

The mark-up shown in yellow highlight below is an additional amendment proposed by the QRC which Aurizon Network has not yet agreed to.

This draft does not cover the QRC's proposed expansion funding obligation for Aurizon Network. Please refer to the QRC Submission (Section 1) – Part 8 – Network development and Expansions.

## Part 8: Network development and Expansions

### 8.1 Overview

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

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

### 8.2 General principles

#### 8.2.1 Rights and obligations to fund, construct or permit the creation of new *Rail Infrastructure*

- (a) Subject to **clauses 8.2.1(b), 8.2.1(c), 8.2.1(d), 8.8(c)** and **Part 9**, nothing in this Undertaking:
  - (i) obliges Aurizon Network to fund, construct or permit an Expansion, or to agree to do so; or
  - (ii) prevents Aurizon Network from agreeing (in its absolute discretion), or deciding itself, to fund, construct or permit an Expansion, or any part thereof.
- (b) Aurizon Network may, at its discretion, fund all or part of the construction of any Expansion without requiring Commercial Terms. Where Aurizon Network exercises its discretion to fund all or part of an Expansion without requiring Commercial Terms, it will provide written notice of that decision (including details of the amount of funding) to the parties requesting the Expansion. The delivery of that notice by Aurizon Network will create a funding obligation on Aurizon Network to provide the relevant funding for the purposes of this Undertaking.
- (c) Notwithstanding any other provision of this **Part 8**, Aurizon Network is obliged to construct or permit an Expansion only to the extent that:

- (i) Aurizon Network is satisfied (acting reasonably) that the Expansion is technically and economically feasible and consistent with the safe and reliable operation of the Rail Infrastructure.
- However where Aurizon Network has not, prior to the expiration of 10 Business Days after entry into a relevant Feasibility Study Agreement for that Expansion, provided written notice to the Access Seekers selected to utilise an Expansion in accordance with the terms of this **Part 8** that the Expansion is not technically or economically feasible, or is inconsistent with the safe and reliable operation of the Rail Infrastructure, the proposed Expansion will, subject to **clause 8.2.1(c)(iii)(A)** be deemed to have satisfied those requirements;
- (ii) The deemed satisfaction of requirements under **clause 8.2.1(c)(i)** shall not apply where, since the date referred to in that clause there has been a material change in circumstances (such as, for example, a change in safety requirements) so that the proposed Expansion is no longer technically or economically feasible or consistent with the safe and reliable operation of the Rail Infrastructure. In such a case Aurizon Network will notify the relevant Access Seekers of the change in circumstances and the basis of its decision not to construct or permit the Expansion;
- (iii) the Expansion is fully funded through one of the following means:
- (A) Aurizon Network is obliged by this Undertaking to fund the Expansion or, where Aurizon Network is not obliged by this Undertaking, it agrees (at its discretion) to fund the Expansion;
- (B) Funding Users agree to fund the Expansion in accordance with a User Funding Agreement for the Expansion;
- (C) Funding Users partially funding the Expansion under a User Funding Agreement and the remainder of the funding is provided by Aurizon Network;
- (iv) Aurizon Network and all other relevant parties have entered into SUFA agreements, a Commercial Terms document and/or an Access Agreement (as the case may be) and such agreements are or have become unconditional in accordance with their terms (except for the delivery of the Capacity being generated by the Expansion); and
- (v) Unless otherwise agreed by Aurizon Network the Expansion (whether or not funded in whole or part by a person other than Aurizon Network) is or will be leased from the State, an Authority or a trustee as contemplated by SUFA or owned, and in either case operated, by Aurizon Network.
- (d) Notwithstanding any other provision of this **Part 8**, to the extent that Aurizon Network is obliged to undertake asset replacement works in order to meet its obligations under an Access Agreement, Aurizon Network will be responsible for the funding of Asset Replacement Expenditure as well as undertaking or procuring the undertaking of the asset replacement covered by that funding. (Aurizon Network's obligations to provide that funding and to undertake or procure the asset replacement will be governed by the terms of the Access Agreement).
- (e) Whether a customer specific branch line will constitute a Customer Specific Branch Line or Private Infrastructure is to be determined by the relevant Access Seeker. Aurizon Network is not obliged to fund or construct a Customer Specific Branch Line (subject to its obligations in relation to Connecting Infrastructure). However, nothing in this Undertaking prevents Aurizon Network from doing so at its discretion by agreement with the

Customer seeking to have the Customer Specific Branch Line constructed.

- (f) In this **Part 8**, Aurizon Network's "legitimate business interests" include, for example, the following matters:
- (i) community amenity concerns or requirements (for example, a grade separation requirement in response to community concerns);
  - (ii) environment, health or safety related matters, standards or requirements whether or not greater than the minimum environment, health or safety requirements under any environment, health or safety related Law;
  - (iii) the operational performance standards or requirements designed to ensure the Rail Infrastructure comprising or affected by the Expansion is robust and reliable;
  - (iv) the maintenance standards or requirements designed to ensure the Rail Infrastructure comprising or affected by the Expansion can be maintained and repaired efficiently and economically by Aurizon Network;
  - (v) the requirements of any Law (including any Act of Parliament or regulation which has been enacted but has not yet commenced);
  - (vi) the operational and technical requirements necessary for the safe and reliable operation of the Rail Infrastructure;
  - (vii) the economically efficient operation of the Rail Infrastructure; and
  - (viii) any material adverse consequences an Expansion may have on the efficient operation of, or Access to, any Rail Infrastructure.
- (g) In making a determination of a dispute referred to the QCA under any of **clauses 8.4(i), 8.5(f), 8.5(o), 8.7(c), 8.9.2 and 8.10.1**, the QCA, in addition to having regard to the matters contained in any submissions made to it by parties to the dispute, will have regard to:
- (i) the object of part 5 of the Act;
  - (ii) Aurizon Network's legitimate business interests;
  - (iii) the legitimate business interests of the relevant Access Seekers; and
  - (iv) the public interest, including the benefit to the public in having competitive markets.
- (h) Where the QCA intends to appoint an expert to assist the QCA in making a determination of a dispute under any of **clauses 8.4(i), 8.5(f), 8.5(o), 8.7(c), 8.9.2 and 8.10.1**, it will provide the parties to that dispute with an opportunity to be consulted over the identity of the expert to be appointed.
- (i) Aurizon Network's obligations in respect of Connecting Infrastructure are set out in **Part 9** and nothing in this **Part 8** limits Aurizon Network's obligations under **Part 9**.
- (j) Aurizon Network will not unnecessarily and unreasonably delay any Expansion that it is obliged to construct in accordance with this Undertaking provided that after any relevant agreement with any Access Seeker, Access Holder, Customer or User Funder (as applicable) including any relevant User Funding Agreement is executed for that Expansion then Aurizon Network's obligations in relation to any delay are solely governed by that agreement.
- (k) Aurizon Network must, in accordance with **Part 5**, enter into Access Agreements with relevant Access Seekers for capacity to be created by an Expansion.
- (l) It is acknowledged that:

- (i) Aurizon Network and an Access Seeker (or, as applicable, Customer) may agree (in each party's absolute discretion) to enter into arrangements relating to or in connection with funding, constructing or permitting an Expansion or Customer Specific Branch Line necessary to provide additional Capacity required to grant Access Rights requested by that Access Seeker (or, as applicable, Customer); and
  - (ii) Aurizon Network may elect to fund and construct Customer Specific Branch Lines and otherwise invest in the Rail Infrastructure on its own account,
- provided that any such agreement or election must not:
- (iii) in any way unfairly prejudice or unfairly disadvantage another Access Seeker (or, as applicable, Customer) who is seeking Capacity to be created by an Expansion or Customer Specific Branch Line under this **Part 8**; or
  - (iv) affect the priority of allocation of capacity between Access Seekers that would otherwise apply under **clause 8.5**.
- (m) To the extent that this Undertaking is inconsistent with a User Funding Agreement, Connection Agreement or a Studies Funding Agreement for a Pre-feasibility Study or a Feasibility Study, the User Funding Agreement, Connection Agreement or Studies Funding Agreement (as applicable) will prevail to the extent of that inconsistency (but only as between Aurizon Network and the other parties to those agreements, any relevant Access Seeker (if its Customer is one of those parties) and any relevant Customer (if its Access Seeker is one of those parties)).
  - (n) Subject to the requirements of this **Part 8**, the person responsible for the investigation and design of any Expansion that is necessary in order to provide any Access Rights requested by an Access Seeker must be Aurizon Network.
  - (o) In this **Part 8** where an Access Seeker has submitted two or more Access Applications which differ in respect of origins/destinations, quantum of capacity, commencement dates or other capacity requirements in relation to a particular Expansion, Aurizon Network will treat each Access Application as a separate Access Application and as if each were lodged by a separate Access Seeker.
  - (p) **Clause 8.2.1(b)** and **clauses 8.2.3 to 8.10** apply only to Expansions for the purpose of providing additional Access to coal carrying Train Services and do not govern the process by which Aurizon Network may fund, construct or permit an Expansion for the purpose of providing additional Access to non-coal carrying Train Services.
  - (q) Except where otherwise expressly provided in this Part 8, Aurizon Network will not discriminate in the performance of its obligations and the exercise of its rights in this **Part 8** as between Access Seekers (or as applicable, Customers) on the basis of the identity of the funder of a Pre-Feasibility Study, a Feasibility Study or an Expansion. For example, Aurizon Network will not provide an Access Seeker (or as applicable Customer) with priority in the allocation of Capacity in respect of an Expansion on the basis that Aurizon Network is providing funding for the Expansion, over another Access Seeker (or as applicable, Customer) with a different source of funding.
  - (r) In this **Part 8**, where the outcome of a dispute referred to the QCA or an expert is intended to bind more parties than the Access Seeker (or Customer) or proposed access seeker initially involved in the dispute:
    - (i) Aurizon Network will use its best endeavours to promptly identify all other parties that should be bound by the outcome of the dispute and

provide those parties with written notice of the existence of the dispute including an outline of the matters in dispute, the identity of the initial parties to the dispute and whether an expert or the QCA has been appointed to resolve the dispute;

- (ii) the expert or the QCA, as applicable, will be provided with a list of the parties to whom notice of the dispute has been given under **clause 8.2.1(r)(i)**; and
- (iii) the parties receiving notice of the dispute under **clause 8.2.1(r)(i)** may contact the expert or the QCA, as applicable, to seek to be heard on the dispute and will in any case be bound by the decision, rules and procedures determined by the expert or the QCA, as applicable, in relation to that request to be heard, in relation to the dispute resolution process and by the determination of the expert or QCA in relation to the dispute.

## 8.2.2 Interdependent and sequential nature of Expansions

- (a) The following principles relate to the interdependent and sequential nature of Expansions:
  - (i) for any Coal System there may be multiple Expansions that incrementally build on each other in sequence to increase the Capacity of that Coal System;
  - (ii) as the Expansions are sequential, Expansions later in the sequence will assume the satisfactory completion of, and delivery of outcomes for Expansions earlier in the sequence;
  - (iii) to the extent that events or circumstances affect an Expansion in the sequence (for example, by it being delayed, not progressing or not delivering the expected outcomes), then Expansions later in the sequence may also be affected and will need to be reviewed to take into account the effect of those events or circumstances;
  - (iv) similarly, to the extent that any Coal Systems overlap, Expansions on one Coal System may affect Expansions on another Coal System; and
  - (v) subject to **clause 8.2.2(b)**, until:
    - (A) the Access Seekers (or, as applicable, their Customers) for any earlier Expansion in a sequence of Expansions have entered into Access Agreements, Commercial Terms or User Funding Agreements, as applicable, (**Earlier Expansion Agreements**) in respect of that earlier Expansion; and
    - (B) such agreements are or have become unconditional, Aurizon Network and Access Seekers (or, as applicable, their Customers) for any later Expansion in a sequence of Expansions must not enter into Access Agreements, Commercial Terms or User Funding Agreements, as applicable, (**Later Expansion Agreements**) in respect of that later Expansion except where conditional on the requirements in **clauses 8.2.2(a)(v)(A) and (B)** being satisfied for the Later Expansion Agreement to come into full effect.
- (b) Where different Access Seekers have been identified to be provided with Access through sequential proposed Expansions and either:
  - (i) an Access Seeker for whom Capacity is proposed to be created by a proposed Expansion later in the sequence of Expansions and has advised Aurizon Network that it will have an Access Agreement,

Commercial Terms or a User Funding Agreement which Aurizon Network assesses is likely to become unconditional at a date at least 90 days earlier than that date on which the proposed Access Agreement, Commercial Terms or User Funding Agreement, as applicable, of an Access Seeker allocated to a proposed Expansion earlier in the sequence is likely to become unconditional; or

- (ii) there has been a delay in the expected date on which an Access Seeker allocated to a proposed Expansion earlier in the sequence can fully utilise the relevant Access Rights sought to be provided by that proposed Expansion (in accordance with the matters in **clauses 8.5(b)(ii)(A) to (D)**) and another Access Seeker for whom Capacity is proposed to be created by a proposed Expansion later in the sequence of Expansions is expected to be able to fully utilise those Access Rights at a date at least 90 days earlier than the delayed Access Seeker,

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

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

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

- (e) Aurizon Network must not proceed with an intended reprioritisation under **clause 8.2.2(b)** until:
  - (i) the period under **clause 8.2.2(d)** for referring the reprioritisation to the QCA has expired and the reprioritisation has not been referred to the QCA; or
  - (ii) the QCA has determined that Aurizon Network may proceed with the reprioritisation.
- (f) If the majority of Access Seekers in a later Expansion in a sequence (by reference to the number of Train Paths sought by those Access Seekers), consider that the circumstances described in **clause 8.2.2(b)(i)** or **clause 8.2.2(b)(ii)** exist, those Access Seekers may notify Aurizon Network of that belief and the grounds for that belief. On receipt of a notice under this **clause 8.2.2(f)**, Aurizon Network must reasonably consider whether a reprioritisation should be made under **clause 8.2.2(b)**.
- (g) If Aurizon Network decides not to undertake a reprioritisation after receiving written notice under **clause 8.2.2(f)**, the relevant Access Seekers may (by written notice to the QCA and Aurizon Network) refer the matter to the QCA for determination under **clause 11.1.5** and the QCA will determine whether Aurizon Network should undertake a reprioritisation by:
  - (i) assessing whether the circumstances described in **clause 8.2.2(b)(i)**

or **clause 8.2.2(b)(ii)** exist; and

- (ii) if so, determining whether it is reasonable for the Access Seekers to be reprioritised.

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

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

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

- (i) the operator of an existing or proposed coal terminal formally advises Aurizon Network that it has commenced a process to expand an existing coal terminal or to build a new coal terminal which is likely to create demand for additional below rail capacity; or
- (ii) an Access Seeker submits an Access Application for Access that Aurizon Network concludes cannot be satisfied without Aurizon Network undertaking an Expansion and that Access Seeker requests in writing that Aurizon Network carry out a Concept Study for that Expansion; or
- (iii) an Access Seeker makes a written request to Aurizon Network for it to conduct a Demand Assessment, provided that, where applicable, the Access Seeker must be acting on behalf of a Customer or Customers identified to Aurizon Network for all of the Access Rights sought by the Access Seeker and Aurizon Network must make reasonable inquiries as to the identity of the Customer(s) in accordance with **clause 8.6(b)**.

