

Attachment 2 - Major Changes in Wording or Concept Between the 2010 AU and the 2013 DAU Including Asciano Comment on These Changes

2010 AU Clause Reference	Clause Outline	2013 DAU Clause Reference	Clause Outline	Asciano Comment
PART 2: INTENT AND SCOPE				
Part 2, 2.3 (e) Intent	This clause requires Aurizon Network establish principles and processes to guide cooperation within the coal supply chains to maximise the performance of the supply chain on an annualised basis.	Part 2, 2.2 (e) (iv) Intent	There has been a slight rewording of this clause as the words “on an annualised basis” have been removed.	Given that the System Forecast and Take or Pay are assessed annually, the establishment of principles and processes to guide cooperation with all elements of the coal supply chains to maximise the performance should remain on an annualised basis.
Part 2, 2.4 (e) Intent	This clause states that Aurizon Network cannot refuse to sell or supply (and procure) electric energy to an access seeker, access holder or nominated railway operator if Aurizon Network or related party sells or supplies a Related Operator with electric energy.	Part 2.4 Electricity Supply	This Aurizon Network obligation has been removed.	Aurizon Network can now refuse to supply electric energy on the basis that it does not have the legal ability to do so or because terms were not acceptable to them. The obligation as in the 2010 AU should remain on the basis that it ensures Aurizon Network do not treat any access seeker, access holder or operator more favourably than another in relation to the provision of electric energy.
Part 2, 2.4 (e) Intent	This clause states that the sale and supply of electric energy is not part of Access except as specifically referred to in this undertaking.	Part 2.4, (b) (i) Electricity Supply	This clause states that it is acknowledged that “the supply of electric energy by Aurizon Network is not a supply of Access Rights or otherwise governed by this undertaking (except to the extent that any Reference Tariff includes EC)” (where EC is an electric energy tariff).	This re-wording narrows the exception. The supply of electric energy by Aurizon Network should be governed by the undertaking. The drafting is unclear on what is governed and not governed in relation to Aurizon Network’s supply of electric energy. For example it should be clarified how the AT ₅ tariff (which is subject to the

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				revenue cap arrangement in the undertaking) would be treated.
Part 2, 2.4 (e) Intent	This clause outlines the dispute resolution process (as per Part 10.1) in relation to Aurizon Network's refusal to sell or supply electric energy to an access seeker, access holder and / or nominated railway operator.	Part 2.4 Electricity Supply	This dispute section has been removed as a result of the insertion of 2.4 (b) (ii) that allows an Access Holder or Train Operator to acquire electric energy from a 3 rd party.	The dispute resolution process should still be referenced, as if a dispute arises in relation to Aurizon Network's supply of electric energy this is the mechanism that should be used. It is likely that electric energy would continue to be supplied by Aurizon Network so a clear dispute process needs to remain in the undertaking.
	This clause does not exist.	Part 2.4 (c) Electricity Supply	A new clause has been inserted which states that " Schedule G sets out the principles which will govern the arrangements for pricing of electric traction services in Blackwater System, and recovery by AN of electric system costs".	This clause assumes that Schedule G, Principles for Pricing of Electric Traction Services in the Blackwater System is approved. This clause should be removed. For Asciano's detailed views on schedule G refer to Asciano's specific comments in both the body of this submission and Attachment 4 of this submission.
Part 2, 2.6 Draft Incentive Mechanism	This clause requires Aurizon Network to consult with access seekers, access holders, customers and any affected Infrastructure service provider in relation to how the revenue cap adjustment provisions in the undertaking might be amended to provide an incentive framework that provides Aurizon Network with an incentive to operate and invest in the network that	This clause does not exist.	The entire section in relation to Draft Incentive Mechanism has been removed from the 2013 DAU.	There needs to be some form of incentive mechanism prescribed in the undertaking to promote efficiency in the supply chain. Refer to Asciano's specific comments on the incentive mechanism in both the body of this submission and Attachment 4 of this submission.

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	promotes efficiency in the coal supply chain. It also outlines the process of how such an incentive mechanism is approved.			
PART 3: RINGENCING				
Part 3, 3.1 (d) Ringfencing – Organisational Structure	This clause requires that if there is a change in corporate structure where a Related Operator becomes responsible for matters integral to the provision of Below Rail Services, Aurizon Network is obligated to submit a Draft Amending Access Undertaking to the QCA for approval.	Part 3.1 Ringfencing – General Provisions	This Aurizon Network obligation has been removed.	This Aurizon Network obligation needs to be reinstated to ensure Aurizon Network operates at “arm’s-length” from Aurizon. As long as Aurizon remains vertically integrated, such provisions should remain to ensure Aurizon Network operates independently.
Part 3, 3.1 (e) Ringfencing – Organisational Structure	This clause states that Aurizon Network and the QCA may agree to jointly review the appropriateness of yard control services at yards other than Major Yards (being Callemondah, Jilalan, Coppabella, Pring, Paget and Rockhampton) continuing to be performed by a Related Operator. It also obligates Aurizon Network to take whatever reasonable steps are required to implement the findings of any such review after approval by the QCA.	Part 3.1 Ringfencing – General Provisions	This Aurizon Network obligation has been removed.	<p>This Aurizon Network obligation needs to be reinstated. Rail yards and yard control continue to be integral to the operation of train services.</p> <p>The ability for a QCA and Aurizon Network joint review of yard control services should remain</p> <p>Asciano would strongly encourage that such a review takes place as this will ensure that the most appropriate body manages the relevant yards and terminals.</p>
	This clause does not exist.	Part 3, 3.1 (b) Ringfencing – General Provisions	This new clause specifically outlines that as a subsidiary of Aurizon, Aurizon Network's financial performance, capital expenditure program and business plan are consistent with good corporate	The commercial decisions of Aurizon Network should be made at an “arm’s-length” basis from Aurizon. There continues to be concerns that Aurizon’s vertical integration will provide Aurizon Network’s Related Operator with a

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			governance, subject to oversight by the board and senior management of Aurizon.	<p>competitive advantage as the Aurizon Network and Related Operator's financial performance, capital expenditure programs and business plans are coordinated and integrated across the whole of Aurizon.</p> <p>Refer to Asciano's specific comments on concerns regarding Aurizon's vertical integration in the body of this submission.</p>
Part 3, 3.1 (b) Ringfencing – Organisational Structure	This clause states that Aurizon Network's primary function is to manage the provision of Below Rail Access Agreements and Access Holders.	Part 3, 3.1 (c) and (g) Ringfencing – General Provisions	<p>Clause 3.1 (c) states that Aurizon Network provides a regulated access service, together with providing unregulated services in competitive markets.</p> <p>Clause 3.1 (g) specifically states that Aurizon Network is required by the Transport Infrastructure Act to maintain an independent board of directors which supervises arm's-length dealings in respect of access between Aurizon Network and any Related Operators.</p>	<p>Aurizon Network has highlighted that they will conduct unregulated services in competitive markets. This raises concerns as Aurizon Network's primary function should be to provide access via its regulated and ring fenced network. Unregulated activities should either be undertaken by a separate entity or scrutinised by the QCA. For example, the regulated revenue Aurizon Network recovers should not be used to subsidise their unregulated activities.</p> <p>Refer to Asciano's specific comments in body of this submission relating to both general concerns' regarding Aurizon's vertical integration and Aurizon Network's independent directors.</p>
Part 2, 2.2 Non-Discriminatory Treatment	This clause outlines guidelines where Aurizon Network will not unfairly differentiate between Access Seekers and Access Holders in negotiations and	Part 3, 3.2 General Principles of Non-Discrimination	This clause appears to have the same broad intent as the previous 2010 AU clause with the exception that the complaint process is not specified in this section. This	<p>A specific complaint lodgement process relating to non-discriminatory treatment should be included in the undertaking.</p> <p>If discriminatory treatment undertaken</p>

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	provision of access. It also outlines complaint processes.		process is now contained in a generalised form in Section E – Complaints and Waiver 3.22.	by Aurizon Network was proven this would be considered a major breach of the undertaking, hence a specific complaints process to deal with this area should be re-included in the undertaking. Otherwise from an access holder's perspective it seems that the process has been weakened.
Part 3, 3.2 (a) General Principles of Non-Discrimination and Independence	3.2 (a) included the words "QR Network will not, and will procure that its Related Parties do not:"	Part 3, 3.2 (a) General Principles of Non-Discrimination	Clause 3.2 (a) only includes the words "Aurizon Network will not:" The words "and will procure that its Related Parties do not:" has been removed.	This wording now means that Aurizon Network does not have an obligation to procure that its Related Parties comply with 3.2 (a). The previous 2010 AU wording needs to be reinstated given that Aurizon Network and its related parties remain vertically integrated.
Part 3, 3.2 (c) General Principles of Non-Discrimination and Independence	This clause states that Aurizon Network must not engage in any activity or conduct (or agree to engage in such activity or conduct), either independently or with Related Operators, which has the purpose of, or results in or creates, or is likely to result in or create: (i) anti-competitive cost shifting; (ii) anti-competitive cross-subsidies; (iii) anti-competitive price or margin squeezing.	Part 3, 3.2 (d) General Principles of Non-Discrimination	This clause has the same broad intent as the 2010 AU but only states that Aurizon Network will not engage in these activities. Aurizon Network engaging in these activities with a Related Operator is no longer specifically mentioned.	The previous 2010 AU wording needs to be reinstated given that Aurizon Network and its related parties remain vertically integrated. Asciano continues to be concerned about the potential for Aurizon Network to be engaged in anti-competitive cost shifting, cross subsidies and price and margin squeezing.
Part 2, 2.5.1 Ultimate Holding Company Support	This clause states that Aurizon Network will procure that the Ultimate Holding Company	Part 3, 3.3 Aurizon Holdings to Execute Deed in	This clause refers to a deed outlined in Schedule D that Aurizon Network will request its UHC to provide. In	The 2010 AU clause was more prescriptive around the UHC's obligations. The new clause is more

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Deed	(UHC) provides a deed in favour of the QCA which obliges the UHC to ensure that all Aurizon parties will take such actions as are necessary to enable Aurizon Network to comply with its obligations under this undertaking where it is reliant on any Aurizon party in order to do so. The clause contains detailed requirements that Aurizon parties are required to meet.	Support of this Part 3	the deed, it is required that the UHC: (a) Must not direct or request Aurizon Network to act in contravention of its obligations in Part 3 (Ringfencing) of the undertaking; (b) Must not disclose Protected Information received from Aurizon Network as permitted by the undertaking to any 3 rd party unless consent is given; (c) Allows for Aurizon Network's executive officer be maintained at the same or greater level of seniority within the organisational structure as the position of the executive manager for a Related Operator.	simplified and substantially weakens the intent of the clause. Asciano believes that these provisions should be strengthened to ensure the UHC has the responsibility to ensure Aurizon Network operates at an "arm's length" from Aurizon. Refer to Asciano's specific comments in body of this submission relating to the UHC Deed.
Part 3, 3.4.3 Transfer of Aurizon Network Employees within the Aurizon Corporate Group	Clause 3.4.3 (c) states that if activities affect or could affect the access of 3 rd Party access holders or seekers, then Aurizon Network must ensure no Aurizon Network employees is transferred to such a Related Operator or working group.	Part 3, 3.6 Staffing of Aurizon Network	Clause 3.6 (b) (ii) and (iii) states that the undertaking does not restrict secondments of employees or prevent Aurizon Network staff ceasing work with Aurizon Network and working for a Related Operator as long as the handling of Protected Information requirements are followed as per the undertaking. Clause 3.6 (b) (v) allows Aurizon Network to engage in other service activities as long as it does not relate to Below Rail Services.	The intent of these new provisions in the 2013 DAU appears to be the opposite to the intent of the previous provisions. Effectively, Aurizon Network has removed restrictions on allowing employees to be easily transferred between Aurizon Network and the Related Operator. The 2010 AU provisions must be reinstated as a minimum to ensure 3 rd party information is not shared with their Related Operator. The undertaking should also include

