrees with the outcome of Aurizon Network's selection process as communicated to it under **clause 8.5(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 be binding on all potential Feasibility Funders (and their Customers) and Aurizon Network as to the issues in dispute.

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(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 8.5(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.

(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 8.5(b)(ii)**.

(g) ~~Unless otherwise agreed by Aurizon Network and the relevant proposed Feasibility Funder a Studies Funding Agreement for a Feasibility Study will be in the form of the Standard Studies Funding Agreement, Each Access Seeker (or Customer) that was given the opportunity to fund Feasibility Study may require that such funding be provided in accordance with the Standard Studies Funding Agreement.~~

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(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 detailed reasons where it rejects a suggestion of a Feasibility Funder.~~

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

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- (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) ~~[20] Business Days of the communication referred to in clause 8.5(c)(ii); or~~

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(iv) ~~if the decision communicated in accordance with clause 8.5(c) is referred for dispute resolution as contemplated by clause 8.5(d), within [5] Business Days following the expert's decision,~~

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then, any of those persons may, within [10] Business Days after the expiration of the relevant period referred to in **clause 8.5(i)(iii)** or **clause 8.5(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 the scope and information in the schedules to the Feasibility Funding Agreement to be included.

(j) The determination of a dispute under **clause 8.5(i)(i)** will 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)**,

(l) Where **clauses 8.5(d)** or **8.5(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.

(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 8.5(n)** and **(o)**, 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**).

(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 8.5(m)(i)**, that Access Seeker must notify Aurizon Network of that

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intention in writing within 20 Business Days after Aurizon Network gives a relevant notice under **clause 8.8(b)**.

(o) All or part of a Provisional Capacity Allocation may be withdrawn by Aurizon Network acting reasonably, where:

(i) the relevant Access Seeker's circumstances change in a **substantial** way so that the Access Seeker ceases to satisfy all of the requirements in **clause 8.5(b)(ii)** or meets one or more of those requirements to a **substantially** lesser extent than when the assessment was originally made by Aurizon Network under that clause;

(ii) **(other than due to an 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 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]** 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 8.6.3** 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(o)**, 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)**.

(p) **If Aurizon Network intends exercising its rights under clause 8.5(o) to withdraw all or a part of a Provisional Capacity Allocation, it must give the relevant Feasibility Funder written notice and a reasonable opportunity to explain why Aurizon Network should not exercise its rights under clause 8.5(o). If having considered any explanation**

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provided by the Access Seeker Aurizon Network (acting reasonably) withdraws all or part of the Provisional Capacity Allocation it must give the relevant Access Seeker written notice, including reasons for its decision.

(q) An affected Feasibility Funder may within 10 Business Days of receiving notice of Aurizon Network's decision to withdraw Provisional Capacity Allocation under **clause 11.5(p)** refer the matter to an expert as a dispute for resolution under **clause [11.1.4]**. The expert will determine whether the Provisional Capacity Allocation should be withdrawn or not. The expert's determination will be binding.

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(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.

(s) If the Feasibility Study for an Expansion is funded under one or more Studies Funding Agreements (**Feasibility SFA**), then:

(i) where:

(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

(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

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(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.

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(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 8.5(s)** will not be treated as capital expenditure and will not be included in the Regulatory Asset Base.

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(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.

(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.

(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:

(a) Aurizon Network; or

(b) a Train Operator, other than where on behalf of a specifically identified Customer.

8.7 Step-in where Aurizon Network fail to enter into Study Funding Agreement or delay 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.

