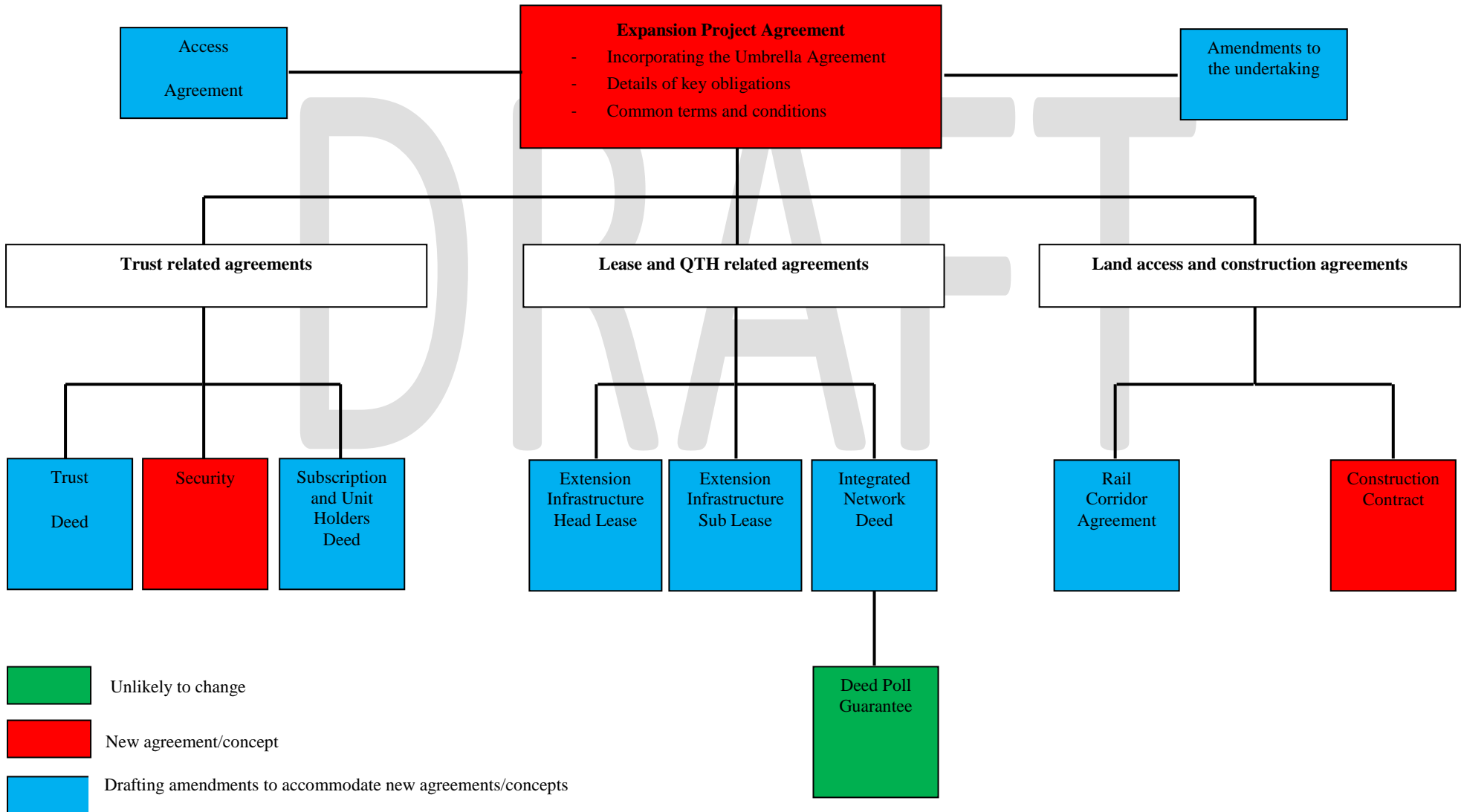


## SUFA term sheets

The term sheet structure is outlined in the diagram. The subsequent sections outline our preliminary thinking regarding the proposed contents for each term sheet.



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# 1. Draft Amending Access Undertaking (DAAU)

## 1.1 Summary

Aurizon Draft	Proposed QCA Draft	Purpose of QCA amendments
Insert extension policy	Insert extension policy based on the agreed position for UT4.	Required by section 7.6(a)(ii) of the Undertaking.

## 1.2 Parties

Aurizon Network Pty Ltd (**Aurizon Network**)

## 1.3 Description

The DAAU will amend the Aurizon Network's 2010 Access Undertaking (**UT3**):

- (a) for the necessary regulatory backdrop and mechanics for the operation of the SUFA; and
- (b) to provide a robust expansion process to ensure that it and the SUFA work in tandem.

The drafting will reflect that approved by the QCA's final decision in respect of the expansion process under Aurizon Network's 2013 Access Undertaking, with amendments as necessary to ensure that the requirements of schedule J of UT3 are satisfied.

For guidance the drafting will deal with the following:

- (a) feasibility studies of proposed extensions;
- (b) pre-approval of extensions;
- (c) use of a SUFA if requested by a User Funder;
- (d) pre-approval of major variations to extensions;
- (e) capacity commitment;
- (f) non-discrimination; and
- (g) statutory severance and ATO and OSR administratively binding advices.

## 2. Expansion Project Agreement

### 2.1 Summary

Aurizon Draft	Proposed QCA Draft	Purpose of QCA amendments
<p>1. Provides primary obligation for preference unit holder's entry into access agreement. Includes process for completion of access agreement prior to the parties entering it.</p> <p>2. Provides AN with tax indemnities from preference unit holders.</p> <p>3. Provides for process of inclusion of completed assets into the RAB, including optimisation.</p> <p>4. Includes limitation of liability regime.</p> <p>5. Annexes amendments to be made to the access agreement.</p>	<p>1. Provide one document that explains the full arrangement (by providing pointers to the other documents).</p>	<p>1. The document will provide a road map to the other documents and will simplify the full document package.</p>
	<p>2. Set out the conditions precedent for the commencement of the transaction.</p>	<p>2. Ensures that the fundamental pre-requisites (that is, statutory severance, QCA pre-approval, tax rulings, evidence of funding) are in place before any substantial obligations are incurred by the parties.</p>
	<p>3. As per AN draft, provides primary obligation for access seekers' entry into access agreements. Amends AN draft to include reference to expedited access dispute to the QCA if there is disagreement as to how the access agreement is to be completed prior to entry.</p>	<p>3. Propose to accept QRC's amendments to the Umbrella Agreement because they reduce the scope for disagreement as to how AN completes the access agreements.</p>
	<p>4. As per AN draft, provides AN with tax indemnities from Preference Unit Holders. However, amends AN draft to incorporate the QRC's amendments.</p>	<p>4. QRC amendments provide a more balanced tax position.</p>
	<p>5. Amends AN draft regarding including assets into RAB to reflect that pre-approval now occurs and that the final review of QCA will be of actual cost of the project with detailed review being only in respect of expenditure outside pre-approval scope and budget.</p>	<p>5. Amendments required to reflect QCA approach to pre-approval of the project</p>
	<p>6. Sets out standard terms, conditions and boilerplate terms.</p>	<p>6. Reduces repetition (and possibility for variations) across document suite. An additional benefit is a reduction in volume of document suite.</p>
	<p>7. Annexes amendments to be made to the relevant standard form access agreement, but amends the AN draft by deleting certain amendments which are managing a risk that can be dealt with in other documents in the SUFA suite (e.g. the implications of separating preference units from access) or are potentially discriminatory (by providing an excusal event where AN cannot</p>	<p>7. To ensure that the access agreements entered into the Expansion Project Agreement are as close to the standard form as possible. By deleting amendments that can be dealt with in other documents in the SUFA suite, the access agreement is kept as standard as it can be, which should assist in providing flexibility to preference unit holders in</p>

Aurizon Draft	Proposed QCA Draft	Purpose of QCA amendments
	provide access due to default in other SUFAs).	managing both access and funding.
	8. AN permits the Trustee to grant security over the Trustee's rights under the SUFA documentation subject to release of the security on redemption of the preference units	8. Protects bona fide interests of users/financiers and enables provision of third party finance

## 2.2 Parties

- (a) Trustee as trustee of the Trust
- (b) Aurizon Network (capacities to be dealt with, as necessary, in the drafting i.e. stating where Aurizon Network is acting in a specific capacity, such as planner, constructor and operator)
- (c) Each Preference Unit Holder as a subscriber for preference units
- (d) Each Access Seeker as an access seeker

## 2.3 Description

- (a) Wrapper document setting out the structure and common terms and conditions.
- (b) Details the key obligations between Aurizon Network, the Trustee, the Preference Unit Holders and the Access Seekers.

## 2.4 Key contents

- (a) Parties acknowledge that:
  - (i) the Trustee has been appointed as trustee of the Trust; and
  - (ii) Aurizon Network has subscribed for one Ordinary Unit and each Preference Unit Holder has subscribed for Preference Units in the Trust in accordance with the Trust Deed and Subscription and Unit Holders.
- (b) Conditions precedent for all SUFA documentation (other than the Trust Deed and the Subscription and Unit Holders Deed, which take effect prior to the Expansion Project Agreement being executed), being:
  - (i) statutory severance in force for this SUFA's extension infrastructure (to the extent that generic statutory severance is not in place);
  - (ii) suitable private binding ruling to be in place for this SUFA;
  - (iii) QCA approval of the project scope, guaranteed maximum price, target capacity, and target date for practical completion; and
  - (iv) evidence of funding (to be provided by Preference Unit Holders after conditions precedent (i), (ii) and (iii) above are satisfied). This

addresses the risk that Aurizon Network is managing in clause 4.16 of the Subscription and Unit Holders Deed.

