

## Part 4: Negotiation Framework

### 4.1 Overview

- (a) The granting of Access will be underpinned by an Access Agreement that will be developed and finalised as part of the negotiation framework.
- (b) **Part 4** addresses the process by which an access seeker may apply for, negotiate and develop an Access Agreement. In particular, under **Part 4**:
  - (i) An access seeker may obtain Preliminary Information prior to submitting an application for Access from the Website or, if Capacity Information is required, by lodging a request with Aurizon Network (**clause 4.24.2**).
  - (ii) An Access Application for Access by an Access Seeker must be provided in the appropriate form and by submitting an Access Application the Access Seeker agrees to be bound by this Undertaking. Aurizon Network will provide notice of any incorrectly completed sections or missing information and may request additional evidence regarding the use of Access Rights and to assess Capacity Allocation (**clause 4.34.3**).
  - (iii) Aurizon Network will provide an Acknowledgement Notice and confirm preparation of an Indicative Access Proposal once additional information or a properly completed Access Application is received. In specified circumstances the negotiation process may be suspended (**clause 4.44.4**).
  - (iv) Aurizon Network will develop an appropriate Indicative Access Proposal (IAP) for the Access Rights sought. The Access Seeker may notify Aurizon Network regarding concerns about the IAP (**clause 4.64.6**).
  - (v) An Access Seeker must provide written notification to Aurizon Network if it intends to progress its Access Application, based on the arrangements within the IAP (**clause 4.74.7**).
  - (vi) Where multiple Access Applications for the same Access Rights are made, **clause 4.84.8** provides a mechanism for determining who shall be treated as the Access Seeker. In these circumstances, Aurizon Network may disclose certain information without breaching its confidentiality obligations (**clause 4.84.8**).
  - (vii) The Negotiation Period commences once the notification of intent to progress an Access Application is provided by the

Access Seeker. Specific issues are to be addressed during the Negotiation Period. Aurizon Network may provide Additional Information to the Access Seeker (**clause [4.104.104.10](#)**).

- (viii) Aurizon Network may issue a Negotiation Cessation Notice to an Access Seeker in certain circumstances (**clause [4.124.124.12](#)**).
- (c) A diagrammatic representation of the negotiation framework is set out in **schedule H**.

## **4.2 Initial enquiries**

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

## **4.3 Access Application**

- (a) Requests for Access must be submitted to Aurizon Network in the form of an Access Application.
- (b) By submitting an Access Application the Access Seeker agrees to be bound by all the provisions of this Undertaking as they relate to Access Seekers.
- (c) If a purported Access Application has not been properly completed, Aurizon Network must, within 10 Business Days after receipt of the purported Access Application, write to the person who lodged it:
  - (i) notifying them that the purported Access Application is incomplete; and
  - (ii) specifying what information is required to make the application complete and compliant.

- (d) Within 10 Business Days after receipt of an Access Application Aurizon Network may write to the person who lodged the Access Application requesting more evidence or information to the extent reasonably required, including evidence or information:
- (i) regarding their ability to fully utilise the requested Access Rights (on the basis of the factors listed in **clause 4.12(c)4.12(e)4.12(e)** ~~and including information~~ from other providers of infrastructure to be used as an entry or exit point to the Rail Infrastructure such as owners or operators of unloading facilities and information in relation to the funding and construction of any relevant Customer Specific Branch Line; and
  - (ii) ~~required to for the purpose of complying with this Undertaking in relation to the allocation of Capacity to one or more Access Seekers (including under clauses 7.2 and 7.5 and, if applicable, Part 8) assess Capacity allocation related issues;~~ and
  - ~~(ii)(iii)~~ (iii) required to prepare an IAP (including an Initial Capacity Assessment).
- (e) A person referred to in **clause 4.3(c)** or ~~(d)(d)(d)~~ must provide the revised Access Application or the requested information under **clause 4.34.34.3(d)(d)(d)** within 20 Business Days of Aurizon Network's notice or request, as applicable, or such other period as may be agreed. If the revised Access Application or required information is not provided to Aurizon Network within that time, Aurizon Network may notify the relevant person that Aurizon Network will take no further action in relation to the request for Access and on giving that notice the request for Access will be treated as though it has been withdrawn provide the relevant person with a Negotiation Cessation Notice. A notice under this clause 4.3(e) does not prevent a person from submitting a new request for Access.
- ~~(e)(f)~~ (f) Without otherwise affecting Aurizon Network's discretion to give a notice under clause 4.3(e), Aurizon Network must provide notice to the relevant person that it will not take any further action in relation to a request for Access where that request for Access relates to a Transfer and the evidence referred to in clause 7(g) of schedule B has not been provided.
- (g) For the purposes of **clauses 4.3(d)(i)4.3(d)(i)4.3(d)(i)** and ~~(e)(e)(e)~~, a person does not fail to comply with a ~~notice request~~ under **clause 4.3(d)(i)4.3(d)(i)4.3(d)(i)** where the Non-Availability Requirements are satisfied.
- ~~(f)~~ ~~the person has not provided evidence or information requested by Aurizon Network because that evidence or information is not available provided that:~~

- ~~(i) reasonable grounds exist demonstrating that the evidence or information is not available; and~~
- ~~(h) Aurizon Network has been notified (as soon as possible prior to the end of the timeframe under **clause 4.3(e)**) that the evidence or information is not available and of the relevant grounds demonstrating that non-availability. Where a person who submits a purported Access Application seeking Access Rights that will be used for transporting coal for another party (that is, a party who is that person's proposed Customer):~~
  - ~~(i) the proposed Customer must be identified in the purported Access Application; and~~
  - ~~(ii) Aurizon Network will use reasonable endeavours to contact the proposed Customer to confirm that the proposed Customer agrees to that person submitting the Access Application based on the transport of coal for the proposed Customer.~~
- ~~(i) If:~~
  - ~~(i) a purported Access Application fails to comply with **clause 4.3(h)(i)**;~~
  - ~~(ii) a proposed Customer does not provide the confirmation referred to under **clause 4.3(h)(ii)** in relation to a purported Access Application within 10 Business Days after being first contacted by Aurizon Network under **clause 4.3(h)(ii)**; or~~
  - ~~(iii) at any time during the negotiation process under this **Part 4** but prior to the Negotiation Period commencing, the person identified and confirmed in accordance with **clause 4.3(h)** as the Customer for the person submitting the purported Access Application or Access Seeker, notifies Aurizon Network that they no longer agree to that person submitting the Access Application based on the transport of their coal.~~

~~Aurizon Network must notify the relevant person submitting the purported Access Application or Access Seeker that Aurizon Network will take no further action in relation to the request for Access and on giving that notice the request for Access will be treated as though it has been withdrawn. A notice under this **clause 4.3(i)** does not prevent a person from submitting a new request for Access.~~

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

- (a) Within 10 Business Days after receiving a properly completed Access Application or the further information requested under **clause 4.3(d)4.3(d)4.3(d)**, as applicable, Aurizon Network will give the relevant Access Seeker a written Acknowledgement Notice:
  - (i) acknowledging receipt of the Access Application; and