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8.8 Funding an Expansion – General

- (a) Subject to this **clause 8.6**, 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 this Undertaking to do so;
 - (ii) is not willing to do so (as notified or deemed notified under **clause 8.8(b)**); or
 - (iii) is only willing to do so subject to Commercial Terms that are unacceptable to the Access Seeker.
- (b) Aurizon Network will notify the Feasibility Funders within 20 Business Days after those Studies Funding Agreements become unconditional, whether:
- (i) Aurizon Network is not willing to fund the Expansion;
 - (ii) is willing to fund the Expansion without Commercial Terms; or
 - (iii) Aurizon Network requires Commercial Terms to be agreed in relation to the funding of the Expansion and if so detailing those Commercial Terms.
- (c) If Aurizon Network has not given a notice under **clause 8.8(b)**, then (for the purpose of Access Seekers commencing the processes under **clause 8.9.1(a)**) Aurizon Network is taken to not be willing to fund the Expansion.
- (d) If Aurizon Network has given a notice under **clause 8.8(b)** and the relevant Access Seeker is willing to negotiate, then Aurizon Network and the relevant Access Seeker will negotiate in good faith the proposed Commercial Terms on which Aurizon Network will be willing to fund the Expansion.
- (e) Where Aurizon Network has given a notice under **clause 8.8(b)(iii)** 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.
- (f) **Clause 8.8(b)** 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 8.6.1(f)** does not prevent Access Seekers from pursuing User Funding in preference to the proposal from Aurizon Network for

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it to fund the Expansion (even if Aurizon Network's proposal is to fund without Commercial Terms).

(g) Where Aurizon Network is obliged by this Undertaking to fund an Expansion Aurizon Network must negotiate an Access Agreement in accordance with [insert].

(h) It is acknowledged that an Expansion may be funded partly by Funding Users and partly by Aurizon Network.

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8.9 User Funded Expansions

8.9.1 Process where Users intend to fund an Expansion

(a) If an Access Seeker intends to fund the cost of an Expansion under clause 8.8(a):

(i) the proposed Funding Users must each give written notice to Aurizon Network of their 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 a User Funding Agreement;

(iii) upon agreement being reached or upon determination through dispute resolution as to the terms of the User Funding Agreement:

(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 9.1(a)(iii) applies, Aurizon Network will use reasonable endeavours to procure the State to enter into a User Funding Agreement.

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8.9.2 Disputes about completion of SUFA schedules

(a) If Aurizon Network and any User do not reach agreement on the completion of schedules to a User Funding Agreement that is in the form of the Standard User Funding Agreement, then any of those

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persons may at any time refer the matter to an expert for dispute resolution under **clause 11.4.1**.

- (b) The determination of a dispute under **clause 8.9.2(a)** will be binding on all proposed Funding Users and Aurizon Network. Aurizon Network does not breach this Undertaking in doing anything necessary to comply with that determination.
- (c) Where **clause 8.9.2(a)** applies, **clause 11.1** will be applied in respect of a User who is a Customer as though a reference to:
 - (i) an Access Seeker includes a reference to that Customer; and
 - (ii) a Related Party for a Customer includes the Access Seeker for that Customer.

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8.9.3 Operation of a User Funded Expansion and Capital Indicator allocation

- (a) A User Funded Expansion will be 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.]

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8.9.4 Capacity Shortfalls for User Funded Expansions

Without limiting clauses 8.4(b) and 8.5(b), 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.

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8.9.5 Inconsistency with a User Funding Agreement

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

8.9.6 Regulatory pre-approval of scope

Promptly after a 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.

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

- (a) The Regulated Asset Base will include User Funded Expansions, notwithstanding that the cost of such Expansions are not paid for by Aurizon Network.
- (b) Subject to **clause 8.9.7(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) Prior to making an application under **clause 8.9.7(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.
- (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.

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8.9.8 Tax rulings

[Note: Please refer to separate Tax Ruling provisions]

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8.9.9 Review of Standard User Funding Agreement

Promptly after executing SUFA documents for the first User Funded Expansion, Aurizon Network will:

- (a) review the Standard User Funding Agreement including having regard to the principles contained in **[insert]: [Note: principles underlying SUFA should be set out in the Undertaking]**
- (b) consult with the Funding Users and Access Seekers about its workability,
- and through a submission to the QCA:
- (c) propose that amendments be made to the Standard User Funding Agreement – giving reasons for those amendments; or
- (d) propose that no amendments are necessary – giving reasons for its belief.

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) as is necessary to comply with the QCA's decision.

8.10 Contracting for Capacity

8.10.1 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:

(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 Expansion²) 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.