- (c) Key obligations:
- (i) Aurizon Network (as lessee under its infrastructure lease with QTH and as lessee under its leases with the State of Queensland) uses reasonable endeavours to procure the entry of :
    - A. QTH into the Extension Infrastructure Head Lease; and
    - B. the State of Queensland and QTH into the Integrated Network Deed;
  - (ii) Aurizon Network (as principal contractor) designs and constructs the extension infrastructure to the agreed project scope, agreed price, target capacity and target date for practical completion for the Trustee, and the Trustee pays Aurizon Network for the design and construction, as more particularly set out in the Construction Contract;
  - (iii) Aurizon Network (as network operator):
    - A. subleases the extension infrastructure from the Trustee and pays Rent in respect of it as more particularly set out in the Extension Infrastructure Sub Lease; and
    - B. agrees to ensure all Access Agreements entered into after the date of the SUFA arrangements include:
      - 1) direction to pay provisions; and
      - 2) right for Aurizon Network (if required to by the Trustee) to direct that the Access Charges (or nominated part) be paid to a nominated third party or a nominated account (as opposed to the direction to pay account);
  - (iv) Aurizon Network (as landholder) grants a land licence to the Trustee, permitting the Trustee to build the extension infrastructure on Aurizon Network's land, as more particularly set out in the Rail Corridor Agreement;
  - (v) Each of the Access Seekers enters into:
    - A. an Access Side Deed with Aurizon Network (that Access Side Deed sets out the specific Access Agreement requirements for the Access Seeker); and
    - B. their respective Access Agreements at the time set out in the Expansion Project Agreement and on the terms set out in the relevant Access Side Deed.;
  - (vi) To the extent agreed by the QCA, the Trustee refunds either Aurizon Network or funding access seekers the feasibility study costs which the QCA has agreed will form part of the RAB; and
  - (vii) Aurizon Network consents to the Trustee charging its rights under the suite of SUFA documents (**Security**) provided that:
    - A. the rights of Aurizon Network as ordinary unit holder set out in the SUFA documents are not and would not be prejudiced by either the grant or the enforcement of the Security; and

- B. on and from earlier of the date falling two years after the Zero Value Date and the date the last of the Preference Units are redeemed, (or such later date as the Ordinary Unit Holder in its discretion permits):
- 1) any Security is released, irrespective of whether (at the time the release is to be provided):
    - a) all or part of any moneys or obligations secured by the Security remains to be satisfied; or
    - b) it is reasonably foreseeable that there could be any moneys or obligations secured by the Security owing or to be satisfied in the future; and
  - 2) the Trustee is unconditionally and irrevocably forgiven, and released or discharged from any liability whatsoever in respect of, all of the moneys owing (whether actually, contingently or prospectively) and all of the obligations remaining to be satisfied.
- (d) Either a copy of the current Land Lease is attached or sufficient information to identify the current Land Lease is included.
- (e) Umbrella Agreement
- (i) Aurizon Network's draft of the Umbrella Agreement will be merged into the Expansion Project Agreement with the following amendments:
  - (ii) Clause 3.1 (entry into access agreement): the QRC's amendments are accepted;
  - (iii) Clause 3.2 (completion of gaps in the access agreement): the QRC's amendments are accepted;
  - (iv) Tax:
    - A. Clause 5.1(b)(ii): to be modified so as to ensure the concept of reasonableness applies to all expenditures which it deals with;
    - B. Clause 5.1(c): the QCA is liaising with QTH to understand QTH's tax position and will amend (if necessary), once that is understood;
    - C. Clause 5.1(f): generally, the QCA accepts the QRC's comments and will make amendments to effect those comments;
    - D. Clause 5.2: generally, the QCA accepts the QRC's comments and will make amendments to effect those comments;
    - E. Clause 5.4: the QCA accepts the QRC's comments to the extent that there is a "double claim" of the same loss and will make amendments to effect those comments; and
    - F. Clause 5.6: the QCA accepts the QRC's comments and will make amendments to effect those comments;

- (v) Clause 6 (Regulatory Asset Base): although as at financial close the QCA will have approved the target scope, cost, capacity; the Expansion Project Agreement must detail a process for pre-approval of variations and for final approval of the as-built costs. The following process is to apply for those variations:
  - A. either the Trustee or Aurizon Network can approach the QCA for pre-approval of a variation. The approval regime is to follow that required for the original pre-approval of the project scope, agreed price, target capacity and target date;
  - B. variations for agreed contingency events funded out of the contingency funding will be deemed to be pre-approved as part of the original pre-approval by the QCA; and
  - C. if a variation occurs without pre-approval (or is outside the agreed contingency events), the party that caused the variation will bear the optimisation risk of that cost not being included in the RAB by the QCA;
- (vi) Clause 6 (Regulatory Asset Base): QCA post-approval of the as-built costs and for any variations which do not fall within paragraphs 2.4(e)(v)A or 2.4(e)(v)B must be detailed. If any variation that is not pre-approved is optimised out of the RAB, and:
  - A. the variation was a valid variation for the purposes of the Construction Contract, the Trustee acknowledges it is not entitled to recover any rent for the use of that asset, even if the asset is used by Aurizon Network; or
  - B. the variation is not an authorised variation for the purposes of the Construction Contract, Aurizon Network acknowledges it must bear the cost of construction of that asset, even if it uses the asset for the purposes of the network. The asset remains a Trust asset;
- (vii) Clause 9.8 (Claims against Aurizon Network): cures for breaches of obligations will be dealt with on a clause by clause basis; and
- (viii) Schedule 2 (amendments to standard access agreement): the access agreement should be as close to the regulatory approved versions as possible. Accordingly, the QRC's amendments to the following are accepted as they achieve that result:
  - A. Item 10 (suspension of access rights) of schedule 2;
  - B. Item 11 (suspension of access rights) of schedule 2;
  - C. Item 12 (excusal of access rights) of schedule 2; and
  - D. Item 17 (stapling) of schedule 2 (as there is to be no requirement for stapling).

(f) Common terms and provisions

Common terms and provisions for the Expansion Project Agreement, Construction Contract, Extension Infrastructure Sub Lease and Rail Corridor Agreement to be detailed in the Expansion Project Agreement to the extent possible, to include:

- (i) Trustee right to refer a discrimination matter to the QCA for determination;

- (ii) definitions and interpretation;
- (iii) dispute resolution: simplified dispute resolution methodology to replace multiple dispute resolution processes contained in the documents;
- (iv) limitation on liability;
- (v) notices;
- (vi) confidentiality;
- (vii) alienation (there is to be no requirement for stapling). The Trustee may charge all of its rights under the SUFA documents as described in paragraph 2.4(c)(vii);
- (viii) applicable law: the QRC amendments requiring that the governing law is that of Queensland and providing courts of Queensland and the courts of appeal from them are accepted; and
- (ix) standard boilerplate provisions.



### 3. Trust Deed

#### 3.1 Summary

Aurizon Draft	Proposed QCA Draft	Purpose of QCA amendments
<p>1. Creates trust and details how the trust is to be managed (subject to the subscription and unit holders deed)</p> <p>2. Note, this document must take effect prior to the SUFA suite, to enable the trustee to sign the SUFA documents. Accordingly, AN, as ordinary unit holder, is issued an ordinary unit before the preference units are issued.</p>	<p>1. As per AN draft but with minor amendments proposed by QRC accepted and a drafting note stating that amendments to assist with the obtaining of third party finance may be made subject to AN's rights as ordinary unit holder being not materially affected.</p>	<p>1. Amendments make document simpler and provide external financing option to SUFA users.</p>
	<p>2. Deletion of right to remove the trustee without cause unless the ordinary unit holder and the preference unit holders all agree.</p>	<p>2. A Trustee would price the risk of removal, with an increase in transaction costs.</p>
	<p>3. Deletion of requirement for interest to be paid where AN issues a direction for distributions to be stopped.</p>	<p>3. The right to direct the withholding of distributions has been deleted from the Subscription and Unit Holders Deed.</p>
	<p>4. Trust to be wound up if conditions precedent under the Expansion Project Agreement are not satisfied by a given date.</p>	<p>4. Ensures the costs of running the Trust are minimised should the project not proceed.</p>

#### 3.1 Parties

- (a) Aurizon Network as subscriber to the Ordinary Unit and as Ordinary Unit Holder
- (b) Trustee

#### 3.2 Description

- (a) Creates the Trust and details how the Trust is to be managed, all subject to the Subscription and Unit Holders Deed.
- (b) Provides the management of the Trust, subject to the Subscription and Unit Holders Deed.
- (c) The Ordinary Unit and the Preference Units are issued under this deed (the subscription process for the Ordinary Unit and the Preference Units is detailed in the Subscription and Unit Holders Deed).

#### 3.3 Contents

- (a) The QRC's amendments are accepted subject to further amendment for the revised structure and the following:
  - (i) Deletion of clause 15.2 (removal of the Trustee without cause): neither the Preference Unit Holders nor the Ordinary Unit Holder should be able to remove the Trustee without cause other than by acting together;

- (ii) Deletion of clause 12.14 (interest payable if direction to withhold distributions is made): the Ordinary Unit Holder should not be able to make a direction for the Trustee to withhold distributions;
- (iii) Clause 21.2(b) (consequence of the Trust becoming (or potentially becoming) registered as a managed investment scheme under Chapter 5C of the Corporations Act): the QRC's amendment should apply to changes which are "desirable" only (but amendments that are "necessary" should be made whether or not they affect the commercial or financial outcomes of the Unit Holders); and
- (iv) Tax:
  - A. Clause 12.3: the QCA accepts the QRC's comments;
  - B. Clause 12.5(c): the QCA accepts the QRC's comments;
  - C. Clause 12.13: the QCA accepts the QRC's comments; and
  - D. Clause 20.2: the QCA accepts the QRC's comments.
- (b) The Trust is to be wound-up if the Expansion Project Agreement conditions precedent are not satisfied by a given date and the Ordinary Unit Holder decides to wind up the Trust.
- (c) The parties acknowledge that the SUFA form of the Trust Deed may be amended as necessary to permit third party finance but that any amendment must ensure that Aurizon Network remains as ordinary unit holder with its rights in such capacity not materially affected.

