

## Volume 2

### **Aurizon Network's Proposed Redraft of the CDD Amended Undertaking (Marked up against the QCA's CDD amended Undertaking)**

This Volume 2 contains Aurizon Network's proposed amendments to the QCA's CDD amended undertaking (in mark up). It consists of the following Parts.

- Part 2 Intent and Scope,
- Part 3 Ringfencing,
- Part 4 Negotiation Framework,
- Part 11 Dispute Resolution and Decision Making, Schedule A, B & C

Aurizon Network will submit further proposed amendments to the QCA's CDD amended undertaking shortly after provision of this submission.

Note: Aurizon Network's mark up to the QCA's proposed Access Agreement and Train Operations Deed, as well as a mark up to Part 5 of the Undertaking (Access Agreements), and associated portions of Part 7 (Available Capacity Allocation and Management) are contained in Volume 3).

## Part 2: Intent and Scope

### 2.1 Duration

- (a) This Undertaking is effective from the Approval Date to the Terminating Date.
- (b) Following the Approval Date, Adjustment Charges will be calculated in respect of the period between the Adjustment Date and the Approval Date in accordance with Schedule F and will be payable in accordance with that Schedule. For clarity, the Adjustment Charges do not involve the retrospective application of this Undertaking, but are amounts payable under this Undertaking that have been calculated by reference to a period prior to the Approval Date.

### 2.2 Objective

The objective of this Undertaking is, without limitation, to:

- (a) ensure the service taken to be declared under section 250(1)(a) of the Act is provided in a manner that does not unfairly differentiate in a material way (as ~~that term is defined~~described in section 137(3) of the Act);
- (b) prevent Aurizon Network recovering, through the price of access to the service taken to be declared under section 250(1)(a) of the Act, any costs that are not reasonably attributable to the provision of that service;
- (c) facilitate the negotiation of access agreements by Aurizon Network and Access Seekers;
- (d) apply the provisions of the Act through:
  - (i) the establishment of processes for Access negotiations and the utilisation of Capacity that are expeditious, efficient, timely, flexible, commercial and non-discriminatory;
  - (ii) the establishment of processes and principles to provide guidance in relation to the pricing, and the terms and conditions, of Access; and
  - (iii) the establishment of processes and principles for the planning and development of Expansions and the framework for the negotiation of terms for the funding of Pre-feasibility Studies, Feasibility Studies and Expansions;

- (e) provide an efficient, effective and binding Dispute resolution process; and
- (f) provide that actions under this Undertaking are consistent with the objectives for rail under section 2(2)(d) of the TIA and that such actions and this Undertaking are also consistent with the objectives and provisions of the Act.

## 2.3 Interpretation of this Undertaking

~~In the event of any ambiguity~~ This Undertaking must be interpreted in a manner that best achieves the objectives set out in **clause 2.2**.

## 2.4 Behavioural obligations

In providing Access and in negotiations for Access, Aurizon Network:

- (a) must act in a manner that is consistent with the unfair differentiation obligations under sections 100(2) to (4) and section 168C of the Act.
- ~~(b)~~ Without limiting **clause 2.4(a)**, the steps that Aurizon Network must take to comply with this general obligation in **clause 2.4(a)** are set out in this Undertaking and include the ~~following:~~ the requirement that
- ~~(b)~~ this Undertaking must, in accordance with its terms and as applicable, be consistently applied to all Access Seekers, Access Applications, negotiations for Access, Access Holders and Railway Operators;
  - ~~(ii)~~ ~~Aurizon Network must not unfairly differentiate between Access Seekers, Access Holders or Railway Operators in a way that has a material adverse effect on the ability of any of them to compete with any other of them, including in relation to:~~
    - ~~(A)~~ ~~any decision relating to whether Aurizon Network will undertake an Expansion;~~
    - ~~(B)~~ ~~assessing, allocating and managing Capacity;~~
    - ~~(C)~~ ~~providing scheduling and Network Control Services in accordance with the Network Management Principles;~~
    - ~~(D)~~ ~~any decision relating to the source of funding for an Expansion;~~
    - ~~(E)~~ ~~assessing and selecting Access Seekers, and~~
    - ~~(F)~~ ~~any decision relating to the provision of Access to:~~
      - ~~(1)~~ ~~a Related Operator;~~
      - ~~(2)~~ ~~a Related Competitor; or~~
      - ~~(3)~~ ~~a Third Party that has commercial arrangements with a Related Operator or Related Competitor,~~

except where there is an express provision to the contrary in:

~~(G)~~ — this Undertaking or the Act; or

~~(H)~~ — an Access Agreement and the relevant conduct would not contravene the requirements set out in **clause 3.1(g)**.

~~(e)~~ — Aurizon Network must:

~~(i)~~ — not engage in conduct for the purpose of preventing or hindering an Access Seeker's access to the declared service within the meaning of section 104 or 125 of the Act; and

~~(ii)~~ — ensure that it does not unfairly differentiate in a material way (that is, in a way that has a material adverse effect on the ability of an entity to compete with another entity) between Access Seekers or Access Holders in the quality of the service taken to be declared under section 250(1)(a) of the Act.

~~(e)~~(c) Without limiting **clause 2.2(a)**, Aurizon Network must ensure that:

(i) all transactions between Aurizon Network and any other party in relation to Access are conducted on an arms-length basis;

(ii) all Access Seekers, irrespective of whether they are an Aurizon Party or a Third Party:

(A) are provided with a consistent level of service; and

(B) given an equal opportunity to obtain Access Rights, and

subject to the express provisions of the Act and this Undertaking; ~~and~~

~~(iii)~~ — all decisions made under this Undertaking are made in a manner that does not unfairly differentiate between any Access Seekers and/or Access Holders in a material way (that is, in a way that has a material adverse effect on the ability of an entity to compete with another entity);

~~(e)~~(d) Aurizon Network must not engage in any activity or conduct (or agree to engage in such activity or conduct), either independently or with Related Operators, which has the purpose of, results in or creates, or is likely to result in or create:

(i) anti-competitive cost shifting;

(ii) anti-competitive cross-subsidies; or

(iii) anti-competitive price or margin squeezing.

~~(f)~~(e) For clarity, nothing in this clauses 2.4(c)(ii) and 2.4(d)(iii) ~~do not~~ prevents Aurizon Network from engaging in conduct expressly

permitted by section 100(3) of the Act (subject to section 100(4) of the Act).

~~(g)~~(f) If an Access Seeker or Access Holder considers that Aurizon Network has failed to comply with **clause 2.4(a) to (d)**, it may lodge a written complaint with Aurizon Network and must provide a copy of that complaint to the QCA.

~~(h)~~(g) Aurizon Network must:

- (i) advise the QCA, as soon as practicable, of any complaints it receives under **clause 2.4(f)**;
- (ii) investigate complaints received under **clause 2.4(f)**; and
- (iii) within twenty-eight (28) days after receiving such a complaint, advise the complainant and the QCA in writing of the outcome of that investigation and Aurizon Network's proposed response, if any.

~~(i)~~(h) If the complainant is not satisfied with the outcome of Aurizon Network's investigation, the complainant may apply to the QCA requesting an audit of the conduct that is the subject of the complaint under **clause 2.4(f)**.

~~(j)~~ — If a complainant applies to the QCA in accordance with **clause 2.4(h)**:

~~(i)~~ — the QCA may request Aurizon Network to conduct an audit in accordance with clause 10.6.3 in respect of Aurizon Network's compliance with **clause 2.4(a) to (d)** as it relates to the relevant complaint; ~~and~~

~~(ii)~~(i) ~~if the QCA makes such a request, clause 10.8 applies.~~

~~(k)~~ — For clarity, the rights and obligations under **clause 2.4(g) to (j)** are in addition to, and do not replace or derogate in any way from, the QCA's investigative powers under the Act, including but not limited to section 150AA and Part 6 of the Act. Nothing in this Undertaking precludes an Access Seeker or Access Holder making any complaint or submission to the QCA.

## 2.5 Scope

- (a) This Undertaking provides only for the negotiation and provision of Access and is not applicable to the negotiation or provision of services other than Access. ~~For clarity, "Access" in this clause 2.5 includes all aspects of access to the service taken to be declared under section 250(1)(a) of the Act.~~
- (b) Access Holders are responsible for:
  - (i) the provision of any services other than Access, including Above Rail Services, required for the operation of Train Services; and

- (ii) the necessary approvals from the owners of the land upon which the Rail Infrastructure is situated if it is not owned by Aurizon Network and Aurizon Network does not have an existing legal right to authorise Access Holders to access that land.
- (c) Aurizon Network must promptly notify the Access Holder if Aurizon Network does not own the land upon which the Rail Infrastructure is situated or have an existing legal right to authorise the Access Holder to access that land.
- (d) Nothing in this Undertaking can require Aurizon Network to act in a way that is inconsistent with its Passenger Priority Obligations or Preserved Train Path Obligations.
- (e) Nothing in this Undertaking can require Aurizon Network or any other party to an Access Agreement or Train Operations Deed, executed before the Approval Date, to vary that agreement or deed or to act in a way that is inconsistent with the relevant agreement or deed.
- (f) ~~Except where expressly stated in this Undertaking to the contrary,~~ ~~¶~~This Undertaking will not apply to the extent that it is inconsistent with an Access Agreement or a Train Operations Deed.
- (g) Nothing in this Undertaking affects the rights of Aurizon Network or other parties under the Act.

## 2.6 Aurizon Holdings to execute Deed

- (a) Aurizon Network must request that its Ultimate Holding Company provides the Ultimate Holding Company Support Deed (**Deed**) in the form set out in **Error! Reference source not found.**
- ~~(b) For clarity, the Deed is intended to ensure:~~
  - ~~(i) the Ultimate Holding Company, Aurizon Network and each other Aurizon Party complies with the arrangements prescribed in **Part 3** of this Undertaking;~~
  - ~~(ii) the Ultimate Holding Company and each other Aurizon Party:~~
    - ~~(A) takes all necessary steps to ensure Aurizon Network complies with arrangements prescribed in **Part 3** of this Undertaking;~~
    - ~~(B) does not direct or request Aurizon Network to act in contravention of **Part 3** of this Undertaking; and~~
    - ~~(C) does not otherwise engage in any conduct which may prevent or hinder Aurizon Network from complying with **Part 3** of this Undertaking;~~
  - ~~(iii) without limiting **clause 2.6(b)(i)**, the Ultimate Holding Company and each other Aurizon Party does not use or~~

~~disclose Confidential Information other than as permitted by this Undertaking;~~

~~(iv) that the Ultimate Holding Company, each other Aurizon Party and Aurizon Network has the authority to provide or authorise access to land which is owned by an Aurizon Party or which an Aurizon Party has authority to authorise access to through a lease, licence or other arrangement with the owners of the land or in accordance with the TIA; and~~

~~(v) Aurizon Parties take the steps required to allow Aurizon Network to procure a sale or supply of electric energy.~~

~~(e)(b)~~ If:

(i) Aurizon Network fails to procure a Deed in the form required by **clause 2.6(a)**;

(ii) the Deed, if obtained, is not maintained in force; or

(iii) the requirements of the Deed are not complied with,

then this Undertaking ceases to permit:

(iv) use of Confidential Information by; or

(v) disclosure of Confidential Information to,

any person or entity in the Aurizon Group but outside Aurizon Network (and any authorisation provided under this Undertaking permitting such use or disclosure is immediately withdrawn and of no effect) until:

(vi) Aurizon Network obtains a current Deed from the Ultimate Holding Company; or

(vii) the failure to comply with the requirements of the Deed is rectified to the satisfaction of the QCA,

as applicable.

## 2.7 Electricity supply and sale

(a) To the extent that Aurizon Network sells or supplies a Related Operator with electric energy in connection with Access, Aurizon Network cannot refuse to sell or supply electric energy to another Access Seeker or Access Holder (or, if applicable, a Nominated Railway Operator).

(b) Despite any other provision of this Undertaking, Aurizon Network will not be obliged to sell or supply electric energy to an Access Seeker or Access Holder (or, if applicable, a Nominated Railway Operator) or to agree to do so:

(i) if Aurizon Network is not lawfully entitled to sell or supply electric energy to the relevant Access Seeker, Access Holder or, if applicable, Nominated Railway Operator under

any Law, including the *Electricity Act 1994* (Qld) and the National Electricity Rules (as defined under the National Electricity Law set out in the schedule to the *National Electricity (South Australia) Act 1996* (SA)); or

(ii) on terms that would be unreasonable or uncommercial.

(c) For clarity, ~~except to the extent that a dispute relates to the terms and conditions of supply of electric energy that is within the competent jurisdiction of another regulator to regulate or determine if a Dispute dispute arises~~ between an Access Holder, a Nominated Railway Operator or an Access Seeker and Aurizon Network regarding a ~~refusal-failure~~ by Aurizon Network to comply with its obligations under this clause 2.7 ~~sell or supply electric energy (or procure such a sale or supply from an Aurizon Party), or the proposed terms and conditions on which Aurizon Network (or an Aurizon Party) offers to sell or supply electric energy to the Access Holder, Nominated Railway Operator or Access Seeker, any party may require~~ may be treated by the relevant parties as a ~~the~~ Dispute to be resolved in accordance with **clause 11.1**.

(Note: This part has not been marked up against the QCA's CDD amended DAU)

## Part 3: Ringfencing

### Section A – General Provisions

#### 3.1 Objectives

- (a) The objectives of this **0** are, without limitation:
- (i) to seek to ensure the Ringfenced Information relating to a Third Party Access Seeker, Access Holder or Train Operator is not subject to unauthorised disclosure or use;
  - (ii) to seek to ensure the day-to-day management of Aurizon Network is independent of Aurizon Parties operating in upstream or downstream markets that are part of any Supply Chain that includes the Rail Infrastructure (subject to corporate governance requirements);
  - (iii) to provide a complaints process for the investigation of potential breaches of this **0**;
  - (iv) to require the provision of specified financial information to the QCA in respect of Aurizon Network's Regulated Business (and other services that Aurizon Network has voluntarily undertaken to provide in accordance with this Undertaking); and
  - (v) to aid Aurizon Network's compliance with its various obligations under the Act, namely:
    - (A) to negotiate in good faith with Access Seekers regarding the provision of Access under section 100(1) of the Act;
    - (B) to not unfairly differentiate between Access Seekers or between Access Holders in the ways referred to in sections 100 and 168C of the Act; and
    - (C) to not engage in conduct for the purpose of preventing or hindering an Access Holder's access to the service taken to be declared under section 250(1)(a) of the Act in accordance with sections 104 and 125 of the Act,

in a way that is efficient, effective and otherwise appropriate.

- (b) To the extent that a provision in this **0** is ambiguous, an interpretation of that provision which is consistent with the objectives in **clause 3.1(a)** must be preferred.

### **3.2 Organisational context**

- (a) Aurizon Network is part of the Aurizon Group and a Subsidiary of Aurizon Holdings.
- (b) Being a Subsidiary of Aurizon Holdings and consistent with good corporate governance, Aurizon Network's financial performance, capital expenditure program and business plan are subject to oversight by the board and senior management of Aurizon Holdings.
- (c) Aurizon Network provides a regulated access service, together with providing unregulated services in competitive markets.
- (d) The Aurizon Group, amongst other matters, provides Above Rail Services through a Related Operator. Aurizon Network does not provide Above Rail Services that use the Rail Infrastructure.
- (e) Within the Aurizon Group, there are functional groups that provide shared support services and core corporate functions to different functional areas and parts of the Aurizon Group that include both Related Operators and Aurizon Network.
- (f) Aurizon Network is required by the TIA to maintain an independent board of directors which supervises arm's-length dealings in respect of Access between Aurizon Network and any Related Operators.

