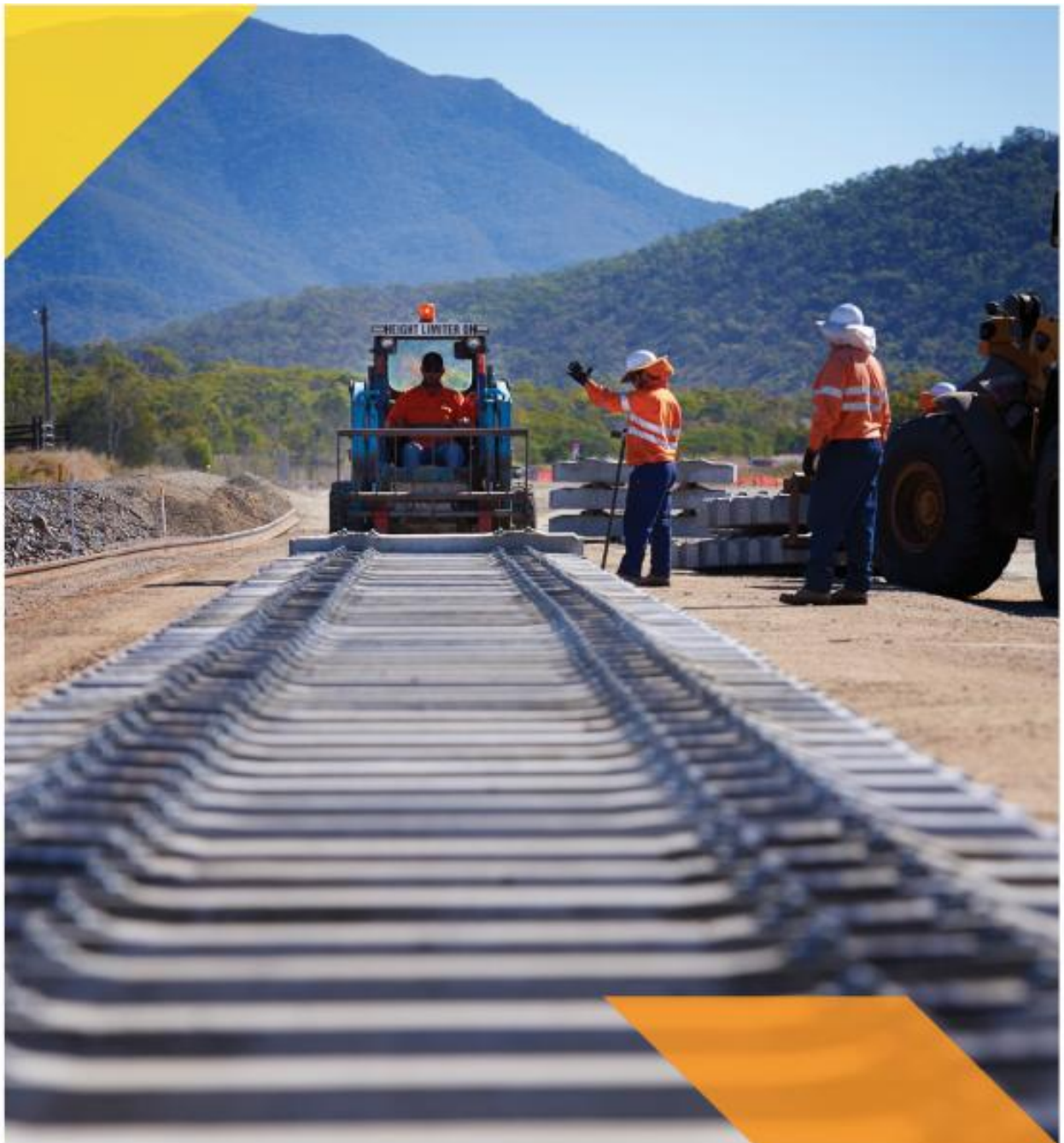




AURIZON™

December 2012

Standard User Funding Agreement (**SUFA**) – Explanatory Notes (Volume 1)



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Introduction

1.1 General

Aurizon Network Pty Ltd (**Aurizon Network**, formerly QR Network Pty Ltd) supports a growing and sustainable Central Queensland Coal Network (**CQCN**) for the benefit of customers, supply chain partners and the broader economy. The sustainable development and funding of railway extensions in the CQCN are critical to the coal supply chain and its stakeholders.

Due to Aurizon Network's ownership by an ASX listed company and the large scale investments required for infrastructure extensions, Aurizon Network must maintain commercial flexibility over the funding of capital projects. When Aurizon Network opts not to fund an extension, access seekers require options to enable ongoing enhancements to the CQCN.

Against that background, and consistent with the objectives of Aurizon Network's 2010 Access Undertaking (**2010AU**), Aurizon Network has, through extensive consultation and negotiation processes with industry, sought to develop a Standard User Funding Agreement (**SUFA**) framework. The framework, comprising the SUFA model, the SUFA legal documents and associated regulatory and technical matters as addressed in this submission, provides a new option for access seekers to fund extensions to accommodate their capacity requirements and timeframes, where infrastructure funding from Aurizon Network is not fully available.

The guiding objective of SUFA has been simple – enabling new arrangements and choices for access seekers in funding extension and growth of the CQCN. In order to develop a viable and innovative framework for the benefit of all parties, Aurizon Network has worked with its customers through an industry-nominated Customer Working Group (**CWG**) of commercial and legal experts for over a year,. Aurizon Network thanks and acknowledges the significant input and assistance of the CWG.

The SUFA framework being submitted for approval reflects many compromises by Aurizon Network and the CWG as the parties sought to address matters of concern to them. The outcome is influenced by the preferred financial outcomes for industry and Aurizon Network.

The SUFA framework comprises a template package of nine interconnected legal agreements, encompassing funding, legal structure, lease tenure, and supporting matters in a commercially prudent and effective way.

