

3 July 2014

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Director – Aurizon Network
Queensland Competition Authority
GPO Box 2257
BRISBANE QLD 4001

Dear Tania

The 2013 Standard User Funding Agreement (SUFA) DAAU – Response to the Queensland Competition Authority (QCA) Position Paper

Aurizon Network provides this submission in response to the Queensland Competition Authority (QCA) Position Paper regarding Aurizon Network's 2013 SUFA DAAU.

The release of the QCA Position Paper follows an extensive consultation process between the QCA, Aurizon Network and the Queensland Resources Council (QRC) to address the key issues within the 2013 SUFA DAAU.

The QCA Position Paper provides proposals that cover four main areas comprising:

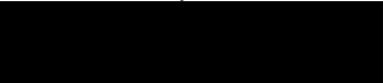
- security and certainty over cash flows;
- the overall construction process (construction, the expansion process and pre-approval);
- the maintenance of SUFA assets; and
- third party financing and risk assessment.

Aurizon Network would like to take the opportunity to acknowledge the significant contribution of the QCA in facilitating this ongoing process and the substantial involvement and assistance provided by the QRC.

The development of a workable, bankable and credible SUFA remains a key priority for Aurizon Network and its coal supply chain partners. It provides an alternative mechanism for access seekers interested in funding expansions, while providing sufficient commercial flexibility to Aurizon Network to facilitate the balancing of its business interests with the business interests of our customers.

Aurizon Network remains committed to the growth and sustainability of the CQCN and investment in the network, and the timely and efficient approval of SUFA.

Yours sincerely



Lana Stockman
Vice President Regulation

Aurizon Network 2013 Standard User Funding Agreement Draft Amending Access Undertaking

**A response to the Queensland Competition Authority (QCA) Position
Paper of May 2014**



Table of Contents

1	EXECUTIVE SUMMARY	3
2	INTRODUCTION.....	5
3	RENTAL METHOD	7
3.1	The QCA’s position.....	7
3.2	Aurizon Network’s response.....	7
4	CONSTRUCTION OF SUFA INFRASTRUCTURE	9
4.1	The QCA’s position.....	9
4.2	Aurizon Network’s response.....	10
5	SECURITY AND FINANCEABILITY	17
5.1	The QCA’s position.....	17
5.2	Aurizon Network’s response.....	17
6	TERMINATION	20
6.1	The QCA’s position.....	20
6.2	Aurizon Network’s response.....	21
7	DISCRIMINATION	24
7.1	The QCA’s position.....	24
7.2	Aurizon Network’s response.....	24
8	PREFERENCE UNIT TRANSFERS	27
8.1	The QCA’s position.....	27
8.2	Aurizon Network’s response.....	27
9	THIRD PARTY FINANCE	28
9.1	The QCA’s position.....	28
9.2	Aurizon Network’s response.....	28
10	TAXATION.....	32
10.1	The QCA’s position.....	32
10.2	Aurizon Network’s response.....	33
11	ACCESS UNDERTAKING AMENDMENTS.....	36
	APPENDIX 1 - THE EXPANSION PROCESS.....	37
	APPENDIX 2 - TAX RULING PROCESS	72
	APPENDIX 3 - SUMMARY RESPONSE TABLE	74
	APPENDIX 4 - ADDITIONAL CONSTRUCTION ISSUES	77
	GLOSSARY	80

1 Executive Summary

Aurizon Network provides this submission in response to the Queensland Competition Authority's (QCA) Position Paper on Aurizon Network's 2013 Standard User Funding Agreement Draft Amending Access Undertaking (2013 SUFA DAAU).

The development of a workable, bankable and credible Standard User Funding Agreement (SUFA) remains of critical importance to both Aurizon Network and its coal supply chain customers, providing an opportunity for access seekers and third party financiers to invest in the expansion of the Central Queensland Coal Network (CQCN).

As the owner and manager of the CQCN, Aurizon Network is committed to its sustainable growth, development and timely investment, as demonstrated through its recent expansions of the network into the Port of Gladstone and the Port of Abbot Point.

The SUFA framework represents an innovative approach to funding the expansion and growth of the CQCN, enabling new arrangements and additional choices for access seekers. Aurizon Network is aligned with the QCA's goal of developing a framework that allows as many financing options for, and potential participants to, a SUFA as possible, in order to provide a credible alternative for rail expansion investment when Aurizon Network chooses not to fund that investment.

Aurizon Network therefore considers the development of a SUFA framework to be important in ensuring the economically efficient operation of, use of, and investment in Aurizon Network infrastructure.

Aurizon Network supports the majority of proposed changes presented in the Position Paper, and has suggested some alternative proposals for the QCA's consideration. Aurizon Network requests that the QCA consider the positions proposed by Aurizon Network in this submission for the development of a SUFA which is workable for Aurizon Network, as well as for industry.

This submission seeks the QCA's consideration and support for Aurizon Network's positions on specified issues. Aurizon Network's ability to support a voluntary form of SUFA as part of UT4 will be determined by the extent of risk it can commercially accept, noting that it is not obliged by the QCA Act to accept costs and risks related to the extension of a facility. Nevertheless, Aurizon Network may choose to accept certain costs and risks in order to help drive the economically efficient development of the CQCN rail infrastructure, consistent with the expectations of the shareholders of Aurizon Network's ultimate parent company.

A table summarising Aurizon Network's response to each of the proposals in the Position Paper is included in Appendix 3. The following is a high level summary of Aurizon Network's response to key issues.

Aurizon Network's response

Aurizon Network supports the following proposals outlined in the Position Paper:

- Construction - Aurizon Network agrees with the QCA proposal to change from the Project Management Agreement to a construction agreement
- Expansion process - Aurizon Network supports the proposal to include an expansion process in the Access Undertaking
- Pre-approval – Aurizon Network agrees with the QCA pre-approval concept
- Rental payments – Aurizon Network supports clarification and simplification of the rental calculation methodology
- Termination – Aurizon Network agrees to provide further understanding of the risks around the Relevant Infrastructure Leases, by providing a redacted version in a data room, subject to the approval of the Relevant Infrastructure Lessor
- Finance – Aurizon Network agrees that the option of raising debt in the Trust can be included, provided that Aurizon Network (as Ordinary Unit Holder) is not disadvantaged
- Tax and stamp duty – Aurizon Network supports the proposals for:
 - a statutory solution for severance; and
 - Aurizon Network seeking an ABA from the ATO in respect of the standard SUFA documentation; and
 - Aurizon Network seeking a PBR for each SUFA project

Aurizon Network proposes the following amendments:

- Capacity – Aurizon Network proposes that the QCA adopt the method of treatment of capacity shortfalls included within the Expansion Process
- Tax indemnity – Aurizon Network proposes that it should have no obligation to fund tax costs
- Trust losses on termination – Aurizon Network proposes that it not be obliged upon termination to pay a Trust the amount, if any, by which the NPV of its expected rentals exceeds its share of infrastructure disposal proceeds
- Variations to the SUHD and TD – Aurizon Network proposes that the SUHD and TD be treated in the same way as other template SUFA documents, which are only varied by agreement
- Construction pricing – Aurizon Network proposes the adoption of lump sum pricing

2 Introduction

The release of the Position Paper follows a detailed engagement process initiated by the QCA to address the main areas within Aurizon Network's 2013 SUFA DAAU, including security and certainty over cash flows, the overall construction process, the maintenance of SUFA assets, and third party financing and risk assessment.

Aurizon Network supports the majority of the positions outlined by the QCA and has structured this submission to align closely with the Position Paper, as outlined below:

- Section 3 – Rental Method
- Section 4 – Construction of SUFA Infrastructure
- Section 5 – Security and Financeability
- Section 6 – Termination
- Section 7 – Discrimination
- Section 8 – Preference Unit Trusts
- Section 9 – Third Party Finance
- Section 10 – Taxation
- Section 11 – Access Undertaking Amendments

Each section contains a detailed summary of Aurizon Network's response to the proposals provided by the QCA, and a summary of all positions has been provided in Appendix 3.

Term Sheets

Aurizon Network has not provided redrafts of the Term Sheets as part of this submission, and would appreciate the opportunity to consult further with the QCA on the composition of the Term Sheets and their subsequent inclusion into the SUFA documentation.

Hybrid Funding

This submission is based on the assumption that all SUFA funding is provided by parties other than Aurizon Network. However, if Aurizon Network were to be an investor alongside other SUFA investors under a 'hybrid' arrangement, it may require changes to the SUFA documentation as a condition of investment.

Aurizon's Commitment to SUFA

Aurizon Network is committed to the timely and efficient approval of SUFA and will continue to consult with the QCA, the QRC and other interested stakeholders, including QTH and Queensland Rail, to develop a workable, bankable and credible SUFA.

SUFA recognises:

- the need to establish sufficiently certain terms on which demand-driven expansion of the CQCN can be achieved, addressing the detail referred to in section 137 (2)(g) of the QCA Act;
- Aurizon Network cannot be compelled under the terms of the QCA Act to pay any of the costs or to bear cost risks of an expansion to the CQCN. Therefore, in the absence of a voluntary funding obligation by Aurizon Network, it is appropriate to have a "safety net" solution for users to fund expansions;
- the desirability of providing a competitive funding model to establish a credible alternative to Aurizon Network funding for returns in excess of regulated returns; and
- that Aurizon Network has a critical role to play in delivering expansions in the CQCN, regardless of the source of funding.

3 Rental Method

The rental calculation methodology is an integral component of the SUFA model as it governs the user funders' entitlement to returns on and of capital invested in a SUFA asset. Aurizon Network and stakeholders are in agreement that the SUFA documentation should incorporate a method of calculating rent that is as clear and as simple as possible. This method of calculation should closely align with the regulatory arrangements from time to time.

3.1 The QCA's position

The QCA has proposed three changes to the SUFA documentation, namely;

- a) the clarification and simplification of the method of rental calculation¹;
- b) the development of worked examples of rental calculation and their inclusion in the SUFA documentation²; and
- c) the provision of a degree of certainty over the rental stream in the event of a change in the regulatory environment³.

3.2 Aurizon Network's response

a) The clarification and simplification of the method of rental calculation

Aurizon Network supports this proposal.

Aurizon Network welcomes further consultation with the QCA to provide further clarity regarding the rental calculation methodology. Due to the intricate nature of the regulatory regime, Aurizon Network notes that the method of rental calculation will by its nature be complex.

b) The development of worked examples of rental calculation and their inclusion in the SUFA documentation

Aurizon Network supports this proposal with a modification.

The worked examples included in the SUFA documentation are for illustrative purposes only and do not govern its legal interpretation.

c) The provision of a degree of certainty over the rental stream in the event of a change in the regulatory environment

Aurizon Network supports this objective and wishes to engage with the QCA.

Aurizon Network acknowledges that within an unregulated environment there will be some uncertainty regarding the contracting and charging of access services and the determination of an appropriate rental methodology.

¹ PP, section 6.2, Regulatory arrangement

² PP, section 6.2, Regulatory arrangement

³ PP, section 6.2, Unregulated arrangement

While Aurizon Network is open to discussion on providing a degree of certainty over rent in the post-regulatory environment, it would be difficult for it as a private sector entity to agree to a regime that would effectively treat services offered by it as being subject to regulation at a time when they are not.

Aurizon Network wishes to engage with the QCA on this issue to see what degree of certainty, if any, can be provided post-regulation.

Summary

	QCA Proposal	Aurizon Network Response
a	Clarification and simplification of the method of rental calculation	Aurizon Network supports this proposal
b	The development of worked examples of rental calculation and their inclusion in the SUFA documentation	Aurizon Network supports this proposal, subject to proposed modification
c	Provision of a degree of certainty over the rental stream if the regulatory environment changes	Aurizon Network supports the objective and wishes to engage with the QCA

4 Construction of SUFA Infrastructure

Aurizon Network developed its position on construction of SUFA infrastructure during extensive discussions with the QRC. This position is summarised across three distinct phases including the process leading up to the closure of a SUFA transaction, the construction or project delivery phase and RAB inclusion.

Aurizon Network and the QRC agree that a robust expansion process is required to address the process leading up to a SUFA closure. A draft of the expansion process was submitted to the QCA on 16 May 2014, following a detailed consultation process with the QRC.

The form of the 2013 SUFA DAAU PMA was developed in response to the QRC's strong desire for the Trustee to have significant influence over the project delivery process. Aurizon Network, as the Trustee's agent, would manage the project delivery process. The complexity of the PMA and the potential for numerous disputes under it would pose a very material risk to the timely and cost-effective project delivery of SUFA projects.

Aurizon Network considers that the risk of non-inclusion in the RAB should be mitigated as much as possible. The pre-approval of scope and standard would be sought by Aurizon Network before commitment to a SUFA project, with other RAB inclusion issues being addressed following project delivery. The risk of RAB non-inclusion is to be shared between the Trustee and Aurizon Network on a defined basis.

4.1 The QCA's position

The QCA has proposed four changes to the SUFA documentation, namely⁴:

- a) The simplification of construction arrangements through the replacement of the PMA with an industry-standard construction contract;
- b) The inclusion of an expansion process into the Access Undertaking which:
 - delivers feasibility studies that satisfy the needs of Aurizon Network, user funders and access seekers; and
 - applies to all capital projects (i.e. SUFA or non-SUFA) that result in a material capacity change;
- c) As Aurizon Network will have control over the planning and construction of SUFA assets, Aurizon Network should provide upfront commitments to scope, standard, cost, time-to-complete and capacity delivered and be subject to financial consequences if these commitments are not delivered upon; and
- d) The inclusion of a pre-approval process to provide upfront certainty that SUFA project costs will be included in the RAB.

⁴ PP, section 7.2

4.2 Aurizon Network’s Response

a) *Simplification of construction arrangements through replacement of the PMA with an industry standard construction contract*

Aurizon Network supports this proposal.

The QCA’s concept of a construction contract as a replacement of the PMA materially strengthens the SUFA model’s workability, bankability and credibility. Aurizon Network’s support for the concept of a construction contract is premised on Aurizon Network being the construction contractor under the contract.

To support the simplification proposal Aurizon Network offers the following commentary on, and proposed refinements to, the construction contract.

Topic	Proposed Refinement
Risk/reward structure of the construction contract	<ul style="list-style-type: none"> The template construction contract should be consistent with normal contracting practice for private sector principals undertaking comparable projects. When the template is converted into a construction contract for a particular SUFA project, that contract’s risk/reward profile should reflect industry-standard risks and rewards for similar projects The Expansion Process will require agreement or dispute resolution of project-specific schedules Aurizon Network does not fully understand the GMP pricing approach proposed by the QCA, as discussed in greater detail in Appendix 4, and would welcome an opportunity to gain a deeper understanding Aurizon Network considers lump sum pricing is the most suitable pricing option for the construction contract
Liquidated damages for late delivery	<ul style="list-style-type: none"> Liquidated damages must be determined as a pre-estimate of the loss suffered by the construction contract’s counterparty, the Trust, and not other parties such as access seekers and user funders
Role of the Independent Certifier	<ul style="list-style-type: none"> Aurizon Network considers the Independent Certifier should undertake the role of superintendent with the usual duty of care applying to superintendents
Flexibility of Aurizon Network as head contractor	<ul style="list-style-type: none"> Aurizon Network proposes that scope be documented at a high level rather than being specified in detail, in order to reflect the design and construct model of engagement and the passive role of the Trustee

Table 1 Construction contract commentary

Due to the adoption of the construction contract as a SUFA document, there are other simplifications that can be implemented across the other SUFA documents to benefit the workability of SUFA. Aurizon Network has previously provided detailed suggestions to the QCA, and will make available these suggestions upon request.

b) Inclusion of an expansion process into the Access Undertaking

Aurizon Network supports this proposal.

As part of UT4, Aurizon Network has been working with the QRC to develop a workable expansion process. The current draft was provided to the QCA on 16 May 2014, and is attached as Appendix 1.

The Expansion Process was drafted prior to reviewing the issues raised in the PP, and certain variations will be required to this drafting to reflect the outcomes of SUFA, including the change to include a construction contract and the pre-approval process.

The figure below details how capacity and scope will be planned, contracted and delivered in the Expansion Process. The proposed drafting is included in Appendix 1.