- (b) Where Aurizon Network undertakes a Demand Assessment for an Expansion it will do so using the most appropriate means and any information it considers relevant (in each case acting reasonably) in the circumstances including as follows:

- (i) the Access Applications it has received;
- (ii) its own market intelligence;
- (iii) any Expression of Interest process conducted by Aurizon Network;
- (iv) liaison and consultation with participants in coal supply chains and Supply Chain Groups relating to the relevant Coal System; and
- (v) analysis or advice from relevantly experienced expert advisors.

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

- (c) An Access Seeker may dispute whether Aurizon Network has acted reasonably in determining the means and information to be used for its Demand Assessment or the information sought under **clause 8.2.3(b)** or under **clause 8.2.3(f)**. Unless otherwise settled, disputes notified in accordance with this clause must be referred by Aurizon Network or a disputing party to the QCA for determination in accordance with the process in **clause 11.1.5**. The QCA will determine whether Aurizon Network has acted reasonably having regard to the matters listed in **clause 8.2.3(b)** and **clause 8.2.3(f)**. The QCA's determination will be binding on all of the Access Seekers the subject of the relevant Demand Assessment and Aurizon Network.

- (d) Subject to **clause 8.2.3(e)**, where a Demand Assessment is triggered by one of the circumstances referred to in **clauses 8.2.3(a)(i), (a)(ii) or (a)(iii)**, Aurizon Network will promptly conduct, complete and prepare a detailed report of the results of its Demand Assessment and provide that report to each Access Seeker that was the subject of the Demand Assessment:
- (i) if the Demand Assessment is carried out by means of an Expression of Interest process, within 40 Business Days of the commencement of the assessment study; or
  - (ii) in all other cases, within 20 Business Days of the commencement of the assessment study,
- provided that where the Demand Assessment is the subject of a dispute under **clause 8.2.3(c)**, the relevant period will be extended by the number of Business Days between (and including) the day on which the dispute is referred to the QCA and the day on which the QCA's determination is published. The QCA and each Access Seeker that was the subject of the Demand Assessment will be provided with a copy of the completed Demand Assessment report.
- (e) The Demand Assessment report will not identify individual Access Seekers or potential access seekers by name or, to the extent practicable, precise origins or destinations for trains utilising the potential Expansion.
- (f) In order to carry out a Demand Assessment Aurizon Network may (acting reasonably) request the following information from Access Seekers and potential access seekers identified by Aurizon Network as potential users of the potential Expansion:
- (i) status of coal reserves or of coal resources, as is appropriate having regard to the status and level of development of the mine (including the status and the quantity of such reserves or resources, as applicable);
  - (ii) status of project development and anticipated commencement of coal production;
  - (iii) current project development program;
  - (iv) status of mining tenure and key approvals; and
  - (v) status of out-loading capacity assets or rights.
- Aurizon Network agrees not to seek information from Access Seekers or potential access seekers under this **clause 8.2.3(f)** which is not reasonably required for a prudent and sound Demand Assessment.
- (g) Once a Demand Assessment report has been provided, Access Seekers wishing to dispute the outcome of a Demand Assessment must notify Aurizon Network and the QCA within 20 Business Days of the provision of the Demand Assessment report to them.
- (h) Unless otherwise settled, disputes notified in accordance with **clause 8.2.3(g)** must be referred by Aurizon Network or a disputing party to an expert for determination in accordance with the process in **clause 11.1.4**. The expert (who will, failing agreement, be appointed under **clause 11.1.4(c)(i)(B)**) will determine whether the Demand Assessment report published by Aurizon Network was reasonable and if not, what Demand Assessment conclusions should apply. Aurizon Network will promptly provide each Access Seeker that was the subject of the relevant Demand Assessment:
- (i) where the expert decides that the Demand Assessment conclusions should differ from those originally proposed by Aurizon Network, a final Demand Assessment report reflecting the expert's preferred conclusions; or

- (ii) where the expert confirms the Demand Assessment conclusions reached by Aurizon Network in its Demand Assessment report, confirmation of that fact will be provided to the relevant Access Seekers.

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

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

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

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

### 8.2.5 Compliance with obligations

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

### 8.3 Concept Studies

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

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

- (c) Aurizon Network must fund all Concept Studies except where an Access Seeker (or, as applicable, Customer) agrees to fund the Concept Study at its absolute discretion. As a result of that agreement Aurizon Network must not afford the funding Access Seeker (or, as applicable, Customer) any rights that Access Seeker (or, as applicable, Customer) would not otherwise be entitled to had they not funded the Concept Study. For the avoidance of doubt, this includes providing the funding Access Seeker (or, as applicable, Customer) with priority for the Expansion relevant to that Access Seeker (or, as applicable, Customer).
- (d) Where an Access Seeker wishes to fund a Concept Study, the Access Seeker must be acting on behalf of a Customer or Customers identified to Aurizon Network for all of the Access Rights sought by the Access Seeker.

### 8.4 Pre-feasibility Studies

- (a) Following a Concept Study, Aurizon Network must promptly undertake and complete scoping, planning, an evaluation of alternatives or other preliminary studies or assessments for that Expansion (**Pre-feasibility Study**), if:
  - (i) one or more Potential Pre-feasibility Funders choose to fund the Pre-feasibility Study by requiring Aurizon Network to enter into a Studies Funding Agreement (on the terms of the Standard Studies Funding Agreement or such other terms as are agreed);
  - (ii) subject to **clause 8.4(c)**, the Potential Pre-feasibility Funders and Aurizon Network agree that Aurizon Network should fund the Pre-feasibility Study; or
  - (iii) subject to **clause 8.4(c)**, Aurizon Network chooses, at its discretion, to fund the Pre-feasibility Study itself in circumstances where no unconditional Studies Funding Agreement comes into effect as contemplated by **clause 8.4(a)(i)**:
    - (A) within 40 Business Days after the date of a communication referred to in **clause 8.4(d)(ii)** if no dispute has been commenced under **clause 8.4(e)**; or

(B) where a dispute has been commenced under **clause 8.4(e)**, within 15 Business Days after the expert determination.

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

(b) Subject to **clause 8.4(c)**, if all of the relevant Studies Funding Agreements for a Pre-feasibility Study terminate prior to completion of the Pre-feasibility Study, then Aurizon Network may (in its discretion) elect to continue to undertake and complete the Pre-feasibility Study.

If Aurizon Network funds the Pre-feasibility Study in accordance with **clause 8.4(a)(ii)** or **8.4(a)(iii)**, or elects to continue to undertake and complete a Pre-feasibility Study under **clause 8.4(b)**, Aurizon Network must not afford an Access Seeker (or, as applicable, Customer) any rights that Access Seeker (or, as applicable, Customer) would not otherwise be entitled had Aurizon Network not funded the Pre-feasibility Study.

(c) The Access Seekers (or, as applicable, Customers) to be given an opportunity to fund a Pre-feasibility Study under **clause 8.4(a)(i)** for an Expansion, as proposed Pre-feasibility Funders, will be:

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

(ii) each of the Access Seekers (or, as applicable, their Customers) who Aurizon Network considers, acting reasonably, satisfy the following requirements:

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

(B) where the relevant Access Seeker (or, as applicable, their Customer) is a producer of coal:

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

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

(3) is diligently developing its mine or mine expansion in accordance with the development program referred to in **paragraph (2)**;

(C) where the relevant Access Seeker (or, as applicable, their Customer) is not a producer of coal but is a consumer of coal:

(1) has or is reasonably likely to obtain the licences, approvals, consents, permits and other permissions (if any) necessary to evaluate the feasibility of the business or activity for which Access Rights are required;

(2) has a credible program for the development of any

infrastructure or other facilities and has or is likely to secure a source of fuel (e.g. coal) necessary for that business or activity; and

(3) is diligently developing any infrastructure or other facilities in accordance with the development program referred to in **paragraph (2)**; and

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

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

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

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

within:

- (iii) 20 Business Days of a communication referred to in **clause 8.4(d)(ii)**;  
or
- (iv) if a decision communicated in accordance with **clause 8.4(d)** is referred for dispute resolution as contemplated by **clause 8.4(e)**, within 5 Business Days following the QCA's decision,

then, any of those persons may, within 10 Business Days after the expiration of the relevant period referred to in **clause 8.4(i)(iii)** or **clause 8.4(i)(iv)**, as applicable, require Aurizon Network to refer the issue of scope and/or the schedules to the QCA as a dispute for resolution under **clause 11.1.5**. The QCA shall determine the scope or the information in the schedules to the Pre-feasibility Funding Agreement (as applicable) to be included.