## 4. Subscription and Unit Holders Deed (SUHD)

### 4.1 Summary

Aurizon Draft	Proposed QCA Draft	Purpose of QCA amendments
<p>1. Details subscription, distribution and transfer mechanics for AN (as ordinary unit holder) and preference unit holders.</p> <p>2. Sets out decision making powers of ordinary and preference unit holders.</p>	<p>1. As per AN draft but with minor amendments proposed by QRC to be accepted and a drafting note stating that amendments to assist with the obtaining of third party finance may be made subject to AN's rights as ordinary unit holder being not materially affected.</p>	<p>1. Amendments make document simpler and provide external financing option to SUFA users.</p>
	<p>2. QRC amendment regarding suspension of the Ordinary Unit Holder's rights if it is subject to an insolvency event to be rejected.</p>	<p>2. As security is to be provided over cash flow from linked access agreements, there is no downside to having an insolvent AN involved in decision making.</p>
	<p>3. Deletion of agency provisions (as AN will not be appointed as the Trustee's agent).</p>	<p>3. Given trustee is to be passive, there is no need for AN to do any of the trustee's tasks (as it should have none that outside normal trustee obligations).</p>
	<p>4. Deletion of Ordinary Unit Holder's right to direct the Trustee to not make distributions.</p>	<p>4. Change required to assist certainty over cash flow into the trust and provide certainty to third party financiers.</p>
	<p>5. Management of ownership of preference units, if an interest in an access agreement is transferred (or preference units are transferred) without the corresponding interest in preference units (or the access agreement). Amendments include permitting a preference unit holder to vote during construction period even if it no longer holds equivalent access.</p>	<p>5. This amendment enables the access agreement to remain as standard as possible and keeps SUFA related matters within the SUFA suite of documents. It also ensures a third party funder holding the preference unit does not lose its right to vote during construction.</p>
	<p>6. Removing right of first refusal to AN for a transfer of a preference unit.</p>	<p>6. Including a right of first refusal may limit the pool of potential purchasers for a preference unit in a fire sale (triggered by an insolvency event in the preference unit holder).</p>
	<p>7. Treatment of tax - incorporate the QRC's amendments.</p>	<p>7. QRC amendments provide a more balanced tax position.</p>
	<p>8. Two years after the Zero Value Date is the earliest the Preference Units may be redeemed unless the cost of running the Trust during that period is expected to be more than the anticipated rent.</p>	<p>8. Protects bona fide interests of users/financiers and enables provision of third party finance</p>

## 4.2 Parties

- (a) Trustee
- (b) Aurizon Network as:
  - (i) Ordinary Unit Holder
  - (ii) ordinary unit subscriber prior to its subscription for the Ordinary Unit
  - (iii) Preference Unit Holder (when relevant)
- (c) Each Preference Unit Holder

## 4.3 Description

- (a) Details the subscription, distribution and transfer mechanics for the Ordinary Unit Holder and the Preference Unit Holder(s).
- (b) Provides for the Reserve Decisions and Reserve Discretions of the Trust.

## 4.4 Contents

- (a) Similar to current QRC draft however, Aurizon Network's position is accepted in relation to clause 18.1 (no suspension of the Ordinary Unit Holder's rights if it is subject to an insolvency event).
- (b) Condition precedent: that the Expansion Project Agreement is unconditional.
- (c) Amendments:
  - (i) Preference Units to be automatically redeemed on the date falling two years after the date of Zero Value or, provided that the date of Zero Value has occurred and where the cost of continuing the Trust is likely to exceed the value of the rent adjustments, when the Preference Unit Holders otherwise agree;
  - (ii) Right for Preference Unit Holders to require the Trustee to grant security over all its rights under the SUFA documents;
  - (iii) Deletion of agency provisions (as Aurizon Network will not be appointed as the Trustee's agent);
  - (iv) Deletion of Ordinary Unit Holder's right to direct the Trustee to not make distributions (clause 14.5);
  - (v) Stapling: there is to be no requirement for stapling;
  - (vi) Tax:
    - A. Clause 2.5: the QCA accepts the QRC's comments;
    - B. Clause 16.2: the QCA accepts the QRC's comments;
    - C. Clause 16.3: the QCA accepts the QRC's comments; and
    - D. Schedule 8: the QCA accepts the QRC's comments;
  - (vii) Aurizon Network may bid in the process for the transfer of unit but will not have a right first refusal; and

- (viii) No suspension of voting rights for prospective under-utilisation/termination of linked access agreement (clause 18.3).
- (d) The parties acknowledge that the SUFA form of the Subscription and Unit Holders Deed may be amended to permit third party finance but that any amendment must ensure that Aurizon Network remains as ordinary unit holder with its rights in such capacity not materially affected.

## 5. Construction Contract

### 5.1 Summary

<b>Aurizon Draft (formerly Project Management Agreement)</b>	<b>Proposed QCA Draft</b>	<b>Purpose of QCA amendments</b>
1. Trustee appoints AN to project manage the design, supply, procurement, construction, testing, commissioning and completion of the Extension.	1. Trustee appoints AN to design and construct the Extension. Scope, cost and date for practical completion determined by the QCA in its pre-approval.	1. Fundamental change in approach acknowledges that AN is an expert at designing and constructing extensions to its network and that it should be able to get on with its business without interference from the SUFA users. The SUFA users are protected from overspend by the pre-approval and variation approval processes inserted into the Undertaking by the DAAU.
2. The Trustee appoints Aurizon as disclosed agent of the Trustee for the purpose of performing many of the Trustee's obligations under the PMA, including procure, negotiate, enter into, vary and administer Works Contracts.	2. No agency required as Trustee can be (relatively) passive while AN designs and constructs as principal contractor.	2. Removes an obstacle for a professional trustee - that is, appointing an agent (AN) that is not independent of the transaction could put the trustee's fiduciary duties to the preference unit holders under stress unless the trustee employed an external consultant to supervise the agent (which would mean paying a second project management fee).
3. The parties jointly appoint an Independent Engineer. In particular, the Independent Engineer is to keep confidential from the Trustee, the Preference Unit Holders and the PUH Engineer any Price Sensitive Information which is provided to it by Aurizon.	3. The parties and the QCA jointly appoint an independent certifier. Confidentiality issues to be addressed, ensuring that sufficient information is provided to the QCA for its final approval processes.	3. Provides QCA access to an independent certifier. Potentially allows the final approval by the QCA to be a tick-off and not a full review.
4. Trustee appoints PUH Engineer as the Preference Unit Holder's representative. He is to be likewise subject to the same confidentiality requirements.	4. No requirement for a principal's representative (which is normal for a construction contract) as that role can be undertaken by the independent certifier. Note, however, that the Trustee may still want to employ its own expert to manage the construction contract.	4. As for 3 above.
5. Any aspect of the Procurement Methodology or Scope of Works not agreed as at the Commencement Date are "Deferred Decisions" and a process for making those decisions is included.	5. As scope of work (and associated cost) should be fully determined to enable the pre-approval, there should not be any need for Deferred Decisions. However, to the extent that an aspect of the scope of work is not finalised prior to QCA pre-approval, the parties can revert to QCA for further approval. This	5. Provides certainty to the SUFA user and any financier as to the cost of the project.

<b>Aurizon Draft (formerly Project Management Agreement)</b>	<b>Proposed QCA Draft</b>	<b>Purpose of QCA amendments</b>
	would form part of the QCA approval.	
6. The process for procuring Works Contracts (by AN on behalf of the Trustee), analysing and signing off on payment claims (by AN on behalf of the Trustee) and varying, terminating or managing a dispute under Major Works Contracts (by AN on behalf of the Trustee) is set out.	6. Payment on a monthly basis.	6. As AN is responsible for its subcontractors, Trustee is not concerned with those arrangements.
7. Permits material change in circumstances, variations to scope of works, target cost and target time.	7. Variation mechanism included, with matters that are permitted (eg force majeure) and matters that must be referred to the QCA for approval noted.	7. Reflects pre-approval mechanism.
8. Sets up reporting mechanisms so that the Trustee (and the preference unit holders) is informed as to what AN is doing on its behalf.	8. Monthly invoice to include statement of progress of the works against timetable.	8. Detailed reporting not as necessary due to different roles of the parties.
9. Provides AN with a management fee and provides for optimisation fee in certain circumstances.	9. Price for contract to be the price structure and quantum approved by the QCA and is either a guaranteed maximum price or schedule of rates with a fee or a combination of both.	9. Reflects that QCA will consider prudence of the fee at the same time it considers prudence of the other costs of the project.
10. Manages AN breach and replacement of AN as project manager (but AN remains part of this agreement in its other capacities).	10. AN breach of contract treated in same manner as standard construction contract.	10. Simplifies processes and recognises that AN is principal contractor (and owes certain duties and obligations as a result).
11. Provides for Trustee terminating the works (for its convenience) and the processes to be followed.	11. Trustee's termination for convenience permitted provided QCA involvement on the prudence of costs incurred to date which determines the payment to be made on termination.	11. To the extent that market conditions change which justify termination of the project, the QCA will need to be involved in the final decision to determine if money spent can be included in the RAB.
12. Provides for various dispute resolution regimes, depending on the nature of the dispute.	12. One dispute resolution regime (which could be the regime in the Expansion Project Agreement imported by reference into the Construction Contract.)	12. Simplifies the dispute regime.
	13. AN responsible for insurance of the works, on-site safety, environmental compliance and breaches, holding all authorisations required for it to	13. Reflects the passive role of the Trustee and that AN is the expert in this area.