- (ii) confirming that Aurizon Network will prepare an Indicative Access Proposal for the requested Access.
- (b) The date of the Acknowledgement Notice will be the date on which the Access Seeker's Access Application will be deemed to have been received for the purposes of this Undertaking.
- (c) If an Access Application is received by Aurizon Network which is, in whole or part, for Access Rights which cannot be provided in the absence of an Expansion ~~or Customer Specific Branch Line~~:
  - (i) **clause 8.2 to 8.10** will apply;
  - (ii) the negotiation process for Access can be suspended (before or after the provision of an Indicative Access Proposal) by either Aurizon Network or the relevant Access Seeker giving written notice to the other (provided that a written notice given under this clause must give reasons for the suspension); and
  - (iii) a suspension of the negotiation process under **clause 4.4(c)(ii)**~~4.4(e)(ii)~~~~4.4(e)(ii)~~ continues until either:
    - (A) the Expansion required has been agreed with Aurizon Network or determined by a relevant Dispute and the funding of that Expansion is specified by this Undertaking, has been agreed with Aurizon Network or determined by a relevant Dispute~~all agreements necessary for the construction and funding of the Expansion have been executed by Aurizon Network~~~~there is an agreement with Aurizon Network on or a determination of a relevant Dispute specifies what Expansion or Customer Specific Branch Line is required and this Undertaking, an agreement to which Aurizon Network is a party or a determination of a relevant Dispute specifies how that Expansion or Customer Specific Branch Line is to be funded;~~ or
    - (B) Aurizon Network and the Access Seeker agree to restart or continue negotiations for Access in parallel with any negotiations over funding of the required Expansion~~or Customer Specific Branch Line~~~~; and~~
  - (iv) except where otherwise expressly provided in this Part 4, Aurizon Network will not discriminate in the performance of its obligations and the exercise of its rights in this Part 4 as between Access Seekers (or as applicable, Customers) on the basis of the identity of the funder of a Pre-Feasibility Study, a Feasibility Study or an Expansion. For example,

Aurizon Network will not provide an Access Seeker (or as applicable, Customer) with priority in the negotiation of Access in respect of an Expansion on the basis that Aurizon Network is providing funding for the Expansion, over another Access Seeker (or as applicable, Customer) with a different source of funding.

- (d) Where a Provisional Capacity Allocation (as defined under **clause 8.5(r)**) has been granted to an Access Seeker, Aurizon Network may, acting reasonably and in good faith, suspend negotiations with other Access Seekers ~~for corresponding Access Rights~~ pending the outcome of negotiations with the holder of the Provisional Capacity Allocation to the extent that those other Access Seekers' Access Applications are for Access Rights that cannot be provided if the Provisional Capacity Allocation proceeds to final allocation by the execution of an Access Agreement (in the absence of another Expansion).
- (e) Subject to **clause 4.44.44.4(c)(e)(e)**, if:
- (i) an Access Application is received by Aurizon Network for Access Rights which do not commence until more than three years after the date on which the relevant Access Application would be deemed to have been received by Aurizon Network under **clause 4.44.44.4(b)(b)(b) (Receipt Date)**; and
- (ii) either:
- (A) the Access Rights are proposed to commence on a date more than five years after the Receipt Date; or
- (B) ~~where~~ the Access Rights are proposed to commence on a date more than three years but no more than five years after the Receipt Date, and Aurizon Network (acting reasonably) considers that seeking the Access Rights so far in advance of the proposed commencement of Access Rights is not required taking into account the lead time reasonably required for each stage of project development including for studies, design, financing and construction stages in relation to necessary to accommodate:
- (1) the infrastructure, facilities and equipment that need to be constructed, installed, procured or otherwise available in order to use the Access Rights including:
- mine development; and

- transport logistics chain development (including, for example, the acquisition of Rollingstock or Rollingstock facilities and the development of rail infrastructure other than Rail Infrastructure);
- (2) any Expansion, Customer Specific Branch Line, Connecting Infrastructure or capital expenditure project involving Asset Replacement and Renewal Expenditure; and
  - (3) export terminal facilities being developed, expanded or otherwise enhanced or becoming available,

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

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

- (f) Where Aurizon Network notifies an Access Seeker that Aurizon Network is rejecting the Access Seeker's Access Application under **clause ~~4.4(e)4.4(e)4.4(e)~~ (Rejection Notice)**:
- (i) the rejection will take effect five Business Days after Aurizon Network gives the Rejection Notice and all time periods and obligations relating to the Access Application (except in relation to a Dispute referred to in **clause ~~4.4(f)(ii)4.4(f)(ii)4.4(f)(iii)~~**) are suspended; and
  - (ii) where, within five Business Days after Aurizon Network gives the Rejection Notice, the Access Seeker commences a Dispute under **clause 11.1** in respect of whether the requirements in **clause ~~4.4(e)4.4(e)4.4(e)~~** have been satisfied:
    - (A) (1) the Access Application's rejection; and
    - (2) the time periods and obligations relating to the Access Application (except in relation to the relevant Dispute),

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

- (B) where the Dispute is determined in favour of the rejection or is withdrawn by the Access Seeker, the suspension of the rejection is lifted and the Access Application is immediately rejected; and
- (C) where the Dispute is not determined in favour of the rejection:
  - (1) the Access Application is not rejected and all time periods and obligations cease to be suspended; and
  - (2) where applicable, all time periods adversely affected by the suspension under **clause 4.4(f)(ii)(A)(2)4.4(f)(ii)(A)(2)4.4(f)(ii)(A)(2)** are taken to be extended by the period from (and including) the date on which Aurizon Network gave the Rejection Notice to (and including) the date on which the Dispute was determined.
- (g) When Aurizon Network suspends the negotiation process in accordance with **clause 4.44.4(c)(e)(e)**, ~~the Access Seeker must each six months thereafter write to Aurizon Network to~~ Aurizon Network may request at intervals not more than every six months that the Access Seeker:
  - (i) confirm, in writing, the Access Seeker's ongoing requirement for the Access Rights;
  - (ii) confirm, in writing, any material change to the information contained in their Access Application or provided in respect of the matters referred to in **clause 4.3(d)4.3(d)4.3(d)1.1.1(a)(i)**; and
  - (iii) if requested by Aurizon Network, provide information or evidence of the Access Seeker's ability to fully utilise the requested Access Rights (on the basis of the factors listed in **clause 4.12(c)4.12(c)4.12(c)**) and from other providers of infrastructure to be used as an entry or exit point to the Rail Infrastructure such as owners or operators of unloading facilities.
- (h) For the purpose of **clause 4.4(g)(iii)**, the Access Seeker does not fail to comply with a request by Aurizon Network where the Non-Availability Requirements are satisfied.

## 4.5 Revisions to an Access Application

- (a) After an Acknowledgement Notice has been given to an Access Seeker by Aurizon Network under **clause 4.4(a)4.4(a)4.4(a)** but prior to Aurizon Network giving an Indicative Access Proposal to the

Access Seeker, the Access Seeker may (acting reasonably and in good faith) vary its Access Application, provided that the variation is not a Material Variation.

- (b) If Aurizon Network is of the view that a requested variation is a Material Variation, Aurizon Network will give written notice to the Access Seeker of its view within 10 Business Days from the date on which Aurizon Network was notified by the Access Seeker of the relevant variation and may suspend preparing an Indicative Access Proposal for the Access Seeker.
- (c) If, within five Business Days after Aurizon Network gives a notice under **clause 4.5(b)4.5(b)4.5(b)**, the relevant Access Seeker gives written notice to Aurizon Network that it wishes to continue with the Access Application without the proposed variation, then:
- (i) the process under this Undertaking in respect of that request for Access will continue; and
  - (ii) the time within which Aurizon Network is required to provide an Indicative Access Proposal to the Access Seeker is extended by the period from (and including) the date on which Aurizon Network notified the Access Seeker under **clause 4.5(b)4.5(b)4.5(b)** to (and including) the date on which the Access Seeker gives Aurizon Network a notice under this **clause 4.5(c)4.5(e)4.5(e)**.
- (d) Where Aurizon Network has:
- (i) given a notice under **clause 4.5(b)4.5(b)4.5(b)**; and
  - (ii) not received a notice from the relevant Access Seeker in accordance with **clause 4.5(c)4.5(e)4.5(e)** (including within the relevant time period),
- then:
- (iii) the relevant Access Application is taken to have been withdrawn by the Access Seeker and, for clarity, the negotiation process under this **Part 4** will cease in respect of that Access Application;
  - (iv) except where that Access Seeker has notified Aurizon Network to the contrary, a new request for Access (comprised of the withdrawn Access Application as varied by the Material Variation) is taken to have been submitted to Aurizon Network; and
  - (v) in respect of a new request for Access under **clause 4.5(d)(iv)**:
    - (A) that new request for Access is taken to have been received by Aurizon Network on the day

immediately after the expiry of the five Business Day period under ~~clause 4.5(c)4.5(e)4.5(e)~~; and