These explanatory notes present an overview of the legal agreements and relevant provisions that comprise Volume 1 of the complete SUFA submission, as follows:

- Section 2 highlights the principles and objectives of the SUFA framework;
- Section 3 covers the development of the SUFA framework;
- Section 4 sets out the structure of the SUFA legal documents;
- Section 5 outlines the treatment of selected SUFA provisions;
- Section 6 provides a summary and conclusion;
- Section A is a glossary; and
- Section B addresses key material issues.

Volume 2 provides the SUFA template legal agreements. Volume 3 presents the regulatory and technical matters supporting this submission. Volume 4 comprises a marked-up copy of the 2010AU for the Draft Amending Access Undertaking (**DAAU**) to implement the SUFA framework.

1.2 Confidentiality

This submission is not confidential.

2 The SUFA framework

2.1 Context

The SUFA framework has been developed with CWG involvement to give access seekers the option of meeting the cost of railway extensions to accommodate their capacity requirements and timeframes. Each SUFA transaction is to be a separate transaction, but on a broadly consistent basis with each other SUFA transaction. SUFA is not the only funding option and does not preclude the negotiation of alternative funding arrangements.

The SUFA framework is intended to facilitate network extensions for capacity growth by providing a mechanism to fund infrastructure enhancements and provide cashflows to funders. The SUFA framework is not designed to:

- impact on the operation or ownership of the CQCN;
- create secondary markets for the cashflows generated by the CQCN;
- enable access seekers to control or own parts of the CQCN;
- enable access seekers to fund directly and take security and recourse over parts of the CQCN; or
- enable third party investment in network extensions (which could conflict with wider coal supply chain coordination, network continuity and coordinated network investment).

2.1.1 Philosophy and approach

In developing the SUFA framework, Aurizon Network has taken an open, innovative and collaborative approach with its customers through the CWG. There has been considerable focus on customer involvement, open debate on divergent views, and implementing mutual compromises on issues wherever possible.

2.1.2 The SUFA trust

The SUFA framework is based on a unit trust (**the Trust**) that develops the SUFA project assets, which are to be incorporated into the relevant railway system and are to be owned by the State. The State leases these assets to the Trust, which sub-leases them to Aurizon Network to operate as a part of its network.

2.1.3 The SUFA beneficiaries

Participating access seekers hold preference units (**PU**s) as Preference Unit Holders (**PU Holders**) in the Trust. Aurizon Network holds the only ordinary unit in the Trust, and Aurizon Network may also hold PUs if it provides funding under a hybrid funding SUFA transaction.

The PU Holders are to provide all of the Trust's funding and receive all of its distributions (essentially the Trust's lease rental income less Trust expenses).

2.1.4 The SUFA infrastructure and Aurizon Network's network

During the project delivery and operational phases of each SUFA transaction, there will be numerous interfaces between the SUFA assets and the balance of the CQCN. The development of user funded infrastructure within Aurizon Network's network requires Aurizon Network to have control over its construction and operation. This allows Aurizon Network to operate the CQCN on a seamless basis while meeting pre-existing obligations and managing the attendant risks.

2.2 SUFA principles

Over a year of discussions, consultations and other involvement with customers, the following principles have been implemented within the SUFA framework.

2.2.1 System Integrity

SUFA infrastructure becomes part of the CQCN, which must be managed and operated as part of a single integrated system. Furthermore, SUFA projects will involve works on existing parts of the CQCN where Aurizon Network has obligations to current access holders and the responsibility for rail safety. A SUFA project must not impede Aurizon Network's ability to operate and manage the affected railway. Consequently, the SUFA documents confer on Aurizon Network effective control over the SUFA infrastructure during both its project delivery and operational phases.

A fundamental Aurizon Network concern is mitigation of the risk that the network augmented by a SUFA project may fail to provide the level of access provision functionality (e.g. capacity, reliability, efficiency and resilience) that would have been provided had Aurizon Network funded the project, and determined the project scope and its delivery (**System Integrity Risk**). This risk may arise from legal, commercial, technical or other factors.

To minimise System Integrity Risk, the SUFA framework imposes substantially all responsibilities for the development, operation and maintenance of SUFA infrastructure on Aurizon Network, and grants information and governance rights in respect of Aurizon Network activities to the PU Holders. Although Aurizon Network's responsibilities are more extensive than is usual for a project manager of a major greenfield infrastructure development, they are consistent with the SUFA principles and mitigate the State's concerns about system integrity.

The SUFA framework requires Aurizon Network to lease the SUFA extension infrastructure from the Trust for each SUFA project. For example, if Aurizon Network entered into three successive SUFA projects on a particular rail corridor, Aurizon Network would hold tenure over rail infrastructure on that corridor under four infrastructure leases, being Aurizon Network's existing infrastructure lease from the State, and the three SUFA infrastructure leases. However, If Aurizon Network was unable to operate infrastructure leased under any of these leases, it would be unable to operate the corridor or a part of it, giving rise to System Integrity Risk and adversely impacting both Aurizon Network and customers not involved in the particular SUFA project.

2.2.2 Workability

SUFA must provide access seekers with a workable mechanism to enable them as PU Holders to contribute the funds necessary for the delivery of an extension project. The SUFA framework has been developed to allow for rail extension projects of various sizes and timeframes. PU Holders commit the funds required in return for rights to future cashflows arising from the SUFA infrastructure, rather than directly owning the SUFA infrastructure. The SUFA framework provides PU Holders as project funders with information and governance rights in respect of their SUFA transaction.

As any SUFA infrastructure will affect the rail infrastructure leased to Aurizon Network from the State, each SUFA transaction must also satisfy the State's requirements on a transaction specific basis (see section 3.2.3). For example, a SUFA transaction must not create System Integrity Risk for the State or adversely affect the State's existing position under its Aurizon Network infrastructure leases or any earlier SUFA transaction.