Aurizon Draft (formerly Project Management Agreement)	Proposed QCA Draft	Purpose of QCA amendments
	construct Extension, obtaining all authorisations Trustee may need (by assisting the Trustee).	
	14. Liquidated damages or similar payable by AN for failing to deliver on time. Rate of LDs to be determined by the parties, but will be taken into account by QCA in assessing the prudence of the construction fee payable to AN.	14. This should form part of the commercial negotiations at the time of entry into the SUFA; however, the level of risk AN takes with delivery on time will assist the QCA in determining the prudence of the fee being paid to AN.
	15. Twelve month defect liability period.	15. Protects bona fide interests of users/financiers and enables provision of third party finance.
	16. The trustee is to be permitted to charge its rights under the Construction Contract.	16. Protects bona fide interests of users/financiers and enables provision of third party finance.

## 5.2 Parties

- (a) Aurizon Network as principal contractor
- (b) Trustee as principal

## 5.3 Description

- (a) Design and construct contract.
- (b) Price to be the price structure and quantum approved by the QCA as either a guaranteed maximum price or schedule of rates with a fee or a combination of both.
- (c) Aurizon Network responsible for entire design and construct.
- (d) Practical completion to be by a designated date (**Date for Practical Completion**) in order to deliver an agreed amount of additional capacity.
- (e) The Contract is to be based upon the Standards Australia **AS4902-2000 document**, updated to include appropriate amendments to reflect the agreed risk profile detailed in this Terms Sheet.

## 5.4 Contents

- (a) Condition precedent: that the Expansion Project Agreement is unconditional.
- (b) Scope, design and agreed price to be defined as the scope and cost pre-approved by the QCA before commencement of construction, with a design brief setting out the capacity requirements (plus any capacity modelling assumptions that are relevant) for the finished extension.



- (c) Variations:
- (i) notwithstanding the requirements for QCA consent for certain variations, the Construction Contract must include a mechanism to formally approve variations (under the Construction Contract);
  - (ii) a regime for pricing variations is to be set out. This might be based on a schedule of rates or a more general "reasonable rates" regime. QCA pre-approval will require that the price be agreed before approval is sought;
  - (iii) pre-approval of variations by the QCA:
    - A. either the Trustee or Aurizon Network may (but are not obliged to) approach the QCA for pre-approval of a variation. The Construction Contract will need to address the risk of delay whilst QCA approval is being obtained. Both Aurizon Network and the Trustee must agree the relevant scope change (and any consequential adjustments to the Date for Practical Completion and/or the agreed price) before Aurizon Network is obliged to proceed with the variation. If the parties decide to not seek pre-approval then the variation works may proceed provided that Aurizon Network and the Trustee first agree upon:
      - 1) which party to the construction contract is to bear the 'optimisation risk'; and
      - 2) how that risk would be given contractual effect,
 if some or all of the costs arising from the variation are subsequently not approved by the QCA (and will therefore not be included in the RAB); and
    - B. subject to paragraph 5.4(c)(iv) below, variations for agreed Adjustment Events (see paragraph 5.4(d) below) to be funded out of the contingency funding will be deemed to be pre-approved as part of the original pre-approval by the QCA and not subject to optimisation risk;
  - (iv) if the contingency is depleted, any Adjustment Events which would otherwise have been paid for out of the contingency will be treated as variations requiring pre-approval and the process set out in paragraph 5.4(c)(iii)A above must be followed in respect of them; and
  - (v) drafting to cover the following issues to be included:
    - A. disputes about whether a particular direction amounts to a variation;
    - B. disputes about whether the QCA approval threshold for Adjustment Events has been reached; and
    - C. an Adjustment Event is thought to not require QCA approval but it subsequently becomes apparent that the Adjustment Event will breach the contingency threshold.
- (d) Adjustment Events:
- (i) where one of an identified list of "Adjustment Events" (to be listed in the Construction Contract) occurs – being events which have not been allowed for by Aurizon Network in the development of its guaranteed

maximum price and the Date for Practical Completion - Aurizon Network shall be entitled to claim, subject to the contingency cap:

- A. an adjustment to the scope;
- B. an adjustment to the agreed price; and/or
- C. an extension of time,

such adjustments/extension of time to be assessed by the independent certifier, to take account of the impacts of the Adjustment Event on the progress, methodology and/or cost of performing the Works.

(ii) Adjustment Events include:

- A. any delay (not contributed to by Aurizon Network) in providing Aurizon Network with access to port or other coal supply chain land or infrastructure which is required to be completed before Aurizon Network can undertake its work;
- B. inclement weather;
- C. compliance with a court order;
- D. delay in site access, to the extent that Aurizon Network does not own, lease or licence the site;
- E. latent conditions/unexpected contamination (as referred to in 5.4(h) below);
- F. force majeure;
- G. change in law;
- H. suspension for non-payment (refer to paragraph 5.4(v) below); and
- I. any other risk expressly identified in the Construction Contract as an Adjustment Event for a particular extension (which will be considered and agreed on a transaction-by-transaction basis having regard to, amongst other matters, the nature of the extension, market conditions and the nature and scope of the Works for the extension).

(iii) Aurizon Network will submit its assessment of the impacts (if any) of the Adjustment Event on:

- A. the scope (i.e. what additional or varied scope is required);
- B. the agreed price; and
- C. the Date for Practical Completion to the independent certifier for the independent certifier to assess and certify entitlement under the Construction Contract.

(iv) Aurizon Network will proceed with a scope change and Aurizon Network will bear the risk that the independent certifier does not certify it.

(e) Independent Certifier

(i) Aurizon Network, the Trustee and the QCA will jointly select and engage an independent certifier to certify the matters set out in this

paragraph 5.4(e). These matters will be carved out of the Superintendent's responsibilities.

- (ii) Under the independent certifier's services agreement the independent certifier will have a duty to act reasonably, fairly, in accordance with its engagement and independently . It will also owe a specific duty of care to the QCA.
- (iii) The independent certifier will be responsible for certifying Practical Completion.
- (iv) The independent certifier will be responsible for assessing payment claims, assessing and granting extensions of time and valuing claims for adjustments to the guaranteed maximum price based on Adjustment Events.
- (v) The independent certifier will also have responsibility for determining scope in respect of an Adjustment Event (see also paragraph 5.4(d) above).
- (vi) The independent certifier's fees will be paid by the Trustee and are separate to (and not included in) the guaranteed maximum price under the Construction Contract. These outgoings will automatically be included in the RAB due to the QCA's prior approval of both the independent certifier's identity and the independent certifier services agreement.

(f) Practical Completion:

- (i) There will be an agreed definition of what Aurizon Network is required to complete/achieve in order to achieve Practical Completion. This will be based on objective, measurable criteria and Practical Completion will require the completed Works to:
  - A. comply with the specified scope requirements of the construction contract (as verified by the independent certifier); and
  - B. ready to enter into operational service (as confirmed by Aurizon Network (in its capacity as RIM for the rail network) to the independent certifier).
- (ii) Practical Completion will therefore be achieved when:
  - A. the independent certifier certifies that the Works comply with the requirements of the Construction Contract; and
  - B. Aurizon Network (in its capacity as RIM for the rail network) certifies that the Works are ready to enter into operational service,

save for minor defects which do not prevent the safe operation of the Works in accordance with legislation.

(g) Warranties and Defects:

- (i) Aurizon Network will provide the standard construction warranties contained in AS4902 in respect of the Works.
- (ii) There will be a 12 months defect rectification period (commencing on the Date of Practical Completion) and Aurizon Network's contractual

obligations in respect of the Works (under the Construction Contract) will cease upon expiry of the defect rectification period.

- (iii) To include shortfall in capacity (to reflect position in DAAU).
  - (iv) Risk and responsibility for maintenance and repair of the completed rail infrastructure will be dealt with in the Extension Infrastructure Sub Lease (see paragraph 5.4(k) below).
- (h) Site and Latent Conditions:
- (i) There is to be a pre-agreed set of known site conditions (as revealed in a baseline report to be commissioned for each project during the Feasibility Study phase).
  - (ii) These conditions will be at Aurizon Network's risk and will be factored into the guaranteed maximum price and Date for Practical Completion.
  - (iii) Where actual conditions differ from the known site conditions, this will be a "Latent Condition" and will be treated as an Adjustment Event under the Construction Contract (with Aurizon Network entitled to additional time and cost). This could trigger a scope change.
  - (iv) Similarly, Aurizon Network will take the risk of known pre-existing contamination, but will be entitled to an Adjustment Event to the extent of any delay or increase in cost of the Works is caused by contamination not identified in the baseline report commissioned by Aurizon Network prior to contract execution).
- (i) Liquidated damages:
- (i) The Construction Contract will contain a Date for Practical Completion (for each Separable Portion where relevant) which can be adjusted for extensions of time certified by the independent certifier.
  - (ii) Delay liquidated damages (**Delay LDs**) will apply for delayed completion beyond the Date for Practical Completion (Delay LDs rate to be agreed on a project by project basis). Delay LDs will be based on the parties' genuine pre-estimate of the damages that will be incurred by the preference unit holders (and the access seekers, if different) (including additional interest payments) in the event of delayed completion of the Works.
  - (iii) Consistent with market practice, Delay LDs will be the sole and exclusive remedy for delayed completion and will be capped at an agreed percentage of the guaranteed maximum price (to be agreed on a project by project basis).
- (j) Extensions of time: Aurizon Network will assume time/completion risk provided that Aurizon Network is entitled to an extension of time to the Date for Practical Completion where the works are delayed by:
- (i) the Adjustment Events identified in paragraph 5.4(d) above;
  - (ii) the pre-approval process for a variation as referred to in paragraph 5.4(c)(iii) above; and
  - (iii) suspension of the Works as referred to in paragraph 5.4(v)(v)A below.