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

### **3.3 Regulated function of Aurizon Network**

- (a) For the purpose of this Undertaking and the Act, Aurizon Network is the access provider for that part of the service described in section 250(1)(a) of the Act which involves the Rail Infrastructure.
- (b) Aurizon Network provides the following Below Rail Services in its role as an access provider:
  - (i) access to the service described in section 250(1)(a) of the Act in so far as it relates to the Rail Infrastructure (which, for clarity, includes access to any overhead electrical power supply systems forming part of the Rail Infrastructure);
  - (ii) negotiating and managing Access Agreements, Train Operations Deed and other agreements or arrangements that may be required in accordance with this Undertaking;
  - (iii) receiving, assessing and responding to Access Applications;
  - (iv) providing or procuring appropriate levels of maintenance for and renewal and repair of the Rail Infrastructure to ensure that the Rail Infrastructure is provided to the standard required to meet Aurizon Network's obligations to Access

Holders, Train Operators, the DTMR, and its infrastructure lessors and Aurizon Network's under all relevant Laws including as a Rail Infrastructure Manager under the Rail Safety Act;

- (v) assessing, allocating and managing Capacity;
  - (vi) providing scheduling and Network Control Services for Rail Infrastructure in accordance with the Network Management Principles; and
  - (vii) the administration of the process for network development, planning, studies and Expansions in accordance with **Part 8**.
- (c) In addition to the Below Rail Services referred to above, Aurizon Network agrees to sell or supply electric energy for electric traction in accordance with clause **[insert sale and supply of electric energy clause]**.
- (d) Aurizon Network must not undertake, provide or market any Above Rail Services in respect of the Rail Infrastructure, unless for the purpose of providing either services in respect of Private Infrastructure or Below Rail Services.
- (e) If Aurizon Network:
- (i) holds any direct or indirect interest in, or operates or manages vessel loading facilities at, a port; or
  - (ii) holds any direct or indirect interest in, or operates or manages, any coal mine or coal-extraction project,
- that forms part of a Supply Chain, in whatever capacity and whether alone or with others, then Aurizon Network must not use that position for the purpose of differentiating between Access Seekers or between Access Holders in a way that would constitute a breach of Aurizon Network's obligations under section 100(2) or 168C of the Act.

### **3.4 Performance of Below Rail Services**

- (a) In performing Below Rail Services, Aurizon Network may obtain assistance or advice from another person (including an Aurizon Party and employees of an Aurizon Party) including:
- (i) to perform Below Rail Services or to provide Access;
  - (ii) to comply with this Undertaking or the Act or any other relevant Law;
  - (iii) to provide access to any service required to be provided under this Undertaking; and
  - (iv) to otherwise operate Aurizon Network's Regulated Business, except that:

- (v) the person must not be part of the Above Rail Marketing Personnel; and
- (vi) a Related Operator or Related Competitor may only perform Below Rail Services that relate to:
  - (A) Field Incident Management;
  - (B) Yard Control services at yards other than Major Yards;
  - (C) maintenance, renewal, repair or replacement of the Rail Infrastructure or Aurizon Network's Rollingstock;
  - (D) project delivery, engineering or rail construction services in relation to the procurement, construction or design of Rail Infrastructure;
  - (E) engineering or other advice in relation to Rollingstock and Rollingstock interface issues;
  - (F) health, safety and environmental related services (including any incident investigations); or
  - (G) corporate functions, shared services, governance arrangements and management reporting (including assessing the credit risk of counterparties or otherwise assessing the implications of an arrangement on Aurizon Network's access to funds or the taxation consequences of that arrangement) in the usual course of business.

### 3.5 Staffing and secondments

- (a) Aurizon Network must not permit employees whose duties relate to providing Below Rail Services and Access to undertake any work at the direction of, or for, a Related Operator.
- (b) Nothing in **clause 3.5(a)** restricts or prevents:
  - (i) an employee from performing functions that are required to negotiate for, or provide Access to, a Related Operator in accordance with the terms of this Undertaking or the Act;
  - (ii) secondments of employees or an employee ceasing to work for Aurizon Network and commencing to work for a Related Operator, subject to the requirements in **clause 3.5(c)**;
  - (iii) an employee undertaking any function or activity:
    - (A) required or compelled by, or necessary to comply with or observe, any Law;

- (B) required or compelled by, or necessary to comply with or observe, any order of a court;
  - (C) required or compelled by, or necessary to comply with or observe, a notice validly issued by any Authority;
  - (D) necessary for the conduct of any legal proceedings, dispute resolution process or audit under this Undertaking, the Act or an Access Agreement, Train Operations Deed or any other agreement or arrangement entered into relating to Below Rail Services, Access or the Rail Infrastructure; or
  - (E) in the course of responding to an emergency or natural disaster or for clearing an incident or emergency that is preventing or impeding the operation of Train Services on the Rail Infrastructure;
- (iv) an employee undertaking work providing services that do not relate to the provision of Below Rail Services; or
  - (v) an employee engaged in undertaking:
    - (A) asset construction, maintenance, renewal, or repair; or
    - (B) support services and/or corporate functions, from undertaking work for any Aurizon Group business unit or corporate functional area, subject to the requirements in this Undertaking on the handling of Ringfenced Information.
- (c) Aurizon Network must not permit any secondments or other temporary transfers of employees to or from:
    - (i) the Above Rail Marketing Personnel; or
    - (ii) a Related Operator if the employee has had (or will have in the new role) access to Ringfenced Information, except where Aurizon Network:
      - (A) has advised the relevant employee of the need to keep Ringfenced Information confidential from the Related Operator; and
      - (B) enters into the Ringfencing Register the details (including the change in role or circumstances, the anticipated duration of that change and confirmation that the advice in **clause 3.5(c)(ii)(A)** was given and by whom).
  - (d) Aurizon Network acknowledges that its obligations under this **0** to protect the unauthorised disclosure of Ringfenced Information extend

to the unauthorised disclosure of Ringfenced Information by Aurizon Network Personnel who participate in a project working group involving persons other than Aurizon Network Personnel.

## Section C – Independent management

### 3.6 Independence of Management Team

- (a) Aurizon Network must:
  - (i) ensure that Aurizon Network is managed independently from:
    - (A) Related Operators;
    - (B) Related Competitors; and
    - (C) Above Rail Marketing Personnel; and
  - (ii) take whatever steps it can reasonably take to ensure that Related Operators, Related Competitors and Above Rail Marketing Personnel do not participate in the process for the appointment or supervision of the executive management of Aurizon Network.
- (b) Aurizon Network must ensure that the executive management of Aurizon Network does not have any management responsibility for:
  - (i) a Related Operator;
  - (ii) any Related Competitor; or
  - (iii) any Above Rail Marketing Personnel.
- (c) Aurizon Network must not act on directions from a Related Operator in respect of the grant or exercise of Access Rights to, by or for the benefit of:
  - (i) any Related Operator; or
  - (ii) a Third Party Access Seeker, Third Party Access Holder or Third Party Train Operator, otherwise than with the consent of the Third Party,

provided that nothing prevents a Related Operator exercising a right or requiring Aurizon Network to comply with an obligation under an Access Agreement between Aurizon Network and that Related Operator, this Undertaking or the Act or any other Law, as applicable.

## Section D – Ringfenced Information

### *Section D1 – General provisions*

### 3.7 Overarching commitment to information security

- (a) Aurizon Network must not:

- (i) disclose Ringfenced Information to any Above Rail Marketing Personnel; or
  - (ii) use, or permit to be used, Ringfenced Information for the purpose of facilitating or assisting Above Rail Marketing Personnel in any way.
- (b) Subject to the other provisions of this Undertaking, Aurizon Network must:
- (i) not disclose Ringfenced Information to a Related Operator or Related Competitor;
  - (ii) only use Ringfenced Information disclosed to it for the purpose for which it is disclosed, and only to the extent necessary for that purpose (including for Aurizon Network's Regulated Business); and
  - (iii) take all reasonable steps to keep Ringfenced Information confidential and secure.
- (c) Without limiting **clause 3.7(b)(i)**, Aurizon Network must not disclose Ringfenced Information to a Related Operator for the purpose of obtaining advice in relation to:
- (i) the amendment, interpretation or application of this Undertaking; or
  - (ii) the preparation of a future Undertaking.

*Section D2 - Control framework for Ringfenced Information*

**3.8 Disclosure of Ringfenced Information**

***Disclosure generally***

- (a) Disclosure of Ringfenced Information by Aurizon Network is permitted where the disclosure is:
- (i) required or compelled by, or necessary to comply with or observe, any Law;
  - (ii) required or compelled by, or necessary to comply with or observe, any order of a court;
  - (iii) required or compelled by, or necessary to comply with or observe, notice validly issued by any Authority;
  - (iv) necessary for the conduct of any legal proceedings or dispute resolution or for an audit processes under this Undertaking, the Act or an Access Agreement, Train Operations Deed or any other agreement or arrangement entered into under this Undertaking or the Act;
  - (v) required under any stock exchange listing requirement or rule (including disclosure to any Aurizon Group company so as to allow, or to make a decision about, compliance with

any such listing requirement or rule), provided that where disclosure is required to comply with a stock exchange listing requirement or rule Aurizon Network must take reasonable steps:

- (A) to consult with the relevant Protected Third Party as to the nature and extent of the proposed disclosure; and
- (B) to comply with any reasonable requests made by the Protected Third Party in respect of the proposed disclosure,

except that Aurizon Network is not required to take any action, or to delay or abstain from taking action, if doing so could result in a breach of any stock exchange listing requirement or rule;

- (vi) for the purpose of facilitating Network Control directions where the disclosure of information is by Aurizon Network in the usual course of undertaking Network Control Services;
- (vii) necessary for the effective response to an emergency or natural disaster or for clearing an incident or emergency that is preventing the operation of Train Services on the Rail Infrastructure;
- (viii) to the Safety Regulator;
- (ix) to Aurizon Network Personnel to the extent necessary to perform their duties;
- (x) to a person providing services as permitted by **3.4(a)(vi)** to the extent necessary to provide a service referred to in that clause; or
- (xi) otherwise required, compelled or permitted by, or necessary to comply with or observe, this Undertaking.

***Disclosure to a Railway Manager or infrastructure provider***

- (b) Disclosure of Ringfenced Information is permitted by Aurizon Network where the disclosure is to either a Railway Manager or an infrastructure provider for infrastructure forming part of the Supply Chain and the Railway Manager or infrastructure provider (as applicable) is notified that the relevant information is Ringfenced Information, is confidential in nature and must be kept confidential.

***Disclosure to an Advisor or Financier***

- (c) Disclosure of Ringfenced Information is permitted by Aurizon Network where the disclosure is to a legal, accounting, tax, environmental, engineering, financial or other adviser, consultant or service provider or a banker, financier or other financial institution (**Advisor or**

**Financier)** who is outside the Aurizon Group, but only to the extent that:

- (i) the Advisor or Financier is notified that the relevant information is Ringfenced Information, is confidential in nature and must be kept confidential; and
  - (ii) the Advisor's or Financier's role in advising or providing services to Aurizon Network or the Aurizon Group requires the disclosure to be made.
- (d) For the purpose of **clause 3.8(c)**, disclosure to an individual will be treated as a disclosure to the entity that employs or engages that individual and a disclosure by that individual to another person employed or engaged by that entity to the extent necessary for the provision of the relevant advice or service will not be treated as a breach of confidentiality.

***Disclosure to senior Aurizon Group management and directors***

- (e) Disclosure of Ringfenced Information is permitted by Aurizon Network where the disclosure is to:
- (i) the Aurizon Holdings board of directors;
  - (ii) the Aurizon Network board of directors;
  - (iii) the Chief Executive Officer of the Aurizon Group;
  - (iv) the Chief Financial Officer of the Aurizon Group;
  - (v) the Company Secretary of Aurizon Network or the Aurizon Group or any assistant Company Secretary;
  - (vi) the General Counsel of the Aurizon Group;
  - (vii) the Chief Internal Auditor of the Aurizon Group;
  - (viii) the Chief Information Officer of the Aurizon Group; and
  - (ix) any person providing clerical or administrative assistance to the individuals or business units identified in **clauses 3.8(e)(i) to (viii)**,

provided that the relevant person(s) is (are) notified that the relevant information is Ringfenced Information, is confidential in nature and must be kept confidential.

***Disclosure with consent***

- (f) If Aurizon Network is not otherwise permitted to disclose Ringfenced Information under this Undertaking, Aurizon Network may still disclose Ringfenced Information but only where the Protected Third Party gives its prior written consent (which consent must not be unreasonably withheld or delayed where the disclosure relates to Aurizon Network's Regulated Business). For clarity, in some cases

prior written consent may be needed from more than one Protected Third Party.

*Section D3 – Compliance monitoring and safeguards*

**3.9 Ringfencing Register**

- (a) Aurizon Network must establish and maintain a Ringfencing Register that contains:
  - (i) in respect of Ringfenced Information that is disclosed to a Recipient other than Aurizon Network Personnel:
    - (A) details identifying the Recipient and the Aurizon Network Personnel who made the disclosure;
    - (B) a description of the type of Ringfenced Information to which the Recipient has access;
    - (C) where:
      - (1) the Recipient is not a person listed in **clause 3.8(e)**; and
      - (2) the Recipient only requires the Ringfenced Information for a specified period of time (for example, until a relevant Access Agreement is executed),  
the period for which the Recipient is permitted to have access to that Ringfenced Information; and
    - (D) the nature of the purpose for which the Ringfenced Information is to be used by the Recipient;
  - (ii) a record of the signing of an exit certificate by Aurizon Network Personnel working within Aurizon Network and with access to Ringfenced Information at the time that Aurizon Network Personnel leaves the employment of, or engagement with, Aurizon Network (whether to another business unit within the Aurizon Group on a temporary or permanent basis or a Third Party);
  - (iii) details of any compliance issues in relation to Ringfenced Information, during the Term, where an investigation revealed a breach of Aurizon Network's obligations under this Undertaking;
  - (iv) the details of secondments or temporary transfers within the Aurizon Group to or from Aurizon Network; and
  - (v) the identity and position of the High Risk Person.
- (b) Subject to **clause** Error! Reference source not found., Aurizon Network can comply with its obligations under **clause 3.9(a)(i)** by recording in the Ringfencing Register the nature of the Ringfenced

Information disclosed, the nature of the purpose for which it was disclosed and the class of persons to whom it was disclosed without having to also recording each and every disclosure to each and every person within that class.

- (c) A Third Party Access Seeker, Third Party Access Holder or Third Party Train Operator may, upon request, view information in the Ringfencing Register referred to in **clause 3.9(a)(i)** which specifically relates to Ringfenced Information that it has disclosed to Aurizon Network.
- (d) The QCA may, upon request, view the Ringfencing Register (or any part of the Ringfencing Register) and may require the Ringfencing Register to be subject to a compliance audit in accordance with **Part 10**.
- (e) The QCA may notify Aurizon Network of persons additional to those identified in the Ringfencing Register that it believes are High-Risk Persons and the reasons for that belief.

### **3.10 Ringfencing training**

- (a) In respect of Aurizon Network Personnel and other Aurizon Group employees who:
  - (i) are not High Risk Persons; and
  - (ii) receive, or have access to, Ringfenced Information in the course of performing their duties,  
**(Low-Risk Persons)**, Aurizon Network must take steps to promote awareness of the obligations relating to the management of Ringfenced Information under this **0**:
    - (iii) for employees of an Aurizon Group entity at the commencement of this Undertaking whose role requires access to Ringfenced Information, within three Months after the Approval Date; and
    - (iv) for all new employees of Aurizon Group entities whose role requires access to Ringfenced Information, within one Month after employment commences,and at least once in every two Year period for each Low-Risk Person while that person continues to be of a Low-Risk Person. For clarity, Aurizon Network can incorporate training or other steps under this **clause 3.10(a)** into Aurizon Network's general corporate conduct and awareness raising activities.
- (b) Aurizon Network must provide High-Risk Person who are Aurizon Network Personnel (and use reasonable endeavours to provide other High-Risk Persons) with detailed ringfenced information training in respect of the obligations relating to the management of Ringfenced

Information under this **0** and the Ultimate Holding Company Support Deed:

- (i) for persons initially included in the Ringfencing Register as High-Risk Persons, within three Months after the Approval Date; and
- (ii) for persons who are subsequently added to Ringfencing Register as High-Risk Persons, within one Month after they are added,

and at least once in every two Year period for each High-Risk Person following their initial training while that person continues to be a High-Risk Person.