2.2.3 Efficiency

SUFA must be structurally efficient for all parties, enabling the implementation of SUFA transactions in a timely, low cost and tax effective manner. While some compromises were necessary to address workability and System Integrity Risk, there is generally a clean allocation of responsibilities between Aurizon Network, the Trustee administering the SUFA transaction, and the participating access seekers as PU Holders.

2.2.4 Non-prejudicial

The SUFA framework should not compromise Aurizon Network's legitimate business interests or prejudice future extension projects, whether funded by Aurizon Network or via another SUFA transaction. For this reason, the SUFA framework is structured to ensure that SUFA does not disadvantage:

- access customers with existing access rights relying on the railway;
- the wider coal supply chain;
- subsequent SUFA (or Aurizon Network-funded) projects;
- Aurizon Network's existing and future business activities; and
- Aurizon Network's legitimate business interests.

An example of a potential impact of SUFA on Aurizon Network's legitimate business interests is the financial metrics of Aurizon Network's ultimate parent company, Aurizon Holdings Limited (**Aurizon Holdings**), as used in debt and equity markets. SUFA funding should not be classified as a liability on Aurizon Network's balance sheet. Similarly, the Aurizon Holdings shareholders have legitimate expectations (given the nature of their investment) that their returns on Aurizon Network funding will not be impacted by a SUFA transaction. Moreover, a SUFA transaction should not impact on the returns available to Aurizon Network should it decide to fund further infrastructure extensions.

It should be noted that for practical reasons, the submitted SUFA legal documents do leave some risks with Aurizon Network, for example:

- 1) impacts of changes to accounting standards over time; and
- 2) consequences of Aurizon Network's fraud, gross negligence or wilful default.

2.2.5 Flexibility

SUFA must enable flexibility by allowing customisation by the parties to suit their needs on a project by project basis. For example, it allows for commercial negotiation of compensation for additional risk, where Aurizon Network may assume some or all of the risks that, under a base case scenario, are allocated to PU Holders (e.g. project delivery cost overrun risk) in return for commercially negotiated returns.

The SUFA framework also enables hybrid funding, where Aurizon Network can fund part of the cost of a SUFA project with access seekers contributing the balance of the funding.

2.3 SUFA documentation

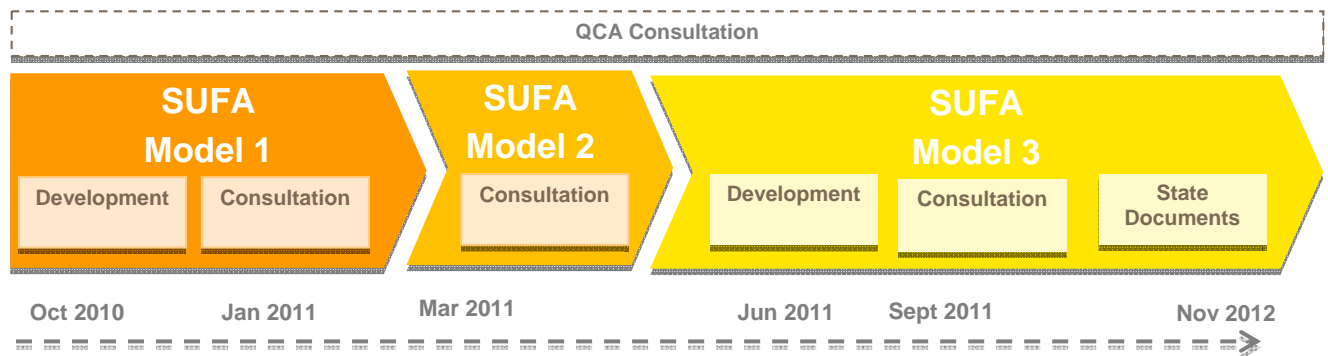
Aurizon Network has developed the SUFA template documentation as a package to address most (but not all) of the commercial positions required for a given SUFA transaction. As is the case for any template documentation, the treatment of certain commercial positions is best determined at the time of a transaction.

3 The development of the SUFA framework

3.1 Background

The SUFA framework has been developed over the last two years in three distinct stages (**models**), as shown in Diagram 1 and discussed below.

Diagram 1: Development of the SUFA Framework



3.1.1 SUFA Model 1

Aurizon Network was required to submit a proposed Standard User Funding Agreement to the Queensland Competition Authority (**QCA**) within three months of the 2010AU being approved on 1 October 2010.¹ Aurizon Network lodged a suite of SUFA documentation (which constituted **SUFA Model 1**) in December 2010. The short time period prevented any substantive customer consultation before submission.

In the period from submission to March 2011, Aurizon Network conducted customer consultations in parallel with the QCA process considering SUFA Model 1. These consultations identified customer concerns regarding:

- limited consultation;
- unacceptable tax risk;
- security of cash flows to funders;
- incompatible with hybrid funding; and
- insufficient project involvement of customers.

3.1.2 SUFA Model 2

In March 2011, customers provided details of an alternative model (**SUFA Model 2**). Aurizon Network and customers consulted on this model for several weeks. SUFA Model 2 did not fully meet some of the objectives discussed in Section 2.2 and did not provide an appropriate balance between the interests of the parties as set out in Section 3.3 below.

3.1.3 SUFA Model 3

Given SUFA Model 1 and SUFA Model 2 both fell short of meeting key requirements of all parties, Aurizon Network developed an innovative alternative structure based on a unit trust developing and

¹ Clause 7.6(a) of 2010AU.

leasing SUFA infrastructure assets from the State, and sub-leasing them to Aurizon Network for a rental stream in favour of the funders (**SUFA Model 3**).