8.10.2 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 Expansion³) 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(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(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(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

² Agreement on the scope of work for a User Funded Expansion is determined under clause 8.9.

³ Amendments to the scope of User Funded Expansion are to be determined in accordance with the User Funding Agreement.

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extent that that amendment is necessary to address a latent condition, change in law or force majeure event.

8.10.3 Capacity Shortfalls

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

- (i) the Existing Capacity at the time; less
- (ii) the Existing Capacity of the system in the absence of the Expansion,

using consistent System Operating Assumptions. Aurizon Network must provide all Conditional Access Holders with results (and comprehensive reasons) of an assessment undertaken under this clause 8.10.3.

(b) Aurizon Network may by written notice to all relevant Conditional Access Holders defer an assessment for the purposes of clause 8.10.3(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) A conditional Access Holder may refer an assessment by Aurizon Network under clause 8.10.3(a) 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 the expert.

(d) If Aurizon Network's assessment under **clause 8.10.3(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

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to that reduction (unless their Access Agreement provides to the contrary).

- (e) For the purpose of a Conditional Access Holder's Access Application under **clause 8.10.3(d)**:
- (i) the Access Application is taken to be on the same terms as the previous Access Application made by that Conditional Access Holder for those Conditional Access Rights but only to the extent that its Conditional Access Rights have been reduced in accordance with its Access Agreement as a result of the Capacity Shortfall;
 - (ii) Aurizon Network and the Conditional Access Holder are taken to have complied with **clauses 4.2 to 4.4(b)**; and
 - (iii) **clause 4.4(c)** applies to the Access Application.
- (f) Subject to 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 (iv)) if the Earlier Expansion was funded by Aurizon Network, Aurizon Network will fund the cost of the Shortfall Expansion;
 - (ii) (subject to paragraph (iv)) if the Earlier Expansion was partly funded by Aurizon Network:
 - (A) Aurizon Network will fund the proportion of the cost of the Shortfall Expansion that represents the proportion of the Earlier Expansion that was funded by Aurizon Network; and
 - (B) the Conditional Access Holder(s) who (or whose Customers) provided funding in respect of the Earlier Expansion will fund 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 agreements on the same terms);
or
 - (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
 - (iv) If the Capacity Shortfall was caused by an act or omission of Aurizon Network, Aurizon Network will fund the cost of the Shortfall Expansion.

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- (g) Unless agreed otherwise 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 Coal supply chain coordination

8.11.1 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 throughput in [each] supply chain.

8.11.2 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 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 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 including whether and, if so, how Aurizon Network has varied the proposed or existing System Operating Assumptions (as applicable) in response to those submissions.

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(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.

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(c) 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).

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(d) Any amendment or change to the System Operating Assumptions must be approved by the QCA.

(e) The System Operating Assumptions as at the Approval Date are set out in **Insert**.

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8.11.3 Capacity review

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

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(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.

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(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 are otherwise varied in a way that materially decreases the Existing Capacity in that Coal System.

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(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.

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(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; and

(ii) an independent, appropriately qualified expert (acting as an independent expert).

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(e) In undertaking a Capacity assessment Aurizon Network must have regard to:

(i) usage in accordance with Good Engineering Practices;

(ii) a goal of achieving reasonable maximum capacity;

(iii) Access Agreements; and

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- (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** 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.

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8.12 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:

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The Network Development Plan will:

(a) align with any System Operating Assumptions;

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(b) align with any Supply Chain Master Plan;

(c) if applicable, considers any supply chain model; and

(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:

(e) the System Operating Assumptions upon which the Network Development Plan is based;

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(f) the assessment of the current Capacity for each Coal System;

(g) the aggregated contracted Train Paths for coal carrying Train Services;

(h) the capacity planning scenarios;

(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:

(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;

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(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.