- (j) In the absence of a manifest error, the determination of a dispute under **clause 8.4(i)** will be binding on all proposed Pre-feasibility Funders and Aurizon Network. Aurizon Network does not breach this Undertaking in doing anything necessary to comply with that determination.
- (k) If the Pre-feasibility Study for an Expansion is funded under one or more Studies Funding Agreements (**Pre-feasibility SFA**), then:
  - (i) as a condition of any Studies Funding Agreements for a Feasibility Study (**Feasibility SFA**) in relation to that Expansion, the relevant Feasibility Funders will be required to include in the funding provided to Aurizon Network under their Feasibility SFAs amounts that in aggregate equal the amount to be repaid or reimbursed by Aurizon Network under **clause 8.4(k)(ii)**; and
  - (ii) after those Feasibility SFAs become unconditional, Aurizon Network will, in accordance with each relevant Pre-feasibility SFA, repay or reimburse (as applicable) the funding provided by the Pre-feasibility Funder under that Pre-feasibility SFA.
- (l) The capital expenditure for an Expansion includes the cost of a Pre-feasibility Study relating to that Expansion. However, any amounts that are not repaid or reimbursed (as applicable) under **clause 8.4(k)** will not be treated as capital expenditure and will not be included in the Regulatory Asset Base.
- (m) Without limiting any provision of this Undertaking, Aurizon Network is not obliged to construct, fund or permit an Expansion or to undertake a Feasibility Study, merely because Aurizon Network undertakes or funds any Pre-feasibility Study relating to that Expansion.
- (n) Aurizon Network will publish to relevant Access Seekers (and, where applicable, their Customers) general details of each multi-user Pre-feasibility Study it is undertaking promptly after commencement of work on the Pre-feasibility Study. The publication will not identify individual Access Seekers by name, precise details of origins and destinations (to the extent possible) or any other confidential information.

## 8.5 Feasibility Studies

- (a) Following a Pre-Feasibility Study, Aurizon Network must promptly undertake and complete the detailed scoping, design and definition of the preferred scheme selected in the relevant Pre-feasibility Study for that Expansion, including planning and preparation for procurement and construction (**Feasibility Study**), if one or more of the Potential Feasibility Funders agree with Aurizon Network to fund the Feasibility Study by entering into a Studies Funding Agreement (on the terms of the Standard Studies Funding

Agreement or such other terms as are agreed).

- (b) Subject to **clauses 8.5(c)** and **(h)**, the Access Seekers (or, as applicable, Customers) to be given an opportunity to fund a Feasibility Study under **clause 8.5(a)** for an Expansion, as proposed Feasibility Funders, will be:
- (i) firstly, where Aurizon Network knows that a Capacity Shortfall exists and the proposed Expansion could create Capacity that would reduce or remove the Capacity Shortfall, Access Seekers with Capacity Shortfall Access Applications to which that Capacity Shortfall relates (or, as applicable, their Customers) other than any of them who (or whose Customer) were offered an opportunity to fund the Pre-feasibility Study for the Expansion but did not become a Pre-feasibility Funder for that Pre-feasibility Study; and
  - (ii) secondly, subject to **clause 8.5(d)**, those Access Seekers (or, as applicable, their Customers) whom Aurizon Network decides (acting reasonably) satisfy all of the following requirements, namely an Access Seeker (or, as applicable, their Customer) who:
    - (A) is participating in a process for the acquisition or development of out-loading capacity (such as an expression of interest process or study funding process in relation to a coal export terminal or a domestic power station or similar out-loading facility) or otherwise has a reasonable likelihood of obtaining out-loading capacity in either case, in a timeframe and having an out-loading capacity entitlement that are consistent with the Access Seeker's Access Application;
    - (B) where the relevant Access Seeker (or, as applicable, their Customer) is a producer of coal:
      - (1) has at least a Mineral Development Licence under the *Mineral Resources Act 1989* (Qld);
      - (2) has a credible program for the development of its mine or mine expansion on a basis that is consistent with its Access Application;
      - (3) is diligently developing its mine or mine expansion in accordance with the development program referred to in **paragraph (2)**;
      - (4) has Marketable Coal Reserves (as defined by the JORC Code) equal to at least 10 times the annual capacity for which Access is required (as determined by reference to the Access Seeker's Access Application), following ramp up;
    - (C) where the relevant Access Seeker (or, as applicable, their Customer) is not a producer of coal but is a consumer of coal:
      - (1) has or will obtain all licences, approvals, consents, permits and other permissions necessary for the business or activity for which Access Rights are required;
      - (2) has a credible program for the development of any infrastructure or other facilities and has or is likely to secure a source of fuel (e.g. coal) necessary for that business or activity;
      - (3) is diligently developing any infrastructure or other facilities in accordance with the development

program referred to in **paragraph (2)**; and

- (4) has or is reasonably likely to obtain a supplier or suppliers of coal in connection with the business or activity for amounts of coal consistent with the Access Rights requested; and

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

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

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

- (i) where the Access Seeker has a Customer (the identity and details of which has been notified to Aurizon Network by the Access Seeker):

- (A) Aurizon Network will notify the Customer that it is identifying Potential Feasibility Funders for the relevant Feasibility Study; and

- (B) the Customer must notify Aurizon Network within 10 Business Days after receiving that notice:

- (1) that the Customer should be considered for an opportunity to fund the Feasibility Study (rather than the Access Seeker) (**Customer Nomination**); or

- (2) that the Access Seeker (and, where there are two or more Access Seekers seeking the same Access Rights, which of the Access Seekers) should be considered for an opportunity to fund the Feasibility Study (rather than the Customer or any other of those Access Seekers) (**Access Seeker Nomination**);

- (ii) where Aurizon Network is given:

- (A) a Customer Nomination under **clause 8.5(c)(i)(B)(1)**, only the Customer can be eligible for an opportunity to fund the relevant Feasibility Study (and not the Access Seeker(s) for the Customer); or

- (B) an Access Seeker Nomination under **clause 8.5(c)(i)(B)(2)**, only the nominated Access Seeker can be eligible for an opportunity to fund the relevant Feasibility Study (and not the Customer or any other relevant Access Seeker for the Customer); and

- (iii) where the Customer does not give Aurizon Network a Customer Nomination or an Access Seeker Nomination under **clause 8.5(c)(i)(B)**, neither that Customer nor that Customer's Access Seeker(s) can be eligible for an opportunity to fund the relevant Feasibility Study.