Between September and November 2011, Aurizon Network consulted broadly with customers about the transaction structure and key elements of SUFA Model 3. This involved high level presentations, Q&A sessions, and customer meetings. During this consultation, Aurizon Network and the customers concurred that SUFA Model 3 could provide the basis of a mutually supported SUFA framework.

Following this positive response, Aurizon Network then developed draft documentation to reflect the revised arrangement and tabled it with customers in November 2011. Under this initial proposed transaction structure, the Trust would own all infrastructure assets and lease them to Aurizon Network.

Consultation on SUFA Model 3 continued until September 2012 and involved Aurizon Network providing two draft iterations of the core SUFA documents to the CWG for its review and feedback. In the period between September 2012 and this submission, Aurizon Network has reflected the outcomes of the consultation about the core SUFA documents and continued engagement with the State via Queensland Treasury Holdings (**QTH**) to develop the State Documents. As a result of subsequent discussions with the State, the SUFA documents, particularly the Extension Infrastructure Lease, were further refined.

Throughout the SUFA framework's development, Aurizon Network has briefed the QCA on progress of the discussions. This has included providing copies of documentation at key points through the process.

3.2 Consultation with customers and the State

3.2.1 The Customer Working Group (CWG) process

To progress the SUFA Model 3 Aurizon Network consulted with the CWG, whose members were nominated by the Queensland Resources Council. A set of issues for discussion was agreed, a work programme developed, and smaller working groups for various streams formed to expedite the process. On such issues, typically working papers were exchanged and subsequently discussed at work stream meetings.

Since November 2011, Aurizon Network has undertaken a substantive involvement process with the CWG and has addressed numerous significant issues, including tax effectiveness, hybrid funding, trust funding mechanism, the credit standing of PU Holders under the Trust, trust rental if regulation ceases, and direction to pay.

In some cases, particular issues were considered in smaller and more specialised settings, e.g. the Trust's tax policy (involving tax specialists), construction involvement (commercial representatives) and liability matters (legal advisors). Overall, Aurizon Network has found that the formation of the small, focussed work stream groups, and the CWG being advised by a single lawyer assisted considerably in the development of the SUFA framework.

Aurizon Network has found working with the CWG beneficial, and discussions were extended at the request of the CWG to allow further consideration of issues. This has been followed with higher level customer feedback sessions with the customers comprising the CWG prior to submission of the SUFA framework to the QCA.

3.2.2 The CWG and Extension Process

The development of the Extension Process, originally considered as a part of the SUFA discussions with the CWG, was deferred to enable SUFA to be prioritised. While the CWG had concerns about this deferral, discussion on the Extension Process will now be expedited following submission of the SUFA framework.

3.2.3 State consultation

As legal owners of the railway infrastructure leased to Aurizon Network, QTH and Queensland Rail (if applicable) must agree to each SUFA transaction on a transaction by transaction basis. This has involved development of State Documents to enable SUFA transactions to be implemented that impinge on the State's infrastructure assets leased to Aurizon Network. Aurizon Network has engaged with QTH, addressing its specific concerns with the draft SUFA documentation and the implementation of the SUFA framework over its existing leases with Aurizon Network.

The State Documents are not as fully developed as the other SUFA documents, due to time constraints. The CWG has not had the opportunity to engage with Aurizon Network and the State at this stage; however Aurizon Network has discussed the relevant high level principles with the CWG. The submitted State Documents express an acceptable position for Aurizon Network and remain subject to further review by QTH. Aurizon Network and Queensland Rail will engage on the Queensland Rail documentation in parallel with the process for further consultation with QTH.

3.3 Balancing competing interests

The collaborative development of the SUFA framework has required significant rethinking of initial positions for all concerned, in order to achieve the balance between necessary accounting, control and tax outcomes while addressing competing interests in respect of commercial prudence, financial viability, risk, project delivery and operational integrity. This is particularly marked for Aurizon Network, which manages multiple responsibilities under its roles as:

- a) operator and maintainer of the CQCEN;
- b) access provider to existing and new customers over the CQCEN;
- c) accredited rail infrastructure manager for the CQCEN;
- d) responsible entity for workplace health and safety and rail safety for the CQCEN;
- e) party responsible for the ongoing cost of maintenance and asset replacement for the CQCEN;
- f) all the above roles per **(a)-(e)**, with respect to SUFA infrastructure;
- g) economic owner of non-SUFA infrastructure in the CQCEN; and
- h) project manager responsible for the timely delivery and within cost for SUFA infrastructure.

In light of its pre-existing responsibilities as well as those under SUFA, Aurizon Network's key interests are:

- 1) operational interests, to provide access to existing customers and to minimise disruptions to normal operational service;
- 2) project delivery interests, to enable cost effective delivery of SUFA and non-SUFA projects within required timeframes serving multiple customers;
- 3) safety and legal compliance interests, to conduct operational and project delivery matters lawfully and safely; and
- 4) tax and financial interests.

These matters must be balanced against the interests of PU Holders regarding their SUFA project's delivery, cost, timing, oversight and control as:

- i. Trust contributors interested in the cost of the SUFA infrastructure project;
- ii. access seekers interested in timely delivery matching with mine and port availability;
- iii. funders with the right to receive, via the Trust, a share of the cash-flows generated in respect of the completed SUFA infrastructure; and
- iv. access holders of the incremental capacity created by the SUFA project.

Aurizon Network considers that the SUFA framework achieves an acceptable balance between the interests of Aurizon Network and PU Holders for a "base case" SUFA transaction. If any subsequent modification is made to the SUFA framework, this may require significant restructuring to retain commercial balance between the various competing interests.

If adjustments to the SUFA template documentation are required for a specific transaction, this is best done by Aurizon Network and PU Holders agreeing to vary the standard documentation to protect their commercial interests in light of transaction specific considerations by:

- jointly assessing project specific risks, requirements and positions;
- negotiating mutually acceptable transaction specific documentation;
- executing the associated contract documents; and
- PU Holders monitoring and engaging with Aurizon Network to ensure that project delivery meets contractual requirements.