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

~~(d) If, within five Business Days after Aurizon Network gives a notice under **clause 4.5(b)**, a notice is not given by the Access Seeker under **clause 4.5(c)**, then:~~

~~(i) the Access Seeker will be taken to have withdrawn the original Access Application;~~

~~(ii) the original Access Application subject to the relevant variations will comprise a new request for Access that is deemed to have been received by Aurizon Network on the date that is five Business Days after the date on which Aurizon Network gave the notice under **clause 4.5(b)**; and~~

~~(iii) the process under this **Part 4** will recommence in respect of that request for Access from **clause 4.3(b)**.~~

(e) If a notice is not given by Aurizon Network under in accordance with **clause 4.5(b)4.5(b)4.5(b)**, then the process under this Undertaking in respect of that request for Access will continue with the Access Application as varied by the Access Seeker, provided that, where Aurizon Network has already commenced preparing the Indicative Access Proposal, Aurizon Network may, by written notice to the Access Seeker, extend the date by which it must give the Indicative Access Proposal to the Access Seeker by a reasonable period which ~~must not be~~ no more than that from (and including) the date on which the original Access Application was submitted in accordance with **clause 4.3** to (and including) the date on which Aurizon Network was notified by the Access Seeker of the relevant variation ~~to (and including) the date on which Aurizon Network notifies the Access Seeker~~ under ~~this~~ **clause 4.5(e)**.

(f) If:

(i) Aurizon Network gives a notice under **clause 4.5(b)4.5(b)4.5(b)**; and

(ii) within five Business Days after Aurizon Network has provided that notice, the relevant Access Seeker commences a Dispute under **clause 11.1** in respect of whether the relevant variation is a Material Variation,

then:

(iii) the time periods under **clauses 4.5(c)4.5(e)4.5(e) and ~~(d)~~ ares** suspended from the date on which the relevant Dispute

Notice was given to Aurizon Network until the Dispute is determined in accordance with **clause 11.1**; and

(iv) following determination of the Dispute:

(A) **clauses ~~4.5(b)~~~~4.5(b)~~~~4.5(b)~~** to **~~(e)~~~~(e)~~~~(e)~~** must be applied in a manner consistent with the determination of that Dispute; and

**~~(B)~~** where applicable, the time within which Aurizon Network is required to provide an Indicative Access Proposal to the Access Seeker is extended by the period from (and including) the date on which Aurizon Network notified the Access Seeker under **clause ~~4.5(b)~~~~4.5(b)~~~~4.5(b)~~** to (and including) the date on which the Dispute was determined in accordance with **clause 11.1**.

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

#### 4.6 Indicative Access Proposal

(a) Aurizon Network will review the information received and assess the Access Application to develop an Indicative Access Proposal (**IAP**) for the type of Access Rights being sought and having regard to the appropriate form of Access Agreement referred to in **clause 5.1(c)**.

(b) The IAP will outline:

(i) the Rollingstock and Rollingstock configuration;

(ii) the relevant operating characteristics;

(iii) an Initial Capacity Assessment (which is subject to confirmation by a Capacity Analysis prepared in accordance with **clause ~~4.10.2(a)(v)~~~~4.10.2(a)(v)~~~~4.10.2(a)(v)~~**) together with, for coal carrying Train Services, Aurizon Network's assumptions regarding Rollingstock, section run times and loading and unloading times used in preparing that assessment (but, for clarity, Aurizon Network may use all or part of a pre-existing assessment to the extent that it is appropriate to do so), ~~except:~~

~~(A) — to the extent that either the System Rules indicate, or Aurizon Network considers, such an assessment is not required; and~~

~~(B) — where Aurizon Network considers, such an assessment is not required, it has notified the~~

~~Access Seeker of the reasons why the assessment is not required;~~

- (iv) whether any other requests for Access exist that, if approved, would affect Aurizon Network's ability to grant the Access Rights sought by the Access Seeker;
  - (v) an initial estimate of the Access Charge applicable to the Train Service proposed and details of how the initial estimate has been calculated including where **clauses 6.2.1(b), 6.2.2 or 6.2.3** apply details of how those clauses have been applied in calculating the initial estimate;
  - (vi) details of any further information which is reasonably required from the Access Seeker in preparation for the negotiation stage; and
  - (vii) where the grant of Access Rights will require the construction of an Expansion, information identifying the likely need for an Expansion and identifying the Expansion including likely timeframes, to extent that this information exists and is reasonably available to, and can lawfully be provided by, Aurizon Network.
- (c) The IAP contains indicative arrangements only and does not oblige Aurizon Network to provide Access.
- (d) Aurizon Network will provide the IAP within 20 Business Days of the date of the Acknowledgement Notice. However, where, due to the complexity of the Access Application or other extenuating circumstances it is not reasonable to provide an IAP within that period. Aurizon Network may, by written notice to the Access Seeker (to be given as soon as practicable and in any case no later than 15 Business Days after the Acknowledgement Notice), extend the period for the giving of an IAP by up to a further 20 Business Days. This period may be further extended by agreement between Aurizon Network and the Access Seeker.
- (e) Unless otherwise agreed by Aurizon Network and the Access Seeker, the IAP expires 60 Business Days after the later of:
- (i) the date of its provision to the Access Seeker; and
  - (ii) the date of issue of a revised IAP (if any) under **clause 4.6(g)4.6(g)4.6(g)**,
- provided that where:
- (iii) the negotiation process has been suspended under **clause 4.4(c)4.4(c)4.4(c)**; and
  - (iv) Aurizon Network provided the IAP to the Access Seeker prior to that suspension commencing,

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

- (f) If the Access Seeker believes, acting reasonably, that the IAP has not been prepared in accordance with this Undertaking and would therefore not be an appropriate basis for continuing with the negotiation process under this Undertaking, the Access Seeker will notify Aurizon Network of its concerns in writing within 20 Business Days of being provided with the IAP, or such other timeframe as Aurizon Network and the Access Seeker agree.
- (g) Aurizon Network will respond to the concerns of any Access Seeker notified under **clause 4.64.64-6(f)(f)(f)** including, where appropriate, by making revisions to the IAP:
  - (i) within 10 Business Days after being notified under **clause 4.64.64-6(f)(f)(f)**; or
  - (ii) if due to the complexity of the concerns or other extenuating circumstances it is not reasonable to provide a response within that 10 Business Day period, a reasonable period notified by Aurizon Network to the Access Seeker in writing within 5 Business Days after the Access Seeker's notice to Aurizon Network under **clause 4.64.64-6(f)(f)(f)**.
- (h) Aurizon Network has no obligation to produce an IAP for an Access Seeker that notifies Aurizon Network in writing that the Access Seeker no longer wishes to proceed with its Access Application.

#### 4.7 Notification of intent

- (a) If an Access Seeker intends to progress its Access Application under the negotiation process set out in this Undertaking on the basis of the arrangements outlined in the IAP (as varied in accordance with **clause 4.6(g)4.6(g)4.6(g)**, if applicable), the Access Seeker must notify Aurizon Network of its intention in writing, prior to the expiry of the IAP in accordance with **clause 4.6(e)4.6(e)4.6(e)**. Notification must be in the form set out in the IAP.
- (b) Where an Access Seeker does not notify Aurizon Network under **clause 4.7(a)4.7(a)4.7(a)** of its intention to progress its Access Application prior to the IAP's expiry, the Access Application and the IAP are taken to have been withdrawn on the IAP's expiry date as determined in accordance with clause 4.6(e)4.6(e)4.6(e).