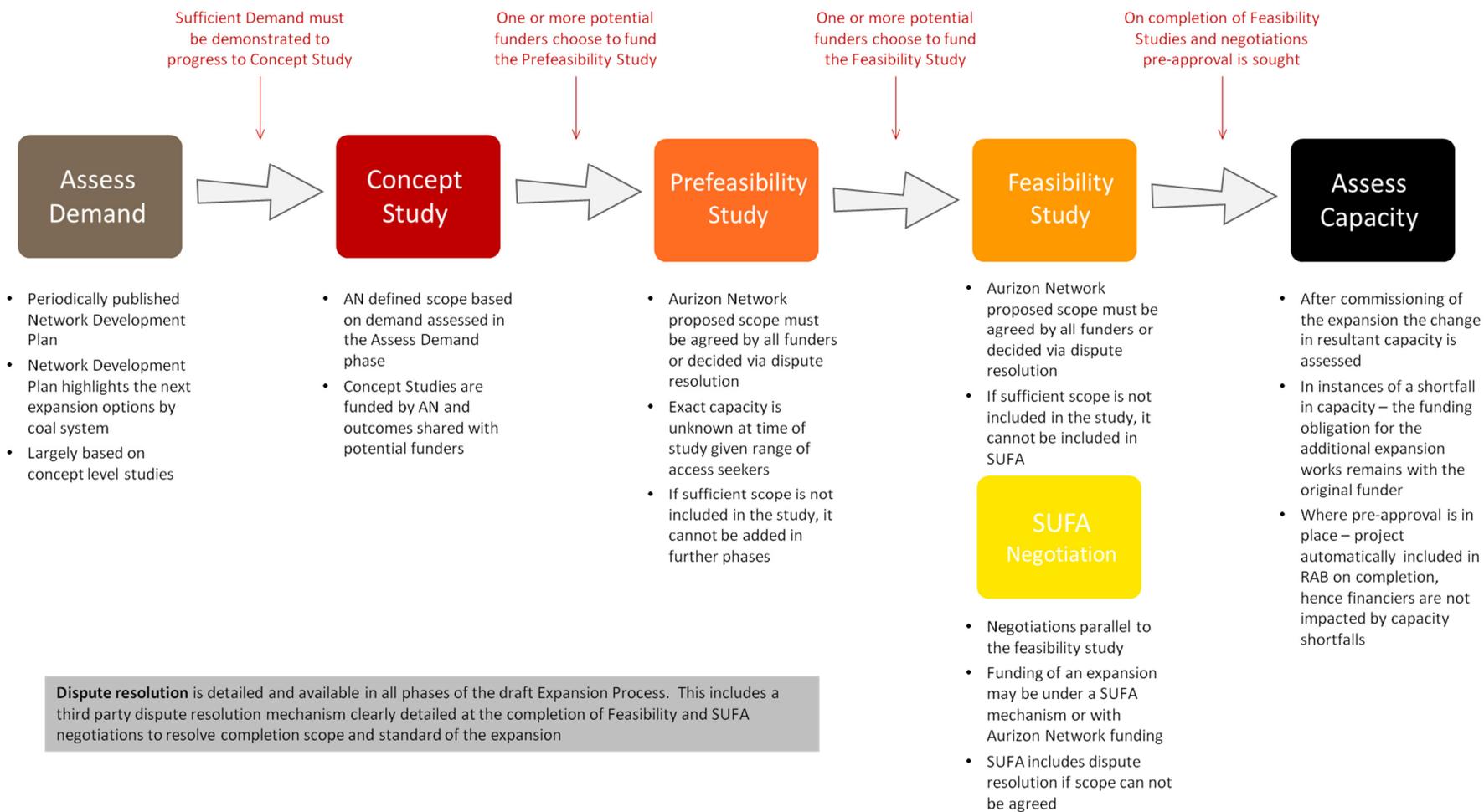


Figure 1 Treatment of Capacity and Scope in the Expansion Process

c) ***Aurizon Network to control the planning and construction and be subject to financial consequences should commitments not be delivered***

Aurizon Network partially supports this proposal in respect to construction (other than for capacity), and does not support the proposal with respect to planning.

This is because the Expansion Process does not provide that Aurizon Network has full control over the planning phase of the expansion, but rather provides substantial involvement for the access seekers including:

- the process of reaching agreement by negotiation between Aurizon Network and Access Seekers as to:
 - what should be studied; and
 - the content of schedules to the SUFA documentation (including scope, standard, time to complete, risks passed through the construction contract and pricing of the construction contract); and
- the process of binding dispute resolution that determines these matters if the parties are unable to reach agreement by negotiation.

Aurizon Network believes the involvement of access seekers will benefit the Expansion Process and subsequently provides a better outcome, but this comes at a cost to participants in that they also need to bear responsibility for outcomes.

The Expansion Process also specifically deals with circumstances where an expansion fails to deliver capacity. The treatment of capacity shortfall, which has been developed with the support of the QRC, recognises that Aurizon Network does not have full control over the decisions on scope and standard, which are key determinants as to whether capacity is delivered.

Aurizon Network believes the treatment of capacity shortfalls proposed in the Expansion Process provides a suitable balance of the interests of all involved parties. Should the QCA's approach to capacity shortfall be adopted, Aurizon Network believes the Expansion Process would require amendment in order to provide full control over scope to Aurizon Network.

Aurizon Network's position on capacity shortfall is supported by the following:

- Capacity shortfalls predominantly impact access seekers. To manage this risk, the QRC has sought greater involvement for access seekers in the Expansion Process rather than financial consequences on Aurizon Network in the event of a capacity shortfall;
- The imposition of financial consequences would motivate Aurizon Network to mitigate risk by ensuring the scope was robust and highly likely to deliver capacity with a corresponding increase in overall project costs;
- The scope of an expansion is locked down in the construction contract with no unilateral right for Aurizon Network to modify the scope to mitigate the capacity risk; and
- The user funders are indifferent to capacity outcomes as the pre-approved cost is included in the RAB upon commissioning.

(d) Inclusion of a pre-approval process

Aurizon Network supports the principle of the pre-approval process proposed by the QCA, and offers the following comments to assist with its further development:

- i. Value included in RAB - In discussions held with the QCA, Aurizon Network believes it was clarified that the amount paid under the lump sum construction contract (as varied due to Adjustment Events and prudent variations), rather than costs of Aurizon Network as construction contractor, would be included in the RAB as this is the amount paid by the Trust;
- ii. Dispute Resolution - Aurizon Network supports the proposal of the role of the Independent Engineer to assess the prudence. In addition, Aurizon Network proposes that the same Independent Engineer should be the expert appointed for dispute resolution (as required) in respect of SUFA schedules;
- iii. System Tests - Aurizon Network supports the concept that prudence must consider the impacts on existing users. However, under the UT4 consultation process, the pricing rules have been proposed at an in-principle level. When finalised, the pricing rules are expected to remove the need for a price test. Similarly, whilst Aurizon Network supports the concept that existing access holders should not have their capacity impacted, it is not clear how an expansion may impact the existing capacity entitlements of existing access holders, because:
 - a. the expansion does not impact the access agreements of existing access holders; and
 - b. to the extent the expansion does not create sufficient capacity the incremental access holders will have their access rights reduced to ensure no impact on pre-existing access holders.
- iv. Adjustment Events – Aurizon Network agrees there will be specified variation events beyond the control of the construction contractor which are not included in the contract price, i.e. Adjustment Events. General variations (which are not required, but may be desired by Aurizon Network as the construction contractor or the Trustee as the Principal) should be assessed on a case-by-case basis and not pre-approved.

The QCA has proposed that a reasonable variation contingency is approved upfront with costs associated with Adjustment Events being approved if they fall within the contingency. Aurizon Network considers that costs in respect of Adjustment Events that are in excess of the contingency amount would nonetheless be prudent as they result from events beyond the construction contractor's control and are not priced in the lump sum construction contract.

An alternative option to provide for approval of such expenditure on Adjustment Events would be to establish a process that ensures all such expenditure is prudent. The incorporation of that process into the construction contract will give assurance to user funders that whatever they spend will be included in the RAB.

As part of its assessment of prudence under the pre-approval process, as discussed above, the Independent Engineer is to approve, among other things, the events that are specified in the construction contract as Adjustment Events and that contract's pricing. During the construction process, any claim by Aurizon Network as construction contractor in respect of an Adjustment Event is to be submitted to the Independent Certifier, which has a duty of care to the QCA (as well as the Trustee and Aurizon Network). Aurizon Network is only entitled to

payment in respect of that claim:

- if the Independent Certifier considers that the claimed Adjustment Event has occurred; and
- in the amount determined by the Independent Certifier in accordance with the construction contract

The process is illustrated below:

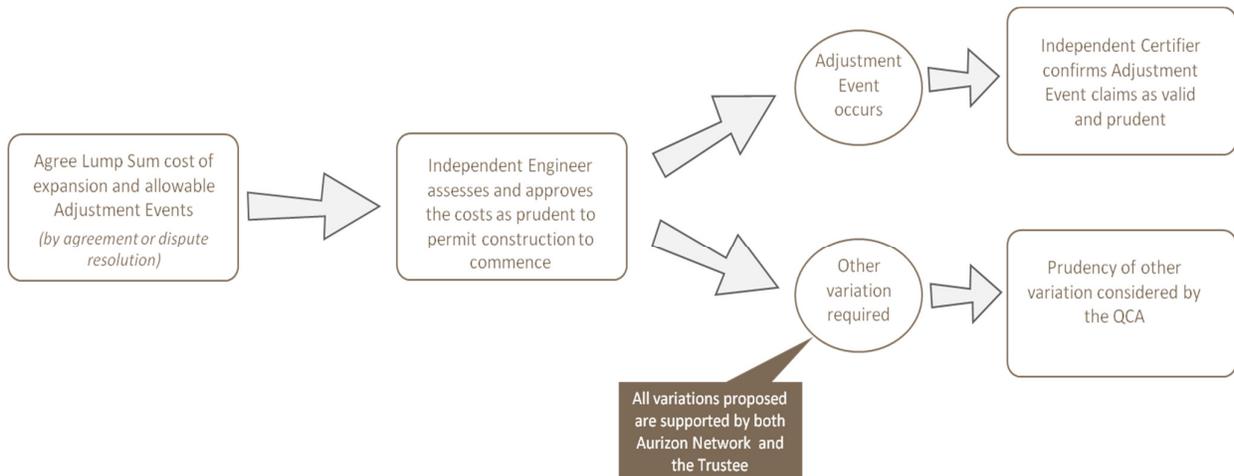


Figure 2 The process for assessment of prudence

This process would ensure that the total amount paid by the Trust under the construction contract is prudent, regardless of whether the occurrence of Adjustment Events is significant or minimal. There would therefore be no need for the QCA to set a contingency as it has proposed, since there would be a rigorous and effective mechanism to ensure prudence of all Adjustment Event expenditure regardless of magnitude. This process would only apply to the payments under the construction contract in respect of the scope as at execution and variations due to Adjustment Events.

This would be without prejudice to Aurizon Network's right to seek approval post construction.

The issue of the QCA approval of costs incurred under the construction contract should not impact on the progress of works under a construction contract with there being no question of having to suspend works awaiting regulatory pre-approval. The proposed process depicted above would ensure that the user funders would always have comfort around the inclusion of these Adjustment Event costs as prudent. It would also avoid any delay to construction which would occur had there been a contingency and it was fully expended.

- v. Aurizon Network proposes that the pre-approval process be available as an option for Aurizon Network-funded projects as well as user funded projects.

Summary

	QCA Proposal	Aurizon Network Response
a	Simplification of construction arrangements through replacement of the Project Management Agreement with an industry standard construction contract.	Aurizon Network supports this proposal and provides a commentary and proposed refinements
b	Inclusion of an expansion process into the Access Undertaking. Expansion Process should apply to all expansion projects that result in a material capacity change.	Aurizon Network supports this proposal and has provided the Expansion Process to the QCA Aurizon Network supports this proposal, and considers that the Expansion Process should apply to all expansion projects
c	Aurizon Network to have control over the planning and development of the expansion and commits to deliverables with financial consequences for non-delivery.	Aurizon Network partially supports this proposal Aurizon Network requests the QCA to consider the Expansion Process under which Aurizon Network shares control over expansion planning with access seekers Aurizon Network also requests the QCA to consider: <ul style="list-style-type: none"> - a construction contract under which Aurizon Network commits to scope, standard, cost and time-to-complete deliverables with financial consequences for non-delivery; and - the treatment of capacity shortfalls as set out in the Expansion Process
d	Inclusion of a pre-approval process	Aurizon Network supports this proposal and offers comments

5 Security and Financeability

In order for the user funders to justify investment in a SUFA project, it is agreed by all parties that there should be a high degree of certainty that the Trust will receive the rental stream due to it from Aurizon Network under the EISL. Aurizon Network has achieved this objective by supporting its unconditional rental payment obligation to the Trust with a direction to pay arrangement over access charges payable to Aurizon Network by user funders and potentially other access holders.

Aurizon Network included cash flow netting arrangements in the SUFA documentation.

5.1 The QCA's position

The QCA has proposed three changes to the SUFA documentation, namely:

- a) Granting security over access charges under linked access agreements for an amount equal to the rent payable in the event that the direction to pay mechanism is no longer effective⁵;
- b) Removal of the Trustee's obligation to withhold distributions if so required by the Ordinary Unit Holder⁶; and
- c) In relation to set off⁷:
 - i. Rent over/under payment is to be dealt with through the rent adjustment mechanisms;
 - ii. Each party is to have a right of set off; and
 - iii. Aurizon Network to seek that both it and the Trust are kept whole in respect of their tax exposure (following a change in law) by seeking a change to the regulatory tariff from the QCA. Only if the QCA refuses the change will Aurizon Network be able to seek set off.

5.2 Aurizon Network's response

- a) *Granting security over access charges under linked access agreements for an amount equal to the rent payable in the event that the direction to pay mechanism is no longer effective*

Aurizon Network supports this proposal and looks forward to working further with the QCA on the development of the security mechanism.

- b) *Removal of the Trustee's obligation to withhold distributions if so required by the Ordinary Unit Holder*

Aurizon Network supports this proposal.

⁵ PP, section 8, item 8.1 of summary box and section 10

⁶ PP, section 8, item 8.2 of summary box

⁷ PP, section 8, item 8.3 of summary box

c) In relation to set off:

i. Rent over/under payment is to be dealt with through the rent adjustment mechanisms

Aurizon Network supports this proposal.

ii. Each party is to have a right of set off

Aurizon Network supports this proposal.

iii. Aurizon Network to seek that both it and the Trust are kept whole in respect of their tax exposure (following a change in law) by seeking a change to the regulatory tariff from the QCA (through inclusion of the tax cost in the RAB)

Aurizon Network supports the proposal of RAB inclusion of tax costs but does not support their funding by Aurizon Network, whether in the form of:

- the temporary financing of tax costs from their occurrence until the QCA decides on their RAB inclusion; and/or
- the ongoing regulatory investment in respect of the tax costs if the QCA approves their inclusion in the RAB.

Aurizon Network considers that, where the SUFA parties had obtained favourable tax rulings prior to a SUFA transaction becoming unconditional, any tax costs incurred at a later time are likely to be prudent. It is reasonable that the parties that bear the ultimate burden of such costs would be access holders through their access charges.

Aurizon Network agrees to include an obligation for Aurizon Network to seek the inclusion of any tax cost amounts in the RAB as capital amounts, which would be depreciated for regulatory purposes over a number of years. It is also necessary to specify the party (or parties) that should be:

- the temporary funder of such costs, ie the party that funds the tax costs from occurrence until RAB inclusion; and
- the ultimate funder of such costs, i.e. the party whose investment funds or reimburses the tax costs, and in return ultimately receives the economic benefit of the incremental regulatory access charges following RAB inclusion of the investment.

The tax indemnity is documented so that it only applies to the extent that the tax costs would not have been incurred without the user funding structure. As stated previously, Aurizon Network considers that it should only assume costs or risks in respect of the SUFA documentation where Aurizon Network elects to do so. Aurizon Network does not wish to be the temporary funder or ultimate funder of tax costs, which would arise solely from its entry into a user funding transaction, and requests that the QCA reconsider this proposal.

Aurizon Network proposes that in the event of the occurrence of such a tax cost, it retains the ability to call on the tax indemnities while it is seeking RAB inclusion of the tax cost in parallel. To the extent the tax cost is included in the RAB, the rent will increase to reflect the returns on the tax indemnity amount included in the RAB.

The 2013 SUFA DAAU provided that the tax indemnifying party would be the user funding party to the Umbrella Agreement, which, in the absence of any assignment, was to be the access holder under the SUFA access agreement. Given the potential for additional rent to be earned through inclusion of the tax cost amount in the RAB, there may be merit in the tax indemnity obligation being transferred to the SUFA funders (ie the preference unit holders) as they receive distributions from the Trust (derived from rent paid to the Trust).

If, and to the extent that the tax indemnifying party does not pay a tax cost due under the tax indemnity, the SUHD provides that the Trust shall divert to Aurizon Network the payment of distributions that would otherwise be paid to the tax indemnifying party. These diverted payments shall be received by Aurizon Network from the Trust as payment under the tax indemnity by the defaulting tax indemnifying party and shall continue until the tax indemnity default has been fully rectified.

Aurizon Network can also set off the Trust's obligation to remit these diverted payments against rent that Aurizon Network is due to be paid to the Trust under the EISL. This cashflow netting arrangement will therefore only impact financially on the defaulting tax indemnifying party.