(l) Quantifies the impact on Capacity during construction and measures for ameliorating this impact:

(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]. 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] 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 if circumstances change in a way that Aurizon Network expects will materially adversely affect the Network Development Plan.
- (d) In developing or reviewing the Network Development Plan, Aurizon Network:
 - (i) will from time to time, inform and consult with, and consider submissions from, Access Holders, Access Seekers and other interested parties identified by Aurizon Network in relation to the proposed Network Development Plan; and
 - (ii) will have regard to:
 - (A) **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 previous or current studies undertaken by Aurizon Network;
 - (G) any supply chain master plan;
 - (H) relevant System Operating Assumptions, System Rules and maintenance plans; and
 - (I) other developments or circumstances which in Aurizon Network's opinion are relevant to the Network Development Plan.
- (e) Aurizon Network will:

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- (i) make available to the QCA and the parties consulted with as contemplated by **clause 8.12(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).
- (f) Neither anything in this **clause 8.12** nor the development, review or notification of a Network Development Plan gives rise to any commitment, representation or obligation in relation to funding, constructing, permitting or otherwise implementing any aspect of the Network Development Plan.

8.13 Acceptance of capital expenditure projects by Interested Participants

[Note: Industry does not support the proposed new voting process.

Industry propose a process which is based on the UT3 version.]

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Deleted: <#>Purpose¶
 <#>This **clause 8.13** sets out a voting process for relevant Access Holders, Customers and Access Seekers to accept any one or more of:¶
 <#>the prudence of scope of a capital expenditure project;¶
 <#>the prudence of standard of works of a capital expenditure project; and¶
 <#>the cost allocation principles for a proposed Reference Tariff variation under **clause 6.2.4(a)(iv)(A)**.¶
 <#>The voting process is an alternative to seeking acceptance of those matters by the QCA under **clauses 3** or **4** of **schedule E** (as applicable). However, an unsuccessful vote does not prevent Aurizon Network from seeking the QCA's acceptance on the same matter or a future vote.¶
 <#>A capital expenditure project referred to in relation to this **clause 8.13** includes all projects of any kind that involve capital expenditure including capital expenditure projects required for safety reasons or for Expansions.¶
<#>Application¶
 <#>This **clause 8.13** applies where Aurizon Network seeks acceptance of:¶
 <#>the scope or standard (as applicable) of a capital expenditure project; ¶
 <#>a change to the scope or standard (as applicable) of a capital expenditure project where:¶
 <#>Aurizon Network previously obtained the acceptance of Interested Participants for that scope or standard (as applicable); and ¶
 <#>that change is a material change; or¶
 <#>the cost allocation principles for the purposes of developing a proposed Reference Tariff variation under **clause 6.2.4(a)(iv)(A)**, ¶
(Voting Proposal) by a vote of Interested Participants under this **clause 8.13**.¶
 <#>Aurizon Network must notify the QCA of the outcome of a vote under this **clause 8.13**.¶
 <#>Nothing in this **clause 8.13**:¶
 <#>obliges Aurizon Network to seek acceptance of the scope or standard of a capital expenditure project, or (... [30])

Where Aurizon Network’s legitimate business interests are relevant to a matter under this **Part 8**, without limiting the matters that may be considered:

the following objectives will be considered:

ensuring that Aurizon Network’s revenue adequacy requirements are met (as described in **clause 6.4.2**);

the allocation of Capacity is made to its highest marginal value; and

the promoting of efficient investment in and use of the Rail Infrastructure having regard to:

the expected duration of the facility or business whose inputs or outputs will be transported on the Rail Infrastructure (for example, the mine production life);

the quality and saleability of the product proposed to be transported on the Rail Infrastructure;

the capital efficiency of rail infrastructure and the density of network utilisation;

the contribution of the relevant Access Rights sought to the long-term demand for Access; and

the current and future competitiveness of the relevant supply chain; and

Aurizon Network may treat a proposed Access Agreement for a coal carrying Train Service as being more favourable to Aurizon Network’s legitimate business interests than a proposed Access Agreement for a non-coal carrying Train Service, except to the extent that the allocation of Available Capacity to that coal carrying Train Service would constitute a breach by Aurizon Network of its obligations under any Law.