- (c) Aurizon Network must ensure that the Compliance Officer establishes and maintains a record of training attendances (as a yearly percentage of Aurizon Group employees) for publication in the annual compliance report prepared under **Part 10**.

### **3.11 Exit certificates**

- (a) Where an Aurizon Network Personnel, who is a High-Risk Person and has had access to Ringfenced Information:
  - (i) leaves Aurizon Network to work for another Aurizon Group business unit, including for temporary secondments; or
  - (ii) leaves Aurizon Network to work for another employer outside the Aurizon Group,

Aurizon Network must use reasonable endeavours to:

- (iii) have that Aurizon Network Personnel undergo a debriefing session provided by Aurizon Network to remind the employee (or other person) of Aurizon Network's and its own obligations relating to the management of Ringfenced Information; and
  - (iv) obtain an exit certificate (that includes an acknowledgement of having undergone such a debriefing process) signed by that person.
- (b) The Ringfencing Register must include a record of signed exit certificates and persons who are requested to but do not sign an exit certificate.

### **3.12 Security measures**

Aurizon Network must take reasonable steps to implement security measures (physical, electronic and otherwise) to seek to ensure that only persons permitted by this Undertaking have access to Ringfenced Information in Aurizon Network's possession or control (whether in electronic or tangible form).

## Section E – Complaints and Waiver

### 3.13 Complaint handling

- (a) If an Access Seeker, Access Holder or Train Operator (**Complainant**) considers that Aurizon Network has breached any obligation under this **0**, the Complainant:
  - (i) may lodge a written complaint with Aurizon Network; and
  - (ii) where such a complaint is lodged, must provide a copy to the QCA.
- (b) Aurizon Network must:
  - (i) promptly investigate complaints received under **clause 3.13(a)**; and
  - (ii) notify the Complainant (with a copy to the QCA) of the outcome of that investigation and Aurizon Network's proposed response, if any, no later than 20 Business Days after receiving such a complaint.
- (c) Aurizon Network must ensure that the Compliance Officer establishes and maintains a record of Aurizon Network's Complaint handling times under this **clause 3.13** for for provision to the QCA on request.
- (d) For clarity, nothing in this **clause 3.13** affects an Access Seeker's, Access Holder's or Train Operator's right to bring any potential breach to the QCA attention or rights under the Act to seek a court order.

## Section F – Financial

### 3.14 Below Rail financial statements

- (a) Aurizon Network has obligations under the Act to keep accounts and records for Aurizon Network's Regulated Business and to do so in accordance with the Cost Allocation Manual.
- (b) Aurizon Network must prepare, on an annual basis, a financial statement for Aurizon Network's Regulated Business. A financial statement under this **clause 3.14(b)** must:
  - (i) be consistent with the requirements of the Cost Allocation Manual;
  - (ii) not include information relating to any other business or activities of Aurizon Network; and
  - (iii) be audited in accordance with **clause 3.15**.

### 3.15 Audit of financial statements

- (a) An audit of the financial statements referred to in **clause 3.14(b)** will be conducted:

- (i) within six Months after the end of the Year to which the financial statements relate, or such longer time as agreed by the QCA; and
  - (ii) subject to this **clause 3.15**, in accordance with **clause [insert audit requirements clause]**.
- (b) In order to facilitate finalisation of the audit within the required timeframe, aspects of the audit may be undertaken by the Auditor at different times throughout the relevant Year where it is appropriate to do so.
- (c) The Auditor will:
- (i) examine whether the financial statements referred to in **clause 3.14(b)** have been developed in all material respects in accordance with this Undertaking and consistent with the Cost Allocation Manual; and
  - (ii) prepare an audit report that specifies:
    - (A) the scope of the audit;
    - (B) the level of access that the Auditor was provided to Aurizon Network's financial information, including the relevant information systems;
    - (C) whether or not the financial statements have been developed in all material respects in accordance with this Undertaking and the Cost Allocation Manual; and
    - (D) if the Auditor identifies that the financial statements have not been developed in all material respects in accordance with this Undertaking and the Cost Allocation Manual, information regarding the relevant non-compliance.

**Definitions**

<b>Above Rail Marketing Personnel</b>	<p>Persons employed or engaged within the Aurizon Group with responsibility for one or more of the following:</p> <ul style="list-style-type: none"> <li>(a) the marketing of Train Services in competition with other Above Rail Service providers in the Coal Systems;</li> <li>(b) the negotiation of contracts (including pricing) for the provision of Above Rail Services in competition with other Above Rail Service providers in the Coal Systems;</li> <li>(c) the development of Above Rail Service plans for response to a competitive tender process relating to the</li> </ul>
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	<p>provision of Above Rail Services in the Coal Systems, where:</p> <ul style="list-style-type: none"> <li>(i) the relevant persons are exercising their responsibility for the purpose of determining Aurizon Group's tender response (having regard to commercial risks and trade offs associated with the train plan being proposed); and</li> <li>(ii) if the tender is successful, those persons will also be involved in the day-to-day delivery of the applicable Above Rail Services; and</li> </ul> <p>(d) the commercial decision to enter into a contract for the provision of Above Rail Services in the Coal Systems, excluding the following persons:</p> <ul style="list-style-type: none"> <li>(e) a director (including a managing director) of Aurizon Holdings;</li> <li>(f) a director (including a managing director) of Aurizon Operations;</li> <li>(g) the Chief Executive Officer of the Aurizon Group; or</li> <li>(h) the Chief Financial Officer of the Aurizon Group.</li> </ul>
<b>Aurizon Network Personnel</b>	<p>The:</p> <ul style="list-style-type: none"> <li>(a) directors and officers of Aurizon Network;</li> <li>(b) employees of Aurizon Network,</li> <li>(c) contractors (including employees of contractors) to Aurizon Network;</li> <li>(d) agents (including employees of agents) of Aurizon Network; and</li> <li>(e) any other person under the control or supervision of Aurizon Network (including secondees working in the business of Aurizon Network) involved in or advising on the provision of Below Rail Services.</li> </ul>
<b>Aurizon Network's Regulated Business</b>	<p>Aurizon Network's business in respect of the service described under section 250(1)(a) of the Act (including the provision of Below Rail Services and Access, compliance with this Undertaking and the Act).</p>
<b>Cost Allocation Manual</b>	<p>The cost allocation manual either:</p> <ul style="list-style-type: none"> <li>(a) prepared by Aurizon Network and approved by the QCA; or</li> </ul>

	<p>(b) prepared by the QCA, under section 159(1) of the Act, as revised by the QCA from time to time under sections 159(2) and (3) of the Act. <b>[Note: Delete “Costing Manual” definition.]</b></p>
<b>High Risk Person</b>	<p>A person who:</p> <ul style="list-style-type: none"> <li>(a) is a part of the Above Rail Marketing Personnel;</li> <li>(b) is director of Aurizon Network;</li> <li>(c) is Aurizon Network’s Executive Officer;</li> <li>(d) is Aurizon Network’s Chief Financial Officer;</li> <li>(e) is an employee of a Related Operator or Related Competitor accessing Ringfenced Information as permitted by this Undertaking; or</li> <li>(f) manages: <ul style="list-style-type: none"> <li>(i) the negotiation and maintenance of Access Agreements and Train Operations Deeds;</li> <li>(ii) the receiving, assessing and responding to Access Applications; or</li> <li>(iii) the assessing, allocating and managing Capacity.</li> </ul> </li> </ul>
<b>Protected Third Party</b>	<p>In respect of Ringfenced Information, the meaning given in the definition of Ringfenced Information.</p>
<b>Ringfenced Information</b>	<p>Any communication, document, data or other information (in whatever form):</p> <ul style="list-style-type: none"> <li>(a) relating to a prospective Access Seeker, Access Seeker, Access Holder, Train Operator or Customer, who is a Third Party (<b>Protected Third Party</b>); and</li> <li>(b) relating to, or arising out of, Aurizon Network’s Regulated Business including: <ul style="list-style-type: none"> <li>(i) any proposed or actual Access Application or related negotiations;</li> <li>(ii) providing Below Rail Services or Access; and</li> <li>(iii) any proposed or executed Access Agreement, Train Operations Deed or other agreement or arrangement proposed or entered into under this Undertaking,</li> </ul> </li> </ul> <p>to the extent disclosed to or otherwise in the possession of Aurizon Network (<b>information</b>), where:</p> <ul style="list-style-type: none"> <li>(c) either:</li> </ul>

	<ul style="list-style-type: none"> <li>(i) the on-disclosure of the information by Aurizon Network might reasonably be expected to have a material adverse effect on the ability of a Protected Third Party to compete with other Access Seekers (including prospective Access Seekers), Access Holders, Train Operators or Customers; or</li> <li>(ii) the information is marked as confidential by the Protected Third Party at the time that it was disclosed to Aurizon Network for the purpose of that disclosure; and</li> </ul> <p>(d) the information:</p> <ul style="list-style-type: none"> <li>(i) is not already in the public domain;</li> <li>(ii) does not become available in the public domain through means other than a breach of <b>Part 3</b> or a breach of confidence;</li> <li>(iii) was not in Aurizon Network's lawful possession or otherwise know to Aurizon Network (other than through a breach of confidence) prior to such disclosure; and</li> <li>(iv) is not received by Aurizon Network independently from a third party that is free to disclose such information,</li> </ul> <p>but does not include:</p> <ul style="list-style-type: none"> <li>(e) information relating in all material respects to matters other than the service described under section 250(1)(a) of the Act as provided by Aurizon Network; or</li> <li>(f) if a communication, document, data or other information is comprised of information only part of which satisfies the requirements of this definition for Ringfenced Information, the remainder that does not satisfy those requirements to the extent that it can be separated.</li> </ul>
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## 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) **0** addresses the process by which a person~~prospective Access Seeker~~ may apply for, negotiate and develop an Access Agreement. In particular, under **0**:
  - (i) A p~~P~~rospective Access Seeker may obtain Preliminary Information prior to submitting an application for Access from the Website or, if Capacity Information is required, by lodging a request with Aurizon Network (**clause 4.2**).
  - (ii) An Access Application by an Access Seeker must be provided in the appropriate form. By submitting an Access Application, the Access Seeker agrees to be bound by this Undertaking. Aurizon Network will provide notice of any incorrectly completed sections or missing information and may request additional evidence regarding the use of Access Rights and to assess Capacity allocation (**clause 4.3**).
  - (iii) Aurizon Network will provide an Acknowledgement Notice and confirm preparation of an IAP once additional information or a properly completed Access Application is received. In specified circumstances, the negotiation process may be suspended (**clause 4.4**).
  - (iv) Aurizon Network will develop an appropriate IAP for the Access Rights sought. The Access Seeker may notify Aurizon Network regarding concerns about the IAP (**clause 4.6**).
  - (v) An Access Seeker must notify Aurizon Network if it intends to progress its Access Application based on the arrangements within the IAP (**clause 4.7**).
  - (vi) Where multiple Access Applications for the same Access Rights are made, **clause 4.9** 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 4.9**).

- (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 4.11**).
- (viii) Aurizon Network may issue a Negotiation Cessation Notice to an Access Seeker in certain circumstances (**clause 4.13**).
- (c) A diagrammatic representation of the negotiation framework is set out in **Schedule H**.
- (d) **0** must be read in conjunction with the processes outlined in **Part 7** and **Part 8**.
- (e) Any Dispute regarding a decision made, or notice given, by Aurizon Network under this **0** must be referred-notified to the QCA and notified ~~to~~ Aurizon Network within ten (10) Business Days after the Access Seeker or its Train Operator receives notice of Aurizon Network's decision or notice, and that Dispute must be dealt with under clause 11.1.
- ~~(f) If a Dispute arises between the parties under this **Part 4**, the time between the issuing of a Dispute Notice and the date of the finding (or such longer time as may be determined by the QCA in the resolution of the Dispute) will be added to the original period that applies under this Undertaking for the period during which the Dispute arose.~~

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## 4.2 Initial enquiries

- (a) Prior to submitting an Access Application, a pProspective 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 must promptly provide pProspective Access Seekers with information regarding the Access Application process. All Preliminary Information and the application form(s) for Access Applications must be displayed on the Website.
- (c) A pProspective Access Seeker may lodge a request for Capacity Information with Aurizon Network and Aurizon Network must provide that Capacity Information within ten (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 ~~prospective~~ Access Seeker agrees to be bound by all the provisions of this Undertaking as they relate to Access Seekers.
- (c) If applicable, Aurizon Network must, within ten (10) Business Days after receipt of a purported Access Application, notify the ~~p~~Prospective Access Seeker that:
  - (i) the purported Access Application has not been properly completed ~~and including~~ specifying the information required to make the application complete and compliant; or
  - (ii) Aurizon Network requests more evidence or information, to the extent reasonably required:
    - (A) regarding the ~~p~~Prospective Access Seeker's ~~or Access Seeker's~~ ability to utilise the requested Access Rights (on the basis of the factors listed in **clause 4.13(c)**); or
    - (B) to assess the allocation of Capacity in accordance with **Part 7** and, if applicable, **Part 8**.
- (d) A person receiving a notice under **clauses 4.3(c)(i) or 4.3(c)(ii)** must provide:
  - (i) the revised Access Application; ~~or~~
  - (ii) the requested evidence or information; ~~or~~
  - ~~(iii) a notice that satisfies the Non-availability Requirements, (except to the extent that the Non-availability Circumstances exist)~~ within twenty (20) Business Days of Aurizon Network's notice or request, as applicable, or such other period as may be agreed.
- (e) If ~~clause 4.3(d) is not complied with in any respect~~ the revised Access Application, evidence or information, or notice satisfying the Non-availability Requirements referred to in **clause 4.3(d)** is not provided to Aurizon Network within the required time period, Aurizon Network may notify the relevant person that Aurizon Network will take no further action in relation to the request for Access and that the request for Access is deemed to be withdrawn. A notice under this **clause 4.3(e)** does not prevent a person from submitting a new request for Access.
- (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 if that request for Access relates to a Transfer and the evidence referred to in **clause 6 of Schedule B** has not been provided.
- ~~(g) A person does not fail to comply with a request under clause 4.3(c) if the Non-availability Requirements are satisfied.~~

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#### 4.4 Acknowledgement of Access Application

- (a) Within ten (10) Business Days of receiving:
- (i) a properly completed Access Application; or
  - (ii) ~~any~~ the further evidence or information ~~(if any) requested~~ required to be provided under **clause 4.3(c)**; ~~or,~~
  - ~~(iii) a notice satisfying the Non-availability Requirements,~~
- whichever is the later, Aurizon Network will give the relevant ~~prospective~~ Access Seeker a notice (**Acknowledgement Notice**):
- ~~(iv)~~(iii) acknowledging receipt of the Access Application;
  - ~~(v)~~(iv) confirming that Aurizon Network will prepare an IAP for the requested Access; and
  - ~~(vi)~~(v) confirming the date Aurizon Network ~~received is deemed to have received the Access Application being~~ the later of:
    - (A) the date on which the Access Seeker ~~the~~ submitted a properly completed Access Application; or
    - (B) the date on which the Access Seeker provided to Aurizon Network the ~~any~~ further evidence or information (if any) required to be ~~provided~~ requested under **clause 4.3(c)(ii)** ~~4.3(c)~~; or
    - ~~(B)~~(C) where the Access Application arises under **clause 4.8(a)**, the date specified in **clause 4.8(a)(v)**.
    - (C) a notice satisfying the Non-availability Requirements,
- as applicable.
- ~~(b) Subject to confirmation under the Acknowledgement Notice:~~
- ~~(i) the prospective Access Seeker's Access Application will be deemed to have been received for the purposes of this Undertaking; and~~
  - ~~(ii) if relevant, the Access Seeker will be deemed to have joined the Queue in respect of the Access Rights sought,~~
- ~~on the later of the date the Access Seeker:~~
- ~~(iii) submits a properly completed Access Application;~~
  - ~~(iv) provides to Aurizon Network:~~
    - ~~(A) any further evidence or information requested under **clause 4.3(c)(ii)**; or~~
    - ~~(B) a notice satisfying the Non-availability Requirements; or~~
  - ~~(v) notifies Aurizon Network under **clause 4.4(c)(ii)**.~~