It is reasonable that Aurizon Network should have a suitable level of credit protection in the event of such a default. Aurizon Network believes that its proposed cashflow netting arrangement is a simpler and cheaper credit protection mechanism than a bank guarantee or security deposit, and is open to discussion about effective alternatives.

Summary

	QCA Proposal	Aurizon Network Response
a	Granting security over access charges under linked access agreements for an amount equal to the rent payable in the event that the direction to pay mechanism is no longer effective	Aurizon Network supports this proposal
b	Removal of Trustee's discretion to distribute cash flows at the direction of the Ordinary Unit Holder	Aurizon Network supports this proposal
c	Rent over/under payment is to be dealt with through the rent adjustment mechanisms. Each party is to have a right of set off Aurizon Network to seek that both it and the Trust are kept whole in respect of their tax exposure by seeking a change to the regulatory tariff from the QCA, and only if the QCA refuses the change will Aurizon Network be able to seek set off	Aurizon Network supports this proposal Aurizon Network supports this proposal Aurizon Network does not support this proposal

6 Termination

Termination relates to the risk to user funders of the termination of the Relevant Infrastructure Leases. Aurizon Network acknowledges that user funders will wish to understand the risk of the termination of the Relevant Infrastructure Lease(s) as part of their investment consideration. In the eventuality of the termination of a Relevant Infrastructure Lease, Aurizon Network would no longer provide access and receive access charges, and the Trustee would no longer receive a payment stream.

In this situation, the Trustee would be entitled to receive from the Relevant Infrastructure Lessor(s) the share(s) of the aggregate disposal proceeds that correspond(s) to the SUFA assets. This sharing arrangement would then place the Trustee in a position equivalent to Aurizon Network's position. Further, it would serve as the Trustee's sole entitlement in respect of the foregone payment stream, whatever the cause for termination of Aurizon Network's underlying infrastructure tenure.

6.1 The QCA's position

The QCA has proposed four changes to the SUFA documentation, namely:

- a) the attachment of a redacted draft of the Infrastructure Lease. The redactions should permit the user funders to determine how QTH may terminate the Infrastructure Lease⁸;
- b) amendment of the EIHL definition of Insolvency Event⁹;
- c) the creation of security over access charges to ensure that compensation cashflows are received by the Trustee¹⁰; and
- d) the Trustee may claim uncapped damages where the Infrastructure Lease has terminated due to Aurizon Network default¹¹.

⁸ PP, section 9, item 9.1 of summary box

⁹ PP, section 9, item 9.1 of summary box

¹⁰ PP, section 9, item 9.2 of summary box

¹¹ TS, section 7.4 (q)

6.2 Aurizon Network's response

a) *The attachment of a redacted draft of the Infrastructure Lease to the SUFA documentation. The redactions should permit the preference unit holders to determine how QTH may terminate the Infrastructure Lease*

Aurizon Network supports the principle that it should make available a redacted Relevant Infrastructure Lease(s).

The redacted document(s) should rather be provided to access seekers during the negotiation of each SUFA transaction rather than being attached to SUFA documentation.

Each redacted document would include all default and termination provisions. The redactions will relate to confidential commercial positions.

Aurizon Network's provision of redacted Relevant Infrastructure Lease(s) to an access seeker would be conditional upon:

- each Relevant Infrastructure Lessor's consent to the disclosure; and
- the access seeker entering into a suitable confidentiality agreement, under which the access seeker could disclose the information received by it to its advisers, potential financiers and potential SUFA investors, provided that they in turn agree to keep the information confidential.

b) *An amendment of the EIHL definition of Insolvency Event*

Aurizon Network supports this proposal.

The proposed amendment relating to the EIHL definition of Insolvency Event would require the consent of the lessor under the EIHL. Aurizon Network has requested that QTH provide favourable consideration to this proposed change in respect of the EIHL.

c) *The creation of security over access charges to ensure that compensation cashflows are received by the Trustee*

Aurizon Network supports this proposal.

The security arrangement for compensation cashflows should apply to the rent-equivalent payment net of any detriment amounts.

d) ***the Trustee may claim uncapped damages where the Infrastructure Lease has terminated due to Aurizon Network default.***

Aurizon Network does not support this proposal.

Although the Rental Method section of the PP 'does not deal with a termination event and associated compensation process' where Aurizon Network no longer holds its Relevant Infrastructure Lease rights, the TS does address this eventuality. The EISL TS provides that:

'the Trustee may claim uncapped damages where the Infrastructure Lease has terminated due to Aurizon Network default'¹²

Discussions held between legal advisors of Aurizon Network and the QCA provided further clarity on the QCA's proposal in relation to the financial consequences of termination of Aurizon Network's underlying infrastructure lease tenure¹³.

If a Relevant Infrastructure Lease is terminated due to Aurizon Network's default, and in turn the sub-lease under the EISL is terminated, Aurizon Network does not pay a compensation payment stream to the Trustee. It is understood the QCA considers that Aurizon Network should in this case be liable on a contingent basis to make a 'one-off' payment to the Trustee. The amount of that payment would be the amount (if positive) that is equal to the NPV of rental payments foregone by the Trustee due to the sub-lease's termination, less:

- if there is one Relevant Infrastructure Lease, the Trustee's share of the disposal proceeds under the IND that relates to the Relevant Infrastructure Lease; or
- if there are two Relevant Infrastructure Leases, the sum of the Trustee's share of the disposal proceeds in respect of each Relevant Infrastructure Lease.

Aurizon Network accepts that it is the party best able to manage the risk of its default under the Relevant Infrastructure Lease(s). There would already be a high degree of alignment of business interests between Aurizon Network and the SUFA investors because Aurizon Network will naturally be motivated by its own business interests to avoid any such default.

However, if Aurizon Network were to assume the Disposal Proceeds Top-up Obligation as proposed by the QCA, SUFA investors would face a lower investment risk profile on their investment than Aurizon Network would face on a comparable investment, even though the two investments would earn the same regulated WACC. The SUFA investors would gain the benefit of a long-term underwriting of risk that is not available to Aurizon Network itself on its investments. Furthermore, neither the PP nor the TS propose any form of compensation to Aurizon Network for the provision of this underwriting.

¹² TS, section 7.4 (q)

¹³ Meeting between legal advisors held on 15 May 2014

Aurizon Network considers that it should only assume costs or risks in respect of the SUFA documentation where Aurizon Network elects to do so. Aurizon Network does not wish to assume the Disposal Proceeds Top-up Obligation.

Summary

	QCA Proposal	Aurizon Network Response
a	Aurizon Network attach a redacted Infrastructure Lease	<p>Aurizon Network supports the proposal that it should make available a redacted Relevant Infrastructure Lease(s)</p> <p>Aurizon Network proposes that the redacted document(s) is provided to access seekers during the negotiation of each SUFA transaction rather being attached to SUFA documentation</p>
b	Amendment of EIHl definition of Insolvency Event	Aurizon Network supports this proposal
c	Security over access charges	Aurizon Network supports this proposal
d	Aurizon Network to assume the Disposal Proceeds Top-up Obligation	Aurizon Network does not support this proposal

7 Discrimination

Discrimination, in regards to the SUFA documentation, relates to two different concepts. The first refers to the scope of parties eligible to invest in SUFA, and the second refers to the treatment of SUFA and Aurizon Network-funded assets, and the principle that SUFA assets will be maintained and operated on a non-discriminatory basis.

The 2013 SUFA DAAU provided that, in the context of the PMA providing significant involvement and control rights to the Trustee for the project delivery phase, only SUFA access seekers could be SUFA investors during that phase to ensure alignment of interests with the wider coal supply chain. Following the project delivery phase, any party, subject to its meeting certain tax status requirements, can become a SUFA investor.

In respect of the treatment of SUFA assets, Aurizon Network provided that it would assume certain non-discrimination obligations under the RCA and the EISL.

7.1 The QCA's position

The QCA has proposed three changes to the SUFA documentation, namely:

- a) a broadening of the scope of parties eligible to be SUFA investors¹⁴;
- b) a proposed treatment to address discrimination concerns¹⁵; and
- c) unlimited liability on Aurizon Network for breaches of discrimination¹⁶.

7.2 Aurizon Network's response

a) A broadening of the scope of parties eligible to be SUFA investors

Aurizon Network supports this proposal.

In the context of the QCA's passive Trustee plus construction contract concept, any party should be entitled to become a user funder. As mentioned in section 11.2, Aurizon Network agrees that the concept of stapling of the access rights to investment rights should not apply at any stage of a SUFA project.

These positions are based on the premise that Aurizon Network itself will not be a SUFA user funder. Aurizon Network notes that each user funder's creditworthiness and legal/tax status (for example, whether it is a unit trust or an Australian tax resident) may be relevant to other user funders, but is not directly relevant to Aurizon Network.

b) A proposed treatment to address discrimination concerns

Aurizon Network supports this proposal and the in-principle approach adopted by the QCA towards discriminatory conduct.

Aurizon Network proposes to work collaboratively with the QCA to design a fully developed discrimination regime that will form part of the SUFA documentation. Aurizon Network considers that the QCA's approach should be amended to make it workable as set out in the table below:

¹⁴ PP, section 10.2

¹⁵ PP, section 10.4

¹⁶ TS, section 7.4(e)

Considerations	Proposed Enhancements	Suggested Impacts
Condition Based Assessments	<ul style="list-style-type: none"> Split the asset in the Condition Based Assessment to detail SUFA and non-SUFA assets Publish the Condition Based Assessment on the QCA's website 	<ul style="list-style-type: none"> Amendment to the Access Undertaking to allow for this variation QCA to include on its website
When is a potential discrimination concern able to be raised?	<ul style="list-style-type: none"> Each Trustee is able to raise a potential discrimination concern, other SUFA parties are unable to raise 	<ul style="list-style-type: none"> Changes required to both the SUFA documentation and the Access Undertaking
Process to assess a potential discrimination concern	<ul style="list-style-type: none"> QCA engage a consultant (at the Trustee's expense) to assess the potential discriminatory conduct Assessing consultant may also be the technical adviser that conducted the Condition Based Assessment Consultant is instructed to investigate whether there has been any potential discrimination that meets the threshold requirements specified in the SUFA documents Duty of care owed to the QCA, Aurizon Network and the Trustee by the consultant, consequentially the outcome of this process should not be subject to dispute resolution unless there is a manifest error <p><i>Consequences:</i></p> <ul style="list-style-type: none"> Aurizon Network agrees that in the event that a discriminatory conduct is identified, it shall provide a remedy plan to the QCA and the Trustee. Remedy plan to detail remediation timeframes and outcomes. In this event the reasonably incurred costs related to the investigation are to be reimbursed by Aurizon Network Where discriminatory conduct is not found, all costs are borne by the Trustee Liability can apply in cases of cases of repeat instances of discrimination 	<ul style="list-style-type: none"> Changes required to both the SUFA documentation and the Access Undertaking
Threshold requirements for determination of discriminatory conduct	<ul style="list-style-type: none"> The SUFA assets must be compared with Aurizon Network-funded assets on a 'like for like' basis in respect of usage or technical standard (eg. the consultant must not compare the asset condition of lightly used SUFA assets with heavily used Aurizon Network-funded assets) The comparison must: <ul style="list-style-type: none"> be conducted on a suitably aggregated basis (eg. the consultant must not compare the asset condition of a single SUFA bridge with a single Aurizon Network-funded bridge, but rather compare the condition of significant groups of assets) disregard differences in asset condition unless a significance threshold is met (eg. where SUFA assets have an asset condition equal to 97% of Aurizon Network-funded assets that difference would not constitute discriminatory conduct) allow for Aurizon Network's asset maintenance cycles 	<ul style="list-style-type: none"> Changes to SUFA documentation

Table 2 Discriminatory Concerns

c) Aurizon Network’s liability for further discrimination breaches

Aurizon Network supports the concept of liability for further discrimination breaches and proposes a modified liability position.

Aurizon Network accepts the concept that, following one determination of discriminatory conduct based on one Condition Based Assessment, it should assume liability in respect of a second determination of discriminatory conduct, a Second DC Determination, based on the next Condition Based Assessment.

Therefore, this liability should:

- be to the Trustee (and no other party);
- extend to the Trustee’s direct loss only; and
- relate to the period that commences on the date of the Second DC Determination and ends on the date when the remedy plan that relates to the Second DC Determination is completed.

Consistent with the liability for further breaches concept, Aurizon Network considers that, if there is no Second DC Determination in respect of the next Condition Based Assessment, there should be a reset on Aurizon Network’s discriminatory conduct. Aurizon Network’s liability in respect of any further discrimination breach would only arise upon the second of two successive determinations of discriminatory conduct in respect of two subsequent and successive Condition Based Assessments.

Summary

	QCA Proposal	Aurizon Network Response
a	Broadening of scope of parties eligible to be SUFA investors	Aurizon Network supports this proposal
b	Treatment of discrimination concerns	Aurizon Network supports in principle the approach adopted by the QCA and proposes enhancements
c	Liability for further discrimination breaches	Aurizon Network supports the concept of liability for further discrimination breaches and proposes a modified liability position

8 Preference Unit Transfers

The 2013 SUFA DAAU provided for the transfer of preference units, during the project delivery phase, to be on a stapled basis. Following the project delivery phase, preference units could be transferred to any party, subject to its meeting certain tax status requirements.

The 2013 SUFA DAAU provided that any preference unit holder seeking to dispose of its preference units must give Aurizon Network a reasonable opportunity to make an offer to acquire those units. Also, if Aurizon Network submits such an offer, that preference unit holder must not sell the preference units to a party that offered less favourable terms than those offered by Aurizon Network.

8.1 The QCA's position

The QCA has proposed two changes to the SUFA documentation, namely:

- a) There will be no requirement for stapling¹⁷; and
- b) Aurizon Network will be permitted to bid for preference units but should not have a first right of refusal¹⁸.

8.2 Aurizon Network's response

a) *There will be no requirement for stapling*

Aurizon Network supports this proposal.

In the context of the QCA's passive Trustee plus construction contract concept, stapling should not apply at any stage of a SUFA project.

b) *Aurizon Network will be permitted to bid for preference units but should not have a first right of refusal*

Aurizon Network supports this proposal with modifications and with the understanding that the QCA's position is that of a would-be seller of preference units:

- must give Aurizon Network a reasonable opportunity to buy the units; and
- if Aurizon Network submits an offer, must not sell the units to a party that offered less favourable terms than those offered by Aurizon Network.

On the basis of this understanding, Aurizon Network supports the QCA's proposal.

Summary

	QCA Proposal	Aurizon Network Response
a	No requirement for stapling	Aurizon Network supports this proposal
b	Aurizon Network will be permitted to bid for preference units but should not have a 'first right of refusal'	Aurizon Network supports the QCA's proposal with enhancements (on the basis of Aurizon Network's understanding of the QCA's position)

¹⁷ PP, section 11.3

¹⁸ PP, section 11.3

9 Third Party Finance

The 2013 SUFA DAAU provided that user funders could not raise debt finance at the Trust level, and there was no restriction on raising debt finance outside the Trust structure. In order to safeguard Aurizon Network's rights as Ordinary Unit Holder, the Trust was prohibited from creating a security interest over the Trust or its assets.

9.1 The QCA's position

The QCA has proposed changes to address the workability of third party finance¹⁹ that would allow the Trustee to:

- a) obtain finance itself;
- b) issue units to third party finance entities or to create a financing trust above the Trust; and
- c) charge its rights in the SUFA documents to ensure that lenders to the Trust are secured creditors.

The QCA also proposes three changes in respect of third party finance as part of the TS, namely:

- d) inclusion of an acknowledgment that the SUFA form of the TD may be amended as required in order to permit third party finance, subject to Aurizon Network as an Ordinary Unit Holder not being materially affected²⁰;
- e) inclusion of an acknowledgment that the SUFA form of the SUHD may be amended as required in order to permit third party finance, subject to Aurizon Network as an Ordinary Unit Holder not being materially affected²¹; and
- f) restrictions apply to the raising of funds by the Trustee and/or the charging of its rights under the SUFA documents²².

9.2 Aurizon Network's response

a) *The Trust should be allowed to obtain finance itself*

Aurizon Network supports this proposal subject to Aurizon Network positions detailed within this section being accepted.

b) *The Trust should be free to issue units to third party finance entities or to create a financing trust above the Trust*

Aurizon Network supports the QCA's proposal subject to Aurizon Network positions detailed within this section being accepted.

¹⁹ PP, section 12.3

²⁰ PP, section 12.1. of summary box

²¹ PP, section 12.2. of summary box

²² TS, section 2.4 (c)(vii)

- c) ***The Trust should be allowed to charge its rights in the SUFA documents to ensure that lenders to the trust are secured creditors of the Trust***

Aurizon Network supports the QCA's proposal subject to Aurizon Network positions detailed within this section being accepted.

- d) ***Inclusion of an acknowledgment that the SUFA form of the TD may be amended as required in order to permit third party finance, subject to Aurizon Network as an Ordinary Unit Holder not being materially affected***

Aurizon Network does not support this proposal.