- (k) Completion of works:
- (i) "Practical completion" is to be defined (although the definition of "Available" from the Project Management Agreement as amended by the QRC may be suitable).
  - (ii) Risk in the Infrastructure to pass from Aurizon Network as constructor to Aurizon Network as sublessee and lessee under the Extension Infrastructure Sub Lease upon the lease or sublease (whichever is the earlier) of that Infrastructure being granted to Aurizon Network in accordance with the Extension Infrastructure Sub Lease.
  - (iii) Aurizon Network to warrant in relation to the completed extension infrastructure.
- (l) Payment / fee:
- (i) Either guaranteed maximum price or schedule of rates or both, to include an amount in respect of repayment of Feasibility Study costs expended for the extension.
  - (ii) Payment regime: monthly on receipt of invoices based on value of work certified by the independent certifier as having been completed in the previous month.
  - (iii) Progress to be assessed by the Independent Certifier against the base program.
  - (iv) Payment within 15 Business Days (consistent with timeframes under the QLD Security of Payment Legislation).
- (m) Security for payment:
- (i) The Trustee is to provide security sufficient to meet Aurizon Network's peak cost exposure if the Trustee were to exercise its right to terminate the Construction Contract for convenience. Once that peak exposure has been reached the security may be reduced to reflect Aurizon Network's sculpted peak exposure.
  - (ii) The security package is to be agreed for each extension however may consist of prepayments, unconditional bank guarantees or moneys placed in escrow (any combination of the same).
- (n) Separable Portions:
- (i) Where the scope is to be delivered so that access to capacity can be provided in separate increments, separate Separable Portions will be included for each increment.
  - (ii) Each Separable Portion will be separately detailed in the Construction Contract, including a separate description in the scope document and (as per the AS4902 format) a "Separable Portion Annexure" for each Separable Portion setting out the scope, Date for Practical Completion, delay liquidated damages rate and sub-cap.
  - (iii) Any variation to the Separable Portions locked in at execution of the Construction Contract will require the agreement of both Aurizon Network and the Trustee.
- (o) Segments:

- (i) The Construction Contract will include a schedule detailing the breakdown of the guaranteed maximum price (as at the date of the Construction Contract) between the various "Segments" of the Works .
  - (ii) Following each adjustment of the guaranteed maximum price (e.g. following an agreed variation or as a consequence of an Adjustment Event), and again at Practical Completion, Aurizon Network will provide the Trustee with a notice (for the purpose of clause 8.1 of the Subscription and Unit Holders Deed) of Aurizon Network's assessment of the updated breakdown of the actual cost between each "Segment" of the extension works, which will be determined in accordance with an agreed set of the "Allocation Principles" consistent with the "Allocation Principles" at Schedule 2 of the Subscription and Unit Holders Deed.
- (p) Permits and approvals: save for any specific approvals identified in the Construction Contract as being ones which the Trustee must obtain, Aurizon Network (or its subcontractors) will be responsible for obtaining all permits/approvals required to carry out and complete the Works.
- (q) Indemnities: to be consistent with the position under AS4902.
- (r) Safety:
- (i) To the extent that Work Health & Safety Act and Work Health & Safety Regulation (**WHS Legislation**) applies to an extension, the Trustee will engage Aurizon Network (or an appropriate nominee selected by Aurizon Network) as "principal contractor" for each construction site for the Works for the purposes of the WHS Legislation.
  - (ii) Aurizon Network shall be entitled to require the Trustee to change the person appointed as "principal contractor" for a particular construction site from time to time as the project proceeds but in no circumstances may Aurizon Network require the Trustee to be the "principal contractor".
  - (iii) Aurizon Network to be responsible for environmental protection.
- (s) Access to land: Trustee is to procure access through the Rail Corridor Agreement and Aurizon Network is to indemnify the Trustee for any breach of the conditions imposed on the Trustee under the Rail Corridor Agreement during construction.
- (t) Insurance: consistent with the approach under the draft Project Management Agreement, Aurizon Network will procure that appropriate insurance is effected under the Construction Contract, namely:
- (i) contract works insurance;
  - (ii) public liability insurance\*;
  - (iii) workers compensation (WorkCover); and
  - (iv) professional indemnity\*.
- \* Quantum of insurance cover to be agreed on a project by project basis by reference to the scope and particular risks of the extension..
- (u) Termination for convenience:
- (i) In (and only in) circumstances where the Trustee is permitted to terminate the entire extension works under the Subscription and Unit Holders Deed, the Trustee (on not less than 40 business days prior notice) may terminate the Construction Contract 'for convenience' (i.e. in

the absence of any breach by Aurizon Network) provided that, in accordance with market practice, Aurizon Network is paid:

- A. for all work performed to the date of termination;
- B. for actual costs reasonably incurred (e.g. materials ordered) prior to the termination date and of demobilising personnel and equipment;
- C. the actual costs of 'breaking' subcontracts and of demobilising the subcontractors' personnel and equipment; and
- D. a "break fee" (to be agreed on a project by project basis as a percentage of works under the Construction Contract that will not be conducted due to the termination) to reflect Aurizon Network's loss of opportunity.

- (ii) In addition, and notwithstanding the issue by the Trustee of a notice of termination for convenience, Aurizon Network shall be entitled to undertake (and to be paid for) under the Construction Contract work required to complete any deemed variation to remove Redundant Extension Infrastructure and restore the rail corridor to its previous condition as required by the Extension Infrastructure Sub Lease and the Extension Infrastructure Head Lease.

(v) Suspension and termination

(i) Suspension by Aurizon Network

Aurizon Network may suspend performance of the Works if:

- A. a monthly claim remains unpaid; or
- B. the Trustee fails to provide the required security,

for a period in excess of 10 business days following notice from Aurizon Network requiring the Trustee to remedy the failure to pay/provide security by the due date for so doing under the Construction Contract.

- (ii) Aurizon Network may terminate if the relevant breach continues more than 30 business days following notice from Aurizon Network requiring the Trustee to remedy the failure to pay/provide security by the due date for payment/provision of security, or terminate immediately in the event of the insolvency of the Trustee.

- (iii) If Aurizon Network terminates the Construction Contract for a relevant breach that is not rectified within the required time period, under the Extension Infrastructure Head Lease or Extension Infrastructure Sub Lease, Aurizon Network may nominate 'Redundant Extension Infrastructure' and its removal/restoration will be a deemed variation under the Construction Contract.

(iv) Suspension by the Trustee

- A. The Trustee may suspend performance of all Works under the Construction Contract where it is permitted to suspend the entirety of the Works under the Subscription and Unit Holders Deed.
- B. If a suspension by the Trustee continues for a period of 60 business days or more, Aurizon Network may (by notice in

writing to the Trustee) elect to treat the construction contract as having been 'terminated for convenience' by the Trustee.

- C. If Aurizon Network elects to treat the Construction Contract as having been 'terminated for convenience', Aurizon Network will be entitled (under the Extension Infrastructure Head Lease or Extension Infrastructure Sub Lease) to nominate 'Redundant Extension Infrastructure' and its removal/restoration will be a deemed variation under the Construction Contract.

(v) Suspension Costs

- A. Suspension of the Works (whether by the Trustee or Aurizon Network) entitles Aurizon Network to claim additional time and cost on the same basis as an Adjustment Event under the Construction Contract, even though the suspension would not be an Adjustment Event.
- B. Suspension costs will not automatically be included in the RAB on a pre-approved basis, and their potential inclusion in the RAB would need to be considered by the QCA after the costs have been incurred.

(w) Default for fundamental breach of contract by the Trustee or Aurizon Network to be included. The following matters to be defined:

- (i) what is to be considered a fundamental breach;
- (ii) what are to be the default rights (e.g. suspension by the contractor and taking over the works by the principal); and
- (iii) what process is to apply before those default rights can be used.

(x) Dispute resolution:

- (i) other than in respect of Adjustment Events (for which the mechanism set out in paragraph 5.4(c) above will apply), all disputes will in the first instance be referred to the CEO of Aurizon Network (or their delegate) and the nominated person of the Trustee for resolution.
- (ii) If a dispute is not resolved by CEO of Aurizon Network (or their delegate) and the nominated person of the Trustee but the parties agree to refer it to the Expert for binding resolution, the Expert shall decide that dispute.
- (iii) If a dispute is not resolved by the CEOs/delegates (nor referred by them to the Expert), either party may refer that dispute to litigation (courts of Queensland) for resolution.

(y) Rail Infrastructure Manager: the Construction Contract will include provisions addressing the requirement for Aurizon Network to be the Rail Infrastructure Manager<sup>1</sup> for the extension works to be constructed.

(z) Liability: in accordance with market practice, Aurizon Network will benefit from:

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<sup>1</sup> Under the *Transport (Rail Safety) Act 2010 (Qld)*



- (i) an overall cap on its liability under the construction contract (including any liability for Delay LDs), which liability cap will be based on a percentage of the agreed price); and
  - (ii) an exclusion from any liability for indirect or consequential loss (*note - this exclusion will not operate to extinguish liability Aurizon Network has accepted to pay Delay LDs for late completion*).
- (aa) Intellectual Property:
- (i) Not applicable in the context of the Construction (that is, neither of the two alternatives in the AS4902 standard IP clause will apply).
  - (ii) In its downstream subcontracts for the procurement of the Works, Aurizon Network will obtain appropriate IP rights from its subcontractors and suppliers to enable Aurizon Network to both (i) carry out and complete and (ii) subsequently operate, maintain and augment the extension works that are the subject of the Construction Contract.
- (bb) Price Sensitive Information:
- (i) Aurizon Network will not be required to disclose any “Price Sensitive Information” to the Trustee.  
  