If Aurizon Network or PU Holders are unable to negotiate a mutually acceptable SUFA transaction, either Aurizon Network or the PU Holders may rely on the dispute resolution provisions of the access undertaking.

3.4 Status of SUFA documents

The SUFA framework comprises a substantially well developed and considered set of legal documents, enabling PU Holders and Aurizon Network to execute SUFA transactions in a workable and effective manner while respecting the balance established to accommodate all parties involved. However, Aurizon Network notes that some matters have not been fully agreed with the CWG.

The State Documents have been developed by Aurizon Network and QTH. Whilst the principles have been discussed with the CWG, the documents have not been reviewed by the CWG. Aurizon Network intends to consult with the CWG and QTH on the State Documents in parallel with consideration of this submission.

Similarly, Aurizon Network will consult with Queensland Rail on the State Documents to develop equivalent documentation for enhancements over infrastructure currently leased from Queensland Rail.

4 Commercial structure

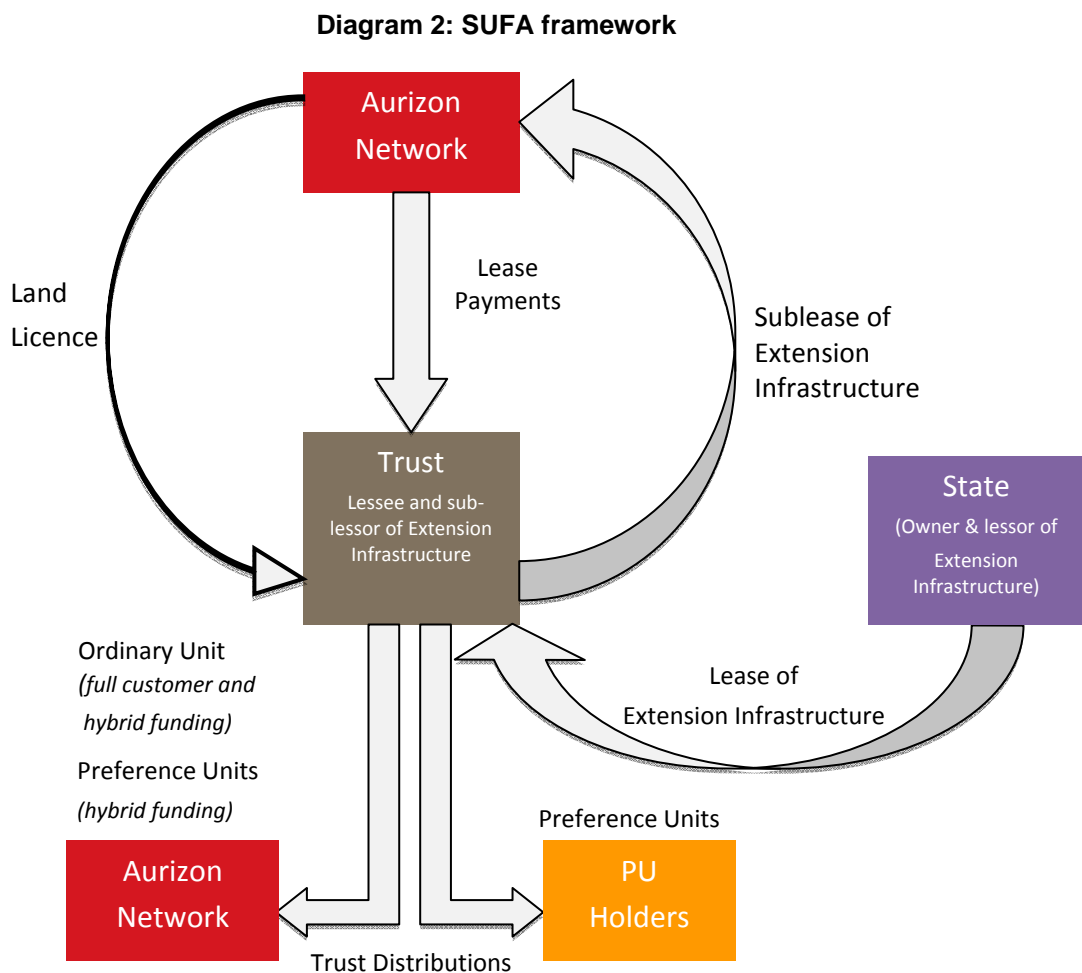
4.1 Overview

As previously discussed, the SUFA framework was developed to provide an alternative option for rail extension projects to proceed should Aurizon Network not fully fund the required works. In this situation SUFA enables access seekers to meet the costs of SUFA projects in a reasonably workable, efficient, non-prejudicial and flexible way.

4.2 SUFA model

As explained in Section 2, the SUFA model is based around a unit trust (the **Trust**), where SUFA project assets to be incorporated into the relevant railway system are owned by the State and leased to the Trust, which sub-leases them to Aurizon Network (**Extension Infrastructure**).

The SUFA model is presented at Diagram 2 below.²



² For simplicity, the diagram and the subsequent description are restricted to Queensland Treasury Holdings (QTH), which owns most of the infrastructure currently leased to Aurizon Network. If a SUFA project requires changes to the rail infrastructure leased to Aurizon Network by Queensland Rail (Aurizon Network’s other infrastructure lessor), an additional SUFA lease from Queensland Rail to the Trust is required.

4.3 SUFA Structuring

Key features of the SUFA framework include:

4.3.1 Trust structure

- NewCo, a wholly-owned subsidiary of Aurizon Network, is appointed as the Trustee for the Trust and may be contractually replaced under certain circumstances;
- Participating access seekers hold preference units (**PU**s) as Preference Unit Holders (**PU Holders**) in the Trust;
- Aurizon Network holds the only ordinary unit in the Trust, and Aurizon Network may also hold PUs under hybrid funding SUFA transactions;
- PU Holders retain a level of control over the Trust through reserve decisions and reserve powers;
- Aurizon Network retains a level of control over the Trust decisions in Aurizon Network’s capacity as the ordinary unit holder; and
- PU Holders provide tax indemnities to Aurizon Network.