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- ~~(c) — If an Access Application is received by Aurizon Network which is, in part, for Access Rights which cannot be provided in the absence of an Expansion and:~~
- ~~(i) — Aurizon Network can satisfy part of the Access Rights sought by the Access Seeker without an Expansion, then within ten (10) Business Days after receipt of the Access Application Aurizon Network will notify the Access Seeker of the portion of the Access Rights being sought which can be provided without an Expansion; and~~
  - ~~(ii) — the Access Seeker notifies Aurizon Network it requires the Access Application to be separated (for clarity, the Access Seeker must, upon receipt of notice from Aurizon Network under **clause 4.4(c)(i)**, notify Aurizon Network whether it requires the Access Application to be separated or treated as one application for all Access Rights sought in order for the process under this Undertaking for the Access Application(s) to continue (and if applicable join the Queue)), then:~~
    - ~~(A) — the Access Rights that can be provided without an Expansion will be deemed to be the subject of one Access Application made on the date of the Access Seeker's notice under this **clause 4.4(c)(ii)**;~~
    - ~~(B) — the Access Rights that can be provided only with an Expansion will be deemed to be the subject of a second Access Application made on the date of the Access Seeker's notice under this **clause 4.4(c)(ii)**;~~
    - ~~(C) — the separation of the Access Application into two Access Applications will occur automatically and without reference to the process under **clause 4.5**; and~~
    - ~~(D) — **clause 4.4(b)** applies to both Access Applications.~~
- ~~(d) — If an Access Application is received by Aurizon Network and:~~
- ~~(i) — Aurizon Network cannot satisfy any part of the Access Rights sought by the Access Seeker without an Expansion;~~
  - ~~(ii) — on receipt of a notice under **clause 4.4(c)(i)**, the Access Seeker notifies Aurizon Network it requires the Access Application to be treated as one application for all Access Rights sought; or~~
  - ~~(iii) — on receipt of a notice under **clause 4.4(c)(i)**, an Access Application for Access Rights that requires an Expansion is deemed to be lodged in accordance with **clause 4.4(c)(ii)(B)**,~~

then:

- (iv) ~~clauses 8.2 to 8.9~~ will apply;
- (v) ~~the negotiation process for Access can be suspended (before or after the provision of an IAP) by either Aurizon Network or the relevant Access Seeker giving notice to the other (provided that a notice given under this clause must give reasons for the suspension); and~~
- (vi) ~~a suspension of the negotiation process under clause 4.4(d)(v) continues until the date that:~~
  - (A) ~~Aurizon Network and the Access Seeker enter into an agreement as to how an Expansion is to be funded in accordance with clause 8.8.1;~~
  - (B) ~~a determination of a relevant Dispute specifies what Expansion is required and how that Expansion is to be funded; or~~
  - (C) ~~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.~~
- (e) ~~If an Access Application is received by Aurizon Network and Aurizon Network considers (acting reasonably) that the Capacity is constrained, within ten (10) Business Days of receipt of the Access Application, Aurizon Network must advise the Access Seeker and, to the extent that the relevant information is available at the relevant time, provide reasons why such constraint cannot be mitigated except through an Expansion.~~
- (f) ~~Where a Provisional Capacity Allocation (as defined under clause 8.5(b)(ii)) has been granted to an Access Seeker, Aurizon Network may, acting reasonably and in good faith, suspend negotiations with other Access Seekers for Access Rights which, if the holder of the Provisional Capacity Allocation executes an Access Agreement in respect of the Provisional Capacity Allocation, cannot be provided in the absence of an Expansion, pending the outcome of negotiations with the holder of the Provisional Capacity Allocation.~~
- (g)(b) ~~Subject to clause 4.4(c),~~ if Aurizon Network receives an Access Application for Access Rights which commence on a date more than ~~three~~five (5) years after the date on which the relevant Access Application would be deemed to have been received by Aurizon Network under ~~clause 4.1.1(a), or 4.8(a)(v),~~ then Aurizon Network may reject the Access Application. Rejection of the Access Application does not restrict the relevant Access Seeker from submitting a new Access Application for the same Access Rights at a later date.

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~~(h)(c)~~ Where Aurizon Network notifies an Access Seeker that Aurizon Network is rejecting the Access Seeker's Access Application under **clause 4.4(b) (Rejection Notice)**:

- (i) the rejection will take effect -ten (10) Business Days after Aurizon Network gives the Rejection Notice; and
- (ii) ~~all time periods and obligations relating to the Access Application is deemed to be withdrawn from that date are suspended.~~

~~(i) When Aurizon Network suspends the negotiation process in accordance with **clause 4.4(d)**, Aurizon Network:~~

~~(i) may request at intervals not more than every six (6) Months that the Access Seeker confirm, in writing:~~

~~(A) the Access Seeker's ongoing requirement for the Access Rights;~~

~~(B) the reasonable likelihood that the Access Seeker will be able to utilise the requested Access Rights at the proposed date of commencement of those Access Rights (on the basis of the factors listed in **clause 4.12(c)**) and provide any relevant information or evidence requested by Aurizon Network (acting reasonably); and~~

~~(C) 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)**; and~~

~~(ii) must, as soon as practicable, notify the Access Seeker of any changes to an Expansion that will impact the Access Seeker's Access Application.~~

~~(j) If the document or information referred to in **clause 4.4(i)(i)** is not provided to Aurizon Network within twenty (20) Business Days of Aurizon Network's request, Aurizon Network may notify the relevant person that Aurizon Network will take no further action in relation to the request for Access and that the request for Access is deemed to be withdrawn. A notice under this **clause 4.4(j)** does not prevent a person from submitting a new request for Access.~~

~~(k) The Access Seeker does not fail to comply with a request under **clause 4.4(i)(i)** if the Non-availability Requirements are satisfied.~~

## 4.5 Revisions to an Access Application

(a) An Access Seeker may, by written request to Aurizon Network (acting reasonably), vary its Access Application at any time after receipt of an Acknowledgement Notice in accordance with this **clause 4.5**.

(b) If the requested variation to the Access Application is not a Material Variation, then the Access Application is varied as requested by the

Access Seeker and the process under this Undertaking for the Access Application will continue provided that:

- (i) if a variation under **clause 4.5(a)** is received prior to Aurizon Network giving an IAP to the relevant Access Seeker; and
- (ii) Aurizon Network has already commenced preparing the IAP,

Aurizon Network may, by notice to the Access Seeker, extend the date by which it must give the IAP to the Access Seeker by a period of no more than ten (10) Business Days.

- (c) If Aurizon Network considers a requested variation is a Material Variation, then Aurizon Network must, within ten (10) Business Days of receipt of the proposed variation under **clause 4.5(a)**, notify the Access Seeker of:

- (i) its reasons for considering the variation is a Material Variation;
- (ii) the extent to which it is possible to separate the Access Application (as varied) so that one Access Application may proceed without containing a Material Variation; and

~~(iii) the extent to which the Material Variation causes or contributes to the Access Application relating to Access Rights which cannot be provided in the absence of an Expansion;~~

~~(iv) the extent that Available Capacity exists which can satisfy part of the Access Rights sought by the Access Application with the proposed Material Variation; and~~

~~(v)~~(iii) the date by when Aurizon Network (acting reasonably) estimates that it will issue an IAP or revised IAP (as applicable) to accommodate the Material Variation.

- (d) If, within five (5) Business Days after receipt of a notice under **clause 4.5(c)**, the Access Seeker:

- (i) notifies Aurizon Network that it wishes to continue with the Material Variation, subject to **clause 4.5(e)**, Aurizon Network will use reasonable endeavours to accommodate the Material Variation including by issuing an IAP or a revised IAP (as applicable) in accordance with this **clause 4.5** within a reasonable time following receipt of any information requested under **clause 4.5(f)(ii)** and having regard to all relevant circumstances including:

- (A) the nature and extent of the Material Variation; and
- (B) 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 **0** (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;

(ii) notifies Aurizon Network that it requires the Access Application to be separated (so that one Access Application may proceed without a Material Variation), then:

(A) in respect of the Access Rights that can be provided without ~~being~~ a Material Variation, the Access Application will be taken to be varied to that extent and the process under this Undertaking for that varied Access Application will continue in accordance with **clause 4.5(b)**; and

(B) in respect of the Access Rights that cannot be provided without a Material Variation;

(1) those Access Rights will be deemed to be the subject of a ~~separate~~ second Access Application;

(2) that separate Access Application will be deemed to be received on the date that Aurizon Network was given the notice under this clause 4.5(d)(ii); and

~~(B)~~(3) the process set out in **clause 4.5(d)(i)** will apply in respect of that separate Access Application; or

(iii) either:

(A) notifies Aurizon Network that it does not wish to continue with any variation to the Access Application; or

(B) does not give Aurizon Network a notice under this clause **4.5(d)**,

then the variation (including the Material Variation) is deemed to be withdrawn and negotiations for Access Rights outlined in this **0** will proceed without the variation.

(e) If a Material Variation causes or contributes to the Access Application relating to Access Rights which cannot be provided in the absence of an Expansion (based on an Initial Capacity Assessment) and the Access Seeker notifies Aurizon Network under **clauses 4.5(d)(i) or 4.5(d)(ii)**, then:

(i) to the extent that Available Capacity exists which can satisfy part of the Access Rights sought by the Access Application with the proposed Material Variation, the IAP or revised IAP (as applicable) to be prepared under **clause 4.5(d)(i)** or

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**clause 4.5(d)(ii)(B)** (as applicable) will be prepared only in relation to that portion of the Access Rights that can be provided in the absence of an Expansion ~~(based on an Initial Capacity Assessment)~~; or

- (ii) if Aurizon Network cannot satisfy any part of the Access Rights sought by the Access Seeker without an Expansion, **clause 4.5(i)** will apply.
- (f) If an IAP or revised IAP (as applicable) must be prepared by Aurizon Network under this **clause 4.5**, then:
- (i) it must be accompanied by or include a statement drawing to the Access Seeker's attention the requirements under **clause 4.5(g)** and the potential consequence under **clause 4.5(i)**;
  - (ii) Aurizon Network may request the Access Seeker to provide more evidence or information, to the extent reasonably required:
    - (A) regarding the Access Seeker's ability to utilise the requested Access Rights (on the basis of the factors listed in **clause 4.13(c)**); or
    - (B) to assess the allocation of Capacity in accordance with **Part 7** and, if applicable, **Part 8**;
  - (iii) the Access Seeker must provide any requested evidence or information ~~(except to the extent, or a notice that satisfies the Non-availability RequirementsCircumstances exist)~~ as soon as reasonably practicable (but within no more than twenty (20) Business Days of Aurizon Network's request for that evidence or information or such other period as may be agreed); and
  - (iv) if the evidence or information required to be provided by the Access Seeker under **clause 4.5(f)(iii)** or a notice is not provided to Aurizon Network within the required time period under ~~**clause 4.5(f)(iii)**~~**clause 4.5(f)(ii)**, then:
    - (A) Aurizon Network's obligations in relation to preparing the IAP or the revised IAP (as applicable) in response to the Material Variation cease;
    - (B) the Material Variation is deemed to be withdrawn; and
    - (C) negotiations for Access Rights outlined in this **Part 40** will proceed without the Material Variation.

~~(g) — A person does not fail to comply with a request under **clause 4.5(f)(ii)** if the Non-availability Requirements are satisfied.~~

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~~(h)~~(g) The Access Seeker must, within ten (10) Business Days after being given the IAP or revised IAP (as applicable) issued by Aurizon Network under this **clause 4.5** in response to a Material Variation, notify Aurizon Network that it intends to continue to negotiate for Access Rights in accordance with this Undertaking either:

- (i) on the basis of the IAP or the revised IAP (as applicable) issued by Aurizon Network under this **clause 4.5** in response to a Material Variation; or
- (ii) without the Material Variation to the Access Application.

~~(h)~~(h) If an Access Seeker notifies Aurizon Network in accordance with **clause 4.5(g)(ii)**, the Material Variation is deemed to be withdrawn and ~~the process under negotiations for Access Rights outlined in this 0 will continue~~~~proceed~~ without the Material Variation (provided that where an IAP was not issued prior to Access Seeker's request under **clause 4.5(a)** relating to the Material Variation, any timeframes under this 0 are extended by the amount of the period between the making of that request and the Access Seeker's notice under **clause 4.5(g)(ii)**).

~~(i)~~(i) If:

- (i) a request to vary an Access Application was made after the relevant Access Seeker has given Aurizon Network a notification of intent under **clause 4.7** in respect of that Access Application and Aurizon Network notifies the Access Seeker under **clause 4.5(c)** that it considers all or a portion of the requested variation is a Material Variation;
- (ii) Aurizon Network has received a notice under **clause 4.5(g)(i)** and there was a portion of the Material Variation that could not be provided in the absence of an Expansion (based on an Initial Capacity Assessment) under **clause 4.5(e)(i)**;
- (iii) **clause 4.5(e)(ii)** applies; or
- (iv) the Access Seeker does not notify Aurizon Network in accordance with **clause 4.5(g)**,

then the following apply:

~~(v)~~ where **clause 4.5(i)(i)** applies:

~~(A)~~ the Material Variation is deemed to be withdrawn by the Access Seeker and, for clarity, the ~~negotiation~~ process under this 0 will cease in respect of that Material Variation; and

~~(B)~~ the process under this 0 will continue for the Access Application;

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(vi) ~~where clause 4.5(i)(i) does not apply,~~ the relevant Access Application (including the Material Variation) or, ~~in the case of where clause 4.5(i)(ii) applies,~~ the relevant portion of the Access Application (including the relevant portion of the Material Variation), ~~is~~ deemed to be withdrawn by the Access Seeker and, for clarity, the negotiation process under this 0 will cease in respect of that Access Application or, ~~in the case of where clause 4.5(i)(ii) applies,~~ the relevant portion of the Access Application; and

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(vii) ~~except~~ where that Access Seeker ~~has notified requests it in writing, Aurizon Network to the contrary,~~ a new request for Access in respect of the whole or any part of the Material Variation or Access Application (as applicable) withdrawn under **clause 4.5(i)(v)** or **(vi)** is deemed submitted to Aurizon Network on the date of Aurizon Network's notice given under **clause 4.5(c)**, and the negotiation process for that new request for Access will start at the beginning of ~~the~~ process under this 0.

~~(k)~~(j) If a change described in **clause 4.10.1(c)(ii)** or **4.10.1(c)(iii)** constitutes a Material Variation, references in this **clause 4.5** to ~~the~~ 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 4.10.1(c)(ii)** or **4.10.1(c)(iii)** as applicable.

~~(k)~~(k) Subject to **clause 4.5(i)**, the negotiation process under this 0 is suspended for the period:

- (i) from (and including) the time that the Access Seeker requested the Material Variation; and
- (ii) until (and including) the time when:
  - (A) the request for Material Variation is deemed to be withdrawn under **clauses 4.5(d)(iii), 4.5(f)(iv)(B)** or **4.5(h)**; or
  - (B) following the issue of an IAP or revised IAP in response to the Material Variation under this **clause 4.5**, Aurizon Network is notified under **clause 4.5(g)**,

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(Suspension Period).

## 4.6 Indicative Access Proposal

- (a) Aurizon Network will review the information received and assess the Access Application to develop an 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 4.11.2(a)(v)**) together with Aurizon Network's assumptions regarding Rollingstock, section run times and loading and unloading times used in preparing that assessment (but, for clarity and efficiency, Aurizon Network may use all or part of any pre-existing Capacity assessment to the extent that it is appropriate to do so);
  - (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 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 the 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) Subject to any suspension of the negotiation process under **clauses 4.8(b), 4.4(d)** or **4.5(k)** occurring before the IAP is provided to the Access Seeker, or an extension of the relevant date under **clause 4.5(b)**, Aurizon Network will provide the IAP to the Access Seeker within twenty (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 notice to the Access Seeker (to be given as soon as practicable and in any case no later than fifteen (15) Business Days after the Acknowledgement Notice), extend the period for the giving of an IAP by up to a further twenty (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 sixty (60) Business Days after the later of:

- (i) the date of its provision to the Access Seeker; and
- (ii) the date of issue of a revised IAP (if any) under **clause 4.6(g)**,

provided that where:

(iii) the negotiation process has been suspended under **clause 4.1.1(a)** or **clause 4.5(k)**; 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 twenty (20) Business Days of being provided with the IAP, or such other timeframe as Aurizon Network and the Access Seeker agree.