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				restrictions around transfers from a Related Operator to Aurizon Network. Stricter transfer practices must be in place. (For example employees could sign agreement to not work for Related Operator for a period after ceasing work with Aurizon Network. This would be no different conceptually to employees agreeing not to work for a competitor for a period of time after ceasing work with the firm).
Part 3, 3.3.1 and 3.3.2 Accounting Separation	<p>This clause specifically outlines that Aurizon Network will develop financial statements on an annual basis:</p> <ul style="list-style-type: none"> (a) in accordance with relevant legislation and Australian accounting standards; (b) which will include a supplementary set of statements identifying Aurizon Network's business in respect of the rail infrastructure regulated by the undertaking; (c) which will be audited within 6 months of the end of the Year to which the financial statements relate, or such longer time as agreed by the QCA. <p>Section 3.3.2 also includes specific audit requirements that the Auditor has to perform in</p>	Part 3, 3.7 Accounting Separation	<p>This clause states that Aurizon Network will develop on an annual basis, the financial statements required by, and in accordance with, Part 10 and that it will only include Below Rail Services regulated by the undertaking and will not include information relating to any other business conducted by Aurizon Network.</p>	<p>Similar to clause 3.1 (c) Aurizon Network is seeking to conduct other activities that are not regulated. As Aurizon Network is ring fenced and regulated, any unregulated activities should be scrutinised by the QCA. For example, regulated revenue Aurizon Network recovers should not subsidise their unregulated activities.</p> <p>In addition, as outlined in the body of this submission, Asciano believes that the auditing requirements should be maintained and strengthened and the Costing Manual as required under the QCA Act should also be reviewed given the numerous changes in Aurizon's structure which have occurred.</p>

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	relation to the financial statements.			
	This clause does not exist.	Part 3, 3.8, 3.9 and 3.10 Management of Aurizon Network	New sections in the 2013 DAU specify the management separation of the Aurizon Network executive team from its Related Operator and how they are appointed.	While Asciano welcomes Aurizon Network management separation, this should be further developed to ensure there are robust and independently audited measures and processes in place to guarantee Aurizon Network management separation from their holding company and Related Operator.
Part 3, 3.4 Management of Confidential Information	Similar intent as 2013 DAU drafting although the clause refers to Confidential Information.	Part 3, 3.11 and 3.12 Protected Information	Under these clauses Protected Information has replaced Confidential Information. Clause 3.11 (j) has been introduced to deal with the handling of Protected Information in the EUAA and TOA.	Asciano believes that clause 3.11 (j) is too broad. From an operator's perspective the operator would seek assurance that an end user would only be provided information related to that particular end user's access rights in an operator's TOA.
	This clause does not exist.	Part 3, 3.15 Disclosure of Protected Information to Marketing Division	Introduction of a section to specifically state that Aurizon Network must not disclose Protected Information to the Marketing Division of Aurizon Above Rail Group.	Asciano strongly questions why this disclosure rule is only restricted to the Marketing Division of Aurizon Above Rail Group. Protected information should not be disclosed to anyone at all in the Aurizon Above Rail Group, including consultants and contractors.
Part 3, 3.4.2 Flows of Confidential Information within the QR Corporate Group.	Under this clause the list of people and areas with access to Protected Information within the Aurizon Group was much more limited. The disclosure of Protected Information to these people or areas was still subject	Part 3, 3.16 Person or Business Units with Access to Protected Information	There appears to be an increase in the people and areas with access to Protected Information within the Aurizon Group. The people or areas listed can obtain access to Protected Information without the need to comply with clause 3.17	There appears to be an increase in the people and areas with access to Protected Information within the Aurizon Group. Each of these people and areas need to be assessed and reasons need to be

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	to the process for managing confidential information flow.		(Process for Authorised Disclosure of Protected Information).	<p>provided justifying their need for access. In particular Asciano questions why senior executives of the Aurizon Group are included, particularly if the senior executive is involved in current or potential above rail operations. The number of people and areas with access to Protected Information should be reduced.</p> <p>Any people or area on the listing must be subject to the compliance process listed in clause 3.17.</p>
Part 3, 3.5 Decision Making Part 3, 3.6 (d) Complaint Handling	Outlines decision making principles.	Part 3 Ringfencing	This has been removed from the undertaking.	These decision making principles should be reinstated and expanded, specifically around decision making processes in relation to the negotiation and management of access.
Part 3, 3.4.2 (j) Flows of Confidential Information within the QR Corporate Group.	Similar intent as 2013 DAU drafting.	Part 3, 3.19 Protected Information Register	<p>More clarity has been provided in relation to the establishment and maintenance of a register for Protected Information flow within Aurizon Group.</p> <p>3.19 (d) allows for QCA to view the register upon their request.</p>	Asciano suggests that clause 3.19 (d) includes a process where the QCA audits the register as part of their annual audit process to ensure Aurizon Network has complied with the handling of Protected Information within Aurizon Group.
Part 3, 3.4.3 (a) and (b) Transfer of Aurizon Network Employees within the Aurizon Corporate Group	Similar intent as 2013 DAU drafting.	Part 3, 3.20 Mandatory Protected Information Training and Exit Certificates	<p>This clause outlines that all Aurizon Network employees must undertake training to ensure they are aware of the Protected Information obligations and that exit certificates and debriefing session must be undertaking for all employees leaving Aurizon Network to work for another Aurizon Group</p>	<p>Asciano believes that additional provisions should be included on the consequences if Aurizon Network breaches these obligations in relation to the handling of Protected Information.</p> <p>At the present time there are no consequences as a result of Aurizon</p>

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			business unit.	<p>Network disclosing Protected Information wrongly.</p> <p>Exit certificates and debriefing sessions should also be undertaken for all employees ceasing employment with Aurizon Network (not just those going to work for another Aurizon Group business unit).</p>
	This clause does not exist.	Part 3, 3.21 Secure Premises	This new clause seeks to ensure Aurizon Network has security measures in place.	<p>Asciano believes that the broad nature of this clause means that the clause does not add much value.</p> <p>Asciano suggests rewording clause 3.21 (b) to require Aurizon Network to be located in facilities separate to the Related Operator".</p>
	This clause does not exist.	Part 3, 3.23 Waiver by the QCA	This new clause allows Aurizon Network to apply in writing to the QCA for a waiver of some or all of its obligations under Part 3 (Ringfencing) on either a temporary or permanent basis.	This clause must be removed. As long as Aurizon Network remains vertically integrated, ringfencing obligations should apply at all times for Aurizon Network. There should be no ability for Aurizon Network to have their ring fencing obligations waived.
Part 3.7 and 3.8.1 Audits Responsibility for Rail Infrastructure – Line Diagrams	<p>Clause 3.7 obligates Aurizon Network to conduct an audit annually in relation to clauses 3.4 (Management of Confidential Info), 3.5 (Decision Making) and 3.6 (Complaint Handling).</p> <p>Matters to consider in the audit (at the request of the QCA) include:</p> <ul style="list-style-type: none"> • Aurizon Network engagement in cost 	Part 3 Ringfencing	This entire section has been removed.	<p>These provisions must, at a minimum, be reinstated in the undertaking. Ideally the audit provisions should be strengthened.</p> <p>Refer to Asciano's specific comments in body of this submission relating to the 2013 DAU audit provisions.</p>

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	<p>shifting between regulated and non-regulated activities.</p> <ul style="list-style-type: none"> • Aurizon Network engagement in margin squeezing. • Aurizon Network refusing access to facilities and discriminating between related operators and 3rd parties. • Aurizon Network's compliance with capacity allocations as per the undertaking. • other issues that the QCA reasonable believes an audit is necessary. <p>3.8 .1 covers Aurizon Network's obligation to make available and keep up to date line diagrams.</p>			
Part 3, 3.8.2 Transfer of Rail Transport Infrastructure from QR Party	This clause obligates Aurizon Network to some extent to take over rail infrastructure owned by other Aurizon parties if it's proven to be a declared service.	Part 3 Ringfencing	These provisions have been removed.	This clause should be re-included to ensure consistency with Transport Infrastructure Act.
PART 4: NEGOTIATION FRAMEWORK				
Part 4, 4.1 (d) Access Application	This clause states that an Access Seekers may request a copy of any Preliminary Information that is not provided on Aurizon Network's website which Aurizon Network will provide within 14 days.	Part 4, 4.1 (b) Overview	4.1 (b) (i) states that Preliminary Information (i.e.; those defined in clause 1 of Schedule A) is now only attainable from their Website. This is also repeated in clause 4.2(b). Preliminary Information as listed in Schedule A includes civil	<p>This clause assumes that information listed in clause 1 of Schedule A is actually available on their website.</p> <p>This is not an issue as long as information on the website is current and complete. Clause 4.2 (d) should</p>

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			infrastructure and Rollingstock interface standards.	place a strong obligation on Aurizon Network to ensure all Preliminary Information is made available on their website (i.e. 'reasonable endeavours' wording should be 'best endeavours').
Part 4, 4.1 (f) and (g) Access Application	Clause 4.1 (f) places obligations on Aurizon Network to provide copies of notices to the relevant Customer if an Access Application included contact details of a Customer. Clause 4.1 (g) places obligations on Aurizon Network to notify each Access Seeker with details of the queue if a queue is established. If there is any change in the order of the queue Aurizon Network must again notify each Access Seeker involved.	Part 4 Negotiation Framework	The queuing arrangements have been removed from Part 4. Part 7.5 of the 2013 DAU now deals with mutually exclusive rights, which has replaced queuing. Refer to clause 7.5 and 7.5.2 below.	The removal of the queuing provisions is problematic as Aurizon Network now has more freedom as to who they negotiate access rights with (i.e. the capacity allocation system is now more subjective). This may allow Aurizon Network to make decisions more favourable to their Related Operator. It will now also be more difficult to demonstrate that Aurizon Network has treated Access Seekers in a discriminatory manner.
	There is no specific clause in relation to providing Capacity Information although clause 3 of Schedule D may apply.	Part 4, 4.2 (c) Initial Enquiries	This clause states that prospective Access Seekers may lodge a request for Capacity Information with Aurizon Network and Aurizon Network will respond within 10 Business Days.	Asciano notes that there are currently only two above rail coal haulage operators on the network. Thus either rail operator could deduce the access rights the other operator holds. Given this situation there should be some consideration given by Aurizon Network as to whether the capacity information may raise confidentiality issues.
Part 4, 4.2 Acknowledgement of Access Application	This clause has a similar intent to the 2013 DAU but Aurizon Network can only request the following information within 10 business days:	Part 4, 4.3 (c)(ii) (A) Access Application	Within 10 business days after receipt of Access Application, Aurizon Network can request the Access Seeker for the following, which was not previously included in	The additional information that Aurizon Network can request under 4.3 (c) (ii) (A) should not be required to be provided in order for an access seeker to receive an Access Application

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	<p>(a) Additional information, if reasonably needed to prepare an IAP.</p> <p>(b) Clarification of the information that has been provided in the request for Access.</p> <p>An Access Seeker also had 30 days after Aurizon Network's request to respond with additional information. Clause 4.2 (d) allowed Aurizon Network to reject Access Request if sufficient information is not provided.</p>		<p>the undertaking</p> <p>(a) Evidence or information regarding their ability to fully utilise the requested Access Rights which may include factors as per clause 4.11 (c) [Supply Chain Rights, Rollingstock, provisioning, maintenance and storage facilities and mine output].</p> <p>(b) Information from other providers or infrastructure to be used as an entry or exit point to the Rail Infrastructure such as operation so unloading facilities.</p>	<p>response. This will delay the access request process and increases Aurizon Network's ability to cease the access application.</p> <p>Clause 4.3 (d) allows Aurizon Network to cease an Access Application if requested information is not received by them within 20 business days of their request. This has the potential to be used differentially against different access seekers.</p>
Part 4, 4.2 (c) Acknowledgement of Access Application	This clause has a similar intent to the 2013 DAU but the date of the Access Application lodgement is deemed to be the date of receipt.	Part 4, 4.4 (b) Acknowledgment of Access Application	This states that the Acknowledgement Notice will be the date on which the Access Request will be "deemed" (where Aurizon Network believes all sufficient info has been provided) to have been received.	This is different from previous arrangements where the Access Request lodgement date was deemed to be the date of receipt. Asciano believes the 2010 AU timing should be used.
Part 4, 4.2 (e) (ii) (A) Acknowledgement of Access Application	This clause allows Aurizon Network to fund Customer Specific Branch Lines if they believe it is commercially sound for them to do so. If the Customer Specific Branch Line was to be funded by Aurizon Network, Aurizon Network must continue to apply the negotiation framework Part 4 to complete the Access Application.	Part 4, 4.4 (c) Acknowledgment of Access Application	This clause states that if an Access Application cannot be progressed in the absence of an Expansion or Customer Specific Branch Line (clause 8.2 and 8.7), Aurizon Network can provide notice to suspend (before or after issuing of IAP) pending agreement on what Expansion or Customer Specific Branch Line is required and how it will be funded.	<p>Asciano questions the need for the suspension provisions on the basis that if the access request is suspended it would be pending the negotiation outcome of an Expansion and/or Customer Specific Branch Line works.</p> <p>If such a suspension process is in place a register / queue should be created to keep track of access requests dependent on an Expansion</p>