4.3.2 Asset ownership

- SUFA project assets are owned by the State lessor, QTH;
- SUFA infrastructure leased by QTH to the Trust, and sub-leased by the Trust to Aurizon Network; and;
- In the event of any termination of the EIA, QTH may elect to transfer ownership of part of the Extension Infrastructure to the Trust on a transaction specific basis.

4.3.3 Miscellaneous

- During construction, each PU Holder is required to be a party to an Umbrella Agreement (**UA**). The PU Holder may nominate a related entity as its UA party, provided a common ownership test is met;
- Post construction, the common ownership test shall cease to apply to the PU Holder and the UA party; and
- During the operation of the relevant SUFA infrastructure, any transfer of PUs is subject to Aurizon Network’s consent, which may be granted or withheld at Aurizon Network’s absolute discretion.

4.4 SUFA Template Documentation

By way of overview, the six core SUFA documents and three State Documents required to establish and operate a SUFA transaction are presented in Table 1 below:

Table 1: SUFA documents, parties and purpose

Document	Parties	Purpose
CORE SUFA DOCUMENTS		
<i>Trust Deed (TD)</i>	<ul style="list-style-type: none"> • Aurizon Network as ordinary unit-holder • NewCo (a wholly owned Aurizon Network subsidiary), as Trustee 	<ul style="list-style-type: none"> • Establishes the Trust
<i>Subscription and Unitholders Deed (SUHD)</i>	<ul style="list-style-type: none"> • Aurizon Network • NewCo as Trustee • each PU Holder 	<ul style="list-style-type: none"> • Addresses PU Holder subscriptions under the Trust • Sets out operational rules for the Trust

Document	Parties	Purpose
		<ul style="list-style-type: none"> In the event of conflict between the SUHD and the TD, the SUHD prevails
<i>Project Management Agreement (PMA)</i>	<ul style="list-style-type: none"> Aurizon Network as PM NewCo as Trustee 	<ul style="list-style-type: none"> NewCo engages Aurizon Network to perform substantially all aspects of the project delivery process Subject to the governance requirements of the PMA
<i>Rail Corridor Agreement (RCA)</i>	<ul style="list-style-type: none"> Aurizon Network as Landholder NewCo as Trustee Licensee 	<ul style="list-style-type: none"> Aurizon Network licences NewCo so Trust can use Aurizon Network land and modify infrastructure
<i>Umbrella Agreement (UA) for each PU Holder</i>	<ul style="list-style-type: none"> Aurizon Network as access provider PU Holder NewCo as Trustee 	<ul style="list-style-type: none"> Aurizon Network undertakes to provide each PU Holder with an access agreement Each PU Holder indemnifies Aurizon Network and NewCo in respect of tax risk
<i>Extension Infrastructure Lease (EIL)</i>	<ul style="list-style-type: none"> Aurizon Network as lessee/sublessee NewCo (Trustee) as lessor/sublessor 	<ul style="list-style-type: none"> NewCo leases all Extension Infrastructure, and subleases all Extension Infrastructure, to NewCo Aurizon Network agrees to pay lease/sublease rentals on all SUFA infrastructure to NewCo
STATE DOCUMENTS		
<i>Extension Infrastructure Agreement (EIA)</i>	<ul style="list-style-type: none"> Aurizon Network as sublessee QTH as lessor NewCo (Trustee) as lessee 	<ul style="list-style-type: none"> QTH leases all Extension Infrastructure to NewCo NewCo assumes some lease obligations Aurizon Network assumes other lease obligations
<i>Integrated Network Deed (IND)</i>	<ul style="list-style-type: none"> Aurizon Network QTH NewCo as Trustee 	<ul style="list-style-type: none"> Governs the circumstances in which, and the process by which, QTH may dispose of EIA assets following the EIA's termination, and, if such a disposal occurs, governs the disposition of the disposal proceeds
<i>Deed Poll Guarantee (DPG)</i>	<ul style="list-style-type: none"> Aurizon Holdings as guarantor 	<ul style="list-style-type: none"> Guarantees to QTH the due and punctual performance by Aurizon Network and the Trustee of their respective obligations under the EIA and the IND Indemnifies QTH against any losses it may incur due to a default or delay in the due and punctual performance of those obligations

4.5 SUFA Transaction Lifecycle

4.5.1 Pre-closure and closure

- Aurizon Network conducts a technical and commercial engagement process with access seekers, who are potential PU Holders, about a proposed network extension;
- During that process, Aurizon Network engages with the access seekers over the project's scope, procurement methodology, target cost and target budget, which are agreed at closure of a SUFA transaction;

- Aurizon Network may agree with one or more access seekers that Aurizon Network will provide funding in their place, and become a PU Holder;
- A specified methodology will be used to determine each PU Holder's percentage interest in the SUFA transaction, based on each PU Holder's incremental capacity requirements and capital costs;
- Each PU Holder is to receive a number of partly paid PUs in proportion to its percentage interest in the network extension, such that the (notional) aggregate paid-up amount of all PUs would amount to 130% of the project's target cost.

4.5.2 Project delivery phase

The Trust engages Aurizon Network as Project Manager (**PM**) to manage the project under the Project Management Agreement (**PMA**). Key features of the project delivery phase include:

4.5.2.1 *Scope, cost, timeframe and procurement*

- Agreed scope and procurement methodology schedules are specified in the PMA;
- Target costs and target availability and completion dates are specified in the PMA;
- Any voluntary change to the scope schedule, the procurement methodology schedule, the target cost(s) or target availability date(s) is to be agreed by Aurizon Network and the Trustee (effectively the PU Holders);
- Aurizon Network as PM is to comply with the scope and procurement methodology schedules;
- Aurizon Network retains discretion over scope and procurement methodology below these contractually agreed requirements;
- Aurizon Network as PM has a reasonable endeavours obligation to deliver the SUFA project to agreed target cost and availability date targets; and
- Jointly engaged Independent Engineer (**IE**) to monitor progress, certify payments and support decision-making, ensuring transparency and oversight.