#### 4.8 Multiple applications for the same Access

- (a) Where more than one party has submitted an Access Application for the same Access Rights and:
  - (i) one of the parties that has applied for Access is the Customer Access Seeker~~the Customer of one of the other parties for that Access;~~

- (A) this Undertaking and Aurizon Network will treat the Customer Access Seeker as the sole Access Seeker and the other relevant Access Seekers' Access Applications for same Access Rights as having been withdrawn; ~~(Customer Access Seeker)~~ and
- (ii)(B) Aurizon Network may will negotiate solely with that Customer Access Seeker; or
- (ii) none of the only parties that have applied for Access are-is a Customer Access Seeker ~~Railway Operators~~, Aurizon Network must continue to negotiate with each Access Seeker unless and until the Customer nominates in writing a single Access Seeker at which point:
- (A) this Undertaking and Aurizon Network will treat that nominated Access Seeker ~~Railway Operator~~ nominated in writing by the Customer to Aurizon Network as the sole Access Seeker and the Access Applications for the other relevant Access Seekers as having been withdrawn; and
- (ii)(B) Aurizon Network may will negotiate solely with that nominated Access Seeker ~~Railway Operator~~.
- (b) ~~Where clause 4.8(a)(i) applies, the Customer Access Seeker may give written notice to Aurizon Network nominating a Railway Operator (Nominee Operator) to act on its behalf for the purposes of assisting the Customer Access Seeker with its Access Application including in negotiations with Aurizon Network for the requested Access. Unless the Customer Access Seeker's nomination expressly indicates otherwise or that nomination is revoked by notice to Aurizon Network:~~
- (i) ~~the Nominee Operator will for the purpose of this Undertaking be taken to be the Customer Access Seeker's agent in relation to the Access Application including for the giving of any notices that may or are required to be given under this Undertaking (but not for the execution of any Access Agreement or other agreement); and~~
- (ii) ~~despite any other provision to the contrary in this Undertaking, any information disclosed to the Nominee Operator by Aurizon Network or disclosed to Aurizon Network by the Nominee Operator will be treated as though it was disclosed to or by the Customer Access Seeker, as applicable.~~
- ~~However, where Aurizon Network receives notices from both the Nominee Operator and the Customer Access Seeker in respect of the same requirement under this Undertaking or the same subject matter,~~

~~the Nominee Operator's notice is of no effect and will be disregarded by Aurizon Network.~~

~~(e)(b)~~ Despite any other provision to the contrary in this Undertaking, where: in the event that:

(i) ~~clause 4.8(a)(ii)~~ applies; and

~~(+)(ii)~~ the Customer ~~does has~~ not nominated ~~the relevant one of the competing Access Seekers Railway Operator~~ under ~~clause 4.8(a)(ii)4.8(a)(ii)4.8(a)(ii)~~, within a reasonable time (which need not be prior to the date on which Aurizon Network issues an Indicative Access Proposal to each of the relevant Railway Operators); and

(ii) ~~any one or more of the relevant Railway Operators has served a notice of intention under clause 4.7,~~

Aurizon Network ~~is not obliged to enter into an Access Agreement with any of the competing Access Seekers prior to being given that nomination by the Customer under clause 4.8(a)(ii) may by written notice to the Customer and the competing Railway Operators,~~ suspend the negotiation process under this **Part 4** for each Access Seeker pending the provision of that notification.

~~(d)(c)~~ For clarity and without limitation to ~~Where~~ ~~clause 4.8(a)(ii)4.8(a)(ii)4.8(a)(ii)~~, where ~~clause 4.8(a)(ii)4.8(a)(ii)4.8(a)(ii)~~ applies and the relevant Customer nominates a relevant Access Seeker Railway Operator prior to Aurizon Network preparing an Indicative Access Proposal for each of the relevant Railway Operators Access Seekers, Aurizon Network may prepare an Indicative Access Proposal only for the Access Seeker Railway Operator nominated by the Customer.

~~(e)(d)~~ Aurizon Network may, for the purpose of ~~clause 4.84.8(a)(a)(a)~~, disclose to a Customer the fact of an Access Application by an Access Seeker in respect of that Customer; and disclosure of that fact will not constitute a breach of the confidentiality obligations owed by Aurizon Network under **Part 3**.

(i) ~~for the purpose of clause 4.8(a), disclose to the Customer the fact of the Railway Operators' Access Application; and~~

(ii) ~~for the purpose of clause 4.8(c), disclose to the Customer and the relevant Railway Operators the fact of the multiple Access Applications and the reasons for the notice under clause 4.8(c).~~

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

(e) ~~Access Applications that constitute Mutually Exclusive Access Applications will be dealt with in accordance with clause 7.5.~~

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

### 4.9.1 Customers and Customer Access Seekers

- (a) A Customer Access Seeker may (in its absolute discretion) give written notice to Aurizon Network nominating a Railway Operator (**Nominee Operator**) to act on its behalf for the purpose of assisting the Customer Access Seeker with its Access Application including in negotiations with Aurizon Network for the requested Access. Unless the Customer Access Seeker's nomination expressly indicates otherwise or that nomination is revoked by notice to Aurizon Network:
- (i) the Nominee Operator will for the purpose of this Undertaking be taken to be the Customer Access Seeker's agent in relation to the Access Application including for the giving of any notices that may or are required to be given under this Undertaking (but not for the execution of any Access Agreement or other agreement); and
  - (ii) despite any other provision to the contrary in this Undertaking, any information disclosed to the Nominee Operator by Aurizon Network or disclosed to Aurizon Network by the Nominee Operator will be treated as though it was disclosed to or by the Customer Access Seeker, as applicable.

However, where Aurizon Network receives notices from both the Nominee Operator and the Customer Access Seeker in respect of the same requirement under this Undertaking or the same subject matter, the Nominee Operator's notice is of no effect and will be disregarded by Aurizon Network.

- (b) At any time during negotiations under this **Part 4**:
- (i) a Customer Access Seeker may withdraw any nomination made under **clause 4.9.1(a)** or replace that nomination by nominating a different Railway Operator to act on its behalf;
  - (ii) a person may take over an Access Seeker's Access Application where that person is the Customer for that Access Seeker; or
  - (iii) a Customer Access Seeker may nominate a Railway Operator to take over that Customer Access Seeker's Access Application provided that the Railway Operator will continue to seek Access Rights for the benefit of that Customer,
- by written notice to Aurizon Network and to the relevant Railway Operator or Access Seeker (as applicable).
- (c) From the date on which Aurizon Network is given a written notice under:

- (i) clause 4.9.1(b)(i) withdrawing a nomination, the relevant Railway Operator will cease to be a Nominee Operator for the purpose of clause 4.9.1(a);
  - (ii) clause 4.9.1(b)(i) nominating a different Railway Operator, that Railway Operator will become the Nominee Operator (replacing the Railway Operator who was previously nominated) for the purpose of clause 4.9.1(a);
  - (iii) clause 4.9.1(b)(ii), the Customer will become the Access Seeker (replacing the existing Access Seeker) for the relevant Access Application; or
  - (iv) clause 4.9.1(b)(iii) and a written notice from the relevant Railway Operator accepting the Customer Access Seeker's nomination, the Railway Operator will become the Access Seeker (replacing the existing Customer Access Seeker) for the relevant Access Application.
- (d) For clarity, where a person becomes the Access Seeker for an Access Application (replacing the existing Access Seeker) under clause 4.9.1(c)(iii) or (iv) (as applicable), that person by doing so agrees to be bound by all the provisions of this Undertaking as they relate to Access Seekers.
- (e) If a take over of an Access Application occurs in accordance with clause 4.9.1(c)(iii) or (iv), then:
- (i) Aurizon Network must provide the incoming Access Seeker with a copy of:
    - (A) the Access Application;
    - (B) notices and other documents (including any IAP) given to or by the outgoing Access Seeker by or to Aurizon Network as expressly required to be given in accordance with this Undertaking; and
    - (C) any other documents exchanged between Aurizon Network and the outgoing Access Seeker that are material to the Access Application and any related negotiations,

except to the extent that providing that information would be in breach of Aurizon Network's confidentiality obligations under Part 3; and
  - (ii) on Aurizon Network's written request, the incoming Access Seeker must provide to Aurizon Network or procure for Aurizon Network,
    - (A) appropriate replacement information to the extent reasonably required; or