The principle that an amendment to the approved template of SUFA documentation could be made without its consent is not acceptable to Aurizon Network. A template that is only binding on Aurizon Network but not on other parties cannot be considered a template, as this will operate in practice to invite changes to the standard form TD.

Any change is likely to affect Aurizon Network's rights and expose it to risks that it has not agreed to or anticipated in the standard suite of SUFA documents.

Aurizon Network does not consider that the protection based on 'no material adverse effect' is an effective protection as it places the onus on Aurizon Network to assess every change for materiality and to challenge each change without any certainty of outcome. The proposed protection also only seeks to address risks to Aurizon Network in its capacity as a unit holder and not generally under the SUFA documentation.

- e) ***Inclusion of an acknowledgment that the SUFA form of the SUHD may be amended as required in order to permit third party finance, subject to Aurizon Network as an Ordinary Unit Holder not being materially affected***

Aurizon Network does not support this proposal.

The principle that an amendment to the approved template of SUFA documentation could be made without its consent is not acceptable to Aurizon Network. A template that is only binding on Aurizon Network but not on other parties cannot be considered a template, as this will operate in practice to invite changes to the standard form SUHD.

Any change is likely to affect Aurizon Network's rights and expose it to risks that it has not agreed to or anticipated in the standard suite of SUFA documents.

Aurizon Network does not consider that the protection based on 'no material adverse effect' is an effective protection as it places the onus on Aurizon Network to assess every change for materiality and to challenge each change without any certainty of outcome. The proposed protection also only seeks to address risks to Aurizon Network in its capacity as a unit holder and not generally under the SUFA documentation.

f) ***Restrictions on the Trustee raising funds and granting security over SUFA documents***

Aurizon Network supports this position and provides enhancements to strengthen protection to Aurizon Network to any adverse consequences of the Trustee's financing.

It is of fundamental importance to Aurizon Network that at the end of the life of a SUFA arrangement, Aurizon Network has an unencumbered economic and legal interest (whether directly or indirectly) in the SUFA assets. This will ensure that the integrity of the rail network is maintained.

Aurizon Network considers that the proposed protection should be more specific and reflect several objectives that are fundamental to Aurizon Network.

These objectives are:

The security must not impair or threaten Aurizon Network's ability to wind up the Trust structure following the Zero Value Date

This objective would require that the security must not prevent or hinder Aurizon Network's ability to hold an unencumbered economic and legal interest in the SUFA assets following the Zero Value Date. This would be achieved either by retaining the Trust structure and being the only unit holder in the Trust following the redemption of the Preference Units, or by winding up the Trust structure and distributing the SUFA assets to Aurizon Network 'in specie'.

It is vital that the SUFA assets remains within the relevant Trust structure at all times except in the event of such an 'in specie' distribution, and any security arrangements would need to be consistent with that requirement. This would mean, for example, that the security must not give the security holder a power of sale over the Trust's SUFA rights, essentially its interests in the various SUFA agreements.

This requirement is consistent with the understanding reached at a meeting²³ between the QCA's legal adviser, Aurizon Network legal staff and Aurizon Network's external legal adviser to discuss third party financing of the Trust.

Aurizon Network as Ordinary Unit Holder must be protected from any liability under the Trust's financing or finance security throughout their respective lives and thereafter.

This would require a broadening of the scope of the release by the security holder.

Aurizon Network must have a very high level of certainty that the previous objectives will be achieved.

This would require the security holder to provide contractual undertakings directly to Aurizon Network as a condition for Aurizon Network to consent to the financing and/or security. Aurizon Network is prepared to agree not to unreasonably withhold such consent.

²³ Meeting between legal advisors held on 15 May 2014

Summary

	QCA Proposal	Aurizon Network Response
a	Trust should be allowed to obtain finance itself	Aurizon Network supports the QCA's proposal, subject to other Aurizon Network positions in this section being accepted
b	Trust should be free to issue units to third party finance entities or to create a financing trust	Aurizon Network supports the QCA's proposal, subject to other Aurizon Network positions in this section being accepted
c	Trust should be allowed to charge its rights in the SUFA documents	Aurizon Network supports the QCA's proposal, subject to other Aurizon Network positions in this section being accepted
d	TD may be amended as required, subject to limited protection of Aurizon Network's interests, in order to permit third party finance	Aurizon Network does not support this position
e	SUHD may be amended as required, subject to limited protection of Aurizon Network's interests, in order to permit third party finance	Aurizon Network does not support this position
f	Restrictions on the Trustee raising funds and granting security over SUFA documents	Aurizon Network supports the QCA's concept and considers it should be strengthened.

10 Taxation

Aurizon Network and the QRC both agree that statutory severance would be beneficial for any SUFA project. Aurizon Network did not address statutory severance in its 2013 SUFA DAAU in the expectation that severance would be addressed separately.

In discussions with the QRC, Aurizon Network has agreed that a set of private binding rulings should be obtained from the ATO in respect of each SUFA transaction before execution of SUFA documentation. This position was documented in the drafting notes on the front cover of the SUHD.

Aurizon Network had not intended to apply for an ABA in respect of the SUFA template documentation as it was considered that there was a low probability of the ATO issuing such an advice.

10.1 The QCA's position

The QCA has proposed three changes²⁴ to the SUFA documentation, namely:

- a) upon agreement of the template SUFA documents, Aurizon Network is to seek statutory severance for the infrastructure assets built under a SUFA;
- b) once statutory severance is obtained Aurizon Network is to obtain an 'administratively binding advice from the ATO in respect of the SUFA structure'; and
- c) once users agree to fund a SUFA, Aurizon Network is to assist in the application for PBRs from the ATO in respect of that proposed SUFA transaction.

The QCA also proposes three changes²⁵ to the SUFA documentation, namely:

- d) modification of the tax indemnity that is in favour of Aurizon Network²⁶;
- e) modification of the Trustee's rights under the TD should the Trust become a managed investment scheme²⁷; and
- f) a set of tax-related amendments to the SUHD²⁸.

²⁴ PP, section 13.1 of summary box

²⁵ PP, section 13.2, section 13.3, section 13.4

²⁶ TS, section 2.4(e)(iv)

²⁷ PP, section 13.3 of summary box

²⁸ PP, section 13.4 of summary box

10.2 Aurizon Network's response

a) *Aurizon Network is to seek statutory severance for the infrastructure assets built under a SUFA upon agreement of the template SUFA documents*

Aurizon Network does not support this proposal, as it would require Aurizon Network to seek a change in law to effect the change.

Aurizon Network's understanding from its discussions with the QCA was that it would request the Queensland State government to create the proposed statutory severance regime. Aurizon Network is ready to make a submission to the Queensland State government in support of the QCA's request.

If a statutory severance regime is established and it calls for an application for statutory severance on a project-by-project basis, Aurizon Network is prepared to assume an obligation under the Access Undertaking to submit a project-specific application as necessary and at the appropriate time.

b) *Aurizon Network is to obtain an administratively binding advice from the ATO in respect of the SUFA structure once statutory severance is obtained*

Aurizon Network supports this proposal with enhancements.

Aurizon Network is prepared to assume an obligation to seek (but not an obligation to obtain) an ABA in respect of the tax affairs of Aurizon Network and a notional Trust under the approved SUFA template documents.

Aurizon Network notes that ABAs in respect of Aurizon Network and a notional trust may not address all taxation aspects of the SUFA structure. This is because there may be taxation implications for the Relevant Infrastructure Lessor(s) under the National Tax Equivalent Regime or Federal tax regime (if applicable). If the Relevant Infrastructure Lessor(s) was subject to taxation under either regime, Aurizon Network would not be able to seek an ABA on behalf of the Relevant Infrastructure Lessor(s). Alternatively, if the Relevant Infrastructure Lessor(s) was not subject to taxation under either regime, no ABA would be applicable. On this basis, Aurizon Network considers that this proposed obligation is too broad in scope, and requests the QCA to ensure the scope is limited only to Aurizon Network and a notional trust.

Aurizon Network has advised the QCA and other parties that the ATO is unlikely to provide an ABA in respect of SUFA template documents. However, Aurizon Network will seek the ABAs in respect of the template, provided the costs of seeking them are added into the operating costs otherwise approved under the access undertaking from time to time.

Aurizon Network briefed the QCA on 7 April 2014 on Aurizon Network's proposed tax ruling process (Appendix 2).

- c) ***Aurizon Network is to assist in the application for PBRs from the ATO in respect of that proposed SUFA transaction once users agree to fund a SUFA***

Aurizon Network supports this proposal and provides a detailed view of this process as Appendix 2.

- d) ***Modification of the tax indemnity that is in favour of Aurizon Network***

Aurizon Network supports this proposal with an enhancement.

The tax indemnity should not operate to prevent a second claim in respect of the same event or circumstances if and to the extent that the second claim covers additional loss (i.e. loss that was not covered by the first claim).

- e) ***Modification of the Trustee's rights under the TD should the Trust become a managed investment scheme***

Aurizon Network supports this proposal.

- f) ***A set of tax-related amendments to the SUHD***

Aurizon Network supports this proposal with a modification.

The proposed amendment to clause 2.5 of the SUHD outlines the process by which, should the Trust be wound up early, distributions are split between Aurizon Network as Ordinary Unit Holder and the user funders as preference unit holders. This process should be constrained by the need to avoid 'any disadvantage' to Aurizon Network and its related entities, rather than 'any material disadvantage'.

Aurizon Network considers that it should only assume costs or risks in respect of the SUFA template documentation where Aurizon Network elects to do so. Aurizon Network does not wish to assume the risk of any disadvantage arising from the Trust being wound up early. This is a risk over which Aurizon Network has no control and therefore cannot appropriately manage.

Summary

	QCA Proposal	Aurizon Network Response
a	Aurizon Network's obligation to seek statutory severance	Aurizon Network does not support this proposal
b	Aurizon Network's obligation to obtain an ABA for SUFA template documents	Aurizon Network supports this proposal with enhancements
c	Aurizon Network's obligation to support in the application for PBRs for SUFA template documents	Aurizon Network supports this proposal
d	Modification of the tax indemnity	Aurizon Network supports this proposal with an enhancement
e	Modification of the Trustee's rights under the TD should the Trust become a managed investment scheme	Aurizon Network supports this proposal
f	A set of tax-related amendments to the SUHD	Aurizon Network supports this proposal with a modification

11 Access Undertaking Amendments

Aurizon Network acknowledges that the agreed outcomes on many of the issues addressed in this submission need to be reflected in the Access Undertaking.

Aurizon Network recognises that UT3 requires a workable SUFA. However, given the passage of time and the fact that there are no projects in the current pipeline that would necessitate a SUFA under UT3, the interests of efficiency call into question the need to pursue changes to the UT3 documentation.

Aurizon Network recognises that the work to date on the UT3 SUFA by Aurizon Network, the QCA and QRC needs to be retained and incorporated into UT4.

One possible way forward is that the SUFA DAAU under UT3 be withdrawn, and replaced with a new DAAU acknowledging that SUFA is now to be addressed as part of UT4, expressly keeping open the opportunity for the QCA to prepare its own version of SUFA if UT4 incorporating a SUFA is not approved by an agreed date.

Aurizon Network is prepared to work collaboratively with the QCA and stakeholders to overcome any potential inefficiencies to minimise the time and cost commitments of all involved.

Appendix 1

The Expansion Process

Part 8 Network development and Expansions

8.1 Overview

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

- (a) **clause 8.2** sets out general principles regarding limitations on Aurizon Network's rights and obligations to fund, construct or permit the creation of new Rail Infrastructure;
- (b) **clause 8.3** sets out principles in relation to Aurizon Network's undertaking of Concept Studies;
- (c) **clauses 8.4 and 8.5** set out principles in relation to the way in which Pre-feasibility Studies and Feasibility Studies are to be funded;
- (d) **clause 8.6** sets out general principles in relation to the funding of Expansions;
- (e) **clause 8.9** describes how Users may fund all or part of an Expansion;
- (f) **clause 8.10** sets out provisions in relation to Capacity Shortfalls and Access Agreements being conditional on Expansions;
- (g) **clause [insert]** confirms that Aurizon Network will participate in supply chain coordination including processes in relation to the review of System Operating Assumptions;
- (h) **clause [insert]** describes Aurizon Network's obligations in relation to its proposed Network Development Plan; and
- (i) **clause [insert]** sets out a voting process that Aurizon Network may apply in relation to certain matters concerning capital expenditure projects.

8.2 General principles

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

- (a) Subject to **clauses 8.2.1(b), 8.2.1(c), 8.2.1(d), 8.8(c) and 9**, nothing in this Undertaking:
 - (i) obliges Aurizon Network to fund, construct or permit an Expansion, or to agree to do so; or

- (ii) prevents Aurizon Network from agreeing (in its absolute discretion), or deciding itself, to fund, construct or permit an Expansion, or any part thereof.
- (b) Aurizon Network will fund the construction of any Expansion where the projected capital cost of the Expansion is less than \$[insert]. For the purpose of this clause, the projected capital cost of the Expansion will be determined on a “most likely case” basis by applying the costing details and approach specified in the Expansion’s Pre-feasibility Study’s report to the Capacity requirements of the Feasibility Funders selected in accordance with the process set out in **clause 8.5(b)**. .

[Drafting Note: Clause 8.2.1(b) has yet to be agreed but has been included as a place marker. The ultimate form of the provision including the amount to be inserted will depend on matters yet to be determined by Aurizon Network senior management and ultimately by the QCA.]

- (c) Notwithstanding any other provision of this **Part 8**, Aurizon Network is obliged to construct or permit an Expansion only to the extent that:
 - (i) Aurizon Network is satisfied (acting reasonably) that the Expansion is technically and economically feasible and consistent with the safe and reliable operation of the Rail Infrastructure.

However where Aurizon Network has not, prior to the expiration of 10 Business Days after entry into a relevant Feasibility Study Agreement for that Expansion, provided written notice to the Access Seekers selected to utilise an Expansion in accordance with the terms of this **Part 8** that the Expansion is not technically or economically feasible, or is inconsistent with the safe and reliable operation of the Rail Infrastructure, , the proposed Expansion will, subject to **clause 8.2.1(c)(ii)** be deemed to have satisfied those requirements.

The deemed satisfaction of requirements under **clause 8.2.1(c)(i)** shall not apply where, since the date referred to in that clause there has been a material change in circumstances (such as, for example, a change in safety requirements) so that the proposed Expansion is no longer technically or economically feasible or consistent with the safe and reliable operation of the Rail Infrastructure. In such a case Aurizon Network will notify the relevant Access Seekers of the change in circumstances and the basis of its decision not to construct or permit the Expansion;

- (ii) the Expansion is fully funded through one of the following means:

- (A) Aurizon Network is obliged by this Undertaking to fund the Expansion or, where Aurizon Network is not obliged by this Undertaking, it agrees (at its discretion) to fund the Expansion;
 - (B) Funding Users agree to fund the Expansion in accordance with a User Funding Agreement for the Expansion;
 - (C) Funding Users partially funding the Expansion under a User Funding Agreement and the remainder of the funding is provided by Aurizon Network;
 - (iii) Aurizon Network and all other relevant parties have entered into SUFA agreements, a Commercial Terms document and/or an Access Agreement (as the case may be) and such agreements are or have become unconditional in accordance with their terms; and
 - (iv) Unless otherwise agreed by Aurizon Network the Expansion (whether or not funded in whole or part by a person other than Aurizon Network) is or will be leased from the State, an Authority or a trustee as contemplated by SUFA or owned, and in either case operated, by Aurizon Network.
- (d) Notwithstanding any other provision of this **Part 8**, to the extent that Aurizon Network is obliged to undertake asset replacement works in order to meet its obligations under an Access Agreement, Aurizon Network will be responsible for the funding of Asset Replacement Expenditure as well as undertaking or procuring the undertaking of the asset replacement covered by that funding. (Aurizon Network's obligations to provide that funding and to undertake or procure the asset replacement will be governed by the terms of the Access Agreement).
- (e) Aurizon Network is not obliged to fund or construct a Customer Specific Branch Line (subject to its obligations in relation to Connecting Infrastructure). However, nothing in this Undertaking prevents Aurizon Network from doing so at its discretion by agreement with the Customer seeking to have the Customer Specific Branch Line constructed.
- (f) In this **Part 8**, Aurizon Network's "legitimate business interests" include, for example, the following matters:
- (i) community amenity concerns or requirements (for example, a grade separation requirement in response to community concerns);
 - (ii) environment, health or safety related matters, standards or requirements whether or not greater than the minimum environment, health or safety requirements under any environment, health or safety related Law;