“**Price Sensitive Information**” means any unit pricing or unit cost information in relation to:

    - A. the conduct of Works other than Works undertaken by subcontractors or suppliers of Aurizon Network; and
    - B. the conduct of Works undertaken by subcontractors or suppliers of Aurizon Network if, and to the extent that, such information falls within the scope of a defined set of information which is agreed between Aurizon Network and the applicable subcontractor or supplier (at the time of entry into the applicable subcontract or supply agreement ) as being Price Sensitive Information.
  - (ii) The independent certifier will be entitled to have access to Price Sensitive Information for the purpose of performing its functions in the administration of the construction contract, but will be under an obligation not to disclose such Price Sensitive Information to the Trustee.
- (cc) Security: the Trustee may grant security over all its rights under the Construction Contract without consent in accordance with the requirements of the Expansion Project Agreement.
- (dd) Independent engineer: the preference unit holders may appoint an independent engineer to review decisions of the independent certifier. The independent engineer will be entitled to see all information provided to the independent certifier (subject to the same conditions of confidentiality as the independent certifier) and all decisions made by the independent certifier.

## 6. Extension Infrastructure Head Lease (EIHL)

### 6.1 Summary

Aurizon Draft	Proposed QCA Draft	Purpose of QCA amendments
<p>1. Provides for transfer of extension infrastructure from Trust to QTH and lease-back to Trustee.</p> <p>2. Permits the Trustee to sublease the extension infrastructure (leased to it by QTH) be subleased to AN.</p> <p>3. Includes indemnity from AN to QTH in respect of activities of the Trust, including with respect to QTH's tax position.</p>	<p>1/2/3. Generally as for AN draft for items 1 - 3.</p>	
<p>4. Provides that the lease will terminate in various circumstances (eg termination of AN's lease with QTH (Infrastructure Lease), termination for default of Trustee or Aurizon Network, etc) but does not automatically determine on termination of the EISL.</p>	<p>4. The EIHL to terminate automatically if the sublease terminates.</p>	<p>4. Simplifies transaction if both leases terminate at the same time.</p>
	<p>5. AN to warrant that the EIHL is not materially inconsistent with its infrastructure lease with QTH and the obligations imposed on AN are no less onerous than those imposed on AN under that lease. Ideally, the relevant termination triggers should be attached.</p>	<p>5. Removes need for AN/QTH lease to be disclosed to SUFA users and, as a result, enables users/funders to understand QTH termination risk (i.e. if Infrastructure Lease is determined) necessary for certainty.</p>
	<p>6. AN to obtain all authorisations required by the Trustee or assist the Trustee obtain them if the authorisation must be held in the Trustee's name.</p>	<p>6. Allows Trustee to be passive.</p>
	<p>7. Minor QRC amendments to be accepted where they result in sensible alignment of risk and/or are necessary for third party finance (e.g. AN to insure infrastructure to particular standard).</p>	<p>7. Appropriately allocates risk necessary for protection of interests of users/financiers and/or is necessary for third party finance.</p>
	<p>8. The trustee is to be permitted to charge its rights under the Extension Infrastructure Head Lease.</p>	<p>8. Protects bona fide interests of users/financiers and enables provision of third party finance.</p>
	<p>9. The Trustee may claim uncapped damages where the EIHL is terminated due to AN</p>	<p>9. Protects bona fide interests of users/financiers and enables</p>

Aurizon Draft	Proposed QCA Draft	Purpose of QCA amendments
	default.	provision of third party finance

## 6.2 Parties

- (a) QTH as lessor
- (b) Trustee as lessee
- (c) Aurizon Network as sublessee

## 6.3 Description

- (a) Details transfer process for extension infrastructure from Trust to QTH and subsequent lease-back (head lease) from QTH to the Trustee.
- (b) QTH grants permission for the sublease of the extension infrastructure from the Trustee to Aurizon Network.
- (c) Includes Aurizon Network indemnity to QTH in respect of the Trust (backed off by Trust in the EIHL and, for tax, by the Preference Unit Holders in the Expansion Project Agreement).

## 6.4 Contents

- (a) Condition precedent: that the Expansion Project Agreement is unconditional.
- (b) Passive Trustee: amendments required so that the Trustee is as passive as possible.
- (c) The EIHL and the sub-lease under the EISL will terminate at the same time. On termination, all the Extension Infrastructure will become QTH rail corridor infrastructure under the Infrastructure Lease (with QTH not having a right of veto).
- (d) QRC amendments to the EIHL will not be incorporated other than where fundamental for the protection of access seekers or financial viability of the model, including:
  - (i) risk under Infrastructure Lease: given the lack of visibility of the Infrastructure Lease, and the importance of the Infrastructure Lease in an assessment of risk for access seekers/funders, a redacted draft of the Infrastructure Lease is to be attached. The redactions must still permit the preference unit holders to determine how QTH may terminate the Infrastructure Lease (i.e. default provisions). This will enable an assessment by users as to reasonableness of termination triggers (e.g. no hair trigger for default);
  - (ii) Authorisations: as the Trustee should be considered to be a passive landlord while Aurizon Network has the skills required to operate the network, Aurizon Network should use all reasonable endeavours to procure all Authorisations required unless the Trustee is required to obtain a particular Authorisation by law, in which case Aurizon Network should obtain that Authorisation on the Trustee's behalf and at the Trustee's cost. All Authorisations must be provided to the Trustee if it is to be obliged to comply with them;

- (iii) Insurance (clause 9): the QRC's amendments to the insurance provisions are to be incorporated excluding the amendments relating to novation;
- (iv) Insolvency: definition of "Insolvency Event": the QRC's amendments are to be incorporated;
- (v) Clause 7 (information): the QRC's amendments are agreed (save for that to clauses 7.5(a) and 7.6);
- (vi) Clause 8 (title): the QRC's amendments are to be incorporated;
- (vii) Clause 15 (security/assignment): save for the deletion of "(other than a Permitted Lien)" and the amendment to clause 15.2(b), the QRC's amendments are agreed. Further, the Trustee is to be permitted to grant security in respect of its rights under the Extension Infrastructure Head Lease without consent in accordance with the requirements of the Expansion Project Agreement;
- (viii) Clause 17.1(a) (disputes): the QRC's amendment is agreed save that the obligation does not apply to QTH;
- (ix) Clause 23.4 (PPSA): the QRC's amendments are agreed;
- (x) Limitation on liability: Aurizon Network's position is accepted other than an amendment to allow the Trustee to claim uncapped damages where the EIHL is terminated due to Aurizon Network default; and
- (xi) Discrimination: as between the Trustee and Aurizon Network, the Trustee is to have a right to refer any discrimination and access matter to the QCA. Any determination of the QCA is to be binding, notwithstanding contrary provisions in the EISL.

## 7. Extension Infrastructure Sub Lease (EISL)

### 7.1 Summary

Aurizon Draft	Proposed QCA Draft	Purpose of QCA amendments
<p>1. Trustee subleases to AN the Subleased Extension Infrastructure (which is leased back to the Trustee under the EIHL).</p> <p>2. Trustee leases to AN Leased Extension Infrastructure (i.e. infrastructure that has not yet been transferred to QTH or which QTH has excluded from Extension Infrastructure and which is not covered by the EIHL).</p>	<p>1/2. As for AN draft for items 1 and 2.</p>	
<p>3. AN to maintain and insure the Leased Extension Infrastructure.</p>	<p>3. Refer disputes regarding AN's treatment of Extension Infrastructure (e.g. repair/replacement/maintenance) (that dispute can only be in respect of a breach of non-discrimination principles) to QCA.</p>	<p>3. Gives greater certainty to preference unit holders that the Extension is not degrading at a rate faster than the rest of the relevant system/network.</p>
<p>4. AN pays Trustee Rent for extension infrastructure, calculated based on revenue earned by AN on the extension infrastructure.</p>	<p>4. Rent calculation to be simplified by including examples. Note that the current drafting is acknowledged by AN to require work.</p>	<p>4. Provides certainty for cash flow to Trustee.</p>
	<p>5. Distinctions between AN's obligations as regards Subleased Extension Infrastructure (i.e. infrastructure leased to the Trustee by QTH) and Leased Extension Infrastructure to be removed.</p>	<p>5. Simplifies documents and provides certainty to preference unit holders that all relevant infrastructure is being appropriately maintained/insured, etc.</p>
	<p>6. AN to covenant to grant security in favour of the Trustee over Access Agreements in respect of AN's obligation to pay the Rent, Detriment Amounts and compensation where the sublease has terminated.</p>	<p>6. Necessary for third party finance.</p>
	<p>7. To the extent that an obligation on the Trustee can be performed by AN, that obligation to be recast as an AN obligation (e.g. defects rectification).</p>	<p>7. Allows Trustee to be passive.</p>
	<p>8. QRC amendments to be incorporated where they reasonably balance the interests of the parties and/or are necessary to provide certainty and facilitate third party financing (e.g.</p>	<p>8. Appropriately allocates risk necessary for protection of interests of users/financiers and/or is necessary for third party finance.</p>

<b>Aurizon Draft</b>	<b>Proposed QCA Draft</b>	<b>Purpose of QCA amendments</b>
	the Trustee's right to restrict access to infrastructure where AN default is not reasonable and not accepted).	
	9. The trustee to benefit from equivalent provisions to those relating to the "Detriment Amount" where the termination of the leasing structure is due to AN default.	9. As the trustee may suffer a detriment due to AN default, it is in the trustee's bona fide interest that it be kept whole in respect of such detriment.
	10. The trustee is to be permitted to charge its rights under the Extension Infrastructure Sub Lease.	10. Protects bona fide interests of users/financiers and enables provision of third party finance.
	11. Two-way set-off is to be permitted.	11. Protects bona fide interests of users/financiers and enables provision of third party finance.
	12. Before claiming under the tax indemnity, AN must seek to have the relevant tax liability refunded through a regulatory tariff change.	12. Appropriately allocates risk necessary for protection of interests of users/financiers and/or is necessary for third party finance.
	13. The Trust is to share in any upside Capital Revenue arising in a post-regulatory period,	13. Appropriately allocates reward.
	14. The Zero Value Date will fall two years after Zero Value to permit all rent adjustments to filter through the rent methodology (or earlier if Zero Value has occurred and it is uneconomic to maintain the Trust).	14. Protects bona fide interests of users/financiers and enables provision of third party finance.
	15. AN to bear the risk of the non-service of a direction to pay.	15. Appropriately allocates risk necessary for protection of interests of users/financiers and/or is necessary for third party finance.
	16. The Trustee may claim uncapped damages where (1) the EISL is terminated with the EIHL due to AN default or (2) the EISL has terminated and the security AN was required to grant under the EISL was not so granted.	16. Appropriately allocates risk necessary for protection of interests of users/financiers and/or is necessary for third party finance.