- (d) Aurizon Network will (acting reasonably and in good faith) determine the target amount of Capacity for the proposed Expansion (**Target Capacity**) having regard to:

- (i) the total indicative demand for Capacity from all the relevant Access Seekers that satisfy the requirements under **clause 8.5(b)(ii)**;
  - (ii) the potential scope of the proposed Expansion;
  - (iii) the capacity of the port or other unloading facility relevant to the use of the proposed Expansion; and
  - (iv) any potential staging of Expansions.
- (e) Aurizon Network will notify all the relevant Access Seekers of:
- (i) the Target Capacity for the potential Expansion determined under **clause 8.5(d)**;
  - (ii) the total indicative demand for Capacity from all the relevant Access Seekers that satisfy the requirements under **clause 8.5(b)(ii)**; and
  - (iii) if the total demand under **clause 8.5(e)(ii)** is more than the Target Capacity under **clause 8.5(e)(i)**, the reasons why a higher Target Capacity has not been proposed.
- (f) Within 10 Business Days after being given a notice under **clause 8.5(e)**, an Access Seeker may dispute Aurizon Network's determination of the Target Capacity by referring the matter to the QCA for dispute resolution in accordance with **clause 11.1.5**. The QCA will determine the Target Capacity having regard to the matters listed in **clause 8.5(d)**. Any determination by the QCA will be binding on Aurizon Network and all Access Seekers notified under **clause 8.5(e)**.
- (g) Aurizon Network must not make a decision under **clause 8.5(h)** until:
- (i) if Aurizon Network's decision has not been referred to an expert under **clause 8.5(f)**, the period specified under that **clause 8.5(f)** has expired; or
  - (ii) if Aurizon Network's decision has been referred to the QCA under **clause 8.5(f)**, the QCA has made its determination.
- (h) Subject to **clause 8.5(g)**, if the Target Capacity to be created by the proposed Expansion as determined under **clause 8.5(d)** by Aurizon Network, or (if applicable) as determined by the QCA under **clause 8.5(g)(ii)**, is expected to be insufficient Capacity for all the relevant Access Seekers that satisfy the requirements under **clause 8.5(b)(ii)**, then Aurizon Network will decide (acting reasonably and in good faith) as between those particular Access Seekers (or, as applicable, their Customers) which will be given an opportunity to fund the particular Feasibility Study by Aurizon Network having regard to the following criteria:
- (i) those Access Seekers who meet the requirements set out in **clause 8.5(b)(ii)** to a greater extent than other Access Seekers;
  - (ii) the Access Seekers who funded the Pre-feasibility Study;
  - (iii) maximisation of the allocation of capacity; and
  - (iv) maximisation of the duration of the expected Access having regard to:
    - (A) the ratio of coal reserves to the Access capacity sought; and
    - (B) the likelihood of continuing to extract such coal reserves over time.

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

- (i) Following a decision under **clause 8.5(b)**, Aurizon Network will notify:
  - (i) each Access Seeker (or, as applicable, Customer) who was not selected to fund the Feasibility Study of that fact; and
  - (ii) each Access Seeker (or, as applicable, Customer) who was selected to fund the Feasibility Study of:
    - (A) that fact;
    - (B) the Access Rights for which the Access Seeker has been selected to participate in the funding of the Feasibility Study; and
    - (C) the date by which Aurizon Network anticipates that an Access Agreement, Commercial Terms or a User Funding Agreement, as applicable, in respect of the funding and construction of the Expansion the subject of the Feasibility Study would become unconditional.
- (j) Any Access Seeker (or, as applicable, its Customer) that disagrees with the outcome of Aurizon Network's selection process as communicated to it under **clause 8.5(i)** may, within 10 Business Days of that communication require Aurizon Network to refer the matter to the QCA for dispute resolution in accordance with **clause 11.1.5**. The QCA will either confirm Aurizon Network's original decision or substitute its own decision by determining the Access Seekers (or, as applicable, Customers) who best meet the criteria set out under **clause 8.5(b)** and, if applicable, **clause 8.5(h)**. The QCA's decision will be binding on all potential Feasibility Funders (and their Customers) and Aurizon Network as to the issues in dispute.
- (k) Each Access Seeker (or where applicable, Customer) that was given an opportunity to fund the relevant Feasibility Study will be notified promptly by Aurizon Network if a dispute has been referred to the QCA under **clause 8.5(j)** and, if the Access Seeker (or, as applicable, its Customer) wishes to do so, has 10 Business Days from the date of notification to make a written submission to the QCA on its view as to how the dispute should be resolved.
- (l) Aurizon Network will provide details to each relevant Access Seeker (or, as applicable, Customer) of Aurizon Network's assessment of that Access Seeker's case against the requirements and criteria in **clause 8.5(b)(ii)**.
- (m) Subject to **clause 8.4(k)(i)**, unless otherwise agreed by Aurizon Network and the relevant proposed Feasibility Funder a Studies Funding Agreement for a Feasibility Study will be in the form of the Standard Studies Funding Agreement. Each Access Seeker (or, as applicable, Customer) given an opportunity to fund a Feasibility Study may require that such funding be provided in accordance with the Standard Studies Funding Agreement.
- (n) Aurizon Network must consult with the relevant proposed Feasibility Funders in relation to the scope of the Feasibility Study and reasonably consider the Feasibility Funders' comments. Aurizon Network will provide the Feasibility Funders with written reasons where it rejects a suggestion of a Feasibility Funder.
- (o) If Aurizon Network and the relevant proposed Feasibility Funders do not reach agreement on:
  - (i) the scope of the Feasibility Study; or
  - (ii) the completion of schedules in the Studies Funding Agreements in the form of the Standard Studies Funding Agreement,
 within:
  - (iii) 20 Business Days of the communication referred to in **clause 8.5(i)(ii)**; or

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

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

- (p) In the absence of manifest error, the determination of a dispute under **clause 8.5(o)** will be binding on all proposed Feasibility Funders and Aurizon Network. Aurizon Network does not breach this Undertaking in doing anything necessary to comply with that determination.
- (q) Where the scope of a Feasibility Study and the Schedules of the Studies Funding Agreement for that Study have been:
  - (i) agreed by Aurizon Network with all of the proposed Feasibility Funders of the Study; or
  - (ii) the subject of a QCA determination as contemplated by **clause 8.5(o)**,

Aurizon Network will, within 5 Business Days of that agreement being reached or publication to Aurizon Network of the expert determination, as applicable, send to each of the Feasibility Funders an executable copy of the Studies Funding Agreement with completed Schedules reflecting the agreement reached or the QCA's determination, as applicable.

- (r) Within 20 Business Days after a Studies Funding Agreement for a Feasibility Study becoming unconditional, Aurizon Network will:
  - (i) issue an IAP (or if one has previously been provided, a revised IAP) to the relevant Access Seeker who is, or whose Customer is, funding the Feasibility Study; and
  - (ii) subject to **clauses 8.5(s)** and **8.5(t)**, grant that Access Seeker a provisional allocation of the capacity detailed in the Train Service Description included in the Studies Funding Agreement (**Provisional Capacity Allocation**).
- (s) If an Access Seeker intends to progress its Access Application under the negotiation process set out in this Undertaking on the basis of the arrangements outlined in an IAP or revised IAP issued under **clause 8.5(r)(i)**, that Access Seeker must notify Aurizon Network of that intention in writing within 20 Business Days after Aurizon Network gives a relevant notice under **clause 8.8(c)**.
- (t) Subject to **clause 8.5(u)**, all or part of a Provisional Capacity Allocation may be withdrawn by Aurizon Network acting reasonably, where:
  - (i) the relevant Access Seeker's circumstances change in a substantial way so that the Access Seeker ceases to satisfy all of the requirements in **clause 8.5(b)(ii)** or meets one or more of those requirements to a substantially lesser extent than when the assessment was originally made by Aurizon Network under that clause;
  - (ii) (other than due to any default or negligent act or omission of Aurizon Network) the relevant mine or out-loading facility (including an expansion of a mine or out-loading facility) will be delayed by 12 months or more as compared to the timeframe that was proposed when Aurizon Network made the original assessment;

- (iii) Aurizon Network exercises a right to lawfully terminate the Feasibility Funder's Studies Funding Agreement; or
- (iv) Aurizon Network and the relevant Access Seeker (or, as applicable, its Customer) do not execute an Access Agreement or an agreement in relation to the funding and/or construction of the Expansion within 120 Business Days (or such longer period as agreed by Aurizon Network acting reasonably and in good faith) after the Feasibility Study is completed (provided that to the extent that the Access Seeker, or its Customer, is a party to a dispute under **clause 8.9.2** or a dispute concerning the negotiation of an Access Agreement or User Funding Agreement, then the time from when that dispute is notified for the purpose of **clause 11.1.4** or **clause 11.1.5** (as applicable), to the determination of that dispute by the expert or the QCA (as applicable), is excluded from that period).