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			<p>Note that the definition of Expansion now also excludes Connecting Infrastructure and any capital expenditure that involves Asset Replacement Expenditure.</p> <p>Clause 4.4 (f) also puts the obligation on an Access Seeker to write to Aurizon Network every 6 months to confirm an ongoing requirement for the suspended Access Request, inform them of any changes and if requested by Aurizon Network provide evidence that they will fully utilise the requested Access Rights.</p> <p>Clause 4.4 (g) allows Aurizon Network to cease a suspended Access Request if the actions are not performed by the Access Seeker in clause 4.4 (f).</p>	<p>and/or Customer Specific Branch Line works.</p> <p>There should be no requirement for an Access Seeker to write to Aurizon Network every 6 months and provide evidence that they still have intention to fully utilise the Access Rights. Access requests are non-binding, and on this basis having such an obligation on Access Seekers would be an additional administrative burden. Aurizon Network on the other hand should be obligated to inform relevant Access Seekers if there are changes to an Expansion or Customer Specific Branch Line that impacts on their pending Access Request.</p>
	This clause did not exist.	Part 4, 4.4 (d) Acknowledgment of Access Application	Where a Provisional Capacity Allocation (as defined under clause 8.5(i)) has been granted, Aurizon Network may suspend negotiations pending the outcome of negotiations with the holder of the Provisional Capacity Allocation.	Asciano believes that such a suspension needs to be made specific to only the Provision Capacity Allocation access rights directly related to all or part of a particular Access Request.
	This clause did not exist.	Part 4, 4.4 (e) Acknowledgment of Access Application	This clause allows Aurizon Network to reject an Access Application if the access rights sought in the Access Request do not commence within 3 years.	<p>Asciano believes that this requirement should be removed as it is too restrictive.</p> <p>This limits an Access Holder's ability to seek information and progress long</p>

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				term projects.
Part 4, 4.2 (g) Acknowledgement of Access Application	This clause allowed an Access Seeker to submit revised information on their Access Request prior to the issuing of an IAP.	Part 4, 4.4 Acknowledgment of Access Application	This provision no longer exists.	Asciano believes that the opportunity should be given to an Access Seeker to revise information relating to their Access Request instead of ceasing current one and submitting a new one.
Part 4, 4.3 (c) (vii) Indicative Access Proposal	Under this clause the IAP expires 90 days after issuing, or such later date as agreed between the parties.	Part 4, 4.5 (e) Indicative Access Proposal	Under this clause the IAP expires 60 business days after issuing.	Asciano believes that this clause should continue to allow for parties to agree to a later date of expiry for the IAP.
Part 4, 4.3 (e) and (h) (ii) Indicative Access Proposal	This clause allows an Access Seeker to refer to the dispute resolution process if they are not satisfied with the Access Application process.	Part 4, 4.5 Indicative Access Proposal	These provisions no longer exist.	The dispute resolution process in Part 11 of the 2013 DAU allows for a dispute resolution when an Access Seeker is negotiating for access. Not when they are seeking access. This dispute resolution process should be extended to cover the period from the lodgement of an access request to the execution of an Access Agreement.
Part 4, 4.4 (b) and (c) Notification of Intent	This clause allows an Access Seeker to provide notification of their IAP acceptance after expiration of the IAP within 6 months. Aurizon Network will provide a revised IAP if required to do so.	Part 4, 4.6 Notification of Intent	These provisions no longer exist.	In the 2013 DAU an IAP will expire after 60 days. These needs to be a provision for parties to at least agree on an extension of an IAP time frame.
Part 7, 7.3.2 Competing Applications	This clause has a similar intent to the 2013 DAU, although it is not as clear as the 2013 DAU in relation to the treatment of multiple operators competing for same access rights for the same customer.	Part 4, 4.7 Multiple Applications for same Access	A new section has been inserted to deal with multiple Access Requests seeking the same access rights. If one of the parties that applied is a Customer, Clause 4.7 (a) (i) states that Aurizon Network will treat the	Asciano believes that clause 4.7 (a) (i) should include a provision to allow the Customer to nominate an Operator that Aurizon Network can negotiate with. Under clause 4.7 (a) (ii) if only railway operators apply then the customer has

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			Customer as the Access Seeker and Aurizon Network may negotiate solely with that Customer.	<p>to nominate the railway operator Aurizon Network is to negotiate with. Asciano believes that this may limit above rail competition if the access request is submitted before any above rail tender is complete.</p> <p>Asciano has a concern as to how confidential information is managed and shared by Aurizon Network in this scenario of multiple Access Requests seeking the same access rights. Asciano believes confidentiality issues should be clarified.</p>
	This section does not exist.	Part 4, 4.8 Train Operations	<p>This is a new section that deals with a Train Operator putting in a request to commence negotiations for a TOA. This must be in writing containing:</p> <ol style="list-style-type: none"> 1. Identify of End User 2. Provide a copy of the notification from the End User nominating them as Train Operator. 3. Any information required by an Access Request or information reasonably required to complete the TOA. 	Asciano believes that the clause could include an option for a Train Operator to refer to an existing Access Requests/IAP already completed by either the End User or themselves for the Access Rights being included in the TOA.
Part 4, 4.5.1 (f) Negotiation Period	<p>This provision allowed for a portion of access rights being sought being negotiated and provided if the total rights sought could not be provided.</p> <p>Clause 4.5.1 (f) (ii) also</p>	Part 4, 4.9.1 (d) Negotiation Period	Under this clause if an Access Application is ceased because available capacity is reduced or Infrastructure Enhancements contemplated in the IAP are not developed, then before cessation Aurizon Network and the Access	This new provision means that the Access Application ceases if access rights cannot be provided. The provisions should allow that any portion of access rights that is available to be negotiated.

2010 AU Clause Reference	Clause Outline	2013 DAU Clause Reference	Clause Outline	Asciano Comment
	contemplates whether Infrastructure Enhancements can be altered to provide all or part of the access rights sought.		Seeker will discuss the matter with a view to agree alternative means of providing access.	
Part 4, 4.5.2 Issues to be Addressed During Negotiations	This clause does not exist.	Part 4, 4.9.2 (d) Issues to be Addressed During Negotiations	This new provision allows Aurizon Network to seek further evidence of an Access Seeker's ability to fully utilise the requested access rights (including matters in clause 4.11 (c)) and from other providers of infrastructure such as operators of unloading facilities. The Access Seeker must provide such information within 20 business Days of Aurizon Network's request.	The requirement to have secured mine and to prove that sufficient rail operator facilities can support train services may be hard to demonstrate as it may be being negotiated concurrently with the access negotiations (given that rail access is often the constraint in the supply chain it is not unreasonable that rail access be sought prior to the finalisation of other negotiations). Asciano is concerned that these provisions could hinder or prevent access unnecessarily.
Part 4, 4.5.2 (e) Issues to be Addressed During Negotiations	This clause placed obligations on Aurizon Network to investigate and design any necessary Infrastructure Enhancements to accommodate the access sought.	Part 4, 4.9.2 Issues to be Addressed During Negotiations	This provision has been removed.	This 2010 AU clause should be reinstated to place obligations on Aurizon Network to investigate ways to assist the Access Seeker in obtaining access rights.
Part 4, 4.6 Negotiation Conditions	This clause has a similar intent to 2013 DAU but is more specific around conditions to when Aurizon Network can issue a Negotiation Cessation Notice.	Part 4, 4.11 Cessation of Negotiations	This section allows Aurizon Network to cease an access application if Aurizon Network considers that an Access Seeker has materially failed to comply with the provisions of this Undertaking. Clause 4.11 states that the Negotiation Cessation Notice is to be provided at anytime during a Negotiation Period.	Asciano is concerned as there is no timeframe around when a Negotiation Cessation Notice is to be issued and there is no opportunity for an Access Seeker to put a position to counter Aurizon Network's belief that provisions have not been comply with. Asciano notes that the issuing of a Negotiation Cessation Notice is also noted in Clause 4.3 (b) and 4.3 (d); this would not be within the Negotiation Period if Aurizon Network was to issue

2010 AU Clause Reference	Clause Outline	2013 DAU Clause Reference	Clause Outline	Asciano Comment
				a notice. This should be clarified.
Part 4, 4.6 (c) Negotiation Conditions	Under this clause Aurizon Network has the option to cease negotiations on the basis of (amongst other things): <ol style="list-style-type: none"> 1. whether an Access Seeker has secured or likely to secure port capacity. 2. whether an Access Seeker has secured or likely to secure rail haulage. 3. the speed and timeliness of the Access Seeker in conducting its negotiations. 	Part 4, 4.11 (c) Cessation of Negotiations	Aurizon Network now have an option to cease negotiations on the basis of the additional following reasons (amongst other reasons): <ol style="list-style-type: none"> 1. whether an Access Seeker has secured, or is reasonably likely to secure Supply Chain Rights (mine right through to port). 2. whether the Access Seeker or its Rail Operator has sufficient facilities (including Rollingstock, provisioning, maintenance and storage facilities). 3. whether the mine has enough output to support full utilisation of Access Rights sought. 	Asciano strongly opposes this additional wording. The requirement to demonstrate these requirements may be difficult as they may be being negotiated concurrently with the access negotiations (given that rail access is often the constraint in the supply chain it is not unreasonable that rail access be sought prior to the finalisation of other negotiations). Asciano is concerned that this provision could hinder or prevent access unnecessarily.
Part 4, 4.6 (f) Negotiation Conditions	This clause has a similar intent to 2013 DAU but did not state that an Access Seeker agrees to pay Aurizon Network's costs if clause 4.6 (a) (iii) applies.	Part 4, 4.11 (e) Cessation of Negotiations	This clause now states that Aurizon Network have the right, at its option, to recover its reasonable costs incurred in negotiations from the Access Seeker if clause 4.11 (a) (iii) applies. It also states that 'By submitting an Access Application the Access Seeker agrees to pay Aurizon Network's costs as referred to in this clause 4.11 (e)' including 3 rd party costs.	The 2010 clause should be reinstated. Clause 4.11 (a) (iii) should not be based on Aurizon Network's reasonable opinion that the Access Seeker had no genuine intention. Rather it needs to be proven by evidence that the Access Seeker had no genuine intention to obtain and use access rights sought. In addition, the words 'By submitting an Access Application the Access Seeker agrees to pay Aurizon Network's costs as referred to in this clause 4.11 (e)' should be removed. The clause pre-

2010 AU Clause Reference	Clause Outline	2013 DAU Clause Reference	Clause Outline	Asciano Comment
				empts that an Access Seekers automatically accepts to pay for these costs if sought by Aurizon Network.
Part 4, 4.7 Capacity Notification Register	Under this clause if Aurizon Network ceases negotiations due to available capacity being reduced or because infrastructure Enhancements expected to not eventuate then the Access Request will be included in the Capacity Notification Register.	Part 4 Negotiation Framework	This entire section does not exist.	Similar arrangements to the 2010 AU should be re-included in the 2013 DAU. These arrangements should allow Access Seekers to continue negotiations once the next tranche of capacity becomes available.
PART 5: ACCESS AGREEMENTS				
Part 5, 5.1 Development of Access Agreement	Provision did not exist.	Part 5, 5.1 (d) Development of Access Agreement	<p>This is a new provision where if parties cannot agree on terms of the Access Agreement it can be referred to the QCA for dispute resolution.</p> <p>Clause 5.1 (d) (i) states that it would be “resolved by the QCA or an expert, as applicable, by completion of” the relevant form of Standard Access Agreement in clause 5.1 (c).</p>	<p>Asciano agrees with the ability to have QCA or an expert to resolve such a dispute, although parties should still be given the option to negotiate variances to the standard form agreements.</p> <p>In addition, if Aurizon Network has negotiated or is negotiating similar access agreements with another Access Seeker, the terms Aurizon Network offered to them should not be more favourable to what Aurizon Network is offering in the dispute.</p>
Part 5, 5.1 Development of Access Agreement	Provision did not exist.	Part 5, 5.2 Access Charges under Access Agreement	<p>A new provision has been inserted to state that Train Service Entitlements are associated with the characteristics of “Train Service Type”. Train Service Type is contained in Part A of Schedule 2 of the Standard Access Agreement which includes details such as:</p> <ul style="list-style-type: none"> • Customer • Train Service compliance, 	<p>Asciano believes that these provisions in the undertaking and Standard Access Agreement are too restrictive. The introduction of Train Service Type diminishes the flexibility of access rights for an Access Holder.</p> <p>For Asciano’s detailed views on Train Service Type refer to Asciano’s specific comments in the body of this submission.</p>