~~(f)~~(B) [authority from the outgoing Access Seeker that Aurizon Network may continue to use the relevant information provided by the outgoing Access Seeker, in relation to the Access Application and any related negotiations.](#)

#### **4.9.9.2 Train Operators**

- (a) A request by a prospective Train Operator for Aurizon Network to enter into a Train Operations Agreement must be provided in writing and:
  - (i) identify the relevant End User;
  - (ii) provide a copy of the notification from the End User nominating them as the “Train Operator”; and
  - (iii) contain the information required by an Access Application and any other information reasonably required by Aurizon Network to assess the request and complete the Train Operations Agreement.
- (b) A negotiation process will apply to the prospective Train Operator as specified in **clause ~~4.104.104.10~~**.
- (c) By submitting a request under **clause ~~4.9.24.9.24.9.2(a)(a)(a)~~** the prospective Train Operator agrees to be bound by all the provisions of this Undertaking as they relate to Train Operators. Where [Aurizon Network, acting reasonably, considers that](#) a prospective Train Operator has materially failed to comply with the provisions of [or processes under](#) this Undertaking, Aurizon Network may, without prejudice to any other rights it may have, cease negotiations for a Train Operations Agreement by [giving written a](#) Negotiation Cessation Notice to the prospective Train Operator [in accordance with clause 4.12](#).

### **4.10 Negotiation process**

#### **4.10.1 Negotiation Period**

- (a) A Negotiation Period in respect of:
  - (i) an Access Seeker’s Access commences on the date on which the Access Seeker provides a notification of intent to progress an Access Application in accordance with **clause ~~4.74.74.7~~**; or
  - (ii) a Train Operator’s Train Operations Agreement commences on the date that Train Operator has provided to Aurizon Network all of the relevant information referred to in **clause ~~4.9.2(a)4.9.2(a)4.9.2(a)~~**.
- (b) Once the Negotiation Period has commenced the Access Seeker or Train Operator, as applicable, and Aurizon Network will begin

negotiations as soon as reasonably possible in relation to an Access Agreement or Train Operations Agreement (as applicable).

- (c) An Access Seeker's Negotiation Period ceases on:
- (i) the execution of an Access Agreement in respect of the Access sought by the Access Seeker;
  - (ii) Aurizon Network receiving written notification by the Access Seeker that it no longer wishes to proceed with its Access Application;
  - (iii) Aurizon Network issuing a Negotiation Cessation Notice to the Access Seeker pursuant to **clause 4.12(a)**~~4.12(a)~~~~4.12(a)~~;
  - (iv) (A) the date nine months after the commencement of the Negotiation Period except where clause 4.10.1(c)(iv)(B) applies; or
    - (B) where the negotiation process has been suspended in accordance with clause 4.10.3(b)(iii), the date nine months, plus the number of days of the Suspension Period, after the commencement of the Negotiation Period.
- ~~(iv)~~unless:
- ~~(A)~~(C) both parties agree to extend the Negotiation Period, in which case the Negotiation Period will continue until the expiry of the agreed extended period; or
  - ~~(B)~~(D) a Dispute arises between the parties in relation to obligations under the negotiation framework in this ~~Part 4~~~~Part 4~~~~Part 4~~, in which case, the Negotiation Period will, subject to **clause 4.12(d)(ii)**~~4.12(d)(ii)~~~~4.12(d)(ii)~~, continue until the Dispute's resolution subject to any extension of the period under this **clause 4.10.1(c)(iv)**~~4.10.1(c)(iv)~~~~4.10.1(c)(iv)~~ agreed by the parties, or determined as part of the Dispute's resolution; or
- (v) subject to **clause 4.10.1(d)**, Aurizon Network no longer being able to offer Access to the Access Seeker under the terms of the IAP, either because of:
- (A) Available Capacity being reduced; or
  - (B) Infrastructure Enhancements subsequently committed to by Aurizon Network adversely impacting Aurizon Network'sthe ability to develop Infrastructure Enhancements contemplated by the IAP.

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

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

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

- (iii) if requested by the Access Seeker within 10 Business Days after the Access Seeker is given such a notice, prepare and issue to the Access Seeker a revised IAP in accordance with **clause 4.64.64.6** in relation to that portion of the Access Rights that can be provided; and
- (iv) if, within 10 Business Days after being given the revised IAP, the Access Seeker notifies Aurizon Network that it intends to continue to negotiate for Access Rights in accordance with this Undertaking on the basis of the revised IAP, the negotiation process outlined in this ~~Part 4Part 4Part 4~~ will recommence from that point.

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

- (e) For clarity:
- (i) to the extent that all or part of the Access Rights sought by the Access Seeker cannot be provided as referred to under **clause 4.10.1(d)(ii)4.10.1(d)(ii)4.10.1(d)(ii)**; or
  - (ii) the negotiation process is not recommenced under **clause 4.10.1(d)(iv)4.10.1(d)(iv)4.10.1(d)(iv)** in respect of all or part of the Access Rights sought by the Access Seeker,
- then ~~as~~ the Negotiation Period in respect of those relevant Access Rights will have ceased and any future request by the Access Seeker in respect of those Access Rights will need to start at the beginning of the negotiation process under this ~~Part 4Part 4Part 4~~.
- (f) A Train Operator's Negotiation Period ceases on:

- (i) the execution of the Train Operations Agreement;
- (ii) Aurizon Network receiving written notification by the Train Operator that it no longer wishes to negotiate or enter into the Train Operations Agreement;
- (iii) Aurizon Network issuing a Negotiation Cessation Notice to the Train Operator pursuant to **clause 4.124.124.12**;
- (iv) the expiration of nine months from the date that the Train Operator is nominated by the relevant End User, unless:
  - (A) both parties agree to extend the Negotiation Period, in which case the Negotiation Period will continue until the expiry of the agreed extended period; or
  - (B) a Dispute arises between the parties in relation to obligations in this negotiation framework in this **Part 4Part 4**, in which case, the Negotiation Period will, subject to **clause 4.124.124.12**, continue until the Dispute's resolution;
- (v) the End User being given a Negotiation Cessation Notice in respect of its Access Application; or
- (vi) a notice is given by Aurizon Network under **clause 4.11(d)4.11(d)4.11(d)**.

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

- (a) During the Negotiation Period, Aurizon Network and the Access Seeker or Train Operator, as applicable, will negotiate and endeavour to agree on the elements comprising, for an Access Seeker, the relevant form of Access Agreement referred to in **clause 5.1(c)** for the type of Access Rights being sought or, for a Train Operator, the matters to be completed in the relevant Train Operations Agreement. In order to facilitate this process:
  - (i) an End User must (if it has not done so already) nominate its Train Operator by written notice to Aurizon Network;
  - (ii) Aurizon Network will provide to the Access Seeker Additional Information (together with any requested Capacity Information) relevant to the rail corridor applicable to the Access Seeker's Access Application and that information must be the most current available to Aurizon Network and be provided within a reasonable timeframe;
  - (iii) an Operating Plan is to be prepared by the Access Seeker (other than End User) or the Train Operator, as applicable;
  - (iv) an Access Charge, determined in accordance with the pricing principles set out in **Part 6**, is to be provided by Aurizon Network including advice as to whether Aurizon

Network has applied **clause 6.2.2(b)(i)** or **clause 6.2.3** in determining the Access Charge and if so:

- (A) the factor associated with the Access Seeker's proposed Access that results in a different cost or risk to Aurizon Network;
  - (B) the impact that the factor has on the Access Charge; and
  - (C) how that impact on the Access Charge was determined;
- (v) a Capacity Analysis and an investigation of operational impacts are to be undertaken by Aurizon Network and any Expansions necessary to accommodate Access by the Access Seeker are to be advised by Aurizon Network except to the extent that Aurizon Network considers that such matters are not required;
- (vi) the definition of the relevant Train Service Entitlement and, where applicable, advice of the initial timetable for the proposed Train Services is to be provided by Aurizon Network;
- (vii) the Access Seeker (other than an End User) or the Train Operator, as applicable, is to demonstrate that the Rollingstock and Rollingstock Configurations for which the Access Rights are applicable are subject to certificates of compliance or a Compliance Statement (as that term is defined in the Standard Access Agreement (Operator), as applicable, with the Rollingstock Interface Standards; and
- (viii) unless otherwise agreed by Aurizon Network and the Access Seeker, the terms and conditions comprising the Access Agreement are those provided in the Standard Access Agreement.
- (b) Without limiting the matters that an Access Seeker (other than an End User) or a Train Operator, as applicable, and Aurizon Network may address during the Negotiation Period, Aurizon Network (jointly with the Access Seeker or Train Operator) will, or will commence to, conduct an Interface Risk Assessment and prepare an IRMP during the Negotiation Period in accordance with the provisions set out in a Standard Access Agreement in respect of such matters:
- (i) if requested by the Access Seeker or Train Operator; and
  - (ii) it is reasonably necessary to do so prior to the Access Seeker or Train Operator and Aurizon Network executing an Access Agreement or Train Operations Agreement, as applicable.

- (c) It would be reasonably necessary to conduct an Interface Risk Assessment for the purposes of **clause ~~4.10.24-10.24-10.2(b)(b)(b)~~** where, for instance:
- (i) the relevant Access relates to the transportation of coal from a new mine or load out facility;
  - (ii) the Access Seeker (or, the relevant Railway Operator) is seeking to operate new Rollingstock, is not an Access Holder or is not currently operating Rollingstock on the Rail Infrastructure; or
  - (iii) the proposed operation, movement, provisioning or other operational aspects of the Train Services, or proposed Rollingstock, relating to the requested Access Rights will differ from existing Train Services operated on the Rail Infrastructure by the Access Seeker (or the relevant Railway Operator) including where:
    - (A) there are reversing or special shunting movements that will be necessary for the proposed Train Services;
    - (B) there is a different driver methodology that applies to, or number of train drivers for, the Trains for the proposed Train Services;
    - (C) the Trains for the proposed Train Services will have a different operating direction (including loading or unloading direction) from that which the relevant Rail Infrastructure, loading or unloading facility or other relevant infrastructure was designed for (for example, entering a balloon loop in the opposite direction to what the balloon loop was designed for);
    - (D) the Trains for the proposed Train Services are proposed to operate at a speed greater than any speed limit or speed restriction that applies at any point on the Rail Infrastructure to be used by the Train Services;
    - (E) the proposed Train Services will not be able to meet nominated section running times for the relevant Reference Train Service or, if there is no relevant Reference Train Service, the section running times that typically apply to the relevant Rail Infrastructure;
    - (F) the Rail Infrastructure is required to be extended, enhanced, expanded, augmented duplicated or replaced in order for the relevant Access Rights to

be used – for example, the installation of open door sensors; and

- (G) there has been a change in the Access Seeker's (or relevant Railway Operator's) or Aurizon Network's accreditation or safety management system under the Rail Safety Act.

(d) During the Negotiation Period Aurizon Network may seek further information that is reasonably required to address any matters referred to in this ~~clause 4.10.24.10.24.10.2~~ during negotiations or information or evidence of the Access Seeker's ability to fully utilise the requested Access Rights (on the basis of the factors listed in ~~clause 4.12(c)4.12(e)4.12(e)~~) and from other providers of infrastructure to be used as an entry or exit point to the Rail Infrastructure such as owners or operators of unloading facilities. The Access Seeker will provide the information and evidence requested within 20 Business Days of the request (or such other period as may be agreed with Aurizon Network) and will facilitate the provision of such information from Third Parties, as applicable.

(e) For the purposes of ~~clause 4.10.2(d)~~, the Access Seeker does not fail to comply with a request by Aurizon Network under ~~clause 4.10.2(d)~~ for further evidence or information where the Non-Availability Requirements are satisfied.

(f) In respect of the details required to be developed by the parties in accordance with ~~clause 4.10.2(a)4.10.2(a)4.10.2(a)~~ and (b), the parties may agree, for example:

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

~~(d)~~ **4.10.3 Revision of Access Application during Negotiation Period**

~~(e)(a)~~ During the Negotiation Period, the Access Seeker may (acting reasonably and in good faith) vary its Access Application in accordance with this **clause 4.10.3**, provided that the variation is not a Material Variation.

~~(b)~~ If Aurizon Network is of the view that a requested variation is a Material Variation, Aurizon Network will give written notice to the Access Seeker of its view and may suspend negotiations with the Access Seeker. Subject to **clause 4.10.3(f)** and (i), if Aurizon Network is of the view that a requested variation is a Material Variation, then:

~~(i)~~ Aurizon Network will give written notice to the Access Seeker of:

~~(A)~~ its view that the requested variation is a Material Variation, including the reasons supporting that view; and

~~(B)~~ the time period within which Aurizon Network estimates (acting reasonably) that it will issue a revised IAP in accordance with **clause 4.10.3(b)(ii)**;

~~(ii)~~ where, within five Business Days after being given a notice under **clause 4.10.3(b)(i)**:

~~(A)~~ the Access Seeker notifies Aurizon Network that it wishes to continue with the Material Variation, Aurizon Network will use reasonable endeavours to accommodate the Material Variation including by issuing a revised IAP in accordance with **clause 4.6** within a reasonable time having regard to all relevant circumstances including:

~~(1)~~ the nature and extent of the Material Variation;

~~(2)~~ the effect that the Material Variation has or would have had on any processes already carried out, or to be carried out, by Aurizon Network or the Access Seeker in accordance with this **Part 4** (including the extent of inconsistency with any parameters or other information upon which a relevant Capacity Analysis has been based) or any other provision of this Undertaking; and

~~(3)~~ the time taken by the Access Seeker to comply with any request for information under **clause 4.10.3(d)**.

provided that where:

(4) the Material Variation causes or contributes to the Access Application requesting Access Rights which cannot be provided in the absence of an Expansion; and

(5) Available Capacity exists which can satisfy part of the Access Rights sought by the Access Application with the proposed Material Variation,

the revised IAP to be prepared under this **clause 4.10.3(b)(ii)(A)** will only be prepared in relation to that portion of the Access Rights that can be provided in accordance with the proposed Material Variation in the absence of an Expansion (based on an Initial Capacity Assessment); or

(B) the Access Seeker either:

(1) notifies Aurizon Network that it wishes to continue with the Access Application without the Material Variation; or

(2) does not give Aurizon Network a notice under this **clause 4.10.3(b)(ii)**,

the Material Variation will be taken to be withdrawn so that negotiations for Access Rights will proceed in accordance with this Undertaking without the Material Variation; and

(iii) subject to **clause 4.10.3(f)**, the negotiation process under this **Part 4** is suspended for the period:

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

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

(1) the Material Variation is taken to be withdrawn under **clause 4.10.3(b)(ii)(B)** or **clause 4.10.3(d)(iii)(B)**; or

(2) Aurizon Network is notified under **clause 4.10.3(e)**,

**(Suspension Period).**

(c) A revised IAP prepared by Aurizon Network under this **clause 4.10.3** must ~~be accompanied by or include a statement drawing notice to the Access Seeker's attention the requirements under **clause 4.10.3(e)** and the potential consequence under **clause 4.10.3(f)**~~ that the revised

IAP will expire and the Negotiation Period will be ceased if the Access Seeker does not notify Aurizon Network in accordance with **clause 4.10.3(e)**.