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

- applicable) including any relevant User Funding Agreement is executed for that Expansion then Aurizon Network's obligations in relation to any delay are solely governed by that agreement.
- (k) Aurizon Network must, in accordance with Part 5, enter into Access Agreements with relevant Access Seekers for capacity to be created by an Expansion.
 - (l) It is acknowledged that:
 - (i) Aurizon Network and an Access Seeker (or, as applicable, Customer) may agree (in each party's absolute discretion) to enter into arrangements relating to or in connection with funding, constructing or permitting an Expansion or Customer Specific Branch Line necessary to provide additional Capacity required to grant Access Rights requested by that Access Seeker (or, as applicable, Customer); and
 - (ii) Aurizon Network may elect to fund and construct Customer Specific Branch Lines and otherwise invest in the Rail Infrastructure on its own account,provided that any such agreement or election must not:
 - (iii) in any way unfairly prejudice or unfairly disadvantage another Access Seeker (or, as applicable, Customer) who is seeking Capacity to be created by an Expansion or Customer Specific Branch Line under this **Part 8**; or
 - (iv) affect the priority of allocation of capacity between Access Seekers that would otherwise apply under **clause 8.5**
 - (m) To the extent that this Undertaking is inconsistent with a User Funding Agreement, Connection Agreement or a Studies Funding Agreement for a Pre-feasibility Study or a Feasibility Study, the User Funding Agreement, Connection Agreement or Studies Funding Agreement (as applicable) will prevail to the extent of that inconsistency (but only as between Aurizon Network and the other parties to those agreements, any relevant Access Seeker (if its Customer is one of those parties) and any relevant Customer (if its Access Seeker is one of those parties)).
 - (n) Subject to the requirements of this **Part 8**, the person responsible for the investigation and design of any Expansion that is necessary in order to provide any Access Rights requested by an Access Seeker must be Aurizon Network.
 - (o) In this **Part 8** where an Access Seeker has submitted two or more Access Applications which differ in respect of origins/destinations, quantum of capacity, commencement dates or other capacity requirements in relation to a particular Expansion, Aurizon Network will treat each Access Application as a separate Access Application and as if each were lodged by a separate Access Seeker.
 - (p) **Clause 8.2.1(b)** and **clauses 8.2.3** to **[insert]** apply only to Expansions for the purpose of providing additional Access to coal carrying Train Services and do not govern the process by which Aurizon Network may fund, construct or permit an Expansion for the purpose of providing additional Access to non-coal carrying Train Services.
 - (q) Except where otherwise expressly provided in this **Part 8**, Aurizon Network

will not discriminate in the performance of its obligations and the exercise of its rights in this **Part 8** as between Access Seekers (or as applicable, Customers) on the basis of the identity of the funder of a Pre-Feasibility Study, a Feasibility Study or an Expansion. For example, Aurizon Network will not provide an Access Seeker (or as applicable Customer) with priority in the allocation of Capacity in respect of an Expansion on the basis that Aurizon Network is providing funding for the Expansion, over another Access Seeker (or as applicable, Customer) with a different source of funding.

- (r) In this **Part 8**, where the outcome of a dispute referred to the QCA or an expert is intended to bind more parties than the Access Seeker (or Customer) or proposed access seeker initially involved in the dispute:
- (i) Aurizon Network will use its best endeavours to promptly identify all other parties that should be bound by the outcome of the dispute and provide those parties with written notice of the existence of the dispute including an outline of the matters in dispute, the identity of the initial parties to the dispute and whether an expert or the QCA has been appointed to resolve the dispute;
 - (ii) the expert or the QCA, as applicable, will be provided with a list of the parties to whom notice of the dispute has been given under **clause 8.2.1(r)(i)**; and
 - (iii) the parties receiving notice of the dispute under **clause 8.2.1(r)(i)** may contact the expert or the QCA, as applicable, to seek to be heard on the dispute and will in any case be bound by the decision, rules and procedures determined by the expert or the QCA, as applicable, in relation to that request to be heard, in relation to the dispute resolution process and by the determination of the expert or QCA in relation to the dispute.

8.2.2 Interdependent and sequential nature of Expansions

- (a) The following principles relate to the interdependent and sequential nature of Expansions:
- (i) for any Coal System there may be multiple Expansions that incrementally build on each other in sequence to increase the Capacity of that Coal System;
 - (ii) as the Expansions are sequential, Expansions later in the sequence will assume the satisfactory completion of, and delivery of outcomes for Expansions earlier in the sequence;
 - (iii) to the extent that events or circumstances affect an Expansion in the sequence (for example, by it being delayed, not progressing or not delivering the expected outcomes), then Expansions later in the sequence may also be affected and will need to be reviewed to take into account the effect of those events or circumstances;
 - (iv) similarly, to the extent that any Coal Systems overlap, Expansions on one Coal System may affect Expansions on another Coal System; and
 - (v) subject to **clause 8.2.2(b)**, until:

- (A) the Access Seekers (or, as applicable, their Customers) for any earlier Expansion in a sequence of Expansions have entered into Access Agreements, Commercial Terms or User Funding Agreements, as applicable, (**Earlier Expansion Agreements**) in respect of that earlier Expansion; and
 - (B) such agreements are or have become unconditional,

Aurizon Network and Access Seekers (or, as applicable, their Customers) for any later Expansion in a sequence of Expansions must not enter into Access Agreements, Commercial Terms or User Funding Agreements, as applicable, (**Later Expansion Agreements**) in respect of that later Expansion except where conditional on the requirements in **clauses 8.2.2(a)(v)(A) and (B)** being satisfied for the Later Expansion Agreement to come into full effect.
- (b) Where different Access Seekers have been identified to be provided with Access through sequential proposed Expansions and either:
- (i) an Access Seeker for whom Capacity is proposed to be created by a proposed Expansion later in the sequence of Expansions and has advised Aurizon Network that it will have an Access Agreement, Commercial Terms or a User Funding Agreement which Aurizon Network assesses is likely to become unconditional at a date at least 90 days earlier than that date on which the proposed Access Agreement, Commercial Terms or User Funding Agreement, as applicable, of an Access Seeker allocated to a proposed Expansion earlier in the sequence is likely to become unconditional; or
 - (ii) there has been a delay in the expected date on which an Access Seeker allocated to a proposed Expansion earlier in the sequence can fully utilise the relevant Access Rights sought to be provided by that proposed Expansion (in accordance with the matters in **clauses 8.5(b)(ii)(A) to (D)**) and another Access Seeker for whom Capacity is proposed to be created by a proposed Expansion later in the sequence of Expansions is expected to be able to fully utilise those Access Rights at a date at least 90 days earlier than the delayed Access Seeker,

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

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

and in good faith in deciding to reprioritise the Access Seekers.

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

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

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

8.2.3 Determination of sufficient demand for an Expansion

- (a) Without limiting Aurizon Network's ability to conduct a Demand Assessment for an Expansion on its own volition, Aurizon Network will promptly (and in any case within 10 Business Days of the relevant event referred to in paragraphs (i), (ii) or (iii) below) commence a Demand Assessment for an Expansion where:
 - (i) the operator of an existing or proposed coal terminal formally advises Aurizon Network that it has commenced a process to expand an existing coal terminal or to build a new coal terminal which is likely to create demand for additional below rail capacity; or
 - (ii) an Access Seeker submits an Access Application for Access that Aurizon Network concludes cannot be satisfied without Aurizon Network undertaking an Expansion and that Access Seeker requests in writing that Aurizon Network carry out a Concept Study for that Expansion; or
 - (iii) an Access Seeker makes a written request to Aurizon Network for it to conduct a Demand Assessment,

provided that, where applicable, the Access Seeker must be acting on behalf of a Customer or Customers identified to Aurizon Network for all of the Access Rights sought by the Access Seeker and Aurizon Network must make reasonable inquiries as to the identity of the Customer(s) in accordance with **clause 8.6(b)**.

- (b) Where Aurizon Network undertakes a Demand Assessment for an Expansion it will do so using the most appropriate means and any information it considers relevant (in each case acting reasonably) in the circumstances including as follows:
 - (i) the Access Applications it has received;
 - (ii) its own market intelligence;
 - (iii) any Expression of Interest process conducted by Aurizon Network;
 - (iv) liaison and consultation with participants in coal supply chains and Supply Chain Groups relating to the relevant Coal System; and
 - (v) analysis or advice from relevantly experienced expert advisors.

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

- (c) An Access Seeker may dispute whether Aurizon Network has acted reasonably in determining the means and information to be used for its Demand Assessment or the information sought under **clause 8.2.3(b)** or under **clause 8.2.3(f)**. Unless otherwise settled, disputes notified in accordance with this clause must be referred by Aurizon Network or a disputing party to the QCA for determination in accordance with the process in **clause 11.1.5**. The QCA will determine whether Aurizon Network has acted reasonably having regard to the matters listed in **clause 8.2.3(b)** and **clause 8.2.3(f)**. The QCA's determination will be binding on all of the Access Seekers the subject of the relevant Demand Assessment and Aurizon Network.
- (d) Subject to **clause 8.2.3(e)**, where a Demand Assessment is triggered by one of the circumstances referred to in **clauses 8.2.3(a)(i), (a)(ii) or (a)(iii)**, Aurizon Network will promptly conduct, complete and prepare a detailed report of the results of its Demand Assessment:
 - (i) if the Demand Assessment is carried out by means of an Expression of Interest process, within 40 Business Days of the commencement of the assessment study; or
 - (ii) in all other cases, within 20 Business Days of the commencement of the assessment study,

provided that where the Demand Assessment is the subject of a dispute under **clause 8.2.3(c)**, the relevant period will be extended by the number of Business Days between (and including) the day on which the dispute is referred to the QCA and the day on which the QCA's determination is published. The QCA and each Access Seeker that was the subject of the Demand Assessment will be provided with a copy of the completed Demand Assessment report.

- (e) The Demand Assessment report will not identify individual Access Seekers or potential access seekers by name or, to the extent practicable, precise

origins or destinations for trains utilising the potential Expansion.

- (f) In order to carry out a Demand Assessment Aurizon Network may (acting reasonably) request the following information from Access Seekers and potential access seekers identified by Aurizon Network as potential users of the potential Expansion:
- (i) status of coal reserves or of coal resources, as is appropriate having regard to the status and level of development of the mine (including the status and the quantity of such reserves or resources, as applicable);
 - (ii) status of project development and anticipated commencement of coal production;
 - (iii) current project development program;
 - (iv) status of mining tenure and key approvals; and
 - (v) status of out-loading capacity assets or rights.

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

- (g) Once a Demand Assessment report has been provided, Access Seekers wishing to dispute the outcome of a Demand Assessment must notify Aurizon Network and the QCA within 20 Business Days of the provision of the Demand Assessment report to them.
- (h) Unless otherwise settled, disputes notified in accordance with **clause 8.2.3(g)** must be referred by Aurizon Network or a disputing party to an expert for determination in accordance with the process in **clause 11.1.4**. The expert (who will, failing agreement, be appointed under **clause 11.1.4(b)(i)(B)**) will determine whether the Demand Assessment report published by Aurizon Network was reasonable and if not, what Demand Assessment conclusions should apply. Aurizon Network will promptly provide each Access Seeker that was the subject of the relevant Demand Assessment:
- (i) where the expert decides that the Demand Assessment conclusions should differ from those originally proposed by Aurizon Network, a final Demand Assessment report reflecting the expert's preferred conclusions; or
 - (ii) where the expert confirms the Demand Assessment conclusions reached by Aurizon Network in its Demand Assessment report, confirmation of that fact will be provided to the relevant Access Seekers.

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

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

determined by the expert.

8.2.4 Participation of Customers

- (a) Without limitation to **clauses 8.4 to 8.9**, if a Customer wishes to fund the cost of:
 - (i) a Pre-feasibility Study, as a Pre-feasibility Funder under **clause 8.4**;
 - (ii) a Feasibility Study, as a Feasibility Funder under **clause 8.5**; or
 - (iii) an Expansion, as a User under **clause 8.9**,

as applicable, then the Customer must give a notice to Aurizon Network that it wishes to do so and agrees to be bound by the provisions of this Undertaking in relation to such matters. Nothing in this **clause 8.2.4(a)** obliges a Customer to give a funding notice earlier than the time required under the relevant part of this **Part 8**.

- (b) Where Aurizon Network does not receive a notice from a Customer under **clause 8.2.4(a)** in respect of a proposed Pre-feasibility Study, Feasibility Study or Expansion (as applicable), then Aurizon Network may refuse to negotiate agreements in relation to such matters with that Customer or to otherwise treat that Customer as a proposed Pre-feasibility Funder or Feasibility Funder.
- (c) Where Aurizon Network considers, acting reasonably, that a Customer has materially failed to comply with any provision of this Undertaking relating to the funding of the cost of a Pre-feasibility Study, Feasibility Study or an Expansion (as applicable), then Aurizon Network may, without prejudice to any other rights it may have, do either or both of the following:
 - (i) give a written Negotiation Cessation Notice to the Customer or its Access Seeker (as applicable) under **clause 4.11**; and
 - (ii) cease any other relevant negotiations with that Customer in relation to the funding of the cost of the Pre-feasibility Study, Feasibility Study or an Expansion (as applicable) by giving written notice to that Customer.
- (d) Where Aurizon Network is to conduct a Demand Assessment or any other process in relation to an Expansion or proposed Expansion, and in doing so Aurizon Network is seeking further information, it must invite all relevant Customers, that Aurizon Network is aware of or ought reasonably to be aware of, to provide the information being sought. It is acknowledged that for the purpose of determining the relevant Customers where the Demand Assessment relates to a terminal Expansion, relevant Customers are the relevant participants in the terminal Expansion (to the extent known to Aurizon Network).

8.2.5 Compliance with obligations

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

8.3 Concept Studies

- (a) Aurizon Network must promptly undertake a Concept Study (whether in connection with the Network Development Plan or otherwise) for capacity that is consistent with the capacity identified in the relevant Demand

Assessment report finalised under **clause 8.2.3** following completion of the final Demand Assessment. However, this obligation will not apply where a further Concept Study is not required because a sufficient Concept Study for the relevant Expansion is already underway or completed.

- (b) Aurizon Network will publish to relevant Access Seekers (and, where applicable, their Customers) general details of:
 - (i) each Concept Study it is undertaking promptly after commencement of work on the Concept Study; and
 - (ii) the project configuration alternatives appropriate for Pre-feasibility Study consideration and the preliminary scope, cost and program details of those alternatives.

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

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

8.4 Pre-feasibility Studies

[Drafting Note: The parties are yet to resolve the Standard Studies Funding Agreement. But whatever position the parties reach must be consistent with this Part 8.]

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

referred to in **clause 8.4(d)(ii)** if no dispute has been commenced under **clause 8.4(i)**; or

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

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

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

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

- (c) The Access Seekers (or, as applicable, Customers) to be given an opportunity to fund a Pre-feasibility Study under **clause 8.4(a)(i)** for an Expansion, as proposed Pre-feasibility Funders, will be:
 - (i) where Aurizon Network knows that a Capacity Shortfall exists and the proposed Expansion could create Capacity that would reduce or remove the Capacity Shortfall, Access Seekers with Capacity Shortfall Access Applications to which that Capacity Shortfall relates (or, as applicable, their Customers); and
 - (ii) each of the Access Seekers (or, as applicable, their Customers) who Aurizon Network considers, acting reasonably, satisfy the following requirements:
 - (A) is participating in a process for the acquisition or development of out-loading capacity (such as an expression of interest process or study funding process in relation to a coal export terminal or a domestic power station or similar out-loading facility) or otherwise has a reasonable likelihood of obtaining out-loading capacity, in either case, in a timeframe and having an out-loading capacity entitlement that are consistent with the Access Seeker's Access Application;
 - (B) where the relevant Access Seeker (or, as applicable, their Customer) is a producer of coal:
 - (1) has at least an Exploration Permit for Coal under the Mineral Resources Act 1989 (Qld);
 - (2) has a credible program for the development of its mine or mine expansion on a basis that is consistent with its Access Application;
 - (3) is diligently developing its mine or mine expansion in accordance with the development program referred to in paragraph (2);
 - (C) where the relevant Access Seeker (or, as applicable, their

Customer) is not a producer of coal but is a consumer of coal:

- (1) has or is reasonably likely to obtain the licences, approvals, consents, permits and other permissions (if any) necessary to evaluate the feasibility of the business or activity for which Access Rights are required;
 - (2) has a credible program for the development of any infrastructure or other facilities and has or is likely to secure a source of fuel (e.g. coal) necessary for that business or activity; and
 - (3) is diligently developing any infrastructure or other facilities in accordance with the development program referred to in paragraph (2); and
- (D) where applicable, has the ability to meet the funding obligation under the terms of the relevant Studies Funding Agreement, **[Drafting Note: The bank guarantee requirement will be addressed as part of the Standard Studies Funding Agreement discussion.]**

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

- (d) Following a decision under **clause 8.4(c)**, Aurizon Network will advise:
- (i) each Access Seeker (or, as applicable, Customer) who was not selected to fund the Pre-feasibility Study of that fact; and
 - (ii) each Access Seeker (or, as applicable, Customer) who was selected to fund the Pre-feasibility Study of that fact and of the Access Rights for which it has been selected to participate in the funding of the Pre-feasibility Study.
- (e) Any Access Seeker (or, as applicable, Customer) that disagrees with the outcome of Aurizon Network's selection process as communicated to it under **clause 8.4(d)** may, within 10 Business Days of that communication require Aurizon Network to refer the matter to the QCA for dispute resolution in accordance with **clause 11.1.5**. The QCA will either confirm Aurizon Network's original decision or substitute its own decision by determining the Access Seekers (or, as applicable, Customers) who best meet the criteria set out under **clause 8.4(c)**. The QCA's decision will be binding on all potential Pre-feasibility Funders (and their Customers) and Aurizon Network as to the issues in dispute.
- (f) Each Access Seeker (or where applicable, Customer) that was given an opportunity to fund the relevant Pre-Feasibility Study will be notified promptly by Aurizon Network if a dispute has been referred to the QCA under **clause 8.4(e)**. Each Access Seeker (or, as applicable, its Customer) wishing to make a written submission to the QCA on its view as to how the

dispute should be resolved will have 10 Business Days from the date of notification to do so.