2010 AU Clause Reference	Clause Outline	2013 DAU Clause Reference	Clause Outline	Asciano Comment
			<p>commitment and expiry date</p> <ul style="list-style-type: none"> • Coal System • Whether it is a reference train or not • Origin and destination • Loaded and empty km • Depot and time at depot • Maximum Dwell times • Whether it is a through running train service type (i.e.; adjoins to another network) • Max time at loading/unloading facility • Maximum payload • Condition access rights (dependent on Expansion) <p>5.2 (b) states that Access Charges will be calculated by reference to Train Type.</p>	
Part 5, 5.3 Access Agreement For New or Renewed Related Operator Train Services	Clause 5.3 (a) states that if Aurizon Network develops an Access Agreement with an Aurizon Party for new or renewed Related Operator Train Services it will be subject to the undertaking. Clause 5.3 (b) in particular, states that where an Access Agreement with an Aurizon Party for a new or renewed Related Operator Train Service is consistent with the Reference Tariff and Standard Access Agreement, Aurizon Network will be deemed to have	Part 5 Access Agreement	This entire section has been removed.	This provision needs to be re-included to ensure that Aurizon Network does not have the ability to negotiate more favourable terms with their Related Operator.

2010 AU Clause Reference	Clause Outline	2013 DAU Clause Reference	Clause Outline	Asciano Comment
	compiled with clause 5.3 (a).			
Part 5, 5.4 Disclosure of Access Agreement	Clause 5.4 (a) obligates Aurizon Network to provide to the QCA upon their request the below rail aspects of Access Agreements (including Access Charges). 5.4 (b) obligates Aurizon Network to permit disclosure of the Access Agreements to the public, subject to non-disclosure elements outlined in 5.4 (c).	Part 5 Access Agreement	This entire section has been removed.	This provision needs to be re-included to ensure that Aurizon Network does not have the ability to negotiate more favourable terms with their Related Operator.
PART 6: PRICING PRINCIPLES				
Part 6, 6.1.3 Establishment of Access Charges for Related Operators	This clause outlines that in developing an Access Agreement with Related Operators, Aurizon Network will not establish Access Charges for Train Services for the purpose of preventing or hindering Access by a 3 rd party access seeker into any market in competition with the Related Operator providing those Train Services.	Part 6 Pricing Principles	This provision has been removed.	This provision needs to be re-included to ensure that Aurizon Network does not have the ability to negotiate more favourable terms with their Related Operator.
Schedule A, 3.2 Customer Group Acceptance of Projects	This clause has a similar intent to the 2013 DAU but the customer voting group was defined as all Customers and Access Holders who do not have Customers, who have responsibility for Reference Tonnes. 3.2.1 (f) states that the acceptance of the capital expenditure is assessed on each customer group's weighted	Part 6, 6.2.4 Access Charges for Train Services that Require an Expansion	This section deals with how the capital cost of an Expansion project is incorporated or not incorporated in an existing Reference Tariff. 6.2.4 (a) (iv) allows Aurizon Network to seek acceptance by Customers and Access Holders without Customers to vote as per clause 8.10 (Acceptance of Capital Expenditure Projects by Interested Participants).	The voting process in 8.10 excludes Railway Operators. As Railway Operators are an active participant of the coal supply chain they should have voting rights particularly if the project impacts on train operations (e.g. it impacts on traction type, train length, train payload etc).

2010 AU Clause Reference	Clause Outline	2013 DAU Clause Reference	Clause Outline	Asciano Comment
	Reference Tonnes		6.2.4 (a) (iv) (A) also allows Aurizon Network to seek approval directly from the QCA.	
Schedule F, Part B, 4.1.1 Reference Tariff for New Coal Carrying Train Services	This clause has a similar intent to the 2013 DAU but there is a variance on assessment of whether Train Service is made part of existing Reference Tariffs or a new one is developed.	Part 6, 6.2.5 Reference Tariff for New Loading Points and Private Infrastructure	This introduces a test of whether a Train Service utilising private or Customer Specific Branch Line will be subject to existing Reference Tariffs or new Reference Tariffs.	This approach requires further scrutiny and clarification to ensure it is equitable for a user funding their own infrastructure.
Part 6, 6.1.2 (d) and (e) Limits on Price Differentiation	This clause states that Aurizon Network will give Access Seekers the opportunity to incorporate rate review provisions in the Access Agreement. 6.1.2 (e) specifically deals with an Access Holder's ability to contest that Aurizon Network has developed Access Charges for another Access Holder for a similar Train Service.	Part 6.2.7 Access Charge review Provisions	This clause has removed the provision in the 2010 AU that allows an Access Holder to contest Aurizon Network for applying a different access charge to another access holder in contravention of the limits on price differentiation.	This provision needs to be re-included to ensure that Aurizon Network does not have the ability to negotiate more favourable terms with their Related Operator.
Part 6, 6.3.1 (b) Rail Infrastructure Utilisation	This provision has similar intent but is worded to include the consideration of expansions: "Where Available Capacity is limited, and Aurizon Network reasonably considers that expansion of the Capacity to meet the requirements of all current or likely Access Seekers is not commercially justified..."	Part 6, 6.4.1 (b) Rail Infrastructure Utilisation	<p>This clause now states that if the "Available Capacity is potentially insufficient to satisfy the requests for Access Rights of all current and likely Access Seekers", then Aurizon Network can go through a process to determine and quote the Maximum Access Charge to all the Access Seekers seeking access rights.</p> <p>6.4.1 (c) outlines that the setting of Access Charges under 6.4.1 does not relate to Train Services subject</p>	<p>6.4.1 (c) implies that Aurizon Network has the ability to set Access Charges so that they can achieve above regulated return. This raises concerns as Aurizon Network's primary function should be to provide access via its regulated and ring fenced network. Unregulated activities should either be undertaken by a separate entity or scrutinised by the QCA. For example, the regulated revenue Aurizon Network recovers should not be used to subsidise their unregulated activities.</p>

2010 AU Clause Reference	Clause Outline	2013 DAU Clause Reference	Clause Outline	Asciano Comment
			to Reference Tariffs.	
Part 6, 6.5.2 to 6.5.5 Access Conditions	This section deals with how Aurizon Network agrees with an Access Seeker on certain Access Conditions before access rights can be granted to them which at the same time would mitigate Aurizon Network's financial risk. Clause 6.5.4 in particular covers the only instance where they can seek to vary the WACC in relation to Access Conditions arrangements.	Part 6, 6.9 Commercial Terms Part 8, 8.7 Contracting for Capacity	This clause has been replaced by section 6.9, Commercial Terms which is defined as conditions in addition to the relevant Standard Access Agreement, including: (a) An upfront contribution (b) A payment of an AFC (all or in part) (c) A varied or an additional take or pay arrangement (d) Access Charges calculated on varied WACC.	Previously, the undertaking required Aurizon Network to seek QCA approval of any varied WACC arrangements. Aurizon Network may now have the freedom to negotiate deals with an Access Seeker allowing them to recover above regulated returns. Asciano is concerned as there is less transparency under these new provisions and Aurizon Network no longer has to go through QCA approval of Access Conditions.
PART 7: AVAILABLE CAPACITY ALLOCATION AND MANAGEMENT				
Part 4, 4.6 (c) Negotiation Conditions	This provision allows Aurizon Network to refuse access rights based on three factors being: (a) Secure port capacity, and or	Part 7, 7.2 General Requirement for Allocation	This provision allows Aurizon Network to refuse available access rights if the Access Seeker does not demonstrate the following: (a) Rights to load and unload,	Asciano strongly opposes this additional wording. Asciano is concerned that this provision could hinder or prevent access

2010 AU Clause Reference	Clause Outline	2013 DAU Clause Reference	Clause Outline	Asciano Comment
	(b) Secure rail haulage, and or (c) Speed and timeliness of Access Seeker conducting negotiations.		(b) Supply chain rights, (c) Contract for rail haulage, (d) Sufficient facilities (including Rollingstock provisioning, maintenance and storage facilities), (e) Sufficient output from the mine to support full use of access rights, and (f) Rights from other providers of infrastructure (entry and exit to network).	unnecessarily. Asciano's views on this issue are further outlined in the body of this submission.
Part 7, 7.4 Committed Capacity	This clause has a similar intent to the 2013 DAU with variations of timeframes and Aurizon Network's requirement to have in place a Committed Capacity Register. Clause 7.4 (d) places obligations on Aurizon Network to notify an Access Holder that their rights are about to expire.	Part 7, 7.3 (a) (ii) Renewals	Wording now states "the person nominated by the Access Holder's Customer..."	Asciano queries whether the word 'person' be replaced with 'Railway Operator' in this clause. Clarity is required.
	Part 7, 7.3 (c) (iv) Renewals	This clause restricts an Access Seeker to only renew access rights by execution of an Access Agreement no less than 12 months prior to the expiry of the Access Rights.	This clause is too restrictive, it should be sufficiently flexible to allow Aurizon Network and the Access Holder to agree to renew within a shorter period based on certain circumstances.	
	The definition of 'Renewal Application' included a term called 'Replacement Mine'. This allows an Access Holder to renew rights from an alternative origin for the new term.	Part 7, 7.3 (e) (i) Renewals	The provision states that an agreement can only be renewed for a term based on the lesser of 10 years and the remaining life of the relevant mine.	This clause is too restrictive, it should be sufficiently flexible to allow Aurizon Network and the Access Holder to agree to renew for a shorter period based on certain circumstances (for example the shorter time frame could reflect the time frames of other key variables). In addition Asciano believes that Aurizon Network's obligation to notify an Access Holder before their access rights expire should be reinstated. This

2010 AU Clause Reference	Clause Outline	2013 DAU Clause Reference	Clause Outline	Asciano Comment
				<p>should be an obligation placed on Aurizon Network as the network provider.</p> <p>In addition Asciano believes that the Replacement Mine provisions in relation to renewals should be re-introduced. As long as equivalent rights are utilised there should be no issues from a capacity perspective.</p>
Part 7, 7.3.6 Capacity Relinquishment and Transfer	<p>This clause covers provisions related to relinquishment or transfer of access rights.</p> <p>Clause 7.3.6 (I) allows for transfers to occur, that is less than a 2 year period, with zero transfer fee.</p>	Part 7, 7.4.2 Transfers	<p>Relinquishment fee and transfer fee requirements have been removed.</p> <p>This clause introduces the term Ancillary Access Rights meaning: "Access Rights (that will use Available Capacity without the need for Expansion or Customer Specific Branch Line) that are ancillary to Transferred Access Rights to the extent required by a Transferee, in addition to the Transferred Access Rights, to provide complete Train Paths using the Transferred Access Rights for the Transferee's origin to destination.</p>	<p>Asciano believes that the only scenario where ancillary access rights may be required is for a transfer that is cross-system.</p> <p>Relinquishment of access rights by an Access Holder is no longer covered in the undertaking. Asciano believes that relinquishment fees should be addressed in the undertaking to ensure all access holders are treated equally.</p> <p>The transfer fee calculations have been removed from the undertaking. Asciano believes that transfer fees should be addressed in the undertaking to ensure all access holders are treated equally.</p> <p>The provision that allows a transfer to occur, less than two years, with zero transfer fee has been removed; this clause should be reinstated.</p>
Part 7, 7.3.3 and 7.3.4 Requests for Clause 7.3.4 outlines Aurizon	Similar intent in 7.3.3.	Part 7, 7.5.2 Capacity Allocation for Mutually	The queuing provisions have been removed. Aurizon Network can now choose which Access Seeker they	The removal of the queuing provisions is problematic as Aurizon Network now has more freedom as to who they