(g) Aurizon Network will respond to the concerns of any Access Seeker notified under **clause 4.6(f)** including, where appropriate, by making revisions to the IAP:

- (i) within ten (10) Business Days after being notified under **clause 4.6(f)**; or
- (ii) if due to the complexity of the concerns or other extenuating circumstances it is not reasonable to provide a response within that ten (10) Business Day period, a reasonable period notified by Aurizon Network to the Access Seeker within five (5) Business Days after the Access Seeker's notice to Aurizon Network under **clause 4.6(f)**.

(h) If a Dispute arises in relation to this **0** within a timeframe prescribed under this **clause 4.6**, including (but not limited to):

- (i) the twenty (20) Business Day time period outlined in **clause 4.6(d)** (or, if extended in accordance with that clause, such extended timeframe); and
- (ii) the sixty (60) Business Day time period outlined in **clause 4.6(e)** (or, if extended in accordance with that clause, such extended timeframe),

such timeframe will be extended by:

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(iii) the time between the issuing of a the Dispute Notice and the date on which the Dispute is settled or determined; of the finding plus

(iv) the time reasonably required to implement the steps and matters needed to give effect to the settlement or determination of the Dispute.

(or such longer time as may be determined by the QCA in the resolution of the Dispute). Aurizon Network has no obligation to produce an IAP for an Access Seeker that notifies Aurizon Network 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 on the basis of the arrangements outlined in the IAP, the Access Seeker must notify Aurizon Network of its intention prior to the expiry of the IAP in accordance with **clause 4.6(e)**. Notification must be in the form set out in the IAP.

(b) Where an Access Seeker does not notify Aurizon Network under **clause 4.7(a)**, the Access Application and the IAP are deemed to be withdrawn on the IAP's expiry date.

#### 4.8 Access Applications that require Expansions

(a) If:

(i) an Access Application is received by Aurizon Network which is, in part, for Access Rights which, in Aurizon Network's view (acting reasonably), cannot be provided in the absence of an Expansion; and

(ii) the Access Seeker notifies Aurizon Network it requires the Access Application to be separated as contemplated by this clause,

then:

(iii) the Access Rights that can be provided without an Expansion will be deemed to be the subject of one Access Application;

(iv) the Access Rights that can only be provided with an Expansion will be deemed to be the subject of a second Access Application;

(v) the Acknowledgement Notice for the original Access Application and the date on which the original Access Application was deemed to have been received, apply to each of those Access Applications; and

(vi) the separation of the Access Application into two Access Applications will occur without having to follow the process under **clause 4.5**.

For clarity, this **clause 4.8(a)** does not apply in respect of a Material Variation.

(b) For any Access Application that requires an Expansion (including where an Access Application is separated under **clause 4.8(a)**, an Access Application referred to in **clause 4.8(a)(iv)**):

(i) **clauses 8.2 to 8.9** will apply;

(ii) the negotiation process for Access may be suspended (before or after the provision of an IAP) by either Aurizon Network or the relevant Access Seeker giving notice to the other (provided that a notice given under this clause must give reasons for the suspension); and

(iii) a suspension of the negotiation process under **clause 4.8(b)(ii)** continues until the date that:

(A) Aurizon Network and the Access Seeker enter into an agreement as to how an Expansion is to be funded in accordance with **clause 8.8.1**;

(B) a determination of a relevant Dispute specifies, subject to the terms of this Undertaking, what Expansion is required and how that Expansion is to be funded; or

(C) 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.

(c) When Aurizon Network suspends the negotiation process in accordance with **clause 4.8(b)**, Aurizon Network:

(i) may request at intervals not more than every six (6) Months that the Access Seeker confirm, in writing:

(A) the Access Seeker's ongoing requirement for the Access Rights;

(B) the reasonable likelihood that the Access Seeker will be able to utilise the requested Access Rights at the proposed date of commencement of those Access Rights (on the basis of the factors listed in **clause 4.13(c)**) and provide any relevant information or evidence requested by Aurizon Network (acting reasonably); and

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- (C) 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)**; and
- (ii) must, as soon as practicable, notify the Access Seeker of any changes to an Expansion that will impact the proposed timing or provision of Access relevant to the Access Seeker's Access Application.
- (d) If the document or information referred to in **clause 4.8(c)(i)** is not provided to Aurizon Network within 20 Business Days after Aurizon Network's request, Aurizon Network may notify the relevant person that Aurizon Network will take no further action in relation to the request for Access and that the request for Access is deemed to be withdrawn. A notice under this **clause 4.8(d)** does not prevent a person from submitting a new request for Access.
- ~~(b)~~(e) Where a Provisional Capacity Allocation (as defined under **clause 8.5(b)(ii)**) has been granted to an Access Seeker, Aurizon Network may, acting in good faith, suspend negotiations with other Access Seekers for Access Rights which, if the holder of the Provisional Capacity Allocation executes an Access Agreement in respect of the Provisional Capacity Allocation, cannot be provided in the absence of an Expansion, pending the outcome of negotiations with the holder of the Provisional Capacity Allocation.

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

- (a) If 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:
    - (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 the same Access Rights as having been withdrawn; and
    - (B) Aurizon Network must negotiate solely with that Customer Access Seeker; or
  - (ii) the only parties that applied for Access are Railway Operators then, to the extent that each Railway Operator is either:
    - (A) currently engaged in negotiations with a Customer in respect of a potential haulage agreement in respect of the Access Rights being sought; or
    - (B) a party to an existing haulage agreement with the Customer in respect of the Access Rights being sought;

then:

- (C) this Undertaking and Aurizon Network will treat the Railway Operators as Access Seekers; and
  - (D) Aurizon Network will negotiate with each of those Railway Operators until an alternative Railway Operator is (or Railway Operators are) nominated in writing by the Customer to Aurizon Network.
- (b) Notwithstanding any other provision in this **0**, if **clause 4.9(a)(ii)** applies, Aurizon Network is not obliged to enter into an Access Agreement with a Railway Operator until a nomination for a Railway Operator is received from the relevant Customer.
  - (c) Aurizon Network may, for the purpose of **clause 4.9(a)**, disclose to the Customer that an Access Application by an Access Seeker in respect of that Customer has been received (that disclosure will not constitute a breach of the confidentiality obligations owed by Aurizon Network under **Part 3**).
  - (d) Access Applications that constitute Mutually Exclusive Access Applications will be dealt with in accordance with **clause 7.5**.

#### **4.94.10 Requirements for Customers, Customer Access Seekers and Train Operators**

##### **4.9.14.10.1 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 the 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.
- (b) If Aurizon Network receives notices from both the Nominee Operator and the Customer Access Seeker in respect of the same requirement under this Undertaking or the same subject matter, the Nominee

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

- (c) At any time during negotiations under this **0**:
- (i) a Customer Access Seeker may withdraw any nomination made under **clause 4.10.1(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 under **clause 4.10.1(a)**,
- by notice to Aurizon Network and to the relevant Railway Operator or Access Seeker (as applicable).
- (d) From the date on which Aurizon Network is given a notice under:
- (i) **clause 4.10.1(c)(i)** withdrawing a nomination, the relevant Railway Operator will cease to be a Nominee Operator for the purpose of **clause 4.10.1(a)** and Aurizon Network must immediately cease providing the Railway Operator with any information in respect of the relevant Access Application;
  - (ii) **clause 4.10.1(c)(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 4.10.1(a)** and Aurizon Network must immediately cease providing the exiting Railway Operator with any information in respect of the relevant Access Application; or
  - (iii) **clause 4.10.1(c)(ii)**, the Customer will become the Access Seeker (replacing the existing Access Seeker) for the relevant Access Application; ~~or~~
  - ~~(iv) **clause 4.9.1(c)(iii)** and a 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.~~
- (e) If a person becomes the Access Seeker for an Access Application (replacing the existing Access Seeker) under **clause 4.10.1(d)(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.
- (f) If a transfer of an Access Application occurs in accordance with **clause 4.10.1(d)(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:
  - (D) be in breach of Aurizon Network's confidentiality obligations under **Part 3**; or
  - (E) disclose information to the incoming Access Seeker that is commercially sensitive to the outgoing Access Seeker or that is not required to be disclosed to the incoming Access Seeker in order to progress the Access Application (or both); 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
  - (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.

#### 4.9.24.10.2 *Train Operators*

- (a) A request by a ~~prospective~~-Train Operator for Aurizon Network to enter into a Train Operations Deed must be provided in writing and:
  - (i) identify the relevant Access Holder (or Access Seeker) and, if that Access Holder (or Access Seeker) is the Train Operator, also identify the relevant Customer; and
  - (ii) 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 Deed.
- (b) A negotiation process will apply to the ~~prospective~~-Train Operator as specified in **clause 4.11**.

- (c) By submitting a request under **clause 4.10.2(a)**, the ~~prospective~~-Train Operator agrees to be bound by all the provisions of this Undertaking as they relate to Train Operators.

#### 4.10.4.11 **Negotiation process**

##### 4.10.4.11.1 **Negotiation Period**

- (a) A Negotiation Period in respect of:
  - (i) an Access Seeker's Access (including negotiation of the terms and conditions of the relevant Access Agreement in accordance with **Part 5**) commences on the date on which the Access Seeker notifies Aurizon Network in accordance with **clause 4.7**; and
  - (ii) a Train Operator's Train Operations Deed commences on the date that Train Operator has provided to Aurizon Network all of the relevant information referred to in **clause 4.10.2**.
- (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 Deed (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 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 under **clause 4.13(a)**;
  - (iv) the date:
    - (A) nine (9) Months after the commencement of the Negotiation Period except where **clause 4.11.1(c)(iv)(B)** applies; or
    - (B) where the negotiation process has been suspended in accordance with **clause 4.5(k)**, nine (9) Months, plus the number of days of the Suspension Period, after the commencement of the Negotiation Period,unless:
    - (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
    - (D) a Dispute arises between the parties in relation to this **0** within the Negotiation Period, in which case,

the Negotiation Period will, subject to **clause 4.13**, be extended by:

(1) the time between the issuing of a the Dispute Notice and the date on which the Dispute is settled or determined of the finding; plus

(2) the time reasonably required to implement the steps and matters needed to give effect to the settlement or determination of the Dispute,

~~(D)~~ (or such longer time as may be determined by the QCA in the resolution of the Dispute); or

- (v) subject to **clause 4.11.1(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 adversely impacting the ability to develop Infrastructure Enhancements contemplated by the IAP; or

(vi) 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 4.11.1(c)(v)(A)** or **4.11.1(c)(v)(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) in that notice, provide (to the extent possible on an unredacted basis but (if necessary) aggregated so as to avoid disclosing the information that is not permitted to be disclosed under Part 3 is confidential and unable to be disclosed) the Access Seeker with an objective, evidence-based explanation as to demonstrating why Available Capacity is being reduced or Infrastructure Enhancements subsequently committed to adversely impacting the ability to develop Infrastructure Enhancements contemplated by the IAP;

- (iv) if requested by the Access Seeker within ten (10) Business Days after the Access Seeker is given such a notice, prepare and issue to the Access Seeker a revised IAP in accordance with **clause 4.6** in relation to that portion of the Access Rights that can be provided; and
- (v) if, within ten (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 on the basis of the revised IAP, the negotiation process outlined in this **0** will recommence from that point.

Aurizon Network's obligation under this **clause 4.11.1(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 in accordance with this **clause 4.11.1(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 due to there being insufficient remaining Available Capacity or the contemplated Infrastructure Enhancements cannot be sufficiently altered as contemplated by **clause 4.11.1(d)(ii)**; or
  - (ii) the negotiation process is not recommenced under **clause 4.11.1(d)(v)** in respect of all or part of the Access Rights sought by the Access Seeker,

then 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 be treated as a new Access Application.

- (f) A Train Operator's Negotiation Period ceases on:
  - (i) the execution of the Train Operations Deed;
  - (ii) Aurizon Network receiving notification by the Train Operator that it no longer wishes to negotiate or enter into the Train Operations Deed;
  - (iii) Aurizon Network issuing a Negotiation Cessation Notice to the Train Operator under **clause 4.13**;
  - (iv) the expiration of nine (9) Months from the date that the Train Operator is nominated by the relevant Access Holder or Access Seeker, as the case may be, 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 this 0 within the Negotiation Period, in which case, the Negotiation Period will, subject to **clause 4.13**, be extended by:

(1) -the time between the issuing of the Dispute Notice and the date on which the Dispute is settled or determined; plus

(2) the time reasonably required to implement the steps and matters needed to give effect to the settlement or determination of the Dispute,

~~(B) between the issuing of a Dispute Notice and the date of the finding (or such longer time as may be determined by the QCA in the resolution of the Dispute);~~

(v) the Access Seeker being given a Negotiation Cessation Notice in respect of its Access Application and that Negotiation Cessation Notice has taken effect in accordance with clause 4.13(e); or

(vi) a notice is given by Aurizon Network under **clause 4.12(d)**.

#### 4.10.24.11.2 **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 Deed. In order to facilitate this process:

(i) an Access Seeker must (if it has not done so already) nominate its Train Operator by notice to Aurizon Network;

(ii) Aurizon Network must 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) the Access Seeker (or its nominated Train Operator) must prepare an Operating Plan consistent with the Access Rights sought under the Access Application;

(iv) Aurizon Network must provide an Access Charge, determined in accordance with the pricing principles set out in **Part 6**, including advice as to whether Aurizon Network

has applied **clause 6.2.36-2** or **clause 6.2.46-3** in determining the Access Charge and if so:

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- (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) Aurizon Network must undertake a Capacity Analysis and an investigation of operational impacts 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) Aurizon Network must provide the definition of the relevant Train Service Entitlement and, where applicable, the initial timetable for the proposed Train Services; and
- (vii) the Access Seeker (or its nominated Train Operator) must 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 Train Operations Deed), as applicable, with the Rollingstock Interface Standards.
- (b) Without limiting the matters that an Access Seeker or a Train Operator 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 or a Standard Train Operations Deed (as applicable) 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 Deed, as applicable.
- (c) It would be reasonably necessary to conduct an Interface Risk Assessment for the purposes of **clause 4.11.2(b)** in the following circumstances:
- (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 Train 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 Train 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 Train 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 4.11.2** or information or evidence of the Access Seeker's ability to utilise the requested Access Rights (on the basis of the factors listed in **clause 4.13(c)**) and from other providers of infrastructure to be used as an entry or exit point to the Rail Infrastructure, such as owners or operators of unloading facilities. The Access Seeker must provide the information and evidence requested within twenty (20) Business Days of the request (or such other period as may be agreed with Aurizon Network) and facilitate the provision of such information from Third Parties, as applicable.

(e) The Access Seeker does not fail to comply with a request by Aurizon Network under **clause 4.11.2(d)** ~~where to the extent that~~ the Non-availability ~~Requirements~~Circumstances exist~~are satisfied in~~ respect of the information or evidence requested. However:

(i) Aurizon Network is not obliged to execute an Access Agreement or Train Operations Deed; unless

~~(e)(ii)~~ the parties have agreed terms under **clause 4.11.2(f)** in relation to that outstanding information or evidence or matters arising out of it and have otherwise agreed the terms of the access agreement.

(f) In respect of the details required to be developed by the parties in accordance with **clauses 4.11.2(a)** and **4.11.2(b)**, the parties may agree, for example:

(i) to finalise certain aspects after the execution of the Access Agreement or the Train Operations Deed, as applicable;

(ii) to make the commencement of Train Services under the Access Agreement or the Train Operations Deed, 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 Deed, as applicable, to address any subsequent cost or operating impacts arising in connection with the matters referred to in **clauses 4.11.2(f)(i)** and **4.11.2(f)(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 Deed.