(d) Where Aurizon Network is obliged under this **clause 4.10.3** to prepare a revised IAP in relation to a Material Variation:

(i) Aurizon Network may request the Access Seeker to provide more evidence or information to the extent reasonably required, including evidence or information:

(A) regarding their ability to fully utilise the requested Access Rights (on the basis of the factors listed in **clause 4.12(c)4.12(e)4.12(e)**) including information from other providers of infrastructure to be used as an entry or exit point to the Rail Infrastructure such as owners or operators of unloading facilities and information in relation to the funding and construction of any relevant Customer Specific Branch Line; and

(B) required to assess Capacity allocation related issues and to prepare the revised IAP;

(ii) the Access Seeker must provide the requested evidence or information as soon as reasonably practicable (but within no more than 20 Business Days after Aurizon Network's request for that evidence or information or such other period as may be agreed); and

(iii) if the requested evidence or information is not provided to Aurizon Network within that time, then:

(A) Aurizon Network's obligations in relation to preparing the revised IAP in response to the Material Variation cease;

(B) the Material Variation will be taken to be withdrawn; and

(C) negotiations for Access Rights will proceed in accordance with this Undertaking without the Material Variation.

For the purposes of **clauses 4.10.3(d)(i)(A)** and **(ii)**, a person does not fail to comply with a notice under **clause 4.10.3(d)(i)(A)** where the Non-Availability Requirements are satisfied.

(e) If the Access Seeker wishes to continue negotiations on the basis of the revised IAP, then the Access Seeker must, within 10 Business Days after being given the revised IAP, notify Aurizon Network that it intends to continue to negotiate for Access Rights in accordance with this Undertaking:

- (i) \_\_\_\_\_ on the basis of the revised IAP; or
  - (ii) \_\_\_\_\_ without the Material Variation to the Access Application.
- (f) \_\_\_\_\_ Where:
  - (i) \_\_\_\_\_ Aurizon Network has received a notice under **clause 4.10.3(e)(i)**, then to the extent that the Material Variation causes or contributes to the Access Application requesting Access Rights which cannot be provided in the absence of an Expansion; or
  - (ii) \_\_\_\_\_ the Access Seeker does not notify Aurizon Network in accordance with **clause 4.10.3(e)**,  
both of the following apply:
    - (iii) \_\_\_\_\_ the Negotiation Period in respect of those relevant Access Rights will on written notice by Aurizon Network have ceased; and
    - ~~(f)(iv)~~ \_\_\_\_\_ the Access Seeker will be required to submit a new Access Application if it wishes to continue to seek Access.
- ~~(g)~~ \_\_\_\_\_ If, within five Business Days after Aurizon Network gives a notice under **clause 4.10.2(f)**, the relevant Access Seeker gives written notice to Aurizon Network that it wishes to continue with the Access Application without the proposed variation, then:
  - ~~(i)~~ \_\_\_\_\_ the process under this Undertaking in respect of that request for Access will continue; and
  - ~~(ii)~~ \_\_\_\_\_ if Aurizon Network suspended negotiations under **clause 4.10.2(f)**, the nine month period under **clause 4.10.1(c)(iv)** is extended by the period from (and including) the date on which Aurizon Network notified the Access Seeker under **clause 4.10.2(f)** to (and including) the date on which the Access Seeker gives Aurizon Network a notice under this **clause 4.10.2(g)**.
- ~~(h)~~ \_\_\_\_\_ If, within five Business Days after Aurizon Network gives a notice under **clause 4.10.2(f)**, a notice is not given by the Access Seeker under **clause 4.10.2(g)**, then:
  - ~~(i)~~ \_\_\_\_\_ the Access Seeker will be taken to have withdrawn the original Access Application;
  - ~~(ii)~~ \_\_\_\_\_ the original Access Application subject to the relevant variations will comprise a new request for Access that is deemed to have been received by Aurizon Network on the date that is five Business Days after the date on which Aurizon Network gave the notice under **clause 4.10.2(f)**; and
  - ~~(iii)~~ \_\_\_\_\_ the process under this **Part 4** will restart at **clause 4.3(b)** in respect of that request for Access.

~~(j)(g)~~ If a notice is not given by Aurizon Network under **clause 4.10.3(b)(i)4.10.2(f)**, then the process under this Undertaking in respect of that request for Access will continue with the Access Application as varied by the Access Seeker.

~~(j)(h)~~ If:

- (i) Aurizon Network gives a notice under **clause 4.10.3(b)(i)4.10.2(f)**; and
- (ii) within five Business Days after Aurizon Network ~~have~~has ~~given~~ that notice, the relevant Access Seeker commences a Dispute under **clause 11.1** in respect of whether the relevant variation is a Material Variation,

then:

- (iii) the time periods under **clauses 4.10.3(b)(ii)4.10.2(g) and ~~(h)~~are is** suspended from the date on which the relevant Dispute Notice was given to Aurizon Network until the Dispute is determined in accordance with **clause 11.1**; and
- (iv) following determination of the Dispute:
  - (A) **clauses 4.10.3(b)4.10.3(b)4.10.3(b)** to ~~(a)(a)(a)~~ must be applied in a manner consistent with the determination of that Dispute; and
  - (B) where applicable, the nine month period under **clause 4.10.1(c)(iv)4.10.1(c)(iv)4.10.1(c)(iv)** is extended by the period from (and including) the date on which Aurizon Network notified the Access Seeker under **clause 4.10.3(b)4.10.3(b)4.10.3(b)** to (and including) the date on which the Dispute was determined in accordance with **clause 11.1**.

~~(k)~~ In respect of the details required to be developed by the parties in accordance with **clause 4.10.2(a) and 4.10.2(b)**, the parties may agree, for example:

- ~~(i)~~ to finalise certain aspects after the execution of the Access Agreement or the Train Operations Agreement, as applicable;
- ~~(ii)~~ to make the commencement of Train Services under the Access Agreement or the Train Operations Agreement, as applicable, subject to the satisfaction of conditions (including, for example, the completion of schedules to the Access Agreement or the securing of access rights to an unloading facility or the securing of access to adjoining infrastructure); or

~~(iii) to include mechanisms in the Access Agreement or the Train Operations Agreement, as applicable, to address any subsequent cost or operating impacts arising in connection with the matters referred to in **clauses 4.10.2(k)(i) and (ii)** that have not been expressly addressed either as part of the relevant Reference Train Service or in the negotiation of the relevant Access Agreement or Train Operations Agreement.~~

~~(i) If a change described by **clause 4.9.1(b)(ii) or (iii)** constitutes a Material Variation, references in this **clause 4.10.3** to Access Seeker will be taken to refer to the incoming Access Seeker from the date when the incoming Access Seeker replaces the existing Access Seeker in accordance with **clause 4.9.1(c)(iii) or (iv)** (as applicable).~~

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

(a) Each:

- (i) End User shall have the right to be present and participate in any negotiation between Aurizon Network and a Train Operator for a Train Operations Agreement or the End User's Access Rights; and
- (ii) End User shall have the right to require Aurizon Network to permit their Train Operator to be present at and participate in all negotiations between Aurizon Network and the End User for Access Rights proposed to be wholly or partially utilised by that Train Operator.

(b) In negotiating an End User Access Agreement and for the purposes of this ~~Part 4~~**Part 4**:

- (i) Aurizon Network and an End User will seek to agree an assumed Operating Plan (which the End User may involve its Train Operator in the preparation of); and
- (ii) if the End User does not provide required information regarding Rollingstock and Rollingstock Configurations for the End User's Train Services, Aurizon Network may assume:
  - (A) a Reference Train Service in respect of the Rollingstock and Rollingstock Configurations; and
  - (B) such other Above Rail operational matters as are reasonably necessary (having regard to any existing standard manner of conducting Above Rail Services on the relevant parts of the Rail Infrastructure).

(c) -If one or more Train Operations Agreements is negotiated between Aurizon Network and the relevant Train Operator(s), the Train

Operations Agreement(s) must not (alone, or in aggregate if there is more than one) grant rights to utilise the Rail Infrastructure that exceed the corresponding Access Rights granted, or to be granted, to the relevant End User.