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, where an Expansion is subject to a Feasibility Study that:

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has been funded under Studies Funding Agreements,

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has not been funded under Studies Funding Agreements, all relevant Access Seekers within [60] Business Days of the agreement under **clause 8.5(a)(ii)** being reached or the choice in **clause 8.5(a)(iii)** being made, as applicable,

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For clarity, a notice under this **clause 8.6.1(b)** does not need to provide the contractual terms on which Aurizon Network is willing to fund the Expansion (for example, in the form of draft agreements).

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, subject to any subsequent notification given under **clause 8.8(f)**

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Nothing in this **clause 8.6** prevents

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on which it would be willing to fund the cost of all or part of the same Expansion

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or the terms on which it is willing to do so

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Purpose

This **clause 8.13** sets out a voting process for relevant Access Holders, Customers and Access Seekers to accept any one or more of:

- the prudence of scope of a capital expenditure project;
- the prudence of standard of works of a capital expenditure project;
- and
- the cost allocation principles for a proposed Reference Tariff variation under **clause 6.2.4(a)(iv)(A)**.

The voting process is an alternative to seeking acceptance of those matters by the QCA under **clauses 3 or 4 of schedule E** (as applicable). However, an unsuccessful vote does not prevent Aurizon Network from seeking the QCA's acceptance on the same matter or a future vote.

A capital expenditure project referred to in relation to this **clause 8.13** includes all projects of any kind that involve capital expenditure including capital expenditure projects required for safety reasons or for Expansions.

Application

This **clause 8.13** applies where Aurizon Network seeks acceptance of:

- the scope or standard (as applicable) of a capital expenditure project;
- a change to the scope or standard (as applicable) of a capital expenditure project where:

- Aurizon Network previously obtained the acceptance of Interested Participants for that scope or standard (as applicable); and

- that change is a material change; or

- the cost allocation principles for the purposes of developing a proposed Reference Tariff variation under **clause 6.2.4(a)(iv)(A)**,

(Voting Proposal) by a vote of Interested Participants under this **clause 8.13**.

Aurizon Network must notify the QCA of the outcome of a vote under this **clause 8.13**.

Nothing in this **clause 8.13**:

- obliges Aurizon Network to seek acceptance of the scope or standard of a capital expenditure project, or the development of a Reference Tariff variation, under this **clause 8.13**; or

- prevents Aurizon Network from seeking the QCA's acceptance of any or all of the scope or standard of a capital expenditure project, or the development of a Reference Tariff variation, even if a vote seeking the acceptance of the same under this **clause 8.13** has been unsuccessful or if Aurizon Network has sought a vote on, for example, scope but not on standard.

Aurizon Network does not have an obligation to construct or fund a capital expenditure project as a result of seeking or obtaining any acceptance of the

scope or standard of a capital expenditure project, or the development of a Reference Tariff variation, under this **clause 8.13**.

This **clause 8.13** must be read in conjunction with **clauses 2.2(g) and (h) of schedule E** (as though those provisions were part of this **clause 8.13**) to the extent that those provisions refer to this **clause 8.13**.

Identification of Interested Participants

For a vote called by Aurizon Network regarding the acceptance of the scope or standard of that capital expenditure project, the persons eligible to participate in that vote (referred to as **Interested Participants** in respect of that vote) are Customers, and Access Holders and Access Seekers without Customers, where the Access Charges (or likely Access Charges) relevant to the person:

are (or will be) determined by reference to a Reference Tariff; and

would be affected by including the amount of capital expenditure for a capital expenditure project into the Regulatory Asset Base.

For a vote called by Aurizon Network regarding the acceptance of the development of a Reference Tariff variation, the persons eligible to participate in that vote (referred to as **Interested Participants** in respect of that vote) are the relevant Affected Parties (referred to under **clause 6.2.4(a)(iv)(A)**).

Despite **clauses 8.13.3(a) and (b)**:

Aurizon Network will not identify any person as an Interested Participant if that would result in any 'double counting' of votes – for example, where two Access Seekers are competing to provide rail haulage services to a prospective Customer only that Access Seeker nominated by the prospective Customer will be eligible to vote; and

if:

a person has not been invited to participate as an Interested Participant; and

that person believes that it is entitled to participate,

then:

that person may request to be allowed to participate by notifying Aurizon Network including setting out reasons why it should be allowed to do so; and

Aurizon Network will use its reasonable endeavours to accommodate that request if it is appropriate to do so.