## 7.2 Parties

- (a) Trustee as lessor
- (b) Aurizon Network as lessee

### 7.3 Description

- (a) Sublease and, where the Trustee is owner, lease of the extension infrastructure to Aurizon Network.
- (b) Provides for Aurizon Network to pay Rent and, where the sublease has been terminated (note that parts of the EISL continue where the sublease is terminated) compensation in lieu of Rent.
- (c) Includes indemnity by Trust to Aurizon Network (backs off Aurizon Network's indemnity to QTH under the EIHL).
- (d) Details Rent Calculation Methodology.

### 7.4 Contents

- (a) Condition precedent: that the Expansion Project Agreement is unconditional.
- (b) Aurizon Network's obligations under EISL in relation to the Leased Extension Infrastructure (e.g. clauses 5.5, 5.6, 5.12): these should not be less than those Aurizon Network owes to the QTH.
- (c) Rent calculations:
  - (i) Set-off (clause 9.6):
    - A. Rent over/under payment is to be dealt with through the rent adjustment provisions;
    - B. Subject to paragraph 7.4(c)(i)C below, each party has a right of set-off in respect monies determined or proved to be due and payable; and
    - C. Aurizon Network is required to seek that both it and the Trust are kept whole in respect of their tax exposure (following a change in law) by seeking a change to the regulatory tariff from the QCA. Only if the QCA refuses the change (or to the extent of the refusal) will Aurizon Network will be able to seek set-off. The QCA understands this approach reflects how Aurizon Network would deal with a change in tax law for reasons other than the existence of the Trust.
  - (ii) Rent Calculation Methodology and post-regulation implications: System Allowable Revenue for the purposes of Rent Calculation Methodology to be limited to that derived from regulatory returns through approved regulatory tariffs.
  - (iii) Rent Calculation and Methodology: Schedules 2, 3 and 4 (rent calculations): to be amended to reflect discussions with Aurizon Network other than the Trust will share in any upside in Capital Revenue arising in a post-regulatory period.
  - (iv) Zero Value Date: this date will be the date of redemption of the Preference Units as detailed in paragraph 4.4(c)(i) above.
  - (v) Rent Shortfall/Late Payment adjustment amounts (clauses 10.6 and 10.7): timeframes for calculations to remain as initially drafted (i.e. 3 months as opposed to 1 month).

- (vi) Rolling rectifications for overpayment of Rent in earlier months to be permitted, however over and under payments are not to be subject to interest.
- (d) No Suspension (clause 14.3): the right of the Trustee to suspend access for non-payment of Rent by Aurizon as drafted by QRC is not accepted. This mechanism is considered to be substantially unworkable and potentially significantly detrimental to the network owner/operator.
- (e) Non-discrimination/Dispute (e.g. clauses 5.5(b)(iii) & (v), 5.6(e), 5.7(d), 5.12 & 6.1 and clause 17.2): breach of non-discrimination to be disputed under UT3 with QCA as arbiter. Monitoring of maintenance for non-discrimination purposes is to be achieved through Aurizon Network's providing to the Trustee condition based assessment reports for the whole network with comparisons against the extension infrastructure. If the QCA determines that there has been discrimination, further breaches will be a wilful default by Aurizon Network resulting in unlimited liability for Aurizon Network.
- (f) Nomination of replacement infrastructure: where Aurizon Network replaces Extension Infrastructure (in accordance with its rights under clause 5.6 of the EISL), it should covenant with the Trustee that it will procure that the replacement infrastructure is incorporated into the Infrastructure Lease between Aurizon Network and QTH (there is a mechanism for nomination by Aurizon under the Infrastructure Lease).
- (g) Compensation on termination (clause 3.5): the QRC amendments are not accepted. From a funding perspective it is considered more appropriate to preserve the position that, where the sublease has been terminated, the provisions of the EISL other than the sublease will continue with the Trustee entitled to receive "compensation" equivalent to and in lieu of Rent from Aurizon Network under clause 3.5. However, the Trustee should benefit from a "Detriment Amount" regime payable by Aurizon Network in circumstances where the Trustee or the Preference Unit Holders suffer a tax detriment as a consequence of being paid compensation under this clause.
- (h) Charging (clause 20.4): the Trust may charge its rights under the EISL without consent in accordance with the requirements of the Expansion Project Agreement. Subject to the limitations included in the Specific Security Agreement over Access Charges, Aurizon Network is not to be restricted in how it charges its assets.
- (i) Security for payments: Aurizon Network covenants to provide security in respect of its obligation to pay the Rent, compensation under clause 3.5 of the EISL or any Detriment Amount payable to the Trustee over:
  - (i) initially, the Access Charges under the Access Agreements entered into under the Expansion Project Agreement; and
  - (ii) as those Access Agreements determine or terminate, the Access Charges under such other Access Agreements to ensure that the Trustee has sufficient security in respect of the Expected Rent payments.
- (j) Direction to Pay (clause 9): Aurizon Network bears the risk of it not serving a direction to pay. The Access Agreement Customer will not have an obligation to notify Aurizon Network if the Direction to Pay has not been served.
- (k) Agency (clause 8): the interface between the EISL and the Rail Corridor Agreement to be reviewed as there will not be an agency.



- (l) Insurance: insurance provisions relating to Leased Extension Infrastructure should mirror the requirements for Subleased Extension Infrastructure as required under the EIHL.
- (m) Aurizon Network to comply with Trustee's obligations in EISL: given that the Trust is now intended to be passive, Aurizon Network should comply with the Trustee's obligations under the EISL, other than those with which only the Trustee can comply.
- (n) Asset Register/Defects Register: Aurizon Network should provide details of the asset and defects registers to the Trustee in accordance with the timings required under the EIHL (which should tie into the Infrastructure Lease's requirements). A mechanism allowing comments of the Trustee to be submitted to Aurizon Network for their consideration is reasonable and should be retained per the QRC's drafting, subject to not interfering with that timing (i.e. comments can be considered after submission of registers).
- (o) Replaced and Obsolete Parts: Aurizon Network is to remain the Trustee's nominee for the purposes of clause 3.2 however is to bear the cost of removal but retain the benefit of any disposal.
- (p) Associates: Aurizon Network to be responsible for all its Associates (Aurizon Network is best able to manage this risk).
- (q) Limitation on liability: Aurizon Network's position is accepted other than the Trustee may claim uncapped damages where the Infrastructure Lease has terminated due to Aurizon Network default.
- (r) Disputes: Dispute resolution methodology to be removed to the Expansion Project Agreement where methodology is homogenous.
- (s) Confidentiality: provisions to be removed to the Expansion Project Agreement to simplify the SUFA documentation and therefore reduce costs of access.
- (t) GST: provisions to be removed to the Expansion Project Agreement to simplify the SUFA documentation and therefore reduce costs of access.
- (u) Clause 22.3 (PPSA): the QRC's amendments are agreed.
- (v) General comment: to the extent applicable, comments in relation to the EIHL to apply to the EISL.

## 8. Rail Corridor Agreement (RCA)

### 8.1 Summary

<b>Aurizon Draft</b>	<b>Proposed QCA Draft</b>	<b>Purpose of QCA amendments</b>
Insert extension policy	Insert extension policy based on the agreed position for UT4.	Required by section 7.6(a)(ii) of the Undertaking.
1. Grants land licence to Trustee for access to AN land for construction works and extension infrastructure.  2. Sets out AN requirements (as landholder) for access, health and safety.	1/2. As for AN draft for items 1 and 2 but with QRC amendments where they are necessary to appropriately balance the interests of the parties or to allow third party financing. ( Note that generally AN's position in relation to matters relating to safety and integrity of the network is accepted).	1/2. To appropriately allocate risk necessary for protection of interests of users/financiers and/or is necessary for third party finance.
	3. Consequential amendments required as a result of removing the agency arrangement (previously in the Project Management Agreement).	3. Consequential amendment. Removal of agency removes an obstacle for a professional trustee to be appointed as Trustee.
	4. Include obligation to make available any land AN owns that is required for the approved scope.  5. Confirm that AN cannot review scope, cost, access requirements, etc, if the QCA has approved the scope and the construction contract has commenced.  6. Include reasonable endeavours obligation to acquire any land that may be required.	4/5/6. Avoids AN using its role as landholder to second guess the QCA approval. The requirements of this role should be factored into the scoping of the project.
	7. Confirm that AN has primary obligation in respect of safety (and Trustee must comply with reasonable requirements if it wants to enter AN land).	7. Ensures Trustee can be passive.
	8. The trustee is to be permitted to charge its rights under the Rail Corridor Agreement.	8. Protects bona fide interests of users/financiers and enables provision of third party finance

### 8.2 Parties

- (a) Trustee
- (b) Aurizon Network in its capacity as landholder

### 8.3 Description

- (a) Grants land licence to the Trustee for access to Aurizon Network land for construction works and extension infrastructure.