- (d) If, for whatever reason (except by reason of execution of the End User Access Agreement):
- (i) negotiations in respect of the End User Access Agreement expire or are terminated; or
  - (ii) the End User ceases to be an Access Seeker in respect of the Access Rights that relate to the relevant Train Operations Agreement; or
  - (iii) where the End User has already executed an End User Access Agreement, the End User ceases to be an Access Holder in respect of the Access Rights that relate to the relevant Train Operations Agreement,

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

#### 4.12 Cessation of negotiations

(a) At any time during a Negotiation Period, Aurizon Network:

~~(a)~~(i) may give a Negotiation Cessation Notice to an Access Seeker or a Train Operator, as applicable, if:

~~(i)~~(A) the Access Seeker or Train Operator, as applicable, does not comply with the relevant obligations and processes contained in this Undertaking, and such non-compliance is material;

~~(ii)~~(B) there is no reasonable likelihood that the Access Seeker or the Train Operator will comply with the terms and conditions of an Access Agreement or Train Operations Agreement, as applicable, in a material way;

~~(iii)~~(C) the Access Seeker fails to comply with **clause 4.4(f)4.4(f)4.4(f)**;

~~(iv)~~(D) the Access Seeker or Train Operator, as applicable, has no genuine intention of obtaining Access Rights or has no reasonable likelihood of utilising Access at the level sought;

~~(v)~~(E) subject to **clause 11.1.4(e)**, the Access Seeker or Train Operator, as applicable, does not comply with a determination of an expert pursuant to **clause 11.1.4**; or

- (F) the Access Seeker or the Train Operator, as applicable, does not comply with a determination of the QCA pursuant to **clause 11.1.5** in relation to a Dispute; and
- (ii) must give a Negotiation Cessation Notice to an Access Seeker where:
- (A) the Access Seeker's Customer notifies Aurizon Network that they no longer agree to the Access Seeker negotiating an Access Agreement based on the transport of their coal; or
- (vi)(B) if the relevant Access Application relates to a Transfer, either the Transferor's Customer (if any) or the Transferee's Customer (if any) notifies Aurizon Network that they no longer agree to the Transfer.
- (b) Without limitation to **clause 4.12(a)(i)(B)4.12(a)(i)(B)4.12(a)(i)(B)**, **clause 4.12(a)(i)(B)4.12(a)(i)(B)4.12(a)(i)(B)** is taken to be satisfied, if:
- (i) the Access Seeker or the Train Operator, as applicable, is subject to an Insolvency Event; or
- (ii) the Access Seeker or the Train Operator, as applicable, or a Related Party of the Access Seeker or Train Operator, is currently, or has in the previous two years been, in Material Default of:
- (A) any Access Agreement or Train Operations Agreement, as applicable; or
- (B) any other agreement where its performance under that other agreement is relevant to its likely performance under any proposed Access Agreement or Train Operations Agreement, as applicable.
- (c) Without limitation to **clause 4.12(a)(i)(D)4.12(a)(i)(D)4.12(a)(i)(D)**:
- (i) **clause 4.12(a)(i)(D)4.12(a)(i)(D)4.12(a)(i)(D)** is taken to be satisfied in relation to an Access Seeker or Train Operator (as applicable) in relation to coal carrying Train Services, where:
- (A) for an Access Seeker, the Access Seeker:
- (1) is seeking Access Rights that will be used for a person other than the Access Seeker (that is, a person who will be a Customer); and

- (2) has no Customer for those Access Rights or no reasonable likelihood of having such a Customer (provided that any consideration of reasonable likelihood must disregard the effect of granting the Access Rights to the Access Seeker on the Access Seeker's ability to attract a Customer in the future); or
- (B) for a Train Operator, the Train Operator ceases to be a Train Operator for the relevant Access Seeker or Access Holder; or
- (ii) where **clause 4.12(c)(i)**~~4.12(e)(i)~~~~4.12(e)(i)~~ does not apply, the following factors must be considered in relation to whether **clause 4.12(a)(i)**~~(D)~~~~4.12(a)(i)~~~~(D)~~~~4.12(a)(i)~~~~(D)~~ is satisfied:
- (A) whether the Access Seeker has secured, or is reasonably likely to secure, Supply Chain Rights;
- (B) whether the Access Seeker has secured, or is reasonably likely to secure, a rail haulage agreement for the operation of the Train Services the subject of the Access Application;
- (C) whether the Access Seeker or its Railway Operator is reasonably likely to have~~has~~ sufficient facilities (including Rollingstock, provisioning facilities, maintenance facilities and storage facilities) to enable it to run Train Services to fully utilise the Access Rights sought; ~~and~~
- (D) where the Access Rights are sought to transport the output of a mine, whether the anticipated output of the mine is sufficient to support full utilisation of the Access Rights sought and all relevant existing Access Rights relevant to that mine; and
- ~~(D)~~(E) where the Access Rights sought require a Customer Specific Branch Line for the relevant Train Services, whether that Customer Specific Branch Line has been constructed and commissioned or is reasonably likely to be constructed and commissioned prior to the date on which the relevant Train Services are to commence.
- (d) If an Access Seeker or Train Operator disputes that Aurizon Network was entitled to give it a Negotiation Cessation Notice and seeks to resolve the Dispute in accordance with **clause 11.1**, for the purposes of **clause 4.12(a)**~~4.12(a)~~~~4.12(a)~~, the Negotiation Cessation Notice will

be deemed to have been issued only if and when the Dispute is resolved in Aurizon Network's favour. If the resolution of the Dispute identifies that Aurizon Network was not entitled to give the Negotiation Cessation Notice:

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

**Customer Access Seeker**

- (a) Where:
- (i) two or more Access Seekers have submitted Access Applications for the same Access Rights; and
  - (ii) one of those Access Seekers (**Principal Access Seeker**) is the Customer for one of the other Access Seekers,  
the Principal Access Seeker; or
- (b) in all other cases, an Access Seeker who is not and will not be the Railway Operator in relation to the Access Rights sought.

**Material Variation**

A variation to the relevant Access Application that materially alters the Access Rights requested by the relevant Access Seeker including a variation that:

- (a) will result in the relevant Access Rights, if granted, being allocated more Capacity including any increase in tonnages to be carried by Train Services or in the required number of Train Paths;
- (b) materially changes:
  - (i) in the way Train Services relating to the Access Rights will be operated (including loading and unloading times) or the Capacity consumed by those Train Services – except to the extent that the changes are to make the Train Service consistent with the description of the relevant Reference Train Service (if any);  
or
  - (ii) the period for which the Access Rights are required, whether shorter or longer;
- ~~(iii)~~(c) changes the nature or type of Access Rights (for example, from Cyclic Traffic to Timetabled Traffic);  
or
- ~~(iv)~~(d) changes the origin or destination relevant to the Access Rights; or
- ~~(e)~~(e) for **clause 4.10.24.10.24.10.2** only, would be materially inconsistent with any parameters or other information upon which a relevant Capacity Analysis has been based.

**Non-Availability Requirements**

The following requirements:

- (a) the relevant person has notified Aurizon Network (as soon as possible prior to the end of the relevant

timeframe for the provision of information or evidence) that the evidence or information is not available or is not reasonably able to be produced, procured or otherwise obtained, including providing the relevant supporting facts or circumstances. ( For example, the relevant facts or circumstance may relate to the development of the project being at too early a stage for the person to be able to produce or procure the relevant evidence or information); and

- (b) having regard to the information provided under **paragraph (a)** of this definition, Aurizon Network is satisfied (acting reasonably) that:
- (i) the evidence or information is not available and is not reasonably able to be produced, procured or otherwise obtained; and
  - (ii) the failure or inability does not indicate a lack of genuine intention to obtain the requested Access Rights or a reasonable likelihood that the Access Rights will not be utilised at the level sought.