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#### **4.114.12 Negotiation of Access Agreements and Train Operations Deeds**

- (a) Each Access Holder or Access Seeker:
  - (i) may be present and participate in any negotiation between Aurizon Network and a Train Operator for a Train Operations Deed (and Operating Plan) in respect of the Access Holder's Access Rights (or Access Seeker's proposed Access Rights) ~~when the relevant Access Agreement is entered into;~~
  - (ii) may not participate in negotiations between Aurizon Network and a Train Operator that relate to Access Rights for a different Access Holder or Access Seeker; and
  - (iii) may require Aurizon Network to permit its Train Operator to be present at, and participate in, all negotiations between Aurizon Network and the Access Holder or Access Seeker for Access Rights proposed to be wholly or partially utilised by that Train Operator.
- (b) In negotiating an Access Agreement and for the purposes of this 0, if the Access Holder or Access Seeker does not provide required information regarding Rollingstock and Rollingstock Configurations for the required Train Services, Aurizon Network may assume:
  - (i) a Reference Train Service in respect of the Rollingstock and Rollingstock Configurations; and
  - (ii) 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 Deeds are negotiated between Aurizon Network and the relevant Train Operator(s), the Train Operations Deed(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 Access Holder or Access Seeker.
- (d) If, for whatever reason (except by reason of execution of the Access Agreement):
  - (i) negotiations in respect of the Access Agreement expire or are terminated; or
  - (ii) the Access Seeker ceases to be an Access Seeker in respect of the Access Rights that relate to the relevant Train Operations Deed; or
  - (iii) where the Access Holder has already executed an Access Agreement, the Access Holder ceases to be an Access

Holder in respect of the Access Rights that relate to the relevant Train Operations Deed,

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

#### **4.124.13 Cessation of negotiations**

- (a) At any time during a Negotiation Period, Aurizon Network (acting reasonably):
  - (i) may give a Negotiation Cessation Notice to an Access Seeker or a Train Operator, as applicable, if:
    - (A) the Access Seeker or Train Operator, as applicable, fails to comply (after being issued with any notices required under this Undertaking) with the relevant obligations and processes contained in this Undertaking, and such non-compliance is material;
    - (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 Deed, as applicable, in a material way;
    - (C) the Access Seeker or its Train Operator, as applicable, fails to comply with **clause 4.1.1(a)**;
    - (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;
    - (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 in accordance with **clause 11.1.4**; or
    - (F) the Access Seeker or the Train Operator, as applicable, does not comply with a determination of the QCA under **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

- (B) if the relevant Access Application relates to a Transfer, either the Customer of the Access Holder that holds the Transferred Access Rights (if any) or the Transferee's Customer (if any) notifies Aurizon Network that they no longer agree to the Transfer.

For clarity, an Access Holder's or Access Seeker's negotiations of an Access Agreement are not affected if negotiations of a Train Operations Deed between Aurizon Network and a Train Operator nominated by the Access Holder or Access Seeker under **clause 4.9(a)(ii)(D)** cease.

- (b) Without limitation to **clause 4.13(a)(i)(B)**, **clause 4.13(a)(i)(B)** is deemed 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 Deed, 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 Deed, as applicable.
- (c) Without limitation to **clause 4.13(a)(i)(D)**:
  - (i) **clause 4.13(a)(i)(D)** is deemed 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 in respect of the negotiation of an Access Agreement, 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 reasonable likelihood of having a Customer for those Access Rights (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 in respect of the negotiation of a Train Operations Deed, the Train Operator ceases to be a Train Operator for the relevant Access Seeker or Access Holder; or
- (ii) where **clause 4.13(c)(i)** does not apply, the following factors must be considered in relation to whether **clause 4.13(a)(i)(D)** is satisfied:
  - (A) whether the Access Seeker (or its Customer) has secured, or is reasonably likely to secure, Supply Chain Rights;
  - (B) whether the Access Seeker, if not a Railway Operator, 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 or if a Railway Operator has entered into, or is reasonably likely to enter into, a rail haulage agreement with a Customer for the use of Access Rights sought;
  - (C) whether the Access Seeker or a Railway Operator is reasonably likely to have facilities (including Rollingstock, provisioning facilities, maintenance facilities and storage facilities) to enable it to run Train Services to utilise the Access Rights sought;
  - (D) whether the Train Operator no longer meets the criteria outlined in **clauses 4.9(a)(ii)(A)** and **4.9(a)(ii)(B)**; and
  - (E) where the Access Rights are sought to transport the output of a mine, whether the anticipated output of the mine is reasonably likely to support utilisation of the Access Rights sought and all relevant existing Access Rights relevant to that mine.

(d) Despite any other provision, where:

(i) Aurizon Network gives a Negotiation Cessation Notice under this **clause 4.13**; and

(ii) the person to whom it was given wishes to commence a Dispute in respect of the giving of that Negotiation Cessation Notice,

the person must give a Dispute Notice in accordance with **clause 11.1.1(a)** within 10 Business Days after that Negotiation Cessation Notice is given.

(e) Where Aurizon Network gives a Negotiation Cessation Notice, that Negotiation Cessation Notice has no effect until:

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- ~~(i)~~ the expiry of the period under clause 4.13(d) without a relevant Dispute Notice being given to Aurizon Network; or
- ~~(E)(ii)~~ where a Dispute Notice is given to Aurizon Network within that period, the Dispute is resolved in favour of Aurizon Network.
- ~~(d)(f)~~ If a party disputes the giving of a Negotiation Cessation Notice, it will be deemed to have been issued only if and when the Dispute is resolved in Aurizon Network's favour.

## Part 12 Definitions and Interpretation

### 12.1 Definitions

#### Access Application

A written request for Access:

- (a) using the application form for such requests published on the Website from time to time; and
- (b) which satisfies:
  - (i) the information requirements set out in **Schedule B and 0**; and
  - (ii) any additional information, evidence or clarification requested by Aurizon Network in accordance with 0.
  - (iii) except to the extent that the Non-availability Circumstances exist in respect of that information, evidence or clarification.

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#### Material Variation

A variation to the relevant Access Application that will adversely affect the allocation of Capacity to an be detrimental to another Access Holder or Access Seeker's Capacity allocation as a result of any of the following either (or both):

- (a) 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; or
- (b) changes:
  - (i) in the way Capacity consumed by Train Services relating to the Access Rights will be operated (including loading and unloading times) or in the Capacity consumed by those Train Services being sought as a result of the variation – 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);
  - (ii) the period for which the Access Rights are required, whether shorter or longer;
  - (iii) the nature or type of Access Rights (for example, from Cyclic Traffic to Timetabled Traffic); or
  - (iv) the origin or destination relevant to the Access Rights.

**Non-availability  
Requirements**  
Circumstances

The following requirements:

- (a) the relevant person has notified Aurizon Network that the evidence or information is not available and 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 circumstances 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 has notified the relevant person (such notice not to be unreasonably withheld or delayed) that it~~(acting reasonably)~~ is satisfied 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.

**Prospective  
Access Seeker**

A person who notified Aurizon Network that the person wants Access, or increased Access, but has not yet provided Aurizon Network with a properly completed Access Application.

# Part 11: Dispute Resolution and Decision Making

## 11.1 Dispute Resolution

### 11.1.1 Disputes

- (a) Any dispute (**Dispute**) arising:
- (i) as between Aurizon Network and a ~~p~~Prospective Access Seeker, Access Seeker or ~~a~~Railway Operator in relation to:
    - (A) the negotiation or grant of Access; ~~or~~
    - (B) the negotiation of a Train Operations Deed; or  
including in relation to the operation of, or anything required to be done or not done by Aurizon Network under, this Undertaking in respect of such negotiations; or
  - (ii) in respect of any matters expressly required by this Undertaking to be resolved in accordance with this Part 11~~Part 11~~,  
Part 11~~Part 11~~,

must be resolved in accordance with this Part 11~~Part 11~~Part 11 and any party to the Dispute may give to the other party or parties a Dispute Notice.

- (b) For clarity, any Dispute in relation to the entry into and completion of schedules for any Standard Agreement, or agreement substantially in the form of a Standard Agreement, is a Dispute for the purpose of **clause 11.1.1(a)** and must be resolved in accordance with this Part 11~~Part 11~~Part 11, but a dispute regarding a party refusing to vary the terms of a Standard Agreement is not a Dispute for the purpose of **clause 11.1.1(a)**~~11.1.1(a)~~11.1.1(a)~~11.1.1(a)~~.
- (c) Unless otherwise agreed by the parties in writing, any disputes arising in respect of any right or obligation under (or in respect of the enforcement) of an Access Agreement, a Train Operations Deed, a Studies Funding Agreement, a User Funding Agreement or a Rail Connection Agreement must be dealt with in accordance with the provisions of that agreement (even if the Dispute relates to provisions included in that agreement that are similar to, required by, or inconsistent with this Undertaking) and are not to be dealt with under this Undertaking.

- ~~(d) Despite **clause 11.1.1(c)**, disputes between parties to an Access Agreement, a Train Operations Deed, a Studies Funding Agreement, a User Funding Agreement or a Rail Connection Agreement may be dealt with under this Undertaking to the extent the dispute is not in respect of any right or obligation (or in respect of the enforcement) of the Access Agreement, the Train Operations Deed, the Studies Funding Agreement, the User Funding Agreement or the Rail Connection Agreement.~~

~~(e)~~(d) For the purposes of this **clause 11.1**, where:

- (i) a Dispute involves an Access Seeker who is not also a Train Operator; or
- (ii) a Dispute involves a Train Operator,

then:

- (iii) Aurizon Network must provide the relevant Train Operator(s) (where **paragraph (i)** applies) or the ~~relevant Customer or~~ Access Seeker (where **paragraph (ii)** applies) with a copy of the Dispute Notice and any subsequent notices or correspondence given by Aurizon Network to ~~the Customer,~~ Access Seeker or Train Operator, as applicable, in connection with the Dispute; and
- (iv) any such ~~Customer,~~ Access Seeker or Train Operator may elect, by giving notice to Aurizon Network and the other parties to the Dispute within five (5) Business Days after receiving the Dispute Notice under **clause 11.1.1(d)(iii)**~~11.1.1(d)(iii)~~~~11.1.1(e)(iii)~~, to become a party to the Dispute for the purposes of **clauses 11.1.2 to 11.1.6**.

~~(f)~~(e) All parties to, and other persons involved in resolving, a Dispute must use reasonable endeavours to facilitate the resolution of the Dispute in a timely manner.

~~(g)~~(f) Aurizon Network must:

- (i) promptly provide the QCA with a copy of any Dispute Notice ~~and any subsequent notices or formal correspondence exchanged between the parties in connection with the Dispute;~~
- (ii) promptly notify the QCA when the Dispute is referred to mediation under **clause 11.1.3** or an expert under **clause 11.1.4** for resolution or determination; and
- (iii) otherwise keep the QCA regularly informed of the progress of the resolution of the Dispute, including its outcome.

~~(g)~~ Despite **clause 11.1.1(f)**, Aurizon Network is not required under **clause 11.1.1(f)** to disclose:

- (i) any settlement proposals, without prejudice offers, agreed statements of facts, terms of compromises or similar information;
- (ii) any information that would waive any legal professional privilege or other privilege associated with that information;
- (iii) any information that may incriminate or have a tendency to incriminate any person; or

~~(iii)~~(iv) any information the parties to the Dispute agree to keep confidential.

### 11.1.2 **Chief executive resolution**

(a) Unless otherwise agreed in writing by the parties to the relevant Dispute, any Dispute must, within five (5) Business Days of the receipt of a Dispute Notice, be referred in the first instance to each party's chief executive (or his or her nominee) for resolution.

~~(a)~~(b) Each party's chief executive (or his or her nominee) must meet within 10 Business Days after of the receipt of a Dispute Notice or within such longer as those persons may agree.

~~(b)~~(c) All communications between the parties to a Dispute, including by, to or through each party's chief executive (or his or her nominee), as part of an attempt to resolve the Dispute under this **clause 11.1.2** are made on a without prejudice and confidential basis.

~~(c)~~(d) Where the Dispute is resolved under this **clause 11.1.2**, Aurizon Network must promptly notify the QCA of the resolution and provide a copy of that notice to the other parties to the Dispute.

~~(d)~~(e) If the Dispute is not resolved within ten (10) Business Days after each party's chief executive (or his or her nominee) first meet~~the referral under this clause 11.1.2~~, the parties may agree to refer the Dispute to:

- (i) mediation to be resolved in accordance with **clause 11.1.3**;
- (ii) an expert to be resolved in accordance with **clause 11.1.4**;  
or
- (iii) the QCA to be resolved in accordance with **clause 11.1.5**,

and, failing agreement under this **clause ~~11.1.2(e)~~11.1.2(e)11.1.2(d)** within fifteen (15) Business Days after the referral under **clause 11.1.2(a)**, either party may refer the Dispute to the QCA to be resolved in accordance with **clause 11.1.5**.

### 11.1.3 **Mediation**

(a) If the parties agreed to refer the relevant Dispute to mediation, then the mediation must be administered by the Australian Commercial Disputes Centre (**ACDC**) in accordance with ACDC's guidelines for mediation. The costs charged by ACDC for the mediation shall be borne equally by the parties and each party shall bear its own costs of preparing for and attending the mediation.

(b) All communications made between the parties to a Dispute, including to or through the mediator, as part of an attempt to resolve the Dispute under this **clause 11.1.3** are made on a without prejudice and confidential basis.

(c) Where mediation resolves the Dispute, the resolution must be documented in writing and signed by the parties to the Dispute. The

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mediator must provide a copy of the agreement by which the Dispute was resolved to the QCA. If the mediator fails to do so, Aurizon Network must provide a copy of the agreement to the QCA.

- (d) If the matter is referred to mediation under **clause 11.1.3(a)** and either:
- (i) the mediator notifies the parties to the mediation that the mediator considers:
    - (A) the parties to the relevant mediation cannot achieve a mediated resolution of the Dispute; or
    - (B) a party to the relevant mediation has failed to participate in the mediation process in good faith; or
  - (ii) mediation fails to resolve the Dispute within four (4) Months after the matter is referred to mediation under **clause 11.1.3(a)**,
- then:
- (iii) the parties may agree to refer the Dispute for resolution by an expert in accordance with **clause 11.1.4**; or
  - (iv) ~~if the parties fail to agree to refer the Dispute to an expert within five (5) Business Days in accordance with **clause 11.1.3(d)(iii)**,~~ either party may refer the Dispute to the QCA for a determination of the Dispute in accordance with **clause 11.1.5**.