2010 AU Clause Reference	Clause Outline	2013 DAU Clause Reference	Clause Outline	Asciano Comment
Mutually Exclusive Access Rights And Formation of Queue	<p>Network's requirement to form a queue for mutually exclusive access rights. Access Applications received by Aurizon Network at the earliest time is treated as first in the queue.</p> <p>7.3.4 (d) allows Aurizon Network to allocate access rights to an Access Seeker who is not first in the queue based on commercial performance being:</p> <ul style="list-style-type: none"> (a) NPV Value that is 2% or more than first in queue. (b) An Access Seeker willing to execute for 10 year or more term. 	<p>Exclusive Access Applications</p> <p>Part 7, 7.5.2 (f) Capacity Allocation for Mutually Exclusive Access Applications</p>	<p>enter access agreements with. They can reject Access Seekers that cannot demonstrate matters such as supply chain rights, haulage agreement, above rail facilities and rolling stock (4.11 (c)).</p> <p>Where Aurizon Network has the opinion it is not practical to determine which Access Seeker they negotiate with for available Access Rights, Aurizon Network can elect to prioritise the execution of Access Agreements with those Access Seekers based on the later of the Acknowledgement Notice of the Access Applications or the date 3 years prior to the date when Access Rights are sought in the Access Application.</p> <p>For those Access Seekers remaining, they will be suspended and clause 4.4(c) applies.</p>	<p>negotiate access rights with (i.e. the capacity allocation system is now more subjective). This may allow Aurizon Network to make decisions more favourable to their Related Operator.</p> <p>It will now also be more difficult to demonstrate that Aurizon Network has treated Access Seekers in a discriminatory manner.</p> <p>Asciano's views on this issue are further outlined in the body of this submission</p>
Part 7, 7.1 (a) Network Management Principles	This clause states that Aurizon Network will perform scheduling, train control and provide capacity related information in accordance with the Network Management Principles. The clause does not specifically cover dispute processes in relation to the Network Management Principles (presumably normal dispute resolution processes in Part 10 would apply).	Part 7, 7.6.1 (b) Compliance with Network Management Principles	This clause states that any dispute between an Access Holder and Aurizon Network in relation to compliance with the Network Management Principles will be dealt with in accordance with the dispute process set out in the relevant Access Agreement.	As the Network Management Principles are set out in Schedule H of the undertaking and to ensure all Access Holders are treated consistently and fairly, the dispute process must be set out in the undertaking not in the access agreement.

2010 AU Clause Reference	Clause Outline	2013 DAU Clause Reference	Clause Outline	Asciano Comment
Part 7, 7.1 (b) to (e) Network Management Principles	States that Aurizon Network must submit Draft System Rules.	Part 7, 7.6.3 Making the Initial System Rules for a Coal System	Outlines the process for the approval of System Rules. 7.6.3 (a) states that Aurizon Network must consult with Access Holders, Access Seekers and Railway Operators in the process.	The 2013 DAU should specify that a formal QCA consultation and approval process be undertaken in relation to the establishment of system rules. Consideration should be given to include System Rules as part of the undertaking or alternatively refining the Network Management Principles to incorporate more specific scheduling principles.
	Provision did not exist.	Part 7, 7.6.4 Amending the System Rules	Outlines the process for System Rule Amendments (replacements and removal).	There is no requirement for QCA approval in relation to amendments of the System Rules. Asciano is concerned with this position as Aurizon Network can simply replace or remove System Rules after consultation. Asciano believes that any amendments to System Rules must be subject to a formal QCA approval process.
Part 7, 7.3.5 Capacity Resumption	This clause addresses Aurizon Network's ability to resume access rights if over a consecutive four quarters period an Access Holder does not at least utilise 85% of their Train service entitlements.	Part 7 Available Capacity Management and Allocation	This section has been removed.	Asciano believes that it is important to have access rights resumptions outlined in the undertaking to ensure consistency of how rights are resumed by Aurizon Network.
Part 7, 7.3.7 Customer Initiated Capacity Transfers	This clause addresses how transfers are to be treated if it was initiated by a Customer. 7.3.7 (ii) specifies states that under this scenario the terms of the Old Access Agreement relating to	Part 7 Available Capacity Management and Allocation	This section has been removed.	Asciano believes that Take or Pay and Relinquishment Fees provisions should remain the same when those access rights transferred to another Access Holder for the remaining term of the Access Agreement.

2010 AU Clause Reference	Clause Outline	2013 DAU Clause Reference	Clause Outline	Asciano Comment
	Take or Pay and Relinquishment Fees will apply for those access rights in the new Access Agreement.			
PART 8: NETWORK DEVELOPMENT AND EXPANSIONS				
Part 7, 7.5.4 (c) Incremental Investments	Where Aurizon Network refuses to undertake funding an Extension on the basis it is Significant Investment: (a) it must provide the QCA with a statement stating reason, or (b) Where the refusal is a decision by their UHC, they must get the UHC to provide a statement stating reason.	Part 8 Network Development and Expansions	These provisions have been removed.	Asciano believes that these provisions should be reinstated as Aurizon Network investments are overseen by the same Board that oversee their Related Operator. This raises concerns regarding the potential for discriminatory behaviour.
	Provision did not exist.	Part 8, 8.2.2 Interdependent and Sequential Nature of Expansions	This clause outlines the principle that multiple expansions incrementally build on each other in sequence to increase capacity. The capacity expected to be created by an Expansion later in the sequence cannot be unconditionally allocated until the outcome of the Expansions earlier in the sequence is known.	The principle outlined in this clause may be problematic for a customer who is developing a mine to line up with the Expansion later in the sequence. They could commit to fund an Expansion for a certain level of capacity only to have their access rights reduced in the future. Aurizon Network should bear the risk that if this situation occurs they fund the difference to ensure that the capacity that was intended to be created is actually created. Aurizon Network bear this risk on the basis that the capital project was designed and built by Aurizon Network, so they are in the best position to manage the risk.

2010 AU Clause Reference	Clause Outline	2013 DAU Clause Reference	Clause Outline	Asciano Comment
Part 7, 7.5.2 (a) Extension Process	This clause has a similar intent to the 2013 DAU clause. Clause 7.5.2 (v) and (vi) did apply a rule for Access Applications received that will utilise 70% of Planned Capacity.	Part 8, 8.2.3 Determination of Sufficient Demand for an Expansion	Under this clause Aurizon Network will make its determination of an Expansion based on information such as Access Applications, its own market intelligence, expressions of interest processes, liaison and consultation with participants in coal supply chains and Supply Chain Groups and expert advice.	Asciano seeks clarity on the definition of "Supply Chain Group", for example does this group include Railway Operators. This provision should also include an ability for any party to submit Expansion requirements, where Aurizon Network would be obligated to carry out studies and planning and if required construct and / or fund the expansion.
Part 7, 7.5 Network Investment	Not specifically covered. Aurizon Network's recovery of cost is partially covered in 7.5.5 (m).	Part 8.3 to 8.5 Principles for Concept Studies Principles for Pre-feasibility Studies Principles for Feasibility Studies	Under this clause concept studies will be undertaken and funded by Aurizon Network where they consider it appropriate to do so. Clauses 8.4 and 8.5 cover the topic of pre-feasibility and feasibility studies (whether funded by Aurizon Network or other funders). Clause 8.5 (j) obligates Aurizon Network to issue an IAP within 20 business days once the Studies Funding Agreement for a feasibility study becomes unconditional to those Access Seekers funding the study and grant those Access Seekers their portion of Provisional Capacity Allocation. Clause 8.5 (k) allows Aurizon Network to withdraw Provisional Capacity Allocation from an Access Seeker if: (a) Aurizon Network believes they will not fully utilise the access rights	This provision allows Aurizon Network to take whatever action it considers appropriate to reallocate withdrawn Provisional Capacity Allocation however they choose. This is concerning if the reallocation is used to favour some access seekers or holders over others. Any reallocation should be transparent and based on an objective set of criteria. (For example the reallocation could be offered to the next Access Seeker whose Access Application has been suspended). This provision also allows Aurizon Network to cease the expansion or even reprioritise the sequence of Expansions. This creates uncertainty for the Funders.

2010 AU Clause Reference	Clause Outline	2013 DAU Clause Reference	Clause Outline	Asciano Comment
			or (b) the Access Seeker does not execute an agreement in relation to funding/constructing the Expansion within 6 months, or a longer agreed period, after the completion of the feasibility study	
Part 7, 7.5.5 User Funded Infrastructure	<p>This clause has a similar intent to the 2013 DAU clause but with the following exceptions.</p> <p>7.5.5 (d) states that operating and maintenance costs will be included in the Reference Tariffs and are not required to be funded by Access Seekers.</p> <p>7.5.5 (f) states that Aurizon Network is required to fund the unfunded portion of the costs of a Significant Investment (capped at 30% of total and not more than \$300m).</p> <p>7.5.5 (l) where the Extension creates excess Available Capacity the costs of creating the Available Capacity may not be incorporated into the RAB initially and instead may be carried forward for inclusion in the RAB at a later date (treated as Excluded Capital Expenditure in 3.2.2 of Schedule A)</p>	Part 8, 8.6 User Funded Expansions	<p>This clause covers the process where a user funds the cost of Expansions to create additional capacity.</p>	<p>Asciano believes that the definition of “Funding User” needs to be clarified as it only includes Access Holders, Access Seekers and Customers, where none of these terms seem to include a Railway Operator. The term “Customer” also seems to be contrary to the terms “Access Holder” and “Access Seeker”</p> <p>Clause 8.6.5 states that any capacity or capacity shortfalls as a result of User Funded Expansions will be dealt with in the relevant User Funding Agreement. This issue needs to be addressed in the undertaking rather than the agreements as the treatment of User Funded Expansions could impact on the existing capacity of the system and other users.</p>
Part 11, 11.3 Contracting for	This clause outlines how Access Rights are reduced when there is	Part 8, 8.7.2 Capacity Shortfalls	Clause 8.7.2 (c) states that the Conditional Access Rights of each	Asciano has a concern with Conditional Access Rights being subject to

2010 AU Clause Reference	Clause Outline	2013 DAU Clause Reference	Clause Outline	Asciano Comment
Capacity in Coal Supply Chains	a Change in Existing Capacity. Clause 11.3 (v) covers how capacity is reduced for each Conditional Access Holder.		Conditional Access Holder are reduced in accordance with its Access Agreement.	negotiation in access agreements. Given this issue relates to system capacity, the method of how Access Rights are reduced for each Access Holder should be specified in the undertaking to ensure consistent and non-discriminatory treatment.
Part 11, 11.1.3 Supply Chain Operating Assumptions	This clause has a similar intent to the 2013 DAU clause, though 11.1.3 (c) obligates Aurizon Network to review assumptions at least once a year.	Part 8, 8.8.2 System Operating Assumptions	Similar intent.	Asciano believes that "System Operating Assumptions" needs to be defined in the 2013 DAU. Given that the System Operating Assumptions relate to the supply chain, supply chain users should have a role in the process of determining System Operating Assumptions.
Part 11, 11.1.4 Regular Review of Capacity	This clause has a similar intent to the 2013 DAU clause.	Part 8, 8.8.3 (b) Capacity Review	This clause states that Aurizon Network will undertake a review of capacity if the System Operating Assumptions are varied in a way that materially decreases the Existing Capacity.	As part of the regular review of capacity there should be a process conducted to periodically audit Aurizon Network's Master Train Plan to ensure Train Service Entitlements are allocated consistently and fairly across users by Aurizon Network.
Part 11, 11.2 Coal Rail Infrastructure Master Planning	This clause has a similar intent to the 2013 DAU clause with the following exceptions. Clause 11.2.1 (b) states that it must contain a horizon of up to three years or longer. 11.2.1 (c) required Aurizon Network to establish forum including certain participants, where this forum will act as a	Part 8, 8.9 Network Development Plan	This provision obligates Aurizon Network to develop a Network Development Plan for the medium to long term.	The period of medium to long term needs to be clarified. The undertaking no longer obligates Aurizon Network to include certain elements in the Network Development Plan; Asciano believes that the undertaking should continue to outline what elements are required in the Network Development Plan. In addition Asciano believes that Aurizon Network should consult with relevant parties in