Voting rights

In this **clause 8.13.4**, **Affected Train Path** means a Train Path where the applicable Reference Tariff for a Train Service using that Train Path would be affected by:

where the Voting Proposal relates to the scope or standard of works for a capital expenditure project, including the amount of capital expenditure for the relevant capital expenditure project into the Regulatory Asset Base; or

where the Voting Proposal relates to the cost allocation principles for proposed Reference Tariff variation, the proposed Reference Tariff variation.

Each Interested Participant's vote will be weighted by multiplying its vote by the number of Affected Train Paths for that Interested Participant as determined by Aurizon Network based on the relevant Access Rights (whether under an Access Agreement or the subject of an Access Application) in accordance with the principles under **clause 8.13.4(c)**.

Aurizon Network must determine Affected Train Paths for the purpose of **clause 8.13.4(b)** in a manner consistent with the following principles:

where the Access Agreement in relation to that Interested Participant:

will be in force at the time that is five years after acceptance is sought under this **clause 8.13**; or

is subject to a legally binding commitment (even if conditional on the completion of an Expansion or Customer Specific Branch Line or other conditions which are Aurizon Network's responsibility to satisfy or can be waived by Aurizon Network),

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

where:

the Access Agreement is due to expire within five years after acceptance is sought under this **clause 8.13**; and

Aurizon Network reasonably expects that a Renewal will occur in relation to the relevant Access Rights under that Access Agreement,

the Affected Train Paths must be determined based on the Access Rights specified in that Access Agreement for the last period of 12 months of that Access Agreement;

to the extent that the Interested Participant is (or is also) an Access Seeker or an Access Seeker's Customer:

where the Available Capacity, plus the Capacity expected to be created by the capital expenditure project, that may potentially be used for Affected Train Paths (**Total Available Capacity**) is less than that needed by Aurizon Network to provide all of the Access Rights sought by Access Seekers (who, or whose Customers, are Interested Participants) for Affected Train Paths (**Requested Capacity**), the Affected Train Paths must be calculated as the Access Seeker's proportion of the Total Available Capacity calculated on a pro rated basis by reference the Access Seeker's proportion of the Requested Capacity; or

where the Total Available Capacity is greater than the Requested Capacity, the Affected Train Paths sought by the Access Seeker,

in either case, for a 12 month period starting five years after the first day of the month in which acceptance is sought under this **clause 8.13**; and

if more than one of **clauses 8.13.4(c)(i) to (iii)** apply in respect of an Interested Participant, then the Affected Train Paths calculated under those clauses will be aggregated for that Interested Participant.

Acceptance process

If Aurizon Network seeks a vote from Interested Participants on a Voting Proposal, then Aurizon Network will:

identify the Interested Participants and notify each identified Interested Participant of the vote; and

make available information relevant to the Voting Proposal and the voting process to those Interested Participants.

A notice under **clause 8.13.5(a)(i)** must specify the period within which the vote will occur being at least six weeks after the notice is given (**Voting Period**).

During the Voting Period:

Aurizon Network will use reasonable endeavours to provide information, forums and engage in discussions with Interested Participants in relation to the relevant Voting Proposal if it chooses to do so or if reasonably requested by any Interested Participants; and

Interested Participants are to notify Aurizon Network of whether they accept or do not accept the Voting Proposal by voting 'yes' or 'no'.