4.5.2.2 *Project management*

- Aurizon Network costs as PM are paid by Trust;
- Aurizon Network receives a PM Fee to be fully at risk in respect of Aurizon Network's performance against the target cost and availability date targets;
- PM Fee to be set so that Aurizon Network's risk-return profile as PM (taking both the PM Fee and the PM's cost reimbursement into account) is consistent with the risk-return profile available in contestable markets to providers of project management services for the delivery of large and complex transport infrastructure projects within a highly-trafficked operational transport environment; and
- Aurizon Network engages contractors as the Trust's agent, and contractors are paid directly by the Trust following certification by the IE.

4.5.2.3 *Prudency risks*

- Regulatory prudency risks are split between the PU Holders and Aurizon Network;
- PU Holders take scope, standard and cost prudency risk in respect of the scope and procurement methodology that are agreed at closure of the SUFA transaction; and
- Aurizon Network takes scope, standard and cost prudency risk over SUFA project elements within Aurizon Network discretion.

4.5.2.4 *Other issues*

- The PU Holders (through their reserve powers over the Trustee) may veto Aurizon Network's proposed actions at defined milestones in the contract lifecycle of major works contracts. This veto right may be exercised in the event of the PM's non-compliance with either the scope or procurement methodology schedules, or Good Industry Practice;
- Trust calls funds from PU Holders in advance in accordance with a pre-agreed funding formula;

- Trust has credit support from each PU Holder without a specified credit standing (or a guarantee from an entity of that credit standing), so that the outstanding credit support amount for each PU Holder equals its share of projected calls for the balance of the project delivery phase;
- Trust will not raise project finance and PU Holders will provide all required project funding;
- There is a mechanism to sell defaulting PU Holder's interests to avoid a SUFA project stalling due to lack of funds; and
- Extensive information flow from Aurizon Network as PM to the Trustee and PU Holders, with regular consultation and reporting by Aurizon Network.

4.5.3 Operational Phase

The Trust sub-leases the Extension Infrastructure leased to the Trust from the State, to Aurizon Network. Key features of the operational phase include:

- Aurizon Network operates the augmented railway (including the extension infrastructure) on a seamless basis as a part of the integrated CQCN;
- Aurizon Network is responsible for substantially all operational and management issues;
- Aurizon Network is liable to the State lessor for loss;
- Aurizon Network is required to provide all necessary insurance;
- Aurizon Network is responsible for making rental payments to the Trust;
- Aurizon Network enters into an access agreement with each PU Holder or its nominee (other than Aurizon Network as a PU Holder) as stipulated in the Umbrella Agreement; and
- Under each of these access agreements Aurizon Network is required to include a direction to pay instruction in favour of the Trustee such that the aggregate of the direction to pay amounts equals the lease rental fee payable by Aurizon Network to the Trustee.

4.5.4 End of Life

- If the Extension Infrastructure Agreement (**EIA**) and Aurizon Network's existing infrastructure lease from the State are terminated early, the Trust is entitled to an appropriate share of the net proceeds obtained by the applicable State infrastructure lessor on disposal on an integrated basis of all infrastructure leased from that lessor to Aurizon Network, this SUFA Trust and any other SUFA trust;
- If the EIA is terminated early due to Aurizon Network's act or omission, and Aurizon Network's existing infrastructure lease from the State continues, Aurizon Network is required to make compensation payments to the Trust that are equal to the rental payments that would have been due had the EIA not been terminated;
- If the EIA is terminated early for other reasons, and Aurizon Network's existing infrastructure lease from the State continues, Aurizon Network is required to negotiate in good faith a compensation arrangement with the Trust;
- When SUFA assets have a zero value in the Regulatory Asset Base (**RAB**) under the 2010AU and the rent is therefore zero, Aurizon Network has the option to require redemption of the PUs;
- After all of the PUs have been redeemed, the Trust can be wound up at the option of Aurizon Network as the ordinary unit holder.

4.6 State Documents

The State's interest in every SUFA transaction arises as legal owner of the existing infrastructure that the SUFA project will augment or improve. The State is primarily concerned with ensuring system integrity for the whole network, to ensure continuous availability of below rail capacity and to prevent network fragmentation. An important mitigant of the State's concerns is the common ownership test for PUs and the requirement for Aurizon Network's consent to transfer PUs, as detailed in **section 4.3.3**.

The State's position should not change as a result of a SUFA transaction. The State consequently requires transaction by transaction approval to ensure that this outcome is achieved. Control of

Extension Infrastructure passes to the State upon termination of a SUFA transaction. The Trust's entitlement in this situation is as set out in **Section 4.5.4** above.

The State's requirements are set out in the State Documents. For SUFA projects that enhance the rail network owned by Queensland Rail, the Trust will need to also enter into documentation equivalent to the State Documents with Queensland Rail.

4.7 Risk profile

4.7.1 SUFA infrastructure and the Regulated Asset Base

The Extension Infrastructure is to form part of Aurizon Network's Regulated Asset Base (**RAB**). As a result, the Extension Infrastructure will earn the same regulated return or weighted average cost of capital (**WACC**) as the rest of the CQCN infrastructure in the RAB. PU Holders, through the Trust, ultimately receive a defined share of the capital returns earned by Aurizon Network across the rail system augmented by the SUFA extension, based on the RAB value of the Extension Infrastructure in relation to the RAB value of the rail system as a whole.