- (g) Unless otherwise agreed by Aurizon Network and relevant proposed Pre-feasibility Funder, a Studies Funding Agreement for a Pre-feasibility Study will be in the form of the Standard Studies Funding Agreement (Pre-feasibility). An Access Seeker (or, as applicable, Customer) given an opportunity to fund a Pre-feasibility Study may require that such funding be provided in accordance with the Standard Studies Funding Agreement (Pre-feasibility).
- (h) Aurizon Network must consult with the relevant proposed Pre-feasibility Funders in relation to the scope of the Pre-feasibility Study and reasonably consider the Pre-feasibility Funders' comments. Aurizon Network will provide the Pre-feasibility Funders with written reasons where it rejects a suggestion of the Pre-feasibility Funder.
- (i) If Aurizon Network and the relevant proposed Pre-feasibility Funders do not reach agreement on:
 - (i) the scope of the Pre-feasibility Study; or
 - (ii) the completion of schedules in a Studies Funding Agreement in the form of the Standard Studies Funding Agreement (Pre-feasibility),within:
 - (iii) 20 Business Days of a communication referred to in **clause 8.4(d)(ii)**; or
 - (iv) if a decision communicated in accordance with **clause 8.4(d)** is referred for dispute resolution as contemplated by **clause 8.4(e)**, within 5 Business Days following the QCA's decision,

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

- (j) In the absence of a manifest error, the determination of a dispute under **clause 8.4(i)** will be binding on all proposed Pre-feasibility Funders and Aurizon Network. Aurizon Network does not breach this Undertaking in doing anything necessary to comply with that determination.
- (k) If the Pre-feasibility Study for an Expansion is funded under one or more Studies Funding Agreements (**Pre-feasibility SFA**), then:
 - (i) as a condition of any Studies Funding Agreements for a Feasibility Study (**Feasibility SFA**) in relation to that Expansion, the relevant Feasibility Funders will be required to include in the funding provided to Aurizon Network under their Feasibility SFAs amounts that in aggregate equal the amount to be repaid or reimbursed by Aurizon Network under **clause 8.4(k)(ii)**; and
 - (ii) after those Feasibility SFAs become unconditional, Aurizon Network will, in accordance with each relevant Pre-feasibility SFA, repay or

reimburse (as applicable) the funding provided by the Pre-feasibility Funder under that Pre-feasibility SFA.

- (ii) The capital expenditure for an Expansion includes the cost of a Pre-feasibility Study relating to that Expansion. However, any amounts that are not repaid or reimbursed (as applicable) under **clause 8.4(k)** will not be treated as capital expenditure and will not be included in the Regulatory Asset Base.
- (m) Without limiting any provision of this Undertaking, Aurizon Network is not obliged to construct, fund or permit an Expansion or to undertake a Feasibility Study, merely because Aurizon Network undertakes or funds any Pre-feasibility Study relating to that Expansion.
- (n) Aurizon Network will publish to relevant Access Seekers (and, where applicable, their Customers) general details of each multi-user Pre-feasibility Study it is undertaking promptly after commencement of work on the Pre-feasibility Study. The publication will not identify individual Access Seekers by name, precise details of origins and destinations (to the extent possible) or any other confidential information.

8.5 Feasibility Studies

- (a) Following a Pre-Feasibility Study, Aurizon Network must promptly undertake and complete the detailed scoping, design and definition of the preferred scheme selected in the relevant Pre-feasibility Study for that Expansion, including planning and preparation for procurement and construction (**Feasibility Study**), if one or more of the Potential Feasibility Funders agree with Aurizon Network to fund the Feasibility Study by entering into a Studies Funding Agreement (on the terms of the Standard Studies Funding Agreement (Feasibility) or such other terms as are agreed).
- (b) Subject to **clauses 8.5(c)** and **(h)**, the Access Seekers (or, as applicable, Customers) to be given an opportunity to fund a Feasibility Study under **clause 8.5(a)** for an Expansion, as proposed Feasibility Funders, will be:
 - (i) firstly, where Aurizon Network knows that a Capacity Shortfall exists and the proposed Expansion could create Capacity that would reduce or remove the Capacity Shortfall, Access Seekers with Capacity Shortfall Access Applications to which that Capacity Shortfall relates (or, as applicable, their Customers) other than any of them who (or whose Customer) were offered an opportunity to fund the Pre-feasibility Study for the Expansion but did not become a Pre-feasibility Funder for that Pre-feasibility Study; and
 - (ii) secondly, subject to **clause 8.5(d)**, those Access Seekers (or, as applicable, their Customers) whom Aurizon Network decides (acting reasonably) satisfy all of the following requirements, namely an Access Seeker (or, as applicable, their Customer) who:
 - (A) is participating in a process for the acquisition or development of out-loading capacity (such as an expression of interest process or study funding process in relation to a coal export terminal or a domestic power station or similar

out-loading facility) or otherwise has a reasonable likelihood of obtaining out-loading capacity in either case, in a timeframe and having an out-loading capacity entitlement that are consistent with the Access Seeker's Access Application;

- (B) where the relevant Access Seeker (or, as applicable, their Customer) is a producer of coal:
 - (1) has at least a Mineral Development Licence under the Mineral Resources Act 1989 (Qld);
 - (2) has a credible program for the development of its mine or mine expansion on a basis that is consistent with its Access Application;
 - (3) is diligently developing its mine or mine expansion in accordance with the development program referred to in paragraph (2);
 - (4) has Marketable Coal Reserves (as defined by the JORC Code [**definition to be included**]) equal to at least 10 times the annual capacity for which Access is required (as determined by reference to the Access Seeker's Access Application), following ramp up;
- (C) where the relevant Access Seeker (or, as applicable, their Customer) is not a producer of coal but is a consumer of coal:
 - (1) has or will obtain all licences, approvals, consents, permits and other permissions necessary for the business or activity for which Access Rights are required;
 - (2) has a credible program for the development of any infrastructure or other facilities and has or is likely to secure a source of fuel (e.g. coal) necessary for that business or activity;
 - (3) is diligently developing any infrastructure or other facilities in accordance with the development program referred to in paragraph (2); and
 - (4) has or is reasonably likely to obtain a supplier or suppliers of coal in connection with the business or activity for amounts of coal consistent with the Access Rights requested; and
- (D) where applicable, has the ability to meet the funding obligation under the terms of the proposed Studies Funding Agreement,

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

Customer in accordance with **clause 8.6(b)**.

- (c) For the purposes of **clause 8.5(b)**:
- (i) where the Access Seeker has a Customer (the identity and details of which has been notified to Aurizon Network by the Access Seeker):
 - (A) Aurizon Network will notify the Customer that it is identifying Potential Feasibility Funders for the relevant Feasibility Study; and
 - (B) the Customer must notify Aurizon Network within 10 Business Days after receiving that notice:
 - (1) that the Customer should be considered for an opportunity to fund the Feasibility Study (rather than the Access Seeker) (**Customer Nomination**); or
 - (2) that the Access Seeker (and, where there are two or more Access Seekers seeking the same Access Rights, which of the Access Seekers) should be considered for an opportunity to fund the Feasibility Study (rather than the Customer or any other of those Access Seekers) (**Access Seeker Nomination**);
 - (ii) where Aurizon Network is given:
 - (A) a Customer Nomination under **clause 8.5(c)(i)(B)(1)**, only the Customer can be eligible for an opportunity to fund the relevant Feasibility Study (and not the Access Seeker(s) for the Customer); or
 - (B) an Access Seeker Nomination under **clause 8.5(c)(i)(B)(2)**, only the nominated Access Seeker can be eligible for an opportunity to fund the relevant Feasibility Study (and not the Customer or any other relevant Access Seeker for the Customer); and
 - (iii) where the Customer does not give Aurizon Network a Customer Nomination or an Access Seeker Nomination under **clause 8.5(c)(i)(B)**, neither that Customer nor that Customer's Access Seeker(s) can be eligible for an opportunity to fund the relevant Feasibility Study.
- (d) Aurizon Network will (acting reasonably and in good faith) determine the target amount of Capacity for the proposed Expansion (**Target Capacity**) having regard to:
- (i) the total indicative demand for Capacity from all the relevant Access Seekers that satisfy the requirements under **clause 8.5(b)(ii)**;
 - (ii) the potential scope of the proposed Expansion;
 - (iii) the capacity of the port or other unloading facility relevant to the use of the proposed Expansion; and
 - (iv) any potential staging of Expansions.
- (e) Aurizon Network will notify all the relevant Access Seekers of:
- (i) the Target Capacity for the potential Expansion determined under

clause 8.5(d);

- (ii) the total indicative demand for Capacity from all the relevant Access Seekers that satisfy the requirements under **clause 8.5(b)(ii)**; and
 - (iii) if the total demand under **clause 8.5(e)(ii)** is more than the Target Capacity under **clause 8.5(e)(i)**, the reasons why a higher Target Capacity has not been proposed.
- (f) Within 10 Business Days after being given a notice under **clause 8.5(e)**, an Access Seeker may dispute Aurizon Network's determination of the Target Capacity by referring the matter to the QCA for dispute resolution in accordance with **clause 11.1.5**. The QCA will determine the Target Capacity having regard to the matters listed in **clause 8.5(d)**.

Any determination by the QCA will be binding on Aurizon Network and all Access Seekers notified under **clause 8.5(e)**.

- (g) Aurizon Network must not make a decision under **clause 8.5(h)** until:
 - (i) if Aurizon Network's decision has not been referred to an expert under **clause 8.1.1(a)**, the period specified under that **clause 8.1.1(a)** has expired; or
 - (ii) if Aurizon Network's decision has been referred to the QCA under **clause 8.1.1(a)**, the QCA has made its determination.
- (h) Subject to **clause 8.5(g)**, if the Target Capacity to be created by the proposed Expansion as determined under **clause 8.5(d)** by Aurizon Network, or (if applicable) as determined by the QCA under **clause 8.5(g)(ii)**, is expected to be insufficient Capacity for all the relevant Access Seekers that satisfy the requirements under **clause 8.5(b)(ii)**, then Aurizon Network will decide (acting reasonably and in good faith) as between those particular Access Seekers (or, as applicable, their Customers) which will be given an opportunity to fund the particular Feasibility Study by Aurizon Network having regard to the following criteria:
 - (i) those Access Seekers who meet the requirements set out in **clause 8.5(b)(ii)** to a greater extent than other Access Seekers;
 - (ii) the Access Seekers who funded the Pre-feasibility Study;
 - (iii) maximisation of the allocation of capacity; and
 - (iv) maximisation of the duration of the expected Access having regard to:
 - (A) the ratio of coal reserves to the Access capacity sought; and
 - (B) the likelihood of continuing to extract such coal reserves over time.

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

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

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

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

within:

- (iii) 20 Business Days of the communication referred to in **clause 8.5(i)(ii)**; or
- (iv) if the decision communicated in accordance with **clause 8.5(i)** is referred for dispute resolution as contemplated by **clause 8.5(j)**, within 5 Business Days following the QCA's decision,

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

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

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

- (r) Within 20 Business Days after a Studies Funding Agreement for a Feasibility Study becoming unconditional, Aurizon Network will:
 - (i) issue an IAP (or if one has previously been provided, a revised IAP) to the relevant Access Seeker who is, or whose Customer is, funding the Feasibility Study; and
 - (ii) subject to **clauses 8.5(s)** and **8.5(t)**, grant that Access Seeker a provisional allocation of the capacity detailed in the Train Service Description included in the Studies Funding Agreement (**Provisional Capacity Allocation**).
- (s) If an Access Seeker intends to progress its Access Application under the negotiation process set out in this Undertaking on the basis of the arrangements outlined in an IAP or revised IAP issued under **clause 8.5(r)(i)**, that Access Seeker must notify Aurizon Network of that intention in writing within 20 Business Days after Aurizon Network gives a relevant notice under **clause 8.8(c)**.
- (t) Subject to **clause 8.5(u)**, all or part of a Provisional Capacity Allocation may be withdrawn by Aurizon Network acting reasonably, where:

- (i) the relevant Access Seeker's circumstances change in a substantial way so that the Access Seeker ceases to satisfy all of the requirements in **clause 8.5(b)(ii)** or meets one or more of those requirements to a substantially lesser extent than when the assessment was originally made by Aurizon Network under that clause;
- (ii) (other than due to any default or negligent act or omission of Aurizon Network) the relevant mine or out-loading facility (including an expansion of a mine or out-loading facility) will be delayed by 12 months or more as compared to the timeframe that was proposed when Aurizon Network made the original assessment;
- (iii) Aurizon Network exercises a right to lawfully terminate the Feasibility Funder's Studies Funding Agreement; or
- (iv) Aurizon Network and the relevant Access Seeker (or, as applicable, its Customer) do not execute an Access Agreement or an agreement in relation to the funding and/or construction of the Expansion within 120 Business Days (or such longer period as agreed by Aurizon Network acting reasonably and in good faith) after the Feasibility Study is completed (provided that to the extent that the Access Seeker, or its Customer, is a party to a dispute under **clause 8.9.2** or a dispute concerning the negotiation of an Access Agreement or User Funding Agreement, then the time from when that dispute is notified for the purpose of **clause 11.1.4** or **clause 11.1.5** (as applicable), to the determination of that dispute by the expert or the QCA (as applicable), is excluded from that period).

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

- (u) If Aurizon Network intends exercising its rights under **clause 8.5(t)** to withdraw all or a part of a Provisional Capacity Allocation, it must give the relevant Feasibility Funder written notice and a reasonable opportunity (for a period of at least 10 Business Days) to explain why Aurizon Network should not exercise its rights in the way proposed. If having considered any explanation provided by the Access Seeker Aurizon Network (acting reasonably) withdraws all or part of the Provisional Capacity Allocation it must give the relevant Access Seeker written notice, including reasons for its decision.
- (v) An affected Feasibility Funder may within 10 Business Days of receiving notice of Aurizon Network's decision to withdraw Provisional Capacity Allocation under **clause 8.5(t)** refer the matter to the QCA as a dispute for resolution under **clause 11.1.5**. The QCA will determine whether the Provisional Capacity Allocation should be withdrawn having regard to the matters listed in **clause 8.5(t)**.

The QCA's determination will, subject to **clause 11.1.5**, be binding on the parties to the dispute.

- (w) Subject to the terms of the relevant Studies Funding Agreements, where a Provisional Capacity Allocation is withdrawn under **clause 8.5(t)**, Aurizon Network must to the extent feasible (and provided that other Access

Seekers will not be materially delayed) seek a replacement Access Seeker (or, as applicable, Customer) (**Replacement**) for all or some of that Capacity who:

- (i) will be selected using the criteria set out in **clause 8.5(b)** and subject to **clause 8.5(d)**; and
- (ii) is willing to enter into a Studies Funding Agreement as a Feasibility Funder for the relevant Feasibility Study,

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

[Drafting Note: Any delays to Aurizon Network in respect of its Studies Funding Agreement obligations to other Feasibility Funders (excluding any delay caused by a breach of obligation by Aurizon Network) will be treated as an extension of time under the Studies Funding Agreements with those other Feasibility Funders. This will be reflected in the Standard Studies Funding Agreement.]