If an Interested Participant votes 'no' on the basis of any of the following: where the vote relates to the scope of a capital expenditure project, the capital expenditure project:

is not technically and/or economically feasible or is inconsistent with the safe and reliable operation of the Rail Infrastructure;

would materially adversely affect the Interested Participant's access rights, providing evidence of how those rights would be affected; or

is inefficient, including having regard to the System Operating Assumptions referred to by Aurizon Network;

where the vote relates to the standard of works of a capital expenditure project, the standard of works:

is unreasonable based on the project's scope;

is inconsistent with relevant standards, including:

the standard of existing or adjacent Rail Infrastructure (except to the extent that the project's scope requires a higher standard); and

relevant Australian standards or Codes of Practice; or

does not reflect an appropriate balance between capital and operating expenditure; or

where the vote relates to the cost allocation principles for a proposed Reference Tariff variation:

the proposed cost allocation principles do not satisfy the pricing principles in section 168A of the Act;

a proposed Reference Tariff variation based on the cost allocation principles would adversely impact on that Interested Participant's ability to compete in a relevant market; or

the Interested Participant should not contribute towards the cost of the capital expenditure project now or at any time in the future,

then that 'no' vote must be accompanied by detailed reasons in relation to those matters. For clarity, **clauses 8.12.5(d)(i) to (iii)** do not prevent a 'no' vote from being made on a different basis – although, any such vote must still be accompanied by detailed reasons.

If an Interested Participant does not respond within the Voting Period or does not respond in a way that is a clear 'yes' or 'no' vote, then the Interested Participant is deemed to have accepted the relevant Voting Proposal – that is, voted 'yes'.

If an Interested Participant responds with a 'no' vote, but:

that vote does not comply with **clause 8.1.1(a)**; or

the reasons provided with that vote cannot reasonably be regarded as appropriate grounds for, or as relevant to, such a vote,

then Aurizon Network may exclude that Interested Participant's vote.

The Interested Participants will be deemed to have accepted the relevant Voting Proposal if Interested Participants for at least 60% of the aggregated Affected Train Paths for all Interested Participants (other than those excluded under **clause 8.1.1(a)**) have, or are deemed to have, voted 'yes'.

Aurizon Network will notify each of those Interested Participants of the results of the vote within five Business Days after Aurizon Network has determined those results.

Information and materials relating to acceptance votes

Aurizon Network will make available information, when it considers it relevant or necessary to do so, to participants in the coal supply chains relating to Coal Systems (as well as the QCA, Queensland Rail Limited and the DTMR) relating to proposed capital expenditure projects relevant to Coal Systems.

If a capital expenditure project, the scope of which is being voted on by Interested Participants under **clause 8.13.5**, is a General Expansion Capital Expenditure project, then Aurizon Network will use reasonable endeavours to cooperate with a consultant jointly appointed by, and at the cost of, those Interested Participants for a peer review of Aurizon Network's capacity planning inputs and processes and capacity model outputs in respect of the capital expenditure project. Aurizon Network will run a range of scenarios in that model, as requested by that consultant (acting reasonably). Aurizon Network's obligations under this **clause 8.12.6(b)** do not include any obligation

to provide the consultant with access to the capacity analysis model, confidential information or any other information or thing in respect of which Aurizon Network has any intellectual property¹.

Aurizon Network will make available to Interested Participants information on the capital expansion project, or the development of a Reference Tariff variation, where those Interested Participants have been asked to vote on the scope or standard (as applicable) of that capital expenditure project, or the development of that Reference Tariff variation, including a working paper the requirements for which are referred to in **clauses 8.13.6(d) to (f)** (as applicable). For clarity, a working paper may relate to more than one capital expenditure project.

A working paper relating to a capital expenditure project's proposed scope as developed in the Feasibility Study will set out the following information in relation to that capital expenditure project:

information on the following:

the reason for the project including relevant capacity planning information;

the project's scope and general standard of works;

the additional capacity expected to be delivered by the project;

the project's preliminary cost;

the potential impact of project construction on Existing Capacity;

the relevant System Operating Assumptions;

the aggregated contracted Train Paths for Train Services on the relevant Rail Infrastructure; and

rationale for the choice of scope for the project with reference to the Pre-feasibility Study and the Network Development Plan (where relevant); and

where the project's scope has materially varied since a vote of Interested Participants accepting the scope:

the scope variations and the reasons for them; and

the relevant changes in the working paper compared to the working paper made available to Interested Participants for the previous vote.