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

- (u) If Aurizon Network intends exercising its rights under **clause 8.5(t)** to withdraw all or a part of a Provisional Capacity Allocation, it must give the relevant Feasibility Funder written notice and a reasonable opportunity (for a period of at least 10 Business Days) to explain why Aurizon Network should not exercise its rights in the way proposed. If having considered any explanation provided by the Access Seeker Aurizon Network (acting reasonably) withdraws all or part of the Provisional Capacity Allocation it must give the relevant Access Seeker written notice, including reasons for its decision.
- (v) An affected Feasibility Funder may within 10 Business Days of receiving notice of Aurizon Network's decision to withdraw Provisional Capacity Allocation under **clause 8.5(t)** refer the matter to the QCA as a dispute for resolution under **clause 11.1.5**. The QCA will determine whether the Provisional Capacity Allocation should be withdrawn having regard to the matters listed in **clause 8.5(t)**. The QCA's determination will, subject to **clause 11.1.5**, be binding on the parties to the dispute.
- (w) Subject to the terms of the relevant Studies Funding Agreements, where a Provisional Capacity Allocation is withdrawn under **clause 8.5(t)**, Aurizon Network must to the extent feasible (and provided that other Access Seekers will not be materially delayed) seek a replacement Access Seeker (or, as applicable, Customer) (**Replacement**) for all or some of that Capacity who:
  - (i) will be selected using the criteria set out in **clause 8.5(b)** and subject to **clause 8.5(d)**; and
  - (ii) is willing to enter into a Studies Funding Agreement as a Feasibility Funder for the relevant Feasibility Study,

subject to that Replacement and the other relevant Feasibility Funders agreeing with Aurizon Network any relevant amendments relating to scope, timing and cost of the Feasibility Study in respect of the Studies Funding Agreement for that Feasibility Study.

For clarity, if a proposed replacement Feasibility Funder enters into a Studies Funding Agreement in respect of the relevant Feasibility Study, then **clauses 8.5(r) to 8.5(v)** apply to that replacement Feasibility Funder.

- (x) A Provisional Capacity Allocation will automatically cease to apply upon the Access Seeker to which that Provisional Access Allocation applies signing an Access Agreement, Commercial Terms or User Funding Agreement relating to corresponding Access Rights.
- (y) If the Feasibility Study for an Expansion is funded under one or more Studies Funding Agreements (**Feasibility SFA**), then:

- (i) where there will be a User Funding Agreement for that Expansion, as a condition of that User Funding Agreement the relevant Funding Users will be required to include in the funding provided to Aurizon Network under their User Funding Agreement amounts that in aggregate equal the amount to be repaid or reimbursed by Aurizon Network under **clause 8.5(y)(ii)**; and
- (ii) where:
  - (A) the agreements with Access Seekers (or their Customers) for the funding and construction of that Expansion or the Access Agreement for utilisation of that Expansion have been executed and have become unconditional; and
  - (B) a Feasibility Funder is a party to those agreements and will use Access Rights granted as a result of the Capacity to be created by that Expansion,

Aurizon Network will, in accordance with the relevant Feasibility SFA for that Feasibility Funder, repay or reimburse to the Feasibility Funder (as applicable) the funding provided by the Feasibility Funder under that Feasibility SFA.
- (z) The capital expenditure for an Expansion includes the cost of Feasibility Studies relating to that Expansion. However, any amounts that are not repaid or reimbursed (as applicable) under **clause 8.5(y)** will not be treated as capital expenditure and will not be included in the Regulatory Asset Base.
- (aa) Without limiting any provision of this Undertaking, Aurizon Network is not obliged to construct, fund or permit an Expansion merely because Aurizon Network undertakes or funds any Feasibility Study relating to that Expansion.
- (bb) Aurizon Network will publish general details of each Feasibility Study it is undertaking promptly to relevant Access Seekers (and, where applicable, their Customers) after commencement of work on the Feasibility Study. The publication will not identify individual Access Seekers by name or, to the extent possible, precise details of origins and destinations.

## 8.6 Funding of Studies

- (a) Feasibility Studies must be funded by Access Seekers and/or, as applicable, Customers and must not be funded by:
  - (i) Aurizon Network; or
  - (ii) a Railway Operator acting as an Access Seeker, other than where a specifically identified Customer has made an Access Seeker Nomination under **clause 8.5(c)(i)(B)(2)** in favour of that Railway Operator.
- (b) Where this **Part 8** provides that a Railway Operator (acting as an Access Seeker) cannot act other than on behalf of an identified Customer:
  - (i) that Railway Operator must notify Aurizon Network of the identity and details of the Customer on whose behalf it is purporting to act; and
  - (ii) Aurizon Network must make reasonable inquiries to verify the identity of that Customer and confirm that the Customer agrees to the Railway Operator acting on its behalf.

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

- (a) If:
  - (i) either:

- (A) Aurizon Network:
  - (1) fails to enter into a Studies Funding Agreement in accordance with this Undertaking or unreasonably delays doing so, after all relevant Access Seekers (or, if applicable, their Customers) have done so; or
  - (2) fails to forward to all relevant Access Seeker an executable form of the Studies Funding Agreement containing the provisions previously agreed with those Access Seekers or in a form consistent with the terms of a final, binding determination made in accordance with the terms of this Undertaking, within 10 Business Days after that agreement being reached or that determination becoming final and binding; or
- (B) there is a reasonable expectation that the relevant Pre-Feasibility Study or Feasibility Study (as applicable) cannot be completed by Aurizon Network prior to the date (**Completion Date**) that is 60 Business Days after the target date specified (including as amended, extended or otherwise varied from time to time) in accordance with the Studies Funding Agreement (**Performance Delay**);
- (ii) a relevant affected Access Seeker (or, as applicable, Customer) who is a proposed party or party to the relevant Studies Funding Agreement has given written notice to Aurizon Network's Chief Executive Officer:
  - (A) identifying the alleged failure, unreasonable delay or Performance Delay; and
  - (B) in the case of the circumstance referred to in **clause 8.7(a)(i)(A)(2)**, (under the hand of a person with authority to bind the Access Seeker and who warrants that he or she has that authority when giving the notice), confirming that the Access Seeker is ready, willing and able to execute a Studies Funding Agreement as previously agreed or as determined by a final, binding determination in accordance with the provisions of this Undertaking;
- (iii) where the failure or unreasonable delay is that referred to in **clause 8.7(a)(i)(A)(1)**, Aurizon Network fails to enter into the Studies Funding Agreement within 10 Business Days after receiving the relevant notice under **clause 8.7(a)(ii)**; and
- (iv) where there is an alleged Performance Delay referred to in **clause 8.7(a)(i)(B)**, Aurizon Network:
  - (A) fails to prepare and provide to the relevant affected Access Seeker (or, as applicable, Customer), within 20 Business Days after receiving the relevant notice under **clause 8.7(a)(ii)**, a response confirming that Aurizon Network will complete the study by the Completion Date supported by reasonable particulars demonstrating how completion will be achieved; or
  - (B) after preparing and providing such a response to the relevant affected Access Seeker (or, as applicable, Customer), materially fails, due to its own acts or omissions, to comply with any aspect of that response,

a relevant affected Access Seeker (or, as applicable, Customer) may refer the matter to resolution as a dispute under **clause 11.1.4**. If the QCA determines that Aurizon Network:

- (v) is obliged to enter into a Studies Funding Agreement and, subject to **clause 8.7(a)(iii)**, has failed unreasonably to do so or unreasonably delayed doing so; or
  - (vi) has failed to forward the executable form of Studies Funding Agreement within the time limit specified by **clause 8.7(a)(i)(A)(2)**;
  - (vii) has:
    - (A) been the cause of a Performance Delay (as described in **clause 8.7(a)(i)(B)**); and
    - (B) either:
      - (1) failed to provide a response within the time specified in **clause 8.7(a)(iv)(A)**; or
      - (2) has failed to comply with the steps detailed in the response provided under **clause 8.7(a)(iv)(A)**,
- the QCA may (with the approval of all relevant Access Seekers and Customers) determine that the relevant study be undertaken by an appropriately qualified and experienced nominee of all relevant Customers.
- (b) If the QCA determines that the relevant study is to be undertaken by the nominee of all relevant Customers:
    - (i) Aurizon Network must comply with that determination;
    - (ii) Aurizon Network must provide the nominee with all information that can be lawfully provided by Aurizon Network<sup>1</sup> which is reasonably required by the nominee to undertake the applicable study (provided however that the nominee must only use such information in connection with the performance of the study); and
    - (iii) Aurizon Network must use the relevant study output for the purposes for which it was provided.
  - (c) If a study is undertaken by a nominee of all relevant Customers as contemplated by **clause 8.7(b)** Aurizon Network will implement the output of the study for completion of the applicable Feasibility Study, User Funding Agreement or Access Agreement, except to the extent that Aurizon Network successfully seeks a review of the scope (which may include the standard of work) of the Expansion referred to in the study by means of a QCA determination. Aurizon Network:
    - (i) may refer the matter for QCA determination in accordance with **clause 11.1.5** within 20 Business Days following publication to Aurizon Network of the study by the nominee;
    - (ii) will provide written notice of its dispute to the relevant Access Seekers, each of whom shall have a right to make submissions to the QCA in respect of the dispute; and
    - (iii) will provide written submissions to the QCA, with copies to each of the relevant Access Seekers, detailing why, in Aurizon Network's view, the scope decided by the nominee is not appropriate and how it should be amended.

The QCA shall determine what the appropriate scope should be.

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<sup>1</sup> For example, Aurizon Network's confidentiality or ring-fencing obligations under this Undertaking, at law or under any agreements may limit or prevent the provision of information.

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

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

- (a) Subject to this **clause 8.8** and **clause 8.9**, an Access Seeker may fund its relevant portion of the cost of an Expansion that is necessary to create additional Capacity so that Access Rights may be granted to Access Seekers but only if Aurizon Network:
  - (i) is not obliged under this Undertaking to do so; and
  - (ii) either:
    - (A) is not willing to do so (as notified or deemed notified under **clause 8.8(c)**); or
    - (B) is only willing to do so subject to Commercial Terms that are unacceptable to the Access Seeker,provided that where the relevant Access Seeker intends to utilise any Access Rights sought to be provided by the proposed Expansion for the benefit of a Customer, it may only fund the cost of an Expansion if it is acting on behalf of a Customer or Customers identified to Aurizon Network for all of the Access Rights sought by the relevant Access Seeker. Aurizon Network must make reasonable inquiries as to the identity of that Customer in accordance with **clause 8.6(b)**.
- (b) For clarity, any obligation on Aurizon Network to construct or permit an Expansion is subject to **clauses 8.2.1(c)** and **(f)**.
- (c) Aurizon Network will notify the Feasibility Funders within 40 Business Days after the relevant Studies Funding Agreements become unconditional whether:
  - (i) Aurizon Network is not willing to fund the Expansion;
  - (ii) Aurizon Network requires Commercial Terms to be agreed in relation to the funding of the Expansion (and, if so, the details of the conditions that will comprise Commercial Terms).
- (d) If Aurizon Network has not given a notice under **clause 8.8(c)** or **clause 8.2.1(b)**, then (for the purpose of Access Seekers commencing the processes under **clause 8.9.1(a)**) Aurizon Network is taken to not be willing to fund the Expansion.
- (e) If Aurizon Network has given a notice under **clause 8.8(c)(ii)** and the relevant Access Seeker is willing to negotiate, then Aurizon Network and the relevant Access Seeker will negotiate in good faith the proposed Commercial Terms on which Aurizon Network will be willing to fund the Expansion.
- (f) Where Aurizon Network has given a notice under **clause 8.8(c)(ii)** that it requires Commercial Terms an Access Seeker may require Aurizon Network to negotiate a User Funding Agreement for all or part of an Expansion in parallel to negotiations in relation to the Commercial Terms.
- (g) **Clause 8.8(c)** does not prevent Aurizon Network from subsequently notifying relevant parties of whether Aurizon Network is willing to fund the Expansion with or without Commercial Terms. Any notice under this **clause 8.8(g)** does not prevent Access Seekers from pursuing User Funding in preference to the proposal from Aurizon Network for it to fund the Expansion (even if Aurizon Network's proposal is to fund without Commercial Terms).

- (h) Where Aurizon Network is obliged under this Undertaking to fund an Expansion, Aurizon Network must negotiate an Access Agreement in accordance with this Undertaking with those Access Seekers that will utilise the Expansion.
- (i) It is acknowledged that an Expansion may be funded partly by Funding Users and partly by Aurizon Network. (j) Where Aurizon Network is:
  - (i) granting a Provisional Capacity Allocation under **clause 8.5(r)**; or
  - (ii) negotiating or entering into an Access Agreement,
 Aurizon Network will not have regard to whether any relevant Expansion is or may be a User Funded Expansion or is or may be funded by Aurizon Network.

## 8.9 User Funded Expansions

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

- (a) If an Access Seeker intends to fund its relevant portion of the cost of an Expansion under **clause 8.8(a)**:
  - (i) each proposed Funding User must give written notice to Aurizon Network of its bona fide intention to negotiate a User Funding Agreement for its relevant portion of the cost of the Expansion;
  - (ii) after receiving such written notice, Aurizon Network and the proposed Funding Users will negotiate in good faith a User Funding Agreement;
  - (iii) upon the User Funding Agreement being agreed by Aurizon Network and the Funding Users, or its terms being determined through dispute resolution, in accordance with this Undertaking:
    - (A) Aurizon Network will issue the proposed User Funding Agreement to the proposed Funding Users and other relevant parties (for example, the State – if applicable), as applicable; and
    - (B) subject to the proposed Funding Users and other relevant parties (for example, the State, if applicable) first executing that User Funding Agreement, Aurizon Network will execute the User Funding Agreement; and
  - (iv) the User Funding Agreement must be in the form of the Standard User Funding Agreement unless otherwise agreed by Aurizon Network and the proposed Funding Users.
- (b) Where **clause 8.9.1(a)(iii)** applies, Aurizon Network will use reasonable endeavours to procure the State to enter into a User Funding Agreement.

### 8.9.2 Disputes about completion of SUFA schedules

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

Customer.

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

- (a) A User Funded Expansion will be leased from the State, an Authority or a trustee as contemplated by SUFA or owned, and in either case operated, by Aurizon Network in accordance with the provisions of the relevant User Funding Agreement and must constitute part of the Rail Infrastructure.
- (b) If Aurizon Network nominates a Capital Indicator to the QCA for approval which includes any allowance for the expected capital expenditure in relation to a User Funded Expansion, Aurizon Network must identify the proportion of the relevant nominated Capital Indicator which reflects the expected capital expenditure in relation to the User Funding Agreement(s) for that User Funded Expansion.

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

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

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

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

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

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

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

the scope and standard of work for the relevant Expansion.

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

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

### **8.9.8 Tax rulings**

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

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

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

- (a) review the SUFA including having regard to the principles developed by Aurizon Network in consultation with industry participants; and
- (b) consult with the Funding Users and Access Seekers about the workability of the SUFA for User Funding, and, after doing so:
- (c) submit to the QCA any amendments that Aurizon Network (acting reasonably) considers will improve the workability of the SUFA in the form of a draft amending access undertaking under the Act; or
- (d) if Aurizon Network (acting reasonably) considers no amendments are required, Aurizon Network must make a submission to the QCA giving detailed written reasons for that belief.