- (x) For clarity, if a proposed replacement Feasibility Funder enters into a Studies Funding Agreement in respect of the relevant Feasibility Study, then **clauses 8.5(r) to 8.5(v)** apply to that replacement Feasibility Funder.
- (y) A Provisional Capacity Allocation will automatically cease to apply upon the Access Seeker to which that Provisional Access Allocation applies signing an Access Agreement, Commercial Terms or User Funding Agreement relating to corresponding Access Rights.
- (z) If the Feasibility Study for an Expansion is funded under one or more Studies Funding Agreements (Feasibility SFA), then:
 - (i) where there will be a User Funding Agreement for that Expansion, as a condition of that User Funding Agreement the relevant Funding Users will be required to include in the funding provided to Aurizon Network under their User Funding Agreement amounts that in aggregate equal the amount to be repaid or reimbursed by Aurizon Network under **clause 8.5(z)(ii)**; and
 - (ii) where:
 - (A) the agreements with Access Seekers (or their Customers) for the funding and construction of that Expansion or the Access Agreement for utilisation of that Expansion have been executed and have become unconditional; and
 - (B) a Feasibility Funder is a party to those agreements and will use Access Rights granted as a result of the Capacity to be created by that Expansion,

Aurizon Network will, in accordance with the relevant Feasibility SFA for that Feasibility Funder, repay or reimburse to the Feasibility Funder (as applicable) the funding provided by the Feasibility Funder under that Feasibility SFA.

- (aa) The capital expenditure for an Expansion includes the cost of Feasibility Studies relating to that Expansion. However, any amounts that are not repaid or reimbursed (as applicable) under **clause 8.5(z)** will not be treated as capital expenditure and will not

be included in the Regulatory Asset Base.

- (bb) Without limiting any provision of this Undertaking, Aurizon Network is not obliged to construct, fund or permit an Expansion merely because Aurizon Network undertakes or funds any Feasibility Study relating to that Expansion.
- (cc) Aurizon Network will publish general details of each Feasibility Study it is undertaking promptly to relevant Access Seekers (and, where applicable, their Customers) after commencement of work on the Feasibility Study. The publication will not identify individual Access Seekers by name or, to the extent possible, precise details of origins and destinations.

8.6 Funding of Studies

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

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

- (a) If:
 - (i) either:
 - (A) Aurizon Network:
 - (1) fails to enter into a Studies Funding Agreement in accordance with this Undertaking or unreasonably delays doing so, after all relevant Access Seekers (or, if applicable, their Customers) have done so; or
 - (2) fails to forward to all relevant Access Seeker an executable form of the Studies Funding Agreement containing the provisions previously agreed with those Access Seekers or in a form consistent with the terms of a final, binding determination made in accordance with the terms of this Undertaking, within 10 Business Days after that agreement being reached or that determination becoming final and binding; or
 - (B) there is a reasonable expectation that the relevant Pre-Feasibility

Study or Feasibility Study (as applicable) cannot be completed by Aurizon Network prior to the date (Completion Date) that is 60 Business Days after the target date specified (including as amended, extended or otherwise varied from time to time) in accordance with the Studies Funding Agreement (Performance Delay);

[Drafting Note: The Standard Studies Funding Agreements should provide for an extension of the target date including for all delays caused by events or circumstances that are beyond Aurizon Network's reasonable control.]

- (ii) a relevant affected Access Seeker (or, as applicable, Customer) who is a proposed party or party to the relevant Studies Funding Agreement has given written notice to Aurizon Network's Chief Executive Officer:
 - (A) identifying the alleged failure, unreasonable delay or Performance Delay; and
 - (B) in the case of the circumstance referred to in **clause 8.7(a)(i)(A)(2)**, (under the hand of a person with authority to bind the Access Seeker and who warrants that he or she has that authority when giving the notice), confirming that the Access Seeker is ready, willing and able to execute a Studies Funding Agreement as previously agreed or as determined by a final, binding determination in accordance with the provisions of this Undertaking;
- (iii) where the failure or unreasonable delay is that referred to in **clause 8.7(a)(i)(A)(1)**, Aurizon Network fails to enter into the Studies Funding Agreement within 10 Business Days after receiving the relevant notice under **clause 8.7(a)(ii)**; and
- (iv) where there is an alleged Performance Delay referred to in **clause 8.7(a)(i)(B)**, Aurizon Network:
 - (A) fails to prepare and provide to the relevant affected Access Seeker (or, as applicable, Customer), within 20 Business Days after receiving the relevant notice under **clause 8.7(a)(ii)**, a response confirming that Aurizon Network will complete the study by the Completion Date supported by reasonable particulars demonstrating how completion will be achieved; or
 - (B) after preparing and providing such a response to the relevant affected Access Seeker (or, as applicable, Customer), materially fails, due to its own acts or omissions, to comply with any aspect of that response,a relevant affected Access Seeker (or, as applicable, Customer) may refer the matter to resolution as a dispute under **clause 11.1.4**. If the QCA determines that Aurizon Network:
 - (v) is obliged to enter into a Studies Funding Agreement and, subject to **clause 8.7(a)(iii)**, has failed unreasonably to do so or unreasonably delayed doing so; or

- (vi) has failed to forward the executable form of Studies Funding Agreement within the time limit specified by **clause 8.7(a)(i)(A)(2)**;
- (vii) has:
 - (A) been the cause of a Performance Delay (as described in **clause 8.7(a)(i)(B)**); and
 - (B) either:
 - (1) failed to provide a response within the time specified in **clause 8.7(a)(iv)(A)**; or
 - (2) has failed to comply with the steps detailed in the response provided under **clause 8.7(a)(iv)(A)**,

the QCA may (with the approval of all relevant Access Seekers and Customers) determine that the relevant study be undertaken by an appropriately qualified and experienced nominee of all relevant Customers.

- (b) If the QCA determines that the relevant study is to be undertaken by the nominee of all relevant Customers:
 - (i) Aurizon Network must comply with that determination;
 - (ii) Aurizon Network must provide the nominee with all information that can be lawfully provided by Aurizon Network which is reasonably required by the nominee to undertake the applicable study (provided however that the nominee must only use such information in connection with the performance of the study); and
 - (iii) Aurizon Network must use the relevant study output for the purposes for which it was provided.
- (c) If a study is undertaken by a nominee of all relevant Customers as contemplated by **clause 8.7(b)** Aurizon Network will, subject to **clause 0**, implement the output of the study for completion of the applicable Feasibility Study, User Funding Agreement or Access Agreement, except to the extent that Aurizon Network successfully seeks a review of the scope (which may include the standard of work) of the Expansion referred to in the study by means of a QCA determination. Aurizon Network:
 - (i) may refer the matter for QCA determination in accordance with **clause 11.1.5** within 20 Business Days following publication to Aurizon Network of the study by the nominee;
 - (ii) will provide written notice of its dispute to the relevant Access Seekers, each of whom shall have a right to make submissions to the QCA in respect of the dispute; and
 - (iii) will provide written submissions to the QCA, with copies to each of the relevant Access Seekers, detailing why, in Aurizon Network's view, the scope decided by the nominee is not appropriate and how it should be amended.

The QCA shall determine what the appropriate scope should be.

- (d) In the absence of manifest error, the determination of a dispute under **clause 8.7(c)** will be binding on all relevant Access Seekers and Aurizon Network. Aurizon Network does not breach this Undertaking in doing

anything necessary to comply with that determination and will, subject to the terms of this Part 8, implement the output of the study for completion of the applicable Feasibility Study, User Funding Agreement or Access Agreement.

8.8 Funding an Expansion - general

- (a) Subject to this **clause 8.6** and **clause 8.9**, an Access Seeker may fund its relevant portion of the cost of an Expansion that is necessary to create additional Capacity so that Access Rights may be granted to Access Seekers but only if Aurizon Network:
 - (i) is not obliged under this Undertaking to do so; and
 - (ii) either:
 - (A) is not willing to do so (as notified or deemed notified under **clause 8.8(c)**); or
 - (B) is only willing to do so subject to Commercial Terms that are unacceptable to the Access Seeker,

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

- (b) For clarity, any obligation on Aurizon Network to construct or permit an Expansion is subject to **clauses 8.2.1(c)** and **(f)**.
- (c) Aurizon Network will notify the Feasibility Funders within 40 Business Days after the relevant Studies Funding Agreements become unconditional whether:
 - (i) Aurizon Network is not willing to fund the Expansion;
 - (ii) Aurizon Network is willing to fund the Expansion without Commercial Terms; or
 - (iii) Aurizon Network requires Commercial Terms to be agreed in relation to the funding of the Expansion (and, if so, the details of the conditions that will comprise Commercial Terms).
- (d) If Aurizon Network has not given a notice under **clause 8.8(c)**, then (for the purpose of Access Seekers commencing the processes under **clause 8.9.1(a)**) Aurizon Network is taken to not be willing to fund the Expansion.
- (e) If Aurizon Network has given a notice under **clause 8.8(c)(iii)** and the relevant Access Seeker is willing to negotiate, then Aurizon Network and the relevant Access Seeker will negotiate in good faith the proposed Commercial Terms on which Aurizon Network will be willing to fund the Expansion.
- (f) Where Aurizon Network has given a notice under **clause 8.8(c)(iii)** that it requires Commercial Terms an Access Seeker may require Aurizon Network to negotiate a User Funding Agreement for all or part of an Expansion in parallel to negotiations in relation to the Commercial Terms.
- (g) **Clause 8.8(c)** does not prevent Aurizon Network from subsequently

notifying relevant parties of whether Aurizon Network is willing to fund the Expansion with or without Commercial Terms. Any notice under this **clause 8.8(g)** does not prevent Access Seekers from pursuing User Funding in preference to the proposal from Aurizon Network for it to fund the Expansion (even if Aurizon Network's proposal is to fund without Commercial Terms).

- (h) Where Aurizon Network is obliged under this Undertaking to fund an Expansion, Aurizon Network must negotiate an Access Agreement in accordance with this Undertaking with those Access Seekers that will utilise the Expansion.
- (i) It is acknowledged that an Expansion may be funded partly by Funding Users and partly by Aurizon Network.
- (j) Where Aurizon Network is:
 - (i) granting a Provisional Capacity Allocation under **clause 8.5(r)**; or
 - (ii) negotiating or entering into an Access Agreement,

Aurizon Network will not have regard to whether any relevant Expansion is or may be a User Funded Expansion or is or may be funded by Aurizon Network.

8.9 User Funded Expansions

8.9.1 Process where Users intend to fund an Expansion

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

8.9.2 Disputes about completion of SUFA schedules

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

8.9.3 Operation of a User Funded Expansion and Capital Indicator allocation

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

8.9.4 Capacity Shortfalls for User Funded Expansions

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

8.9.5 Inconsistency with a User Funding Agreement

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

8.9.6 Regulatory pre-approval of scope

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

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

the scope and standard of work for the relevant Expansion.

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

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

8.9.8 **Tax rulings**

[AN to progress]

8.9.9 **Review of the SUFA**

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

- (a) review the SUFA including having regard to the principles contained in [insert] [QRC Note: QRC to propose principles underlying SUFA to be set out in this Undertaking.]; and
- (b) consult with the Funding Users and Access Seekers about the workability of the SUFA for User Funding,

and, after doing so:

- (c) submit to the QCA any amendments that Aurizon Network (acting reasonably) considers will improve the workability of the SUFA in the form of a draft amending access undertaking under the Act; or
- (d) if Aurizon Network (acting reasonably) considers no amendments are required, Aurizon Network must make a submission to the QCA giving detailed written reasons for that belief.

8.10 **Contracting for Capacity**

8.10.1 **Access Agreements conditional on an Expansion**

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

- (a) that Access Agreement is subject to a condition precedent that requires the relevant Expansion to have been completed and commissioned;
- (b) that Access Agreement includes terms and conditions so that the Access Rights relevant to the Expansion are limited to the available Capacity for the Expansion; and

- (c) either:
 - (i) the Access Seeker and Aurizon Network have agreed the scope of work the subject of the Expansion; or
 - (ii) where the Expansion is not (or will not be) an Expansion to be funded on Commercial Terms, in the absence of agreement on the scope of works the subject of the Expansion, the scope has been determined by the QCA.

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

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

8.10.2 Optimisation risk and Capacity Shortfalls

- (a) This **clause 8.10.2** applies where Aurizon Network is funding all or part of the cost of an Expansion at the regulated rate of return specified by this Undertaking. [*Note: It is assumed that separate sections will deal with pre-approval of scope for commercial terms projects.*]
- (b) Where the scope of works (including the standard of work) for an Expansion is determined by the QCA as contemplated by this **Part 8** or by a nominee under **clause 8.7**, Aurizon Network will promptly apply to the QCA following that determination of scope for pre-approval of the:
 - (i) prudence of scope of the Expansion;
 - (ii) prudence standard of works for the Expansion; and
 - (iii) prudence of the proposed cost of the Expansion,in accordance with the process in Schedule E.
- (c) Where the QCA provides pre-approval of each of the matters in **clause 8.10.2(b)** the actual cost of the Expansion up to the total of the pre-approved proposed cost under **clause 8.10.2(b)** will be automatically included into the Regulatory Asset Base in accordance with the process in Schedule E. The amount of any actual cost above the pre-approved proposed cost will need to be approved by the QCA for it to be included into the Regulatory Asset Base.
- (d) Where the QCA does not pre-approve the proposed cost of the Expansion as contemplated by **clause 8.10.2(b)**, Aurizon Network will not be obliged to fund the cost of that Expansion and has no obligation to construct that Expansion in the absence of User Funding.
- (e) Where the scope of works (including the standard of work) for an Expansion is determined by the QCA as contemplated by this **Part 8** and:
 - (i) the Expansion is constructed in accordance with that scope and standard; and
 - (ii) the Expansion results in a Capacity Shortfall (determined in accordance with the process in **clause 8.10.3**),

then:

- (iii) Aurizon Network will (acting reasonably) calculate the Capacity Shortfall, if any, that would have existed if the scope of work (including standard of work) previously proposed by Aurizon Network had been constructed, which calculation may (pursuant to **Part 11**) be disputed by Affected Access Holders (**AN Shortfall**);
- (iv) If the AN Shortfall is less than the Capacity Shortfall calculated under **clause 8.10.2(e)(ii)**, the Affected Access Holders may:
 - (A) elect to have their rights of Access remain compressed in relation to that Expansion as a result of the Capacity Shortfall (in accordance with the process for compression in this Undertaking);or
 - (B) elect to seek to fund an Expansion to address the difference in Capacity between the AN Shortfall and the Capacity Shortfall, in which case Aurizon Network will fund an Expansion to address the AN Shortfall;
- (v) where the affected Access Holders elect to seek to fund an Expansion under clause 8.10.2(e)(iv)(B) they can be given a priority allocation of Capacity in an existing or future process for the scoping and funding of a related Expansion that can be utilised to address the Capacity Shortfall without Aurizon Network offending this **Part 8**;
- (vi) If the AN Shortfall is equal to or greater than the Capacity Shortfall calculated under **clause 8.10.2(e)(ii)**, Aurizon Network will fund the Shortfall Expansion needed to address the Capacity Shortfall in accordance with and subject to the provisions of **clause 8.10.3(f)**; and
- (vii) Unless otherwise agreed in writing by Aurizon Network and Affected Access Holders, Aurizon Network's obligations in relation to a Capacity Shortfall arising in the context of an Expansion where the scope of the Expansion has been determined by the QCA will be governed solely by this **clause 8.10.2(e)**.

Drafting Note: It is AN's intention that the standard form Access Agreement will need to reflect the position articulated in paragraph (iv).

8.10.3 Capacity Shortfalls

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

using consistent System Operating Assumptions. Aurizon Network must notify all of the relevant Conditional Access Holders of the conclusions of that assessment and the basis for those conclusions.
- (b) Aurizon Network may by written notice to all relevant Conditional Access

Holders defer an assessment for the purposes of **clause 8.10.3(a)** until such time as Aurizon Network reasonably considers that the relevant Expansion is fully operational and the demand conditions are such that a reasonable assessment can be undertaken.

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

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

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

New Definitions for Clause 12

Demand Assessment: means an estimation (acting reasonably) of:

- (i) the demand for Capacity beyond Existing Capacity and committed Expansions; and
- (j) the estimated time for which the Capacity referred to in paragraph (a) is required,

having regard to the relevant information in accordance with **clause 8.2.3(b)**.]

Potential Feasibility Funders, in respect of a proposed Feasibility Study, the Access Seekers (or if applicable, Customers or Conditional Access Holders) who are required to be given an opportunity to fund that Feasibility Study as determined in accordance with **clause 8.5(b)** and **clause 8.5(j)**.

Potential Pre-feasibility Funders, in respect of a proposed Pre-feasibility Study, the Access Seekers (or if applicable Customers or Conditional Access Holders) who are required to be given an opportunity to fund that Pre-feasibility Study as determined in accordance with **clause 8.4(c)** or **clause 8.4(e)**.

Pre-feasibility Study: Definition to be determined. [**QRC Note: Definition should provide for the delivery of a specified output, to a specified amount of information.**]

Feasibility Study: Definition to be determined. [**QRC Note: Definition should provide for the delivery of a specified output, to a specified amount of information.**]

JORC Code: Definition to be determined.

Asset Replacement Expenditure: Expenditure on capital projects required to maintain the Existing Capacity of the Rail Infrastructure including without limitation:

- (a) the replacement of life expired or obsolete assets; and

- (b) the replacement of assets which are lost, damaged or destroyed as a result of a Force Majeure Event,

and which are required for Aurizon Network to meet its existing contractual entitlements under Access Agreements.