2010 AU Clause Reference	Clause Outline	2013 DAU Clause Reference	Clause Outline	Asciano Comment
	<p>consultative body for the purposes of Aurizon Network's master plan (11.2.1 (d)).</p> <p>11.2.1 (e) also requires Aurizon Network to involve the forum heavily on the development of the master plan.</p> <p>Section 11.2.2 (Content of Master Plan) outlines what must be contained in the master plan, including its capacity analysis, impact on capacity during construction and measures for limiting this impact.</p>			developing the plan.
Schedule A, 3.2.1 (a) Identification of Customer Groups	Under this clause a Customer Group is defined as all Customers and Access Holders without Customers who have Reference Tonnes.	Part 8, 8.10.3 (a) Identification of Interested Parties	States that the persons eligible to participate in a vote for capital expenditure projects are Interested Participants.	<p>This term "Interested Participants" does not include Railway Operators. There is merit in including Railway Operators as they are likely to be impacted by any capital investment in the network.</p> <p>It is also not clear whether existing Access Holders, where their access rights will be impacted by the capital expenditure, will have voting rights. This should be clarified.</p>
Schedule A, 3.2.1 (a) (i) Identification of Customer Groups	This clause has a similar intent to the 2013 DAU clause but a Customer's vote is based on Reference Tonnes.	Part 8, 8.10.4 Voting Rights	<p>Clause 8.10.4 (b) outlines that each Interested Participant's votes will be weighted by multiplying its vote by the number of Affected Train Paths for that Interested Participants.</p> <p>Vote Proposals will relate to scope or standard of capital works, expenditure to be included in RAB</p>	<p>The coal supply chain is designed to move tonnes rather than create train paths. Asciano believes that tonnes are a better basis of voting rights.</p> <p>Clause 8.10.4 (c) limits voting to access rights that will be in force five years after the acceptance is sought. This could be problematic to those with</p>

2010 AU Clause Reference	Clause Outline	2013 DAU Clause Reference	Clause Outline	Asciano Comment
			and cost allocation principles for Reference Tariff variations.	shorter term access rights, as they will not be eligible to vote but their access rights and access charges may be affected.
Schedule A, 3.2.2 Customer Group Voting Process	Clause 3.2.2 (e) has similar intent to the 2013 DAU clause where Aurizon Network can form a view to reject a 'no' vote in the voting process but it requires Aurizon Network to seek QCA approval to disregard any votes on the basis that a specific object is not bona fide.	Part 8, 8.10.5 Acceptance Process	<p>Clause 8.10.5 (d) states that where an Interested Participant votes 'no', there is requirement for them to fully justify their reason and provide evidence if they believe their access rights will be impacted.</p> <p>Clause 8.10.5 (e) outlines that where a vote has not been received from an Interested Participant, Aurizon Network would deem their votes as accepted.</p> <p>Clause 8.10.5 (f) also allows Aurizon Network to reject a 'no' vote if they believe the reasons that were provided are not reasonable.</p> <p>Clause 8.10.5 (g) sets a 60% of aggregated Affected Train Paths as a pass for capital projects. This 60% excludes the no votes that Aurizon Network rejected as per 8.10.5 (f).</p>	<p>Asciano questions the requirement for Interested Participants to justify their rejection.</p> <p>The current voting process appears subjective given that Aurizon Network can exclude a 'no' vote from the process if they believe the justification from the Interested Participant is inadequate.</p> <p>Asciano believes that the provision where any rejection of votes by Aurizon Network should be approved by the QCA should be reinstated.</p>

PART 9: CONNECTING PRIVATE INFRASTRUCTURE				
Part 8, 8.3 Connecting Infrastructure	This clause has a similar intent to the 2013 DAU clause although clause 8.3 (b) obligates Aurizon Network to do all things reasonably necessary, and in a timely manner, to ensure that the	Part 9 Connecting Private Infrastructure	Similar intent.	Aurizon Network's obligation to carry out negotiation, design and construction in a timely manner and their obligation to provide train control for entry and exit needs to be stated in the 2013 DAU.

2010 AU Clause Reference	Clause Outline	2013 DAU Clause Reference	Clause Outline	Asciano Comment
	<p>Connecting Infrastructure is physically connected to the Rail Infrastructure and to facilitate the movement of trains.</p> <p>8.3 (c) also obligates Aurizon Network to provide train control and planning services for the Connecting Infrastructure in a manner consistent with the Aurizon Network operated network.</p>			
Part 8.1 to 8.2 Interface Considerations	<p>The following provisions were included in Part 8:</p> <p>Clause 8.1 – Interface Risk Management Process outlines Aurizon Network’s obligation to ensure that the interface risk is appropriately managed.</p> <p>Clause 8.1.5 obligates Aurizon Network to provide training to Access Seekers and Holders if it is part of a control in the risk assessment.</p> <p>Clause 8.2 – Environmental Risk Management Process outlines, the requirement for the Access Seeker or Holder to commission a qualified person to prepare an environmental risk review (an EIRMR).</p>	Part 9 Connecting Private Infrastructure	<p>These sections have been removed from the undertaking.</p>	<p>Asciano believes that there is merit in having these elements prescribed in the undertaking to ensure consistency between different access seekers and access holders, ensure that minimum standards are set and ensure the safe operation of the network.</p>
PART 10: REPORTING				
Part 9, 9.2	Similar intent.	Part 10.1	This clause requires the submission	Asciano believes that the Costing

2010 AU Clause Reference	Clause Outline	2013 DAU Clause Reference	Clause Outline	Asciano Comment
Annual Reports		Annual Reports	of financial statements within 6 months of the end of the financial year in accordance with the costing manual.	Manual must be reviewed in its entirety given the significant changes in Aurizon's corporate structure.
Part 9, 9.2.3 Maintenance cost report	<p>Under this section reportable line items to the QCA included.</p> <ul style="list-style-type: none"> • mechanised maintenance • general track maintenance • structures and facilities maintenance • trackside system maintenance • electrical overhead maintenance • telecommunication maintenance <p>Aurizon Network has an obligation to report actual maintenance against forecast maintenance.</p>	Part 10, 10.1.3 Annual Maintenance Cost Report	<p>Under 10.1.3 (b) (B), Aurizon Network is obligated to report actual maintenance costs publicly that include:</p> <ul style="list-style-type: none"> • ballast undercutting • rail grinding (for mainline) • rail grinding (for turnouts) • resurfacing (for mainline) • ultrasonic track testing <p>Clause 10.1.4 (c) (ii) outlines the report that goes to the QCA.</p> <p>Clause 10.1.4 (c) states that the Goonyella to Abbot Point System will not be reported on an independent basis.</p>	<p>Asciano believes that the items listed under the 2010 AU for the QCA report should be included in the 2013 DAU public report. Aurizon Network should also present the report in a format that shows actual maintenance against forecast maintenance dollars.</p> <p>Mechanised maintenance has been removed from the list of items reportable to the QCA under 10.1.4 (c) (ii). This should be re-included.</p> <p>The costs associated with GAPE traffic needs to be reported separately on the basis that GAPE users are subject to separate Reference Tariffs. This ensures there are no cross-subsidies across systems.</p>
Part 9, 9.1 Quarterly Network Performance e Reports Part 9, 9.2.5 Operational Data Report to the QCA	This clause has a similar intent to the 2013 DAU clause although quarterly performance reports were published.	Part 10, 10.1.5 Annual Operational Data Report	<p>Clause 10.1.5 (a) now allows Aurizon Network to provide their Ultimate Holding Company the report, to so that they can provide to the ASX, prior to it being published.</p> <p>Parameters that used to be reported on a quarterly basis are only required to be reported annually.</p> <p>Clause 10.1.5 (c) states that the Goonyella to Abbot Point System will not be reported on an</p>	<p>The quarterly reports and annual operational data report has been merged into one annual report. Asciano's view, as outlined in this submission, is that operational reports should be monthly and should contain additional data 9as outlined in this submission).</p> <p>The performance of GAPE traffic needs to be reported separately on the basis that GAPE users are subject to separate Reference Tariffs. By</p>

2010 AU Clause Reference	Clause Outline	2013 DAU Clause Reference	Clause Outline	Asciano Comment
			independent basis.	providing GAPE performance separately this allows users to make a better informed assessment of the performance received compared to the access charges paid.
Part 9, 9.3 Capital Expenditure and Regulatory Asset Base Reports	This clause requires Aurizon Network to provide the QCA with reports regarding their capital expenditure, RAB roll-forward. These reports are public.	Part 10, 10.1.6 Annual Regulatory Asset Base Roll-Forward Report	Report requirements are now contained in Schedule E.	These reports should continue to be made public.
Part 9, 9.5 Information Requested by the QCA	This clause has a similar intent to the 2013 DAU clause but the QCA can request information for the purposes of the QCA performing its function in accordance with the undertaking or an Access Agreement (including conducting audits).	Part 10, 10.3 Information Requested by the QCA	Clause 10.3.2 (a) has removed the QCA's ability to request information from Aurizon Network for the purposes of conducting an audit.	The ability of the QCA to request information from Aurizon Network for the purposes of conducting an audit must be re-included. The QCA should be given more powers to request audits on any matters relating to the undertaking and Access Agreements.
Part 10, 10.3 Audit Process	This clause has a similar intent to the 2013 DAU clause with the one exception where 'clause 2.2, Non-Discriminatory Treatment was included in this audit process.	Part 10, 10.8 Audit Process	This clause outlines how an audit is conducted annually in relation to <ul style="list-style-type: none"> • 3.22 Complaint Handling • 10.6 Reporting; • 10.7 Compliance Audits Requested by the QCA; • 6.2 Price Differentiation; and • Schedule E Regulatory Asset Base. 	This clause must reinstate Non-Discriminatory Treatment in the audit process.
PART 11: DISPUTE RESOLUTION AND DECISION MAKING				
Part 10, 10.1.1 (b) Disputes	This clause has a similar intent to the 2013 DAU clause.	Part 11, 11.1.1 (b) Disputes	This provision states that, unless otherwise agreed in writing, any disputes in connection with an Access Agreement or TOA shall be	Asciano's experience of disputes confined to the dispute process in the Access Agreements is that these disputes are more complex and time

2010 AU Clause Reference	Clause Outline	2013 DAU Clause Reference	Clause Outline	Asciano Comment
			dealt with under the provision of the relevant Access Agreement or TOA.	<p>consuming than necessary.</p> <p>The dispute process in the Undertaking should take precedence over any dispute process in the access agreement.</p> <p>This clause should also include an option where the QCA can be chosen by the parties to arbitrate before an expert determination.</p>
	Provisions did not exist as EUAA and TOAs were not in place.	Part 11, 11.1.1 (c) Disputes	This clause introduced a dispute process where an EUAA and TOA are involved.	<p>Clause 11.1.1 (c) (iii) requires more clarity surrounding the involvement of a Train Operator in an End User dispute (and vice versa).</p> <p>An additional clause to state that written consent must be provided by the party that submits the Dispute Notice prior to any other parties being notified should also be included in these provisions.</p>
	Provisions did not exist.	Part 11, 11.1.3 Mediation	These new provisions to allow a dispute to be referred to the Australian Commercial Dispute Centre (ACDC) if after 10 business days a dispute is not resolved after the receipt by each parties chief executive (or their nominee).	<p>Timeframes need to be specified for an ACDC to resolution.</p> <p>Asciano also believes that allowing for either party to refer the dispute to the QCA during this stage has merit.</p>
Part 10, 10.1.3 Expert Determination	Provisions mirror the 2013 DAU.	Part 11, 11.1.4 Expert Determination	Same as 2010 AU provisions.	Asciano believes that timeframes need to be outlined during the expert determination process).
Part 10, 10.1.4 Determination by	This clause has a similar intent to the 2013 DAU clause apart from	Part 11, 11.1.5 Determination by	These provisions are similar apart from 10.1.4 (f) and 10.1.4 (h)	Asciano believes that this section should allow the QCA more

2010 AU Clause Reference	Clause Outline	2013 DAU Clause Reference	Clause Outline	Asciano Comment
the QCA	the clauses 10.1.4 (f) and clause 10.1.4 (h).	the QCA	previously in the 2010 AU.	determination powers.
PART 12: DEFINITIONS AND INTERPRETATION				
“Access Charge”	Defined as the price paid by an Access Holder for Access under an Access Agreement.	“Access Charge”	Now includes take or pay charges and excludes any amounts paid to Aurizon Network in accordance with Commercial Terms, studies funding agreement, user funding agreement or rail connection agreement.	<p>Clarity is sort in respect of the exclusions to this definition to ensure there is no double recovery of revenue by Aurizon Network.</p> <p>For example, Under 9.1 (a) (vii), it states that “the Connecting Infrastructure is owned by Aurizon Network.....” 9.1 (b) further implies that Connecting Infrastructure costs can be rolled in to the cost build up of Reference Tariffs where it states that “to the extent that Aurizon Network’s costs of operating, maintaining and renewing the Connecting Infrastructure are included in the cost build up for Reference Tariffs or are otherwise included in Access Charges for Train Services ...”. The definition of “Access Charges” may now contradict this.</p>
“Access Conditions”	Defined as conditions additional to those in the relevant Standard Access Agreement. Restricted to mitigate Aurizon Network’s exposure to financial risks associated with providing access to an Access Seeker.	“Commercial Terms”	<p>Includes a varied or additional take or pay arrangement.</p> <p>The term no longer restricted to simply mitigate Aurizon Network’s financial risk associated with providing access to Access Seekers.</p>	<p>Asciano has a concern that Aurizon Network now has an ability to vary take or pay arrangements.</p> <p>This may not align with the provision of access in a non-discriminatory manner.</p>
“Access Holder” and “Access Seeker”	Access Holder is a person that holds Access Rights and Access Seeker is a person seeking new or additional Access Rights.	“Access Holder” and “Access Seeker”	Definition of Access Holder and Access Seeker now excludes Train Operators.	Asciano believes that a train operator must be able to seek access by submission of an access application.