- (b) Provides Aurizon Network's requirements for access, health and safety.

## **8.4 Content**

- (a) Scope: given access during construction will be governed by the Construction Contract under which Aurizon Network will be the Principal Contractor, Aurizon Network must undertake construction/modification of the Infrastructure on its own land. Accordingly, as Aurizon Network is the Landholder, the scope of the RCA will be significantly reduced (e.g. to instances where the Trustee has rights to access the Land under the Project documents). Necessary revisions will be required.
- (b) Condition precedent: that the Expansion Project Agreement is unconditional.
- (c) The QRC's comments are accepted as they provide greater simplicity to the operation of the document save that Aurizon Network's position on safety and integrity of the network is preferred.
- (d) Agency provisions: Aurizon Network will not be the agent of the Trustee. Consequential amendments to the RCA are required.
- (e) Construction Works: Aurizon Network cannot withhold consent to access, interface plans or the works if the scope has been approved under the Construction Contract.
- (f) Breach of non-discrimination: to be disputed under the regulatory undertaking then in force with QCA as arbiter.
- (g) Given pre-approval of scope and that Aurizon Network has full control of the land, any action Aurizon Network takes which has a consequence of changing the scope or increasing cost outside the approved variation methodology will be subject to the QCA approval.
- (h) Aurizon Network should be subject to a reasonable endeavours obligation to acquire land where necessary for the Project, however there will be no absolute obligation. Given the revisions to the Construction Contract mechanisms, and Aurizon Network's role as principal contractor, it is anticipated that these provisions would be limited to acquisition of additional land where required as a result of an agreed variation under the Construction Contract only.
- (i) WH&S: the Trustee will not be the principal contractor for the purposes of the WH&S Act.
- (j) Accreditation: Aurizon Network must obtain and maintain accreditation as Rail Infrastructure Manager.
- (k) Limitation on liability: Aurizon Network's position is accepted.
- (l) The Trustee may charge its rights under the RCA without consent in accordance with the requirements of the Expansion Project Agreement.

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## 9. Integrated Network Deed (IND)

### 9.1 Summary

<b>Aurizon Draft</b>	<b>Proposed QCA Draft</b>	<b>Purpose of QCA amendments</b>
1. Provides for State and QTH's consent for AN to enter into SUFA arrangement.  2. Sets out compensation mechanism if the AN/QTH infrastructure lease terminates.	1/2. As for AN draft for items 1 and 2.	
	3. State and QTH to consent to security over right to compensation in favour of Trustee.	3. Permits third party financing.
	4.QTH's right to exclude "Excluded Extension Infrastructure" to be removed. It should not be needed with a pre-approval process.	4. Provides certainty to preference unit holders and financiers that their interest will not be adversely affected on termination of the structure as a result of exclusion of infrastructure from compensation process.
	5. The trustee is to be permitted to charge its rights under the Rail Corridor Agreement.	5. Protects bona fide interests of users/financiers and enables provision of third party finance.

### 9.2 Parties

- (a) Trustee
- (b) Aurizon Network
- (c) State of Queensland
- (d) QTH

### 9.3 Description

- (a) Provides the State's and QTH's consent for Aurizon Network to enter into the SUFA transaction.
- (b) Details the compensation mechanics where the Infrastructure Lease terminates.

### 9.4 Contents

- (a) Condition precedent: that the Expansion Project Agreement is unconditional.
- (b) Generally, the IND is to be broadly based on the Aurizon Network draft, with several of QRC amendments where reasonable/necessary to protect interests of persons proposed by the Trust to seek access to the Network.

- (c) Restriction on Termination of Sublease/Land Licence (clause 5): the EISL and the EIHL are to terminate contemporaneously to avoid stranding of essential Infrastructure.
- (d) QTH will not have a right to require Excluded Extension Infrastructure to be returned to either the Trustee or Aurizon Network (on termination of the Extension Infrastructure Head Lease and termination or expiry of the Infrastructure Lease).
- (e) The Trustee may charge its rights under the Integrated Network Deed without consent in accordance with the requirements of the Expansion Project Agreement.

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## 10. Specific Security over Access Charges

### 10.1 Summary

Aurizon Draft	Proposed QCA Draft	Purpose of QCA amendments
Nil	Provides for mortgage of contractual rights (to receive payment) under the documents.	Enhances attractiveness of package for third party financing.

### 10.2 Parties

- (a) Aurizon Network Pty Ltd (**Grantor**)
- (b) Trustee (**Secured Party**)

### 10.3 Description

Mortgage of contractual rights in favour of the Secured Party.

### 10.4 Definitions

**Compensation** refers to the amount to be paid by the Grantor in lieu of Rent where the sublease has been terminated.

**Direction to Pay Account** is the separate bank account referred to in the Extension Infrastructure Sub Lease and is an account in the name of the Trustee which the Trustee is required to establish and maintain for the sole purpose of receiving all Direction to Pay Amounts.

**Direction to Pay Amount** is the amount defined in the Extension Infrastructure Sub Lease as being the rent payable under that document.

**Trustee Detriment Amount** means the Detriment Amount (as defined in the Extension Infrastructure Sub Lease) payable to the Trustee by the Grantor.

### 10.5 Terms of Specific Security Agreement

- (a) (**Secured Obligations**) The obligation of the Grantor to pay the Rent, Trustee Detriment Amounts and Compensation to the Trustee under terms of the Extension Infrastructure Sub Lease.
- (b) (**Secured Property**) The Grantor's present and future right, title and interest in the right to receive the payment of the Direction to Pay Amount under each Extension Access Agreement and Nominated Access Agreement (as those terms are defined in the Extension Infrastructure Sub Lease).
- (c) (**Event of Default**) It will be an Event of Default if an Insolvency Event (as that term is defined in the Extension Infrastructure Sub Lease) in respect of the Grantor subsists.
- (d) (**Enforcement Rights**) If an Event of Default is subsisting the Trustee will have the customary rights for enforcement under a specific security agreement.
- (e) (**Priority**) The Specific Security Agreement is to be first ranking.

(f) **(Representations, warranties and undertakings)** In addition to standard corporate competency representations, the following representations, warranties and undertakings in relation to the Secured Property:

- (i) the Grantor has, or will upon signing of the relevant access agreements have, good title to the Secured Property;
- (ii) no interest, right or entitlement to receive any benefit or profit from the Secured Property has been assigned or encumbered to any other person;
- (iii) the mortgage is legally binding on the Grantor and that all necessary authorisations have been obtained;
- (iv) the Grantor will not, without the Secured Party's prior written consent:
  - A. create any encumbrance over the Secured Property; or;
  - B. dispose of, or permit to exist, any other interest in the Secured Property.

**Table 1: Summary of parties involved and applicable agreements**

		Queensland Treasury Holdings	Aurizon Holdings	Aurizon Network	Trustee	Preference unit holder	Access seeker	State of Queensland
<b>The Trust</b>								
<b>Trust Deed (TD)</b>	- Establishes the Trust with Aurizon Network as ordinary unit holder, permits the issue of preference units and appoints the Trustee			Yes	Yes			
<b>Subscription and Unit Holders Deed (SUHD)</b>	- Subscription process for preference units - Establishes the operational rules of the Trust whilst there are unredeemed preference units - Supercedes the Trust Deed if there is a conflict			Yes	Yes	Yes		
<b>Project Delivery and Land Access</b>								
<b>Construction Contract</b>	- A contract under which Aurizon Network designs and builds the extension by a designated date for practical completion in order to deliver an agreed amount of additional capacity.			Yes	Yes			
<b>Rail Corridor Agreement (RCA)</b>	- Provides a licence to the Trustee so that it can have the extension infrastructure built on Aurizon Network land - Identifies the terms and conditions associated with this right			Yes	Yes			
<b>Leasing, Ownership and Rent</b>								
<b>Extension Infrastructure Head-lease (EIHL)</b>	- Establishes the ownership and leasing terms and conditions for the SUFA asset between QTH, the Trust and Aurizon Network	Yes		Yes	Yes			
<b>Extension Infrastructure Sub-lease (EISL)</b>	- Establishes the sub-leasing terms and conditions for the SUFA asset between the Trust and Aurizon Network - Contractually defines the rental terms and conditions for Aurizon Network to pay rent to the Trust			Yes	Yes			
<b>Access Rights and Tax Indemnity</b>								
<b>Expansion Project Agreement (formerly Umbrella agreement)</b>	- "Wrapper Document" setting out common terms and conditions - Provides an overview of the key obligations between Aurizon Network, the Trustee and the Preference Unit Holders - Establishes which parties will be entering into a linked access agreement - Establishes that each preference unit holder will provide various tax indemnities			Yes	Yes	Yes	Yes	
<b>Agreement Termination and SUFA Asset Disposal</b>								
<b>Integrated Network Deed (IND)</b>	- Governs the circumstances and process by which the QTH may dispose of SUFA assets following termination of the EIHL - Governs the disposition of any disposal proceeds if a disposal occurs	Yes		Yes	Yes			Yes
<b>Performance Standards</b>								
<b>Deed Poll Guarantee (DPG)</b>	- Guarantees to QTH Aurizon Network and the Trustee's performance of their obligations under the EIHL and IND - Indemnifies QTH against any losses it may incur due to a default of delay in the performance of these obligations		Yes					
<b>Security</b>								
<b>Specific Security over Access Charges</b>	- Provides for mortgage of contractual rights (to receive payment) under the documents.			Yes	Yes			