Customer Specific Branch Line: An extension, enhancement, expansion, augmentation, duplication or replacement of part of the Rail Infrastructure:

- (a) to be constructed solely to act as a spur line connecting an Access Holder's or Customer's single loading facility to Rail Infrastructure; and
- (b) that on completion will form part of the Rail Infrastructure,

excluding:

- (c) Connecting Infrastructure; and
- (d) any capital expenditure project to the extent that it involves Asset Replacement Expenditure.

[Drafting note: The definition of Customer Specific Branch Lines is to be further considered in the context of all uses of the term in the Undertaking]

DRAFT

Appendix 2

Tax Ruling Process

For the Template documents:

1. Aurizon Network to seek a tax ruling for Aurizon Network and Trust tax positions following QCA approval of the Template
2. Aurizon Network to consult with expert tax adviser representing the QCA regarding:
 - a. Content of Aurizon Network's submissions to the ATO
 - b. Discussions/correspondence with ATO
 - c. Whether the ATO response is favourable
 - d. What to do about unfavourable ATO response:
 - i. Dispute/challenge
 - ii. Modify Template and make a resubmission to the ATO

Generally these discussions will be resolvable through binding dispute resolution where not agreed by the expert tax adviser and Aurizon Network. However changes to the Template and Aurizon Network's initiation of any dispute of the ATO's decisions will only be by Aurizon Network's agreement. Also Aurizon Network will not be obliged to submit anything to the ATO that is false or misleading.

3. If QTH is seeking a tax ruling in respect of its tax position under SUFA, Aurizon Network will consult regarding co-ordination.
4. Obligations on the Template to be documented in Expansion Process in UT4.
5. Expert tax adviser is free to provide information to QCA but QCA is not to publish confidential information.

For an actual transaction:

1. Aurizon Network to seek a tax ruling for Aurizon Network position upon execution of SUFA project documentation.
2. Aurizon Network to consult with expert tax adviser representing the user funders regarding:
 - a. Content of Aurizon Network's submissions to the ATO
 - b. Discussions/correspondence with ATO
 - c. Whether the ATO response is favourable
 - d. What to do about unfavourable ATO response:
 - i. Dispute/challenge
 - ii. Modify transaction documents and make a resubmission to the ATO

Generally these discussions will be resolvable through binding dispute resolution where not agreed by the expert tax adviser and Aurizon Network. However changes to the SUFA project documentation and Aurizon Network's initiation of any dispute of the ATO's decisions will only be by Aurizon Network's agreement. Also Aurizon Network will not be obliged to submit anything to the ATO that is false or misleading.

3. If QTH and Trust are seeking binding tax rulings for their positions, Aurizon Network will consult regarding co-ordination.
4. Aurizon Network's obligations to be documented in SUFA agreements. Receipt of favourable tax ruling for Aurizon Network to be a condition precedent for the SUFA transaction in favour of both User Funders/Trust and Aurizon Network.
5. Expert tax adviser must not provide confidential information to User Funders/Trustee.

Appendix 3

Summary Response Table

	QCA proposal	Aurizon Network response
Rental Method	Clarification and simplification of the method of rental calculation	Aurizon Network supports this proposal
	The development of worked examples of rental calculation and their inclusion in the SUFA documentation	Aurizon Network supports this proposal, subject to proposed modification
	Provision of a degree of certainty over the rental stream if the regulatory environment changes	Aurizon Network supports the objective and wishes to engage with the QCA
Construction of SUFA Infrastructure	Simplification of construction arrangements through replacement of the Project Management Agreement with an industry standard construction contract.	Aurizon Network supports this proposal and provides a commentary and proposed refinements.
	Inclusion of an expansion process into the Access Undertaking.	Aurizon Network supports this proposal and has provided the Expansion Process to the QCA.
	Expansion Process should apply to all expansion projects that result in a material capacity change.	Aurizon Network supports this proposal, and considers that the Expansion Process should apply to all expansion projects.
	Aurizon Network to have control over the planning and development of the expansion and commits to deliverables with financial consequences for non-delivery.	<p>Aurizon Network partially supports this proposal.</p> <p>Aurizon Network requests the QCA to consider the Expansion Process under which Aurizon Network shares control over expansion planning with access seekers.</p> <p>Aurizon Network also requests the QCA to consider:</p> <ul style="list-style-type: none"> - a construction contract under which Aurizon Network commits to scope, standard, cost and time-to-complete deliverables with financial consequences for non-delivery; and - the treatment of capacity shortfalls as set out in the Expansion Process
	Inclusion of a pre-approval process	Aurizon Network supports this proposal and offers comments

	QCA Proposal	Aurizon Network Response
Security and Financeability	Granting security over access charges under linked access agreements for an amount equal to the rent payable in the event that the direction to pay mechanism is no longer effective	Aurizon Network supports this proposal
	Removal of Trustee's discretion to distribute cash flows at the direction of the Ordinary Unit Holder	Aurizon Network supports this proposal
	Rent over/under payment is to be dealt with through the rent adjustment mechanisms.	Aurizon Network supports this proposal
	Each party is to have a right of set off Aurizon Network to seek that both it and the Trust are kept whole in respect of their tax exposure by seeking a change to the regulatory tariff from the QCA, and only if the QCA refuses the change will Aurizon Network be able to seek set off.	Aurizon Network supports this proposal. Aurizon Network does not support this proposal.
Termination	Aurizon Network attach a redacted Infrastructure Lease	Aurizon Network supports the proposal that it should make available a redacted Relevant Infrastructure Lease(s). Aurizon Network proposes that the redacted document(s) is provided to access seekers during the negotiation of each SUFA transaction rather being attached to SUFA documentation
	Amendment of EIHL definition of Insolvency Event	Aurizon Network supports this proposal
	Security over access charges	Aurizon Network supports this proposal
	Aurizon Network to assume the Disposal Proceeds Top-up Obligation	Aurizon Network does not support this proposal
Discrimination	Broadening of scope of parties eligible to be SUFA investors	Aurizon Network supports this proposal
	Treatment of discrimination concerns	Aurizon Network supports in principle the approach adopted by the QCA and proposes enhancements
	Liability for further discrimination breaches	Aurizon Network supports the concept of liability for further discrimination breaches and proposes a modified liability position

	QCA Proposal	Aurizon Network Response
Preference Unit Transfers	No requirement for stapling	Aurizon Network supports this proposal
	Aurizon Network will be permitted to bid for preference units but should not have a 'first right of refusal'	Aurizon Network supports the QCA's proposal with enhancements (on the basis of Aurizon Network's understanding of the QCA's position)
Third Party Finance	Trust should be allowed to obtain finance itself	Aurizon Network supports the QCA's proposal, subject to other Aurizon Network positions in this section being accepted
	Trust should be free to issue units to third party finance entities or to create a financing trust	Aurizon Network supports the QCA's proposal, subject to other Aurizon Network positions in this section being accepted
	Trust should be allowed to charge its rights in the SUFA documents	Aurizon Network supports the QCA's proposal, subject to other Aurizon Network positions in this section being accepted
	TD may be amended as required, subject to limited protection of Aurizon Network's interests, in order to permit third party finance	Aurizon Network does not support this position
	SUHD may be amended as required, subject to limited protection of Aurizon Network's interests, in order to permit third party finance	Aurizon Network does not support this position
	Restrictions on the Trustee raising funds and granting security over SUFA documents	Aurizon Network supports the QCA's concept and considers it should be strengthened.
Taxation	Aurizon Network's obligation to seek statutory severance	Aurizon Network does not support this proposal.
	Aurizon Network's obligation to obtain an ABA for SUFA template documents	Aurizon Network supports this proposal with enhancements
	Aurizon Network's obligation to support in the application for PBRs for SUFA template documents	Aurizon Network supports this proposal
	Modification of the tax indemnity	Aurizon Network supports this proposal with an enhancement.
	Modification of the Trustee's rights under the TD should the Trust become a managed investment scheme	Aurizon Network supports this proposal.
	A set of tax-related amendments to the SUHD	Aurizon Network supports this proposal with a modification

Appendix 4

Additional Construction Issues

Risk/Reward Structure of Construction Contract

In the TS the QCA has proposed the pricing approach²⁹ for the construction contract should be a GMP or a schedule of rates with a fee or a combination of both, rather than lump sum pricing. Aurizon Network provides comments below on these two pricing approaches in the context of a typical SUFA project, which would:

- cost \$0.5 - \$1.0 billion;
- have a delivery period from closure to completion of ~3 years;
- have a substantial degree of 'brownfields' works;
- entail the progressive award of sub-contracts over the delivery period; and
- require the services of a number of specialised service providers (for example, in respect of earthworks, trackworks, signalling).

Aurizon Network considers that a schedule of rates pricing approach is unsuitable as:

- it would not enable a Trust to obtain an upfront commitment regarding scope and standard from Aurizon Network as head contractor. Certainty over rates under the construction contract will not lead to certainty over payments in the absence of certainty over the quantities of activities to which the rates relate, and these activities and the associated activities will not be known in detail as at the award of the design and construct construction contract;
- the adoption of a schedule of rates approach for a private sector principal's procurement of a project comparable to a typical SUFA project, a SUFA Comparator Project, would not be a standard arrangement in the Australian construction industry; and
- it is inconsistent with the form of contract, AS4902-2000, General conditions for design and construct, agreed by the QCA and Aurizon Network.

Aurizon Network does not fully understand the GMP pricing approach proposed by the QCA, and would welcome an opportunity to gain a deeper understanding. It is assumed that a GMP contract is a lump sum construction contract modified so that where the head contractor's project delivery costs result in an amount less than the full GMP being payable, the price payable is set so that the principal gains all or part of the benefit of the head contractor's favourable cost performance. Whereas a lump sum contract has a fixed price in the event of either good or bad cost performance, a GMP contract has a fixed price in the event of bad cost performance and a cost-related price in the event of good cost performance. The principal to a GMP contract therefore is in the same financial position as it would be with a lump sum contract plus a call option over the benefit of the head contractor's good cost performance. Naturally the head contractor would charge a higher fee for providing this call option to the principal compared to the price of a lump sum contract.

Aurizon Network considers that:

- the GMP pricing approach is much more complex than a lump sum pricing approach, so the GMP pricing approach is likely to lead to pricing negotiations taking longer and being more likely to rely on dispute resolution mechanisms, which in turn could cause further delays. For example, under a GMP pricing approach actual costs need to be compared with target costs, which involves the principal in the head contractor's incurred costs;

²⁹ TS, section 5.3(b)

- the GMP pricing approach is not commonly used by private sector principals in the procurement of SUFA Comparator Projects in the Australian construction industry;
- GMP is inconsistent with the agreed form of construction contract; and the value to SUFA investors of an asymmetrical allocation of cost risk (i.e. cost overrun risk is capped but cost underrun risk is unlimited) is unclear. Provided the entire consideration payable under the construction contract will be included in the RAB and therefore provide an investment return, SUFA investors would be expected to have no preference for an asymmetrical allocation of cost risk over a symmetrical allocation of cost risk. Indeed, SUFA investors would be expected to have a slight preference for a lump sum pricing approach, since, if costs turn out to be lower than expected, that approach would result in a larger indirect investment in regulated assets for a given risk/return profile than would apply under the GMP pricing approach.

For the reasons set out above, Aurizon Network considers that the QCA should give favourable consideration to reverting to lump sum pricing as the pricing approach for the construction contract. Aurizon Network would welcome the opportunity to meet the QCA and, if the QCA so wishes, stakeholders to engage further on the optimal pricing approach(es) to be adopted for the construction contract.

Flexibility of Aurizon Network as Head Contractor

The TS states that practical completion will only be achieved when, among other things, the completed works comply with the specified scope requirements³⁰. The specification of the construction contract's scope will be a critical issue for any SUFA project. As a result of the Expansion Process, extensive information on the project configuration will be available when this scope is documented, and there are clear alternatives about how to do so.

If the scope is documented in the construction contract in a very detailed and prescriptive manner (the Detailed Scope option), Aurizon Network's ability as a design and construction contractor to deliver the project would be heavily constrained. This is because any change, no matter how minor, to the Detailed Scope during the project delivery process would require Aurizon Network to request a scope variation, and the Trustee's consent to that variation request would be required. For example, if the Detailed Scope specified the location of a signalling asset and Aurizon Network wished to move it by 10 metres to avoid interference with a utility's assets, the Trustee's consent would be required for that location change. In this situation, Aurizon Network would lack the 'control over the construction of SUFA projects' that is proposed by the QCA³¹.

Given that the Trustee is a passive principal, Aurizon Network considers that the Trustee's involvement in minor variations such as signalling asset location would not add value to the project delivery process. Even assuming that Aurizon Network is successful in obtaining the consent of the Trustee for such scope changes, Aurizon Network could experience very considerable delays in the project delivery process and it would be unable to obtain an extension of time for such delays. If a Detailed Scope option were to be adopted for a SUFA project, Aurizon Network would wish to mitigate appropriately the approval and delay risks that it would assume as a result of the scope constraints on it. This mitigation could take several forms, including the addition of extra Adjustment Events and setting a later date for practical completion that reflects an allowance for delays of the sort outlined.

An alternative approach to scope specification, and Aurizon Network's preferred position, is that the project scope is documented at a high level with an emphasis on the required functional outcomes (the High Level Scope option). Under this option Aurizon Network would have the flexibility to undertake minor scope changes without requiring the Trustee's consent.

³⁰ TS, section 5.4(f)

³¹ PP, section 7.2

The QCA's proposed approach on the construction contract is 'based on Aurizon Network having control of the construction of SUFA projects' and allowing that control 'significantly reduces the complexity of the construction process³²'. Aurizon Network fully endorses this proposed project control model. In order to give full effect to it. Aurizon Network proposes that the Expansion Process should require that the project scope for each SUFA project be documented in accordance with the High Level Scope option.

³² PP, section 7.2

Glossary

Defined terms in the PP have the same meaning when used in this submission.

Term	Definition
Access Undertaking	The Access Undertaking provides a framework for access to the rail network for the purposes of operating train services
Adjustment Event	A specified risk or type of risk that is retained by the Trustee as principal under its construction contract with Aurizon Network, on the basis that the cost and time consequences of any occurrence of this risk or risk type is borne by the Trustee
Condition Based Assessment	An assessment of the condition of the CQCN infrastructure to be conducted at the commencement of, and the termination of, each Access Undertaking
Detailed Scope	Has the meaning given in Appendix 4
Disposal Proceeds Top-up Obligation	The obligation to pay the NPV of rental payments foregone less the Trustee's share of disposal proceeds as further described in section 6.2(d)
Expansion Process	<p>The expansion process, which is to form part of the access undertaking, that:</p> <ul style="list-style-type: none"> i. governs how Aurizon Network manages the study stage of network expansions, ii. enters into project development agreements; and iii. addresses other expansion issues, such as capacity shortfall rectification <p>in the form that was provided by Aurizon Network to the QCA on 16 May 2014</p>
GMP	Guaranteed Maximum Price of a SUFA construction contract, as discussed in section 4.2 and Appendix 4
High Level Scope	Has the meaning given in Appendix 4
Independent Certifier	The independent certifier for a SUFA construction contract

Term	Definition
Independent Engineer	The independent engineer responsible in respect of a SUFA project for determining, among other things, <ul style="list-style-type: none"> i. before the project's commitment whether expenditure under a SUFA construction contract on the specified scope is prudent; and ii. during that project's delivery whether each proposed variation to that scope is prudent
Infrastructure Lease	As the context requires, either: <ul style="list-style-type: none"> i. the infrastructure lease by Queensland Rail to Aurizon Network of CQCN rail infrastructure on the North Coast Line; ii. the infrastructure lease by QTH to Aurizon Network of CQCN rail infrastructure other than on the North Coast Line; or iii. both of these infrastructure leases
Ordinary Unit Holder	Aurizon Network in its capacity as the holder of the ordinary unit in each Trust
PP	The SUFA Position Paper published on the QCA's website on 22 May 2014
Relevant Infrastructure Lease	In respect of a SUFA project, each Infrastructure Lease of infrastructure that would be augmented, modified or removed during the delivery of that project
Relevant Infrastructure Lessor	In respect of a SUFA project, the lessor of a Relevant Infrastructure Lease
Second DC Determination	A second determination of discriminatory conduct as further described in section 7.2(c)
SUFA Comparator Project	A project comparable to a SUFA project that is procured by a private sector principal
Trust	A unit trust for a SUFA transaction
Trustee	A trustee of a Trust
TS	The updated 2013 SUFA DAAU term sheets dated 16 June 2014, as published on the QCA's website
Umbrella Agreement	The 2013 SUFA DAAU template agreement that provides the SUFA funder's tax indemnity of Aurizon Network and the Trustee, and grants contingent access rights to the SUFA funder