2010 AU Clause Reference	Clause Outline	2013 DAU Clause Reference	Clause Outline	Asciano Comment
				<p>Clause 3.2 (a) (i) states “Aurizon Network will not engage in conduct for the purpose of preventing or hindering an Access Seeker’s or Access Holder’s Access.” Though as the definition of “Access Holder” and “Access Seeker” now exclude Train Operators this implies that Aurizon Network may have the ability to hinder access for Train Operators.</p> <p>This wording must be assessed to ensure all people seeking or holding access rights are treated equally and in a non discriminatory manner.</p>
“QR Network Cause”	Defined as Aurizon Network possessions, Force Majeure events and anything that was rail infrastructure related.	“Aurizon Network Cause”	<p>The definition has changed significantly to specifically exclude:</p> <ul style="list-style-type: none"> • anything attributable to an Access Holder, Railway Operator or their Customers. • Passenger Priority Obligations. • unavailability to loading and unloading facilities. • failure of a train to load/unload within the times specified in access agreement. • cancellation/unavailability of train service entering and existing private infrastructure. 	<p>Asciano believes that the definition should be clarified as to how issues which have multiple attributions are treated.</p> <p>This definition will have implications for an Access Holder’s take or pay liability if the definition is not clarified.</p> <p>-</p>
“Below Rail Transit Time”	This definition included time taken to cross other trains.	“Below Rail Transit Time”	This definition will be the meaning given in the Standard Access Agreement.	Asciano believes that the definition needs to be specified in the undertaking and applied consistently

2010 AU Clause Reference	Clause Outline	2013 DAU Clause Reference	Clause Outline	Asciano Comment
				across all Access Holders.
"Below Rail Transit Time Percentage"	BRTT divided by Nominated SRT as outlined for Train Service Entitlements.	"Below Rail Transit Time Percentage"	For Train Service Entitlements: Actual BRTT divided by the Maximum SRT outlined in the Access Agreement for that given year.	This is now defined as an annual calculation. Asciano believes that the BRTT calculation should not be restricted by any period of time.
N/a	Was not defined.	"Capacity Multiplier"	New definition. <ul style="list-style-type: none"> • prior to 1 July 2015 = 1, • after 1 July 2015 = 1.59 for Constrained section of Blackwater and 1.63 for the Constrained Section of Goonyella. 	As the Capacity Multiplier is applied to of the AT ₂ rate 9i.e. not levied on distance) it is unclear how it is applied to 'constrained sections' of the network. This would only be clear if it is applied on a tariff component levied on distance. Asciano's views on the capacity multiplier are outlined in this submission including section 6.4 and Attachment 4.
N/a	Was not defined.	"Constrained Section"	New definition. <ul style="list-style-type: none"> • Blackwater constrained section – Edungalba to Tunnel • Goonyella constrained section – Broadlea and Coppabella 	Asciano believes that some analysis should be undertaken to prove these are constrained sections of the network.
SCHEDULE A: PRELIMINARY, ADDITIONAL AND CAPACITY INFORMATION				
Schedule D, Part A Preliminary Information		Schedule A, Section 1 Preliminary Information	This section now notes that the Goonyella to Abbot Point System will not be reported separately. It also states that the preliminary information will be made available on their website. As per outlined in	Asciano believes that the GAPE system should be reported on separately on the basis that users are subject to a separate set of tariffs. Such reporting will ensure that there are no cross-subsidies between systems.

2010 AU Clause Reference	Clause Outline	2013 DAU Clause Reference	Clause Outline	Asciano Comment
			Part 4, 4.1 (b).	If information is only available on the Aurizon Network website then there needs to be obligations on Aurizon Network to ensure they keep information accurate and up to date.
SCHEDULE B: ACCESS APPLICATION INFORMATION REQUIREMENTS				
Schedule C Summary of Information Requirements as Part of Access Application		Schedule B Access Application Information Requirements	<p>Information required is now more prescriptive.</p> <p>Under Section 4.1 (Train Service Description) Aurizon network now require an Access Seeker to provide:</p> <ul style="list-style-type: none"> (i) Maximum dwell times, time at loading/unloading facilities and time at depot. (ii) Non standard operating modes or methods. (iii) Proposed stowage requirements. <p>Under Section 4.3 (Rollingstock Details) they have included 'locomotive traction type'.</p>	<p>Asciano believes that many of the additional information requirements sought are premature for the access application stage of the process.</p> <p>Similar to the issues raised above in relation to clause 4.11 (c), there should be no requirement for an Access Seeker to prove they have supply chain rights, haulage agreement arrangements, facilities and that their mine will support the Access Rights sought at this stage.</p> <p>Section 3 Form of Access Agreement also should be removed as the form of Access Agreement will be chosen during the negotiation stage of the Access Agreement, not when an Access Application is submitted.</p> <p>It would be problematic for an Access Seeker to know with certainty what is considered as non-standard, what stowage requirements are needed and the choice of traction so early in the stage of a project.</p> <p>The additional information sought gives Aurizon Network more ability to reject access applications (as per clause</p>

2010 AU Clause Reference	Clause Outline	2013 DAU Clause Reference	Clause Outline	Asciano Comment
				4.11) and this is a major concern as this may hinder or prevent the provision of access.
SCHEDULE C: OPERATING PLAN REQUIREMENTS				
Schedule I Operating Plan		Schedule C Operating Plan Requirements	Aurizon Network has included the following matters as part of the Operating Plan: <ul style="list-style-type: none"> • description of activities that may negatively impact mainline running. • tonnage profile. • anticipated project life. • stowage locations. • Train Service Entitlement levels. • maximum number of one way train services per year (contract). • total number of consists • minimum number of consists available to ensure 100% utilisation of Train Service Entitlement. 	Asciano believes that anything in relation to Train Service Entitlements should not form part of the Operating Plan as these are contained in Access Agreements. An Operating Plan should simply address operational matters The requirement to specifically describe activities that may negatively impact main line running is not required. If Aurizon Network provides Access Rights on the basis of the operating mode under an Operating Plan there should not be any impact.
SCHEDULE D: ULTIMATE HOLDING COMPANY DEED				
Part 2, 2.5.1 Ultimate Holding Company Support Deed	Refer to above Part 2, 2.5.1, Ultimate Holding Company Support Deed.	Schedule D Ultimate Holding Company Deed	Aurizon Holdings to Execute Deed in Support of this Part 3.	Refer to comments above under Part 3, 3.3. Asciano believes that the deed in its current form in the 2013 DAU adds little value as its provisions are too broad.
SCHEDULE E: REGULATORY ASSET BASE				
Schedule A, Part 1	Clause 1.1 stated that Aurizon Network will maintain a RAB.	Schedule E, Part 1.1	This clause outlines how RAB will be roll forward year on year.	There needs to be a requirement for Aurizon Network to maintain a RAB

2010 AU Clause Reference	Clause Outline	2013 DAU Clause Reference	Clause Outline	Asciano Comment
Maintenance of RAB		Roll Forward Principles		register. This RAB register needs to contain opening values, depreciation, escalation, disposals, new capital from effective use date, closing value. The QCA should also review the RAB register to ensure accuracy and prudence.
Schedule A, 1.4 (b) Maintenance of RAB	This provision allowed the QCA to reduce the value of assets based on: <ol style="list-style-type: none">1. Where demand has deteriorated to such an extent that regulated prices on an unoptimised asset would result in a further decline.2. It becomes clear that there is a possibility of actual bypass.3. Rail infrastructure has deteriorated by more than would have been the case had good maintenance practices had bee pursued.	Schedule E, Part 1.2 (c) Adjusting the Value of Assets in the RAB	This provision now states that the QCA will not require the value of the assets in the RAB to be reduced unless the QCA made a decision for original acceptance in the RAB based on false or misleading information from Aurizon Network.	The 2010 AU provisions need to be reinstated to ensure users are not paying for assets which are not used.
Schedule A, Part 1 Maintenance of RAB	Provision did not exist.	Schedule E, Part 1.2 (e) Adjusting the Value of Assets in the RAB	This clause states that "if the QCA has not notified Aurizon Network of whether it accepts any asset value increase.....within 40 Business Days.....then the QCA is taken to have made a determination to accept Aurizon Network's request."	Asciano believes that the QCA should not be bound in this manner.

2010 AU Clause Reference	Clause Outline	2013 DAU Clause Reference	Clause Outline	Asciano Comment
Schedule A, 2.2 Acceptance of Capital Expenditure into the RAB by the QCA	Stated that the QCA will accept all prudent capital expenditure in the RAB based on scope, standard of works and cost.	Schedule E, Part 2.1 Overview – Acceptance of Capital Expenditure into the RAB by the QCA	<p>Clause 2.1 (c) allows Aurizon Network freedom to chose whether they seek approval from QCA or by vote from interested Participants.</p> <p>Clause 2.1 (d) clearly states that the following may only be decided by the QCA:</p> <ul style="list-style-type: none"> • prudency of cost. • acceptance of Asset Management Plan. 	<p>Aurizon Network has the freedom of deciding the method of capital acceptance.</p> <p>Given that the prudency of cost and the Asset Management Plan impact on users some consideration should be given as to whether users can vote on these issues.</p>
Schedule A, 3.1.1(c) Regulatory Pre-Approval of Capital Expenditure	This clause allows for input from Customer Groups.	Schedule E, Part 2.3 (a) Assessing Prudency of Capital Expenditure	This clause states that in assessing whether capital expenditure is prudent the QCA must use only information available to Aurizon Network at the time of making the investment decision and if necessary advice from independent advisors.	<p>The QCA should also be allowed to make their assessment based on submissions from Interested Participants in the voting process.</p> <p>The QCA should not be held to only making a decision based on the information available to Aurizon Network at a certain time.</p>
Schedule A Maintenance of RAB	Provisions did not exist.	Schedule E, Part 2.4 Asset Management Plan	This new section states that Aurizon Network 'may' prepare a proposed Asset Management Plan describing the standards that Aurizon Network will apply in determining whether to incur capital expenditure by replacing assets within the RAB rather than maintaining those assets and submit it to the QCA for acceptance.	Aurizon Network should be obligated to submit this to the QCA for their approval and users should be able to submit comments for the QCA's consideration prior to their approval. This is particularly the case if Schedule E, 3.2 (a) (i) allows for its automatic inclusion in the RAB.
Schedule A, Part	This clause outlines Aurizon	Schedule E	Provisions have been removed.	This clause should be reinstated to