## 8.10 Contracting for Capacity

### 8.10.1 Access Agreements conditional on an Expansion

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

- (a) that Access Agreement is subject to a condition precedent that requires the relevant Expansion to have been completed and commissioned;
- (b) that Access Agreement includes terms and conditions so that the Access Rights relevant to the Expansion are limited to the available Capacity for the Expansion; and
- (c) either:
  - (i) the Access Seeker and Aurizon Network have agreed the scope of work the subject of the Expansion; or
  - (ii) where the Expansion is not (or will not be) an Expansion to be funded on Commercial Terms, in the absence of agreement on the scope of works the subject of the Expansion, the scope has been determined by the QCA.

Where an Access Seeker and Aurizon Network do not reach agreement on the scope of work (including standard of work) for an Expansion (other than an Expansion to be funded on Commercial Terms), either party may at any time refer the matter to the QCA for dispute resolution under **clause 11.1.5**. In such circumstances involving a User Funded Expansion **clause 8.9.2** will apply.

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

### 8.10.2 Optimisation risk and Capacity Shortfalls

- (a) This **clause 8.10.2** applies where Aurizon Network is funding all or part of the cost of an Expansion at the regulated rate of return specified by this Undertaking.
- (b) Where the scope of works (including the standard of work) for an Expansion is determined by the QCA as contemplated by this **Part 8** or by a nominee under **clause 8.7**, Aurizon Network will promptly apply to the QCA following that determination of scope for pre- approval of the:
  - (i) prudence of scope of the Expansion;
  - (ii) prudence standard of works for the Expansion; and
  - (iii) prudence of the proposed cost of the Expansion, in accordance with the process in **schedule E**.
- (c) Where the QCA provides pre-approval of each of the matters in **clause 8.10.2(b)** the actual cost of the Expansion up to the total of the pre-approved proposed cost under **clause 8.10.2(b)** will be automatically included into the

Regulatory Asset Base in accordance with the process in **schedule E**. The amount of any actual cost above the pre-approved proposed cost will need to be approved by the QCA for it to be included into the Regulatory Asset Base.

- (d) Where the QCA does not pre-approve the proposed cost of the Expansion as contemplated by **clause 8.10.2(b)**, Aurizon Network will not be obliged to fund the cost of that Expansion and has no obligation to construct that Expansion in the absence of User Funding.
- (e) Where the scope of works (including the standard of work) for an Expansion is determined by the QCA as contemplated by this **Part 8** and:

- (i) the Expansion is constructed in accordance with that scope and standard; and
- (ii) the Expansion results in a Capacity Shortfall (determined in accordance with the process in **clause 8.10.3**),

then:

- (iii) Aurizon Network will (acting reasonably) calculate the Capacity Shortfall, if any, that would have existed if the scope of work (including standard of work) previously proposed by Aurizon Network had been constructed, which calculation may (pursuant to **Part 11**) be disputed by Affected Access Holders (**AN Shortfall**);

- (iv) If the AN Shortfall is less than the Capacity Shortfall calculated under **clause 8.10.2(e)(ii)**, the Affected Access Holders may:

- (A) elect to have their rights of Access remain compressed in relation to that Expansion as a result of the Capacity Shortfall (in accordance with the process for compression in this Undertaking); or
- (B) elect to seek to fund an Expansion to address the difference in Capacity between the AN Shortfall and the Capacity Shortfall, in which case Aurizon Network will fund an Expansion to address the AN Shortfall;

- (v) where the affected Access Holders elect to seek to fund an Expansion under **clause 8.10.2(e)(iv)(B)** they can be given a priority allocation of Capacity in an existing or future process for the scoping and funding of a related Expansion that can be utilised to address the Capacity Shortfall without Aurizon Network offending this **Part 8**;

- (vi) If the AN Shortfall is equal to or greater than the Capacity Shortfall calculated under **clause 8.10.2(e)(ii)**, Aurizon Network will fund the Shortfall Expansion needed to address the Capacity Shortfall in accordance with and subject to the provisions of **clause 8.10.3(f)**; and

- (vii) Unless otherwise agreed in writing by Aurizon Network and Affected Access Holders, Aurizon Network's obligations in relation to a Capacity Shortfall arising in the context of an Expansion where the scope of the Expansion has been determined by the QCA will be governed solely by this **clause 8.10.2(e)**.

### 8.10.3 Capacity Shortfalls

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

- (i) the Existing Capacity at the time; less
  - (ii) the Existing Capacity of the system in the absence of the Expansion, using consistent System Operating Parameters. Aurizon Network must notify all of the relevant Conditional Access Holders of the conclusions of that assessment and the basis for those conclusions.
- (b) Aurizon Network may by written notice to all relevant Conditional Access Holders defer an assessment for the purposes of **clause 8.10.3(a)** until such time as Aurizon Network reasonably considers that the relevant Expansion is fully operational and the demand conditions are such that a reasonable assessment can be undertaken.
- (c) If a Conditional Access Holder disputes an assessment by Aurizon Network under **clause 8.10.3(a)**, the Conditional Access Holder may refer that dispute to an expert in accordance with **clause 11.1.4**. The determination of the expert will be binding. The expert will determine which party or parties should bear the costs of the expert.
- (d) If Aurizon Network's assessment under **clause 8.10.3(a)** indicates that there is a Capacity Shortfall in relation to Conditional Access Holders, then:
- (i) the Conditional Access Rights of each Conditional Access Holder are reduced in accordance with its Access Agreement; and
  - (ii) subject to **clause 8.10.3(e)**, where those Conditional Access Rights are reduced, each Conditional Access Holder will be taken to have lodged an Access Application with Aurizon Network for Access Rights equivalent to that reduction if they notify Aurizon Network within 20 Business Days after the reduction occurs that they wish to seek Access Rights equal to that reduction (unless their Access Agreement provides to the contrary).
- (e) For the purpose of a Conditional Access Holder's Access Application under **clause 8.10.3(d)**:
- (i) the Access Application is taken to be on the same terms as the previous Access Application made by that Conditional Access Holder for those Conditional Access Rights but only to the extent that its Conditional Access Rights have been reduced in accordance with its Access Agreement as a result of the Capacity Shortfall;
  - (ii) Aurizon Network and the Conditional Access Holder are taken to have complied with **clauses 4.2 to 4.4(b)**; and
  - (iii) **clause 4.4(c)** applies to the Access Application.
- (f) Subject to **clause 8.10.2**, and subject to any agreement with the relevant Conditional Access Holders, where an Expansion (**Shortfall Expansion**) is required as a result of a Capacity Shortfall arising in respect of an earlier Expansion (**Earlier Expansion**) and that Shortfall Expansion is technically and economically feasible:
- (i) subject to **clause 8.10.3(f)(ii)**, if the Earlier Expansion:
    - (A) was funded by Aurizon Network, Aurizon Network will bear the cost of the Shortfall Expansion;
    - (B) was partly funded by Aurizon Network:
      - (1) Aurizon Network will bear the proportion of the cost of the Shortfall Expansion that represents the proportion of the Earlier Expansion that was funded by Aurizon Network; and
      - (2) the Conditional Access Holder(s) who (or whose Customers) provided funding in respect of the

Earlier Expansion will bear the remainder of the cost of the Shortfall Expansion if they require it (in which case Aurizon Network and the Conditional Access Holder(s) (or their Customers) will promptly enter into User Funding Agreements on the same terms); or

- (C) was not funded (in whole or part) by Aurizon Network, a Conditional Access Holder will bear the cost of the Shortfall Expansion if they require it; and
- (ii) if the Capacity Shortfall was caused by a default by, or the negligent acts or omissions of, Aurizon Network, Aurizon Network will bear the cost of the Shortfall Expansion.
- (g) Unless agreed otherwise by the relevant Conditional Access Holders, any Shortfall Expansion must be addressed in accordance with the provisions of this Undertaking relating to Expansions.
- (h) Nothing in this **clause 8.10** obliges Aurizon Network to do or not to do anything that would cause or contribute to Aurizon Network failing to comply with this Undertaking, any legal obligation or any agreement.