#### 11.1.4 *Expert determination*

- (a) Where ~~the parties to a Dispute agree to refer a matter to an expert for determination, the Dispute must be referred to the expert for determination in accordance with this **clause 11.1.4**;~~
- ~~(i) the parties to a Dispute agree to refer a matter to an expert for determination; and~~
  - ~~(ii) the Dispute is referred to the chief executives (or their nominee) and has not been resolved under **clause 11.1.2**,~~
- ~~the Dispute must be referred to the expert for determination in accordance with this **clause 11.1.4**.~~
- (b) Where a Dispute is referred to an expert:
- (i) the expert shall be:
    - (A) appointed by agreement between the parties to the Dispute; or
    - (B) in default of such appointment within ten (10) Business Days after the requirement or right (as applicable) to refer the matter to an expert arose,

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the person nominated by (at request of any party to the Dispute):

- (1) ~~the QCA~~ if the parties agree that the Dispute is purely of a financial or accounting nature, the President (for the time being) of The Institute of Chartered Accountants in Australia;
  - (2) if the parties agree that the Dispute is purely of a technical nature, the President (for the time being) of the Resolution Institute; or
  - (3) in any other case, the President (for the time being) of the Queensland Law Society Incorporated;-
- (ii) if the expert is to be nominated by a person referred to in **clause 11.1.4(b)(i)(B)**, then the parties to the Dispute must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of that person (including providing relevant indemnities and paying any charges or fees (which charges or fees will be borne by the parties in equal shares)) that must be satisfied or complied with as a condition of that person agreeing to nominate an expert;
- (iii) if the expert is to be nominated by a person referred to in **clause 11.1.4(b)(i)(B)** and that person declines to nominate a person as the expert but provides a list of people that could be appointed as the expert, then:
- (A) the first person specified in that list will be taken to be nominated as the Expert;
  - (B) if the first person specified in that list does not accept the appointment as the Expert, then the next person specified in that list will be taken to be nominated as the Expert; and
  - (C) the process specified in **clause 11.1.4(b)(iii)(B)** will apply to the next and each subsequent person specified in that list until a person that is taken to be nominated as the Expert accepts the appointment as the Expert;
- (iv) subject to **clause 11.1.4(b)(iii)**, if the expert is to be nominated by a person referred to in **clause 11.1.4(b)(i)(B)** and the person nominated as the expert does not accept appointment as the expert, then an alternative person is to be nominated as the expert at the request of any party to the

Dispute by the relevant person referred to in clause 11.1.4(b)(i)(B):

~~(iii)~~(v) the parties to the Dispute must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of an agreed or nominated expert (including providing relevant indemnities and paying any charges or fees (which charges or fees will be borne by the parties in equal shares)) that must be satisfied or complied with as a condition of that person accepting the appointment as an expert;

~~(iv)~~(vi) the expert shall:

- (A) have appropriate qualifications and practical experience having regard to the nature of the Dispute;
- (B) have no interest or duty which conflicts or may conflict with their function as expert, the expert being required to fully disclose any such interest or duty by notice to the parties before their appointment;
- (C) not be, or have been in the last five (5) Years, an employee of any of the parties to the Dispute or of a Related Party of any of them;
- (D) not be permitted to act until the expert has given notice to each party that the expert is willing and able to accept the appointment;
- (E) have regard to the provisions of this Undertaking and consider all submissions (including oral submissions by each party provided that such oral submissions are made in the presence of the other parties to the Dispute), supporting documentation, information and data with respect to the matter submitted by the parties;

~~(F)~~ not make a determination in relation to a Dispute that is directly inconsistent with an express provision of this Undertaking or the Act; ~~although an expert may make a decision (without limitation) relating to;~~

~~(F)~~(G) only make a determination that the QCA could make if the matter were arbitrated by the QCA under Subdivision 3, Division 5 of Part 5 of the Act;

~~(G)~~ ~~the interpretation or application of any provision of this Undertaking;~~

~~(H)~~ — whether a party has complied with the terms of this Undertaking;

~~(1)~~ — any matter not expressly stated in this Undertaking; or

~~(2)~~ — any part of a matter that is not expressly covered by this Undertaking even if another part of the matter is expressly covered by this Undertaking;

~~(H)~~ have regard to the matters specified in section 120(1)(a) to (l) and other relevant provisions of the Act;

~~(I)~~ provide to the parties a copy of the expert's determination in relation to the Dispute in the form of a report setting out reasonable details of the reasons for the expert's determination within a reasonable time after their appointment;

~~(J)~~ be required to undertake to keep confidential all matters coming to their knowledge by reason of their appointment and performance of their duties (including, if required by a party, by entering into a confidentiality agreement in favour of the parties to the relevant Dispute); and

~~(K)~~ be deemed to be and shall act as an expert and not an arbitrator and the law relating to arbitration (including the *Commercial Arbitration Act 2013* (Qld)), shall not apply to the expert or to the determination or the procedures by which the expert may reach a determination.

~~(c)~~ For clarity, an expert may make a determination relating to:

~~(i)~~ the interpretation or application of any provision of this Undertaking; or

~~(ii)~~ whether a party has complied with the terms of this Undertaking.

where the interpretation or application of the Undertaking or compliance with the Undertaking is the matter that is in dispute.

~~(c)~~ Any Dispute subject to expert determination under this **clause 11.1.4** must be determined in accordance with the Expert Determination Rules of the Resolution Institute to the extent those rules are not inconsistent with the terms of this **clause 11.1.4**.

(d) If, at any time during the determination, the expert becomes aware of circumstances that might reasonably be considered to adversely affect the expert's capacity to act independently or impartially, the expert must:

- (i) inform the parties to the Dispute immediately;
  - (ii) unless the parties to the Dispute agree otherwise in writing, terminate the engagement; and
  - (iii) in which case any determination of the expert will be of no effect and a new expert must be appointed in accordance with the procedure outlined in this **clause 11.1.411.1.411.1.4**.
- (e) The parties shall do everything reasonably requested by the expert to assist the expert in determining the Dispute, including providing or making available to the expert, as soon as reasonably practicable, all information and materials in their possession or control requested by the expert and attending any hearing convened by the expert.
- (f) If the parties to a Dispute agree it is appropriate appoint multiple experts to determine the Dispute, each expert must:
  - (i) cooperate with the other experts appointed to determine the Dispute;
  - (ii) endeavour to reach a unanimous decision with the other appointed experts; and
  - (iii) agree between the experts the procedure for drafting the written determination.
- (g) In the absence of manifest error, the expert's decision is final and binding upon the parties. If a party believes that there has been a manifest error ~~or fraud~~ in the expert's decision, it may refer the matter to the QCA for a determination. If the QCA determines that there has been a manifest error ~~or fraud~~, then the parties may agree to refer the Dispute to another expert in accordance with this **clause 11.1.411.1.411.1.4**, or failing such agreement, either party may refer the Dispute to the QCA for resolution in accordance with **clause 11.1.5**.
- (h) Unless otherwise agreed by the parties to the Dispute:
  - (i) the following must be borne by the parties in equal shares:
    - (A) the costs of the expert (and the costs of any advisers to the expert), including fees and disbursements; and
    - (B) any transcript fees;
  - (ii) each party shall bear their own costs of and incidental to participating in the expert determination process, including their own costs of and incidental to the preparation of a confidentiality deed or agreement for the engagement of the expert.
- (i) An expert appointed under this **clause 11.1.411.1.411.1.4** must not, without the prior written consent of the parties to the Dispute, accept

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an appointment to act as arbitrator, or act as an advocate or adviser to either party, in any subsequent arbitral or judicial proceedings arising out of or in connection with the Dispute.

#### 11.1.5 *Determination by the QCA*

- (a) If this Undertaking requires that a Dispute be resolved by the QCA under this **clause 11.1.5**, then that Dispute may be referred to the QCA after **clause 11.1.1** has been complied with in relation to that Dispute.
- (b) Despite this Undertaking requiring a Dispute to be resolved by the QCA, the parties may agree, and jointly request-notify the QCA, ~~to refer that~~ the matter is to be referred to an ~~e~~Expert for determination in accordance with ~~clause 11.1.411.1.411.1.4~~ clause 11.1.411.1.4 in which case the parties may first seek to refer the Dispute to an Expert under clause 11.1.411.1.4 the QCA may, but is not required to, refer the matter to an expert.
- ~~(c) If a Dispute is referred to the QCA under this Undertaking or otherwise, the parties agree that Division 5 of Part 5 of the Act applies. Where a Dispute is referred to the QCA for determination under this Undertaking, any determination of that Dispute by the QCA must occur subject to, and in accordance with, Division 5 of Part 5 of the Act.~~
- ~~(d) Without limitation to clause 11.1.5(c):~~
- (i) ~~For clarity,~~ nothing in this Undertaking is intended to derogate from section 119~~(1)(a)~~ of the QCA Act.
- (ii) ~~for the Any~~ referral of a Dispute to the QCA, ~~must be accompanied by a~~ Dispute Notice must satisfy the requirements under setting out the information required by sections 112 and 113 of the Act.
- (iii) ~~If~~ a Dispute is referred to the QCA ~~in accordance with this Undertaking~~, the QCA must provide notices of the Dispute to the parties specified in section 114 of the Act.
- ~~(e)~~(e) If a Dispute is referred to the QCA in accordance with this Undertaking, the QCA must seek the advice of the Safety Regulator on any aspect of the Dispute that either party to the Dispute or the QCA considers to be a safety related matter and must not make any decision that is inconsistent with advice it receives from the Safety Regulator to the extent that the advice relates to any aspect of safety. The QCA must provide to the parties a copy of any advice it receives from the Safety Regulator.
- ~~(d) Notwithstanding any provision in this Undertaking, an access determination made by the QCA will not be inconsistent with this Undertaking if it relates to (without limitation):~~

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- ~~(i) the interpretation or application of any provision of this Undertaking;~~
- ~~(ii) whether a party has complied with the terms of this Undertaking;~~
- ~~(iii) any matter not expressly stated in this Undertaking; or~~
- ~~(iv) any part of a matter that is not expressly covered by this Undertaking even if another part of the matter is expressly covered by this Undertaking.~~

#### 11.1.6 Procedure

- (a) Where a Dispute is referred to either an ~~e~~Expert or the QCA (**decision maker**) for determination:
  - (i) the parties to the Dispute must provide written submissions to the decision maker outlining their respective views on the matter(s) in dispute, including reasons why their view should be preferred and an outline of how they would like to see the Dispute resolved;
  - (ii) each party to a dispute will be provided with a reasonable opportunity to respond to submissions made to the decision maker by the other party; and
  - (iii) where the matter in Dispute arises under a provision of this Undertaking which sets out the relevant matters to be taken into account by Aurizon Network or the decision maker in making a decision, the submissions to the decision maker by the parties to the Dispute must address those matters.

~~(b) In the absence of manifest error or fraud, the decision maker's determination is final and binding upon the parties and the parties to the Dispute must comply with the directions or determinations of the decision maker, unless:~~

- ~~(i) in the case of an expert, **clause 11.1.4(g)** applies; or~~
- ~~(ii) a determination by the QCA is challenged on the basis of a breach of a requirement in **clause 11.2**.~~

#### 11.1.7 Application to Part 8 Disputes

**Part 8** expressly sets out additional requirements in relation to resolution of specified Disputes.

~~(a) **Part 8** prevails to the extent of any inconsistency with this **Part 11**.~~

### 11.2 QCA decision-making

- (a) The QCA may not make a decision (**Decision**) under this Undertaking (including a determination under this ~~Part 11~~~~Part 11~~~~Part 11~~) that may affect Aurizon Network (including to require Aurizon Network to do, give or submit anything to the QCA, to resolve a Dispute or to refuse to approve, approve or consent to or grant anything), unless:

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- (i) the QCA observed the rules of natural justice;
- (ii) the QCA observed any procedures that were required by law or this Undertaking;
- (iii) the QCA had jurisdiction to make the Decision under this Undertaking;
- (iv) the QCA was authorised to make the Decision under this Undertaking;
- (v) the QCA's Decision would not be an improper exercise of the power conferred by this Undertaking. An improper exercise of power includes a reference to:
  - (A) taking an irrelevant consideration into account in the exercise of a power;
  - (B) failing to take a relevant consideration into account in the exercise of a power;
  - (C) an exercise of a power for a purpose other than a purpose for which the power is conferred;
  - (D) an exercise of a discretionary power in bad faith;
  - (E) an exercise of a personal discretionary power at the discretion or behest of another person;
  - (F) an exercise of a discretionary power in accordance with a rule or policy without regard to the merits of a particular case;
  - (G) an exercise of a power that is so unreasonable that no reasonable person could so exercise the power;
  - (H) an exercise of a power in such a way that the result of the exercise of the power is uncertain; and
  - (I) any other exercise of a power in a way that is an abuse of the power;
- (vi) the QCA's Decision did not involve an error of law (whether or not the error appears on the record of the Decision);
- (vii) the QCA's Decision was not induced or affected by fraud;
- (viii) to the extent that any matters were required to be established before the Decision could be made or taken, there was some material or evidence from which the QCA could reasonably be satisfied the matter was established to justify the Decision or, to the extent that the existence of a particular fact forms the basis on which the Decision is made, the fact did or does exist; and
- (ix) the Decision was not otherwise contrary to law or this Undertaking. For the avoidance of doubt, the terms of this

**clause 11.2(a)** are intended to have the same meaning as used in the *Judicial Review Act 1991* (Qld).

- (b) If the QCA's Decision or conduct is challenged on the basis of a breach of a requirement in this **clause 11.2**, Aurizon Network and the QCA agree that Aurizon Network may seek an order suspending the operation of the Decision and a stay of any proceedings under the Decision.
- (c) This **clause 11.2** does not affect the right of any party to seek any other form of remedy or relief including relief by way of the equitable remedies of injunction or declaration or to seek review under the *Judicial Review Act 1991* (Qld).

# Schedule A

## Preliminary, Additional and Capacity Information

### 1 Preliminary Information

The following preliminary information will be made available on the Website for Access Seekers:

- (a) **(Introduction)** The criteria for the use of data and the purpose of the preliminary information.
- (b) **(Civil Infrastructure)** A description of the railway and Track and any operational constraints, e.g. grades and curves.
- (c) **(Telecommunications)** A description of the communication system used.
- (d) **(Electric Traction)** A general system description.
- (e) **(Interface Requirements)** Information on track gauge, axle loads, train speeds, Rollingstock gauge and noise limits.
- (f) **(Locality Information)** Terrain information and climatic conditions and resultant system disruptions.
- (g) **(Committed Corridor Upgrades)** Identification of any relevant committed corridor upgrades.
- (h) **(Maps and Drawings)** Corridor maps and Line Diagrams including plans specifying Track Segments and Mainline Paths.
- (i) **(Level Crossings)** The number of public and occupational level crossings and the type of protection used.
- (j) **(Train Operations)** Sectional running times (calculated based on the projected average sectional running times), maximum Train lengths incident recovery times, crew change locations and facilities forming part of the Rail Infrastructure<sup>1</sup> and stowage infrastructure locations.
- (k) **(Systems)** A description of operational, safeworking and signalling systems.

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<sup>1</sup> For example, safety matting next to Track to help people safely walk on the ballast.

- (l) **(Rollingstock Interface Standards)** A copy of the relevant Rollingstock Interface Standards.
- (m) **(Description of entitlements)** Information relating to the description of, and calculations in respect of, Train Service Entitlements and Capacity.
- (n) **(Commercial Information)** The applicable Reference Tariffs and Standard Access Agreement and System Rules together with a sample IRMP listing Interface Risks and Environmental Risks that should, at a minimum, be addressed during an Interface Risk Assessment, along with suggested control measures that are at least industry standard or otherwise required by Aurizon Network's accreditation requirements under the Rail Safety Act.

However, the sample IRMP is not exhaustive of the matters that should be considered as part of an Interface Risk Assessment. An IRMP may set out additional or different matters depending on the circumstances (including additional safety and/or Rollingstock issues and associated controls) as long as those additional matters are industry standard or otherwise required by Aurizon Network's accreditation requirements under the Rail Safety Act.

## 2 Additional Information

For the purpose of **clause 4.11.2(a)(ii)**~~4.10.2(a)(ii)~~ of this Undertaking, Aurizon Network is required to provide the following information to an Access Seeker:

<b>Access to rail corridor</b>	<p>Where Aurizon Network does not have authority to authorise the Access Seeker to access land on which Rail Infrastructure on a route nominated by the Access Seeker is situated, the following information in relation to access to that land:</p> <ul style="list-style-type: none"> <li>(a) the name, address and contact details of the person <b>(Landholder)</b> that the Access Seeker needs approval from to access that land, where this information is reasonably available to Aurizon Network without breaching its confidentiality obligations under this Undertaking, <del>or</del> an Access Agreement <u>or any lease, licence or other agreement with the Landholder;</u></li> <li>(b) advice as to the nature and extent of the rights, if any, that Aurizon Network holds in relation to the relevant land without breaching its confidentiality obligations under this Undertaking, <del>or</del> an Access Agreement <u>or any lease, licence or other agreement with the Landholder;</u> and</li> </ul>
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	(c) a notice that may be provided to that person indicating that Aurizon Network has no objection to the Access Seeker negotiating for access to that land.
<b>Compliance information</b>	Subject to the Access Seeker having entered into an applicable confidentiality agreement with Aurizon Network, the protocols, standards and procedures an Access Holder is required to comply with under the terms of the relevant Standard Access Agreement.
<b>Other information</b>	(a) Information required under section 101(2) of the Act, to the extent not already provided.  (b) Other information that is reasonably required by the Access Seeker in accordance with Aurizon Network's obligation under section 101(1) of the Act, provided such information cannot reasonably be obtained from another source.