2010 AU Clause Reference	Clause Outline	2013 DAU Clause Reference	Clause Outline	Asciano Comment
5 Condition Based Assessment	<p>Network's obligation to procure, a condition based assessment of the Rail Infrastructure in central Queensland coal region at the start of the undertaking and again just prior to the end of the undertaking.</p> <p>5(b) allows the QCA to reduce the RAB to reflect the level of deterioration presented in the assessment results if it is proven that good practices were not carried out by Aurizon Network.</p>	Regulatory Asset Base		<p>ensure</p> <ul style="list-style-type: none"> • Aurizon Network remains accountable for the management of assets; • the condition of the assets is independently assessed and made known to operators and users; and • the RAB is a true reflection of the assets value based on Aurizon Network's management of those assets.
SCHEDULE F: REFERENCE TARIFFS				
Schedule F, Part A, 1.4 Conditions of Access	Under this clause the Train Service Entitlement was simply referred to as Train Service Entitlement specified as described in Part B or Part C.	Schedule F, 1.3 (e) General Characteristics of Reference Train Services	<p>This clause now has entitlements based on:</p> <ol style="list-style-type: none"> 1. Trains being made available 24 hours per day and 360 day of the year, and 2. Operate evenly throughout each monthly and weekly period consistent with the monthly distribution published by Aurizon Network by 30 May prior to the relevant year. 	<p>This seems to be inconsistent with past methodologies adopted by Aurizon Network and may have implications to Access Holders that currently hold access rights from previously undertakings.</p> <p>The 360 day assumption implies Aurizon Network will provide 360 day availability over a course of a year. In practice possession periods for maintenance shutdowns etc will mean that availability is substantially less than 360 days. Consideration should be given to reducing the 360 day assumption to a lower number.</p>
Schedule F, Part B, 4.2 Cross System Train Services	<p>This clause has a similar intent to the 2013 DAU clause but:</p> <ul style="list-style-type: none"> • AT3: total gtrks x the higher AT3 rate. • AT4: total nt x the higher 	Schedule F, 2.3 Calculation for a Cross System Train Services	<p>Under this clause there are some differences to the applicability of the cross system tariff components, namely:</p> <ul style="list-style-type: none"> • AT3: will be the AT3 input for 	<p>Asciano believes the following issues should be addressed:</p> <ul style="list-style-type: none"> • the cross system charges should address instances where a service crosses 3 or more

2010 AU Clause Reference	Clause Outline	2013 DAU Clause Reference	Clause Outline	Asciano Comment
	<p>AT 4 rate.</p> <ul style="list-style-type: none"> • AT5 and EC: will be the AT5 and EC for each relevant system. 		<p>each relevant system.</p> <ul style="list-style-type: none"> • AT4: will be the AT4 input for the Destination system. • AT5 and EC: will be the AT5 and EC for the Destination System. 	<p>systems;</p> <ul style="list-style-type: none"> • the cross system charging methodology should ensure that the cross system train service is not cross subsidising existing services (or being cross subsidised itself); and • the cross system charging methodology should take into account the proportion of distance the cross system train service travels on a particular system.
Schedule F, Part B, 2.2 Take or Pay	This clause has a similar intent to the 2013 DAU clause but the capping is not as specific.	Schedule F, 2.4 Calculation for Take or Pay	<p>Clause 2.4 (a) now specifically states that the Reference Tariff also includes a take or pay charge. The clause now introduces</p> <ul style="list-style-type: none"> • “Mine Capping” under clause 2.4(i) which allows offsets for the “same origin to destination”; and • “Operator Capping” under clause 2.4 (k), they have introduced take or pay offsets in relation to a group of Train Service Entitlements. This is as long Aurizon Network is notified by the Eligible Operator prior to May each year. 	<p>This section needs to be clarified. Especially if it allows for different origin-destination groupings.</p> <p>More generally Asciano believes that the Take or Pay arrangements need to be broadened to support flexibility in access rights.</p> <p>Asciano’s position on flexibility in access rights is outlined in detail in this submission, including section 6.7.</p>
Schedule F, Part B, 3 Requirement for Annual Review of Reference Tariffs	In general, this clause has a similar intent to the 2013 DAU clause although there are no Short Run Variable Maintenance Cost adjustments provisions.	Schedule F, 4.1 Requirement for Annual Review of Reference Tariffs	This provision now specifies that Short Run Variable Maintenance Cost will be adjusted to reflect the variance between the Approved System Forecast and revised	It needs to be clarified whether there will be a negative and positive adjustment to the allowable revenue.

2010 AU Clause Reference	Clause Outline	2013 DAU Clause Reference	Clause Outline	Asciano Comment
			System Forecast.	
Schedule F, Part B, 3.2 Calculation of Revenue Adjustment Amounts	This clause has a similar intent to the 2013 DAU clause.	Schedule F, 4.3 Calculation of Revenue Adjustment Amounts	This clause outlines Aurizon Network's obligation to calculate revenue adjustment amounts and increments.	This clause needs to include Aurizon Network's collection of any ancillary revenue which relates to or supports the provision of access including charges for storage, repositioning, licence arrangements etc as a result of Aurizon Network providing services using any assets included in the RAB. This is to ensure there is no double recovery by Aurizon Network.
Schedule F, Part B, 3.3 Calculation of Increment	This clause has a similar intent to the 2013 DAU clause.	Schedule F, 4.4 (a) Calculation of Increment	<p>This clause introduces a new 110% test relating to the calculation of the performance increment. The test is based on a trigger where the number of coal carrying train services exceeds 110% of Access Rights.</p> <p>Clause 4.6 has been added where it allows Aurizon Network to submit amendments to the calculation of the Increment under clause 4.4.</p>	<p>Asciano believes that the 110 % trigger should be justified.</p> <p>In addition it should be clarified if the revenue adjustment under 4.3 (a) (iii) triggered by this clause only applies for those individual months that triggered only.</p>
Schedule F, Part B, 5 Blackwater System	This clause has a similar intent to the 2013 DAU clause.	Schedule F, 7 Blackwater System	<p>Changes to this clause include:</p> <ul style="list-style-type: none"> • 7.1 (iii) states that a reference train uses electric traction now (apart from Rolleston and Minerva). • 7.1 (iv) also states that separation time is 20 minutes over the constrained area. • Clause 7.2 (d) also now specifies the nt payload of 	<p>Asciano believes that the reference train should not be defined as a certain traction type. An Operator should have freedom to choose the traction type. Asciano's position on electric traction in the Blackwater System is outlined in detail in this submission, including section 6.4 and Attachment 4.</p> <p>Asciano believes that Aurizon Network should clarify the purpose of the reference payload.</p>

2010 AU Clause Reference	Clause Outline	2013 DAU Clause Reference	Clause Outline	Asciano Comment
			the revenue train being 8,211 tonnes for Blackwater.	
Schedule F, Part B, 6 Goonyella System	This clause has a similar intent to the 2013 DAU clause.	Schedule F, 8 Goonyella System	<p>Changes to this clause include:</p> <ul style="list-style-type: none"> • 8.1 (iii) states that a reference train uses electric traction. • 8.1 (iv) also states that separation time is 20 minutes over the constrained area. • 8.2 (b) now outlines that Hail Creek, IP, Carborough Downs, Millennium, SWC and Moorvale are subject to separate AT3, AT4 and AT5 components. • 8.2(c) also now specify the net payload of the revenue train being: • 10,055 tonnes. 	<p>As noted above, Asciano believes that the reference train should not be defined as a certain traction type. An Operator should have freedom to choose the traction type.</p> <p>Asciano believes that the changes in 8.2 (b) need to be further explained.</p> <p>Asciano believes that Aurizon Network should clarify the purpose of the reference payload.</p>
Schedule F, Part B, 7 Moura System	This clause has a similar intent to the 2013 DAU clause.	Schedule F, 9 Moura System	Changes to this clause include 9.2 (b) now specifies the net payload of the revenue train being 6,269 tonnes.	Asciano believes that Aurizon Network should clarify the purpose of the reference payload.
Schedule F, Part B, 8 Newlands System	This clause has a similar intent to the 2013 DAU clause.	Schedule F, 10 Newlands System	<p>Changes to this clause include:</p> <ul style="list-style-type: none"> • 10.1 (c) has an adjustment to the BRTT factor % (increased from 23% to 60%). • 10.1 (d) has an adjustment to the Sonoma load time (increased from 1.5 to 2.4). • 10.2 (b) now outlines that Sonoma is subject to 	<p>Asciano believes that the changes to the BRTT adjustment should be justified.</p> <p>Asciano believes that the changes in 10.2 (b) need to be further explained.</p> <p>Asciano believes that Aurizon Network should clarify the purpose of the reference payload.</p>

2010 AU Clause Reference	Clause Outline	2013 DAU Clause Reference	Clause Outline	Asciano Comment
			<p>separate AT3, and AT4 components.</p> <ul style="list-style-type: none"> • 10.2 (c) now specifies the net payload of the revenue train being: 6,871 tonnes. 	
Schedule F Reference Tariff Schedules	Did not exist as the GAPE system was yet to be introduced.	Schedule F, 11 Goonyella to Abbot Point System	11..2 (b) also now specify the net payload of the revenue train being: 6,871 tonnes for GAPE	<p>Middlemount is missing as a loading facility in 11.1 (d). As trains from Middlemount use the GAPE this should be addressed.</p> <p>Asciano believes that Aurizon Network should clarify the purpose of the reference payload.</p>
SCHEDULE G: PRINCIPLES FOR PRICING OF ELECTRIC TRACTION SERVICES IN THE BLACKWATER SYSTEM				
N/a	Entire section did not exist.	Schedule G Principles for Pricing of Electric Traction Services in the Blackwater System	<p>This schedule sets out the principles which will govern the arrangements for pricing of electric traction services in the Blackwater system, and recovery by Aurizon Network of electric system costs.</p> <p>2 (c) states that all Access Holders utilising the Blackwater system should contribute to Aurizon Network's recovery of the Blackwater electric System costs.</p>	<p>Asciano strongly opposes the intent and content of this schedule.</p> <p>Asciano's position on the pricing of electric traction in the Blackwater System is outlined in detail in this submission, including section 6.4 and Attachment 4.</p>
SCHEDULE H: NETWORK MANAGEMENT PRINCIPLES				
Schedule G, Appendix 3 Traffic Management Decision Making Matrix	This matrix is broadly consistent with the 2013 DAU.	Schedule G, 7.4 Application of Traffic Management Decision Making Matrix	<p>Clause 7.4 (b) and (c) are new provisions.</p> <p>Clause 7.4 (b) outlines that where the operation of train services differ from the Daily Train Plan, Train Controllers will apply the traffic</p>	<p>Clause 7.4 (c) now gives Aurizon Network a ability to depart from the application of the traffic management decision making matrix following a network incident or Force Majeure event. This should only be reserved for circumstances where Aurizon Network</p>

2010 AU Clause Reference	Clause Outline	2013 DAU Clause Reference	Clause Outline	Asciano Comment
			<p>management decision making matrix.</p> <p>Clause 7.4 (c) allows Aurizon Network to depart from the matrix in the period following a Network Incident, or a Force Majeure event.</p>	<p>has no other choice in relation to restoring the network to normal operations.</p> <p>Re-starting of train services and services that can operate normally during this period should still be subject to the traffic management decision making matrix.</p> <p>Clause 7.4 (c) needs to include a maximum time period that this departure from the decision matrix can apply following a network incident or Force Majeure event.</p>
Schedule G, Appendix 2 Contested Train Path Decision – Making Process		Schedule G, 8.2 TSE Reconciliation Report	<p>This clause now outlines that Aurizon Network must provide a report to each Access Holder at the end of each weekly cycle.</p> <p>Under 8.2 (c) (iii) the principles are the same as the 2010 AU, although they have introduced a new term ‘Additional Path based on Pooled Entitlements’</p>	Asciano believes that the Pooled Entitlements concept and its application need to be clarified.
Schedule G, Appendix 2 Contested Train Path Decision – Making		Schedule G, 8.3 Contested Train Path Principles	<p>Clause 8.3 (iii) now contains provisions where an Access Holders request for a contested train path will have their Train Service Entitlements adjusted for Aurizon Network cause.</p> <p>Clause 8.3 (iv) introduces a rule in relation to an Access Holder’s pool of mainline paths being Train Service Entitlements between:</p> <ul style="list-style-type: none"> a) Coppabella and Jilalan 	<p>Asciano believes that clause 8.3 (v) is too broad as it is not subject to an Access Holder’s Train Service Entitlements but rather is based on services having the least impact (e.g. a request where new origin is on the same branch, would take precedence over another request where the new origin is on a different branch).</p> <p>Asciano believes that the Pooled Entitlements concept and its application</p>

2010 AU Clause Reference	Clause Outline	2013 DAU Clause Reference	Clause Outline	Asciano Comment
			b) Burngrove and Parana c) Collinsville and Pring d) Byelle Junction and boundary Hill Junction	need to be clarified.