A working paper relating to a capital expenditure project's standard will set out the information referred to in **clause 8.13.6(d)(i)** plus information in relation to that capital expenditure project:

demonstrating that the proposed standard is reasonable based on the project's scope;

regarding its consistency with:

¹ Intellectual property includes any intellectual and industrial property rights conferred or recognised by any law anywhere throughout the world, including rights in relation to copyright, trade marks, trade secrets and patent rights (including the right to apply for registration of any such rights) and know-how that is confidential.

the standard of existing or adjacent infrastructure with similar usage levels, or its modern engineering equivalent;
Aurizon Network's and established Australian design, engineering, safety and construction standards for similar purpose assets and meeting all relevant legislative requirements; and
relevant codes of practice; and
regarding any relevant substitution possibilities between capital and operating expenditure.

A working paper relating to the cost allocation principles for a proposed Reference Tariff variation under **clause 6.2.4(a)(iv)(A)** will set out the following information:

an indicative estimate of the System Allowable Revenue associated with the relevant capital expenditure project;

the indicative impact on an existing relevant Reference Tariff from including the value of the relevant assets in the Regulated Asset Base;

an indicative estimate of the economic benefits (including avoidable costs) to existing Access Holders arising from the relevant capital expenditure project; and

Aurizon Network's proposed cost allocation principles for the Expansion or Customer Specific Branch Line (as applicable), including the relevant Distance Discount.

If Aurizon Network is seeking a vote of Interested Participants on more than one aspect of the same capital expenditure project, then Aurizon Network may issue a single working paper that satisfies the requirements of each of **clauses 8.13.6(d) to (f)** (as applicable).

Compliance

Any person who is an Interested Participant, or is entitled to be an Interested Participant, in respect of a proposed vote to be conducted under this **clause 8.13** who has any concerns about Aurizon Network's compliance with this **clause 8.13** in respect of the proposed vote may notify Aurizon Network of those concerns in writing including providing reasons or other information in support of those concerns prior to the end of the Voting Period.

Aurizon Network may take whatever action is reasonably required to address any concerns notified to it under **clause 8.13.7(a)** to achieve substantial compliance with this **clause 8.13**. Aurizon Network is not obliged to repeat a vote process where a valid concern is raised:

if remedying the concern would not be expected to change the outcome of the vote; or

if it can remedy the concern in a way that achieves substantial compliance.²

² For example, if a person notifies Aurizon Network that it should be Interested Participant but the Voting Period has already commenced, then one remedy might be for Aurizon Network to provide all of the relevant notices, information and other material already provided to the other Interested Participants to that person and allow that person an extension of the Voting Period so that person can participate in the vote.

An audit of Aurizon Network's compliance with this **clause 8.13** in relation to a vote will be procured by Aurizon Network:

prior to Aurizon Network relying on that vote for the purposes of the QCA's acceptance of prudency of scope or standard of capital expenditure project; and

subject to **clauses 8.13.7(d) to (f)**, in accordance with **clauses 10.8(a) to (d)** and **10.8(g) to (j)**.

Where an audit is required under **clause 8.13.7(c)**:

Aurizon Network must provide to the auditor copies of all concerns notified to it under **clause 8.13.7(a)** in relation to the relevant vote for the purpose of the audit certificate's preparation; and

the auditor will compile an audit report identifying:

whether Aurizon Network has complied in all material respects with this **clause 8.13** and, if not, details as to the relevant non-compliance; and

the process adopted for the conduct of the audit.

If, in preparing an audit certificate, the auditor identifies flaws in the calculation of the Access Train Paths, then:

Aurizon Network may recalculate the Access Train Paths and recount the votes in a manner consistent with the auditor's findings;

the auditor will take that recalculation and recount into account in preparing the audit certificate; and

to the extent that the Aurizon Network has already notified Interested Participants of the outcome of the vote, Aurizon Network will notify the Interested Participants as soon as reasonably practical of the recounted vote.

If:

in preparing an audit certificate, the auditor identifies a flaw in a vote of Interested Participants under this **clause 8.13**; and

either:

Aurizon Network cannot remedy the flaw in a way that achieves substantial compliance with this **clause 8.13**; or

the flaw would be expected to change the outcome of the vote,

then Aurizon Network may, but is not obliged to, redo the voting process.