### 3 Capacity Information

- (a) This **clause 3** only applies in respect of information which can be provided by Aurizon Network without breaching either Aurizon Network's obligations under **Part 3** of this Undertaking, an Access Agreement or any relevant confidentiality agreement.
- (b) The following information will be provided to an Access Seeker by Aurizon Network on request by that Access Seeker:
- (i) in addition to the Preliminary Information, the Master Train Plan; and
  - (ii) in addition to the Additional Information, the Daily Train Plan (as assessed under **clause 3(c)**) for the relevant part of the Rail Infrastructure,
- subject to:
- (iii) the identity of other Access Holders not being detailed; and
  - (iv) the terms of other Access Holders' Train Service Entitlements not being detailed.
- In addition, the Master Train Plan and the Daily Train Plan may not show all parts of the Rail Infrastructure, and as such may not show all Train Services that may impact on the Existing Capacity detailed. However, Aurizon Network will note those other parts of the Rail Infrastructure where interaction with other Train Services is most likely to impact on the Existing Capacity detailed.
- (c) The relevant current Daily Train Plan will be assessed as, for an Access Application in respect of:

- (i) a Timetabled Traffic, the current Daily Train Plan for the relevant day (or days) of the week; or
  - (ii) a Cyclic Traffic, the current Daily Train Plans for a week, unless Aurizon Network reasonably believes that provision of Daily Train Plans for a longer period of time is required in order that the Daily Train Plans show a use of Existing Capacity that is representative of current utilisation.
- (d) Aurizon Network will also provide access to Network Control diagrams, indicating actual running of Train Services against the relevant Daily Train Plan, for those days for which the Daily Train Plan has been provided under **clause 3(b)(ii)**.

# Schedule B

## Access Application information requirements

### 1 Application

- (a) Without limiting the information requirements that an Access Application must satisfy in accordance with this Undertaking, an Access Application must satisfy the information requirements set out in this **Schedule B**.
- (b) This **Schedule B** applies as follows:
  - (i) where the proposed Access Application is solely for a Transfer in respect of Transferred Access Rights, **clause 6** applies (and, except as expressly referred to in **clause 6**, **clauses 2 to 5** and **clause 7** do not apply);
  - (ii) where the proposed Access Application is solely for a Renewal, **clause 7** applies (and, except as expressly referred to in **clause 7**, **clauses 2 to 6** do not apply); and
  - (iii) subject to **clauses 1(b)(i) and (ii)**, for all other proposed Access Applications, **clauses 2 to 5** apply.

### 2 Access Seeker and Customer

Relevant contact details including:

- (a) the Access Seeker's name and contact details;
- (b) if the Access Seeker has a Customer ~~(or prospective Customer)~~, that Customer's ~~(or prospective Customer's)~~ name and contact details; and
- (c) if the Access Seeker or its Customer ~~(or prospective Customer)~~ is an unincorporated joint venture, the names and contact details for all joint venture participants.

### 3 Ability to use Access Rights

Information needed to assess matters referred to in **clause 4.13(c)4.12(e)** of this Undertaking, including the following information about matters to be taken in account under **clause 4.13(c)4.12(e)** of this Undertaking:

- (a) where an Access Seeker is seeking Access Rights that will be used for a person other than the Access Seeker (that is, a person who is the Access Seeker's Customer ~~or prospective Customer~~), the identity of the Customer ~~or prospective Customer~~ for those Access Rights are sought is to be confirmed along with information evidencing that ~~the Access Seeker has or is reasonably likely to have such a Customer,~~

~~and that~~ the Customer ~~or prospective Customer~~ has authorised the Access Seeker to apply for the relevant Access Rights. Aurizon Network will disregard for this purpose the effect that granting the Access Rights to the Access Seeker will have on the Access Seeker's ability to attract a Customer in the future;

- (b) for a Train Operator, the identity of the relevant Access Seeker or Access Holder for whom they are the Train Operator;
- (c) whether the Access Seeker has secured, or is reasonably likely to secure, Supply Chain Rights;
- (d) whether the Access Seeker, or its Customer (if any), has secured or is reasonably likely to secure a rail haulage agreement for the operation of the proposed Train Services within the timeframes and in the manner contemplated by the Access Application, if applicable;
- (e) whether the Access Seeker or its Railway Operator is reasonably likely to have facilities (including Rollingstock, provisioning facilities, maintenance facilities and storage facilities) to enable it to run Train Services to fully utilise the Access Rights sought;
- (f) where the Access Rights are sought to transport the output of a mine, whether the anticipated output of the mine is sufficient to support full utilisation of the Access Rights sought and all relevant existing Access Rights relevant to that mine; and
- (g) where the Access Rights sought require a Customer Specific Branch Line for the relevant Train Services, whether the 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.

## 4 Coal and freight Train Services

### 4.1 Train Service description

Information describing the Train Services, including:

- (a) the route of operation (including a diagram if necessary) including origin, destination, loading facility, unloading facility and depot;
- (b) the proposed commencement date for Train Services;
- (c) the proposed term of the Access Agreement;
- (d) the method of transporting freight (e.g. containers, louvered wagons, bulk wagons);
- (e) a description of freight/ commodity;
- (f) the Coal System(s) in which the Train Service will operate;
- (g) the net tonnes of product per annum each Year of operation, represented on a Monthly basis, or where Monthly railings are not even, the proposed distribution of the net tonnes;

- (h) the proposed sectional run times;
- (i) the proposed maximum Dwell times, time at loading facility, time at unloading facility and time at depot;
- (j) the proposed non-standard operating modes or methods (if applicable); and
- (k) the proposed Stowage requirements.

## 4.2 Timetable requirements

Information setting out the timetabling requirements, including:

- (a) whether the Access Rights sought are for a new Train Service, or a variation to an existing Train Service, for the Access Seeker;
- (b) whether the Access Rights sought are for a new Train Service or variation to an existing Train Service on the Rail Infrastructure;
- (c) the required frequency of Train Services, including weekly requirements, seasonality variations and any trends over the proposed Access Agreement term;
- (d) the preferred departure and arrival windows on preferred days of operation, separately for forward and return journeys, where relevant; and
- (e) the requirements for shunting or Dwell times en route, separately for forward and return journeys.

## 4.3 Rollingstock details

For all Access Seekers, information describing the Rollingstock and Rollingstock Configurations, including:

- (a) the proposed number of locomotives per Train;
- (b) the proposed number of wagons per Train;
- (c) the type and class of locomotive;
- (d) the mass of each locomotive (includes full sand and fuel load);
- (e) the type and class of wagons;
- (f) the nominal gross mass of wagons;
- (g) the tare mass of each wagon;
- (h) the tare mass per container;
- (i) the average number of containers per wagon;
- (j) the average proposed load (of product) per wagon;
- (k) the maximum proposed gross tonnes per wagon;
- (l) the maximum axle load of locomotives and wagons;
- (m) locomotive traction type;

- (n) where the traction type is electric traction, the regenerative braking capability and relevant details relating to that regenerative braking capability including electricity metering;
- (o) the gross tonnes per Train Service, separately for forward and return journeys;
- (p) the nominal payload per Train Service, separately for forward and return journeys; and
- (q) the Static Length and Comparative Length for the proposed Train.

#### **4.4 Infrastructure requirements**

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

## **5 Passenger Train Services**

### **5.1 Train Service description**

Information describing the Train Services, including:

- (a) the route of operation (including a diagram, if necessary);
- (b) the proposed term of the Access Agreement; and
- (c) the type of passenger traffic (e.g. long distance, commuter, tourist).

### **5.2 Timetable requirements**

Information setting out the timetabling requirements, including:

- (a) whether the Access Rights sought are for a new Train Service, or a variation to an existing Train Service, for the Access Seeker;
- (b) whether the Access Rights sought are for a new Train Service, or a variation to an existing Train Service, for the Rail Infrastructure;
- (c) the required frequency of Train Services, including weekly requirements, seasonality variations and any trends over the proposed Access Agreement term;
- (d) the preferred departure and arrival windows on preferred days of operation, separately for forward and return journeys; and
- (e) the requirements for shunting or Dwell times en route, separately for forward and return journeys.

### **5.3 Rollingstock details**

Information describing the Rollingstock, including:

- (a) the total number of locomotives per Train;
- (b) the total number of carriages per Train;
- (c) the total number of passenger multiple units (**PMU**) per Train;
- (d) the type and class of locomotive;

- (e) the mass of each locomotive (including full sand and fuel load);
- (f) the type and class of carriage;
- (g) the nominal gross mass of each carriage;
- (h) the type and class of PMU;
- (i) the average gross mass of PMU;
- (j) the maximum number of vehicles including locomotives, wagons or units within PMU;
- (k) the maximum axle load of locomotives and wagons;
- (l) locomotive traction type;
- (m) the total length of Train (including locomotives);
- (n) the gross tonnes per Train Service, separately for forward and return journeys; and
- (o) the maximum operation speed separately for loaded and empty Trains.

#### 5.4 Infrastructure requirements

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

## 6 Transfers

Information relating to the Transfer including:

- (a) relevant contact details including:
  - (i) the Transferee's name and contact details;
  - (ii) if the Transferee has a Customer, that Customer's name and contact details; and
  - (iii) if the Transferee or its Customer is an unincorporated joint venture, the names and contact details for all joint venture participants;
- (b) where the Transferee is not the current Access Holder (**Transferor**) who intends to undertake the relevant Transfer, relevant contact details for the Transferor including:
  - (i) the Transferor's name and contact details;
  - (ii) if the Transferor has a Customer, that Customer's name and contact details; and
  - (iii) if the Transferor or its Customer is an unincorporated joint venture, the names and contact details for all joint venture participants;

- (c) details identifying the Transferor's Access Agreement, and the Access Right under it (including by reference to origin and destination), to which the Transfer relates;
- (d) the proposed date and term for the Transfer;
- (e) the information referred to in **clauses 3.4.1 to 4.3** or **clauses 5.1 to 5.3** (as applicable);
- (f) evidence that the Transferor's Customer and the Transferee's Customer have been notified of, and have agreed to, the Transfer (except where the Transferor's Customer initiated the Transfer by notice to Aurizon Network); and
- (g) except to the extent that ~~the Access Seeker satisfies~~ the Non-availability ~~Requirements~~Circumstances exist, any other information that:
  - (i) it is necessary to provide under this Undertaking; or
  - (ii) is otherwise necessary and has been notified to the Access Seeker by Aurizon Network.

## 7 Renewals

Information relating to the Renewal including:

- (a) relevant contact details including:
  - (i) the Renewing Access Seeker's name and contact details;
  - (ii) if the Renewing Access Seeker has a Customer, that Customer's name and contact details; and
  - (iii) if the Renewing Access Seeker or its Customer is an unincorporated joint venture, the names and contact details for all joint venture participants;
- (b) where the Renewing Access Seeker is not the current Access Holder, relevant contact details for the current Access Holder including:
  - (i) the current Access Holder's name and contact details;
  - (ii) if the current Access Holder has a Customer, that Customer's name and contact details; and
  - (iii) if the current Access Holder or its Customer is an unincorporated joint venture, the names and contact details for all joint venture participants;
- (c) a description identifying the current Access Agreement to which the Renewal relates;
- (d) whether the Renewal is for all or part of the relevant existing Access Rights and, where for part only, details of the relevant part;

- (e) details of all changes (if any) in:
- (i) the information referred to in **clauses 3.4.1 to 4.3** or **clauses 5.1 to 5.3** (as applicable)<sup>2</sup>; and
  - (ii) the Operating Plan,
- from that relating to the relevant existing Access Agreement.

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<sup>2</sup> A Renewal will ~~do~~ not require any Expansion or Customer Specific Branch Line therefore **clauses 4.4Schedule B4.4** and **5.4Schedule B5.4**, as applicable, are not relevant.

# Schedule C

## Operating and other plan requirements

### 1 Operating Plan

- (a) The following matters must, amongst others, be included in an Operating Plan.
- (b) An Operating Plan will adopt a three tiered presentation of information with information for the following categories:
  - (i) whole of network information that applies generally to the Train Services of the Access Seeker or the Access Holder (see **clause 1.1 below**);
  - (ii) Coal System specific information that applies to the Train Services of the Access Seeker or the Access Holder operating in that Coal System (see **clause 1.2 below**) but was not provided under **clause 1.3**; and
  - (iii) origin/destination pair specific information that applies to the Train Services of the Access Seeker or Access Holder for that origin/destination pair (**clause 1.3 below**) but was not provided under **clauses 1.1 or 1.2**.

#### 1.1 Umbrella Central Queensland Coal Network information

The following information must be provided in an Operating Plan on a whole of network basis.

- |                                       |   |
|---------------------------------------|---|
| <b>Area of Operation</b>              | <ul style="list-style-type: none"><li>• Depot locations</li></ul>   |
| <b>Operation</b>                      | <ul style="list-style-type: none"><li>• Type of service (passenger, freight) or commodity</li><li>• Dangerous goods details</li><li>• Overload management system</li><li>• Stowage locations held by the operator</li><li>• Timing of scheduled servicing/provisioning activities</li><li>• The maximum Rollingstock operational speed separately for loaded and empty Trains</li></ul> |
| <b>Train Information</b>              | <ul style="list-style-type: none"><li>• Safety systems</li><li>• Communication systems</li></ul>  |
| <b>Information in compliance with</b> | <ul style="list-style-type: none"><li>• Rollingstock Interface Standard</li></ul>   |

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

## 1.2 Coal System specific information

- (a) The requirement for the information under this **clause 1.2** is in addition to **clause 1.1**.
- (b) The following information must be provided in an Operating Plan on Coal System basis, so that the information is provided separately for each relevant Coal System (as applicable).
- (c) For clarity, it is not necessary to repeat information already provided under **clause 1.1**.

- Area of operation**
  - Origin and destination
  - Cycle description (including nominated stops en route)
  - Entry and exit points onto or off of Rail Infrastructure
  - Details regarding repositioning of Rollingstock (prior to, during and after operation of the Train Service)
  - Authority from Private Infrastructure manager to enter and/or exit the Private Infrastructure to enable use of Access Rights (where applicable)
- Operation**
  - Description of any activities that may negatively impact main line running (e.g. shunting and reversing)
  - Dwell times at loading facility (minimum and maximum)
  - Dwell times at unloading facility (minimum and maximum)

- Dwell times en route and operational requirements (minimum and maximum)
- Indicative timetable requirements or sectional running times
- Type, class and number of locomotives per Train
- Maximum and average gross tonnage of loaded Train (including locomotives)
- Tare of empty Train
- Method of operation
- Traction type
- Train length
- Rollingstock and Rollingstock Configuration details (number of wagons/locomotives/carriages/self-propelled units)

### 1.3 Origin/destination pair specific information

- (a) The requirement for the information under this **clause 1.3** is in addition to **clauses 1.1** and **1.2**.
- (b) The following information must be provided in an Operating Plan on an origin/destination pair basis, so that the information is provided separately for each origin/destination pair of the relevant Train Services (as applicable).
- (c) For clarity, it is not necessary to repeat information already provided under **clauses 1.1** or **1.2**.

- Area of operation**
  - Authority from Private Infrastructure manager to enter and/or exit the Private Infrastructure to enable use of Access Rights (where applicable)
- Operation**
  - Special operating parameters (e.g. key arrival and departure windows)
  - Any critical timings at specified locations
  - Description of any activities that may negatively impact main line running (e.g. shunting and reversing)
  - Load tables (including the loads for Train Services and all relevant requirements and information in relation to the specification of those loads)
  - Additional information applying to the requested Train Service which differs from other Train Services on the same Coal System