4.7.2 Competitive Neutrality of SUFA and Aurizon Network Funded Extensions

As Extension Infrastructure will earn the same rate of return as the rest of Aurizon Network's regulated business, it should face the same risk also. This concept of risk neutrality as applied to SUFA and Aurizon Network funded projects is intended to ensure that SUFA transactions do not prejudice or give any advantage to either Aurizon Network-funded or SUFA-funded transactions.

The WACC return earned on SUFA assets incorporates both an asset-based element, and an element of return for the risks Aurizon Network bears as operator of those assets. The Operating Performance Risk Allowance (**OPRA**) is compensation to Aurizon Network in respect of the latter element, and the OPRA is payable by the Trust to Aurizon Network. The derivation of OPRA is discussed in more detail in **Attachment A** of **Volume 3** of this submission.

5 Key features of the SUFA framework

5.1 The benefits of SUFA customer engagement

The involvement of customers via the CWG has greatly assisted Aurizon Network in developing the SUFA framework and documentation, allowing Aurizon Network and the CWG to gain a deep understanding of one another's views, openly discuss issues, and develop numerous mutually acceptable improvements to the SUFA framework. In several cases, Aurizon Network has made major concessions to achieve a mutually acceptable position. Nonetheless, there remain some topics where Aurizon Network and the CWG have at this time "agreed to disagree" on SUFA treatment.

Some examples of the gains realised through CWG involvement are set out below.

5.1.1 Developments in the SUFA framework

The numerous developments to the SUFA documentation in response to consultation with the CWG include:

- improved trust funding mechanism and reduction in cash float as a project nears completion;
- shortfall loan mechanism;
- direction to pay arrangements for both SUFA access agreements and other access agreements;
- non-discrimination provision;
- cost recovery mechanism for services provided by the Trustee and Aurizon Network as PM;
- provision of information on a transparent basis;
- PU Holders' ability to direct the Trustee through the refinement of the PU Holders' reserved decisions and reserved powers;
- addition of role of the Independent Engineer under the PMA;
- Trustee's involvement in key milestones in the lifecycle of Major Works Contracts;
- treatment of procurement for contracts with Aurizon Network-related parties;
- contractual mechanisms for replacing the PM or Trustee;
- contractual right of renewal of SUFA access agreements;
- reduced level of financial commitment by PU Holders (from 150% to 130% of target cost);
- true-up mechanism after project completion to re-align each PU Holder's PU holding with its attributable share of actual project capital expenditure;
- the adjustment of the PM Fee for breach and negligence under the PMA;
- the option process permitting non-defaulting PU Holders to acquire the interests of a defaulting PU Holder before a market disposal process is undertaken; and
- the conversion of each PU Holder's tax indemnity from a single one-off compensation amount to a stream of as-incurred compensation amounts, and the specification of Trustee obligations and PU Holder rights in respect of the Trust's tax management.

5.2 Substantive issues

Table 2 below provides an overview of key issues. This shows the evolution of Aurizon Network's positions over the development of SUFA Model 3. A detailed discussion of the relevant considerations underlying some issues is set out in Section B.

Table 2: Development of key issues with customers via the CWG

Key issue	Initial Aurizon Network position	Submitted Aurizon Network position
1. Liability	<p>Limited liability Aurizon Network is liable for fraud, dishonesty or wilful default and that liability is uncapped, but not otherwise.</p>	<p>Broadened liability Aurizon Network is liable for fraud, gross negligence and wilful default and that liability is uncapped. In addition, Aurizon Network liable for breach and negligence under the PMA, but that liability is capped at the amount of Aurizon Network’s project management fee.</p>
2. Non Discrimination Provision (NDP)	<p>Not included</p>	<p>New clause added Both in the role of landholder under the Rail Corridor Agreement (RCA) and as lessee under the Extension Infrastructure Lease (EIL), Aurizon Network is to conduct certain specified activities that have the potential to adversely affect the Trust.</p> <p>In carrying out these specified activities, Aurizon Network is subject to the NDP, which requires Aurizon Network not to impose materially more onerous requirements on a SUFA transaction (or SUFA infrastructure assets) than would apply for a comparable Aurizon Network-funded project (or comparable Aurizon Network-funded assets) in comparable circumstances.</p> <p>If the Trustee claims that Aurizon Network is not complying with the NDP in respect of any specified activity, the dispute is subject to a contractual dispute resolution process (DRP), the last stage of which is a joint reference to an independent expert for a binding decision. If in relation to that conduct of that specified activity, it is determined that Aurizon Network has not complied with an NDP, Aurizon Network must conduct that specified activity again but in a manner that complies with the NDP, having regard to the DRP’s outcome.</p>
3. Aurizon Network direction to pay to access customers	<p>Not included</p>	<p>New provision added Aurizon Network will provide Direction to Pay (DtP) instructions of up to 100% of access revenues due from all access holders under access agreements in respect of capacity created by a SUFA project. These instructions will require the DtP amounts to be paid by those access holders directly to the Trust, which will receive them as lease rental due from Aurizon Network.</p> <p>If such DtP instructions amount to less than 100% of the lease rental due, Aurizon Network will provide DtP instructions in respect of one or more other access agreement(s), if the access customer(s) under these agreement(s) has/have contractually agreed to comply with Aurizon Network’s DtP instructions.</p>
4. Information availability and transparency	<p>Limited information Limited supply of information and transparency by Aurizon Network (in its various</p>	<p>Greater information Much greater level of information and transparency by Aurizon Network (in its various</p>

Key issue	Initial Aurizon Network position	Submitted Aurizon Network position
	roles).	roles).
5. Reallocation (true-up) mechanism	Not included	<p>New clause added</p> <p>Following project completion, subject to the following paragraph, there is to be a mandatory reallocation of the SUFA project's funding between PU Holders. Prior to that point each PU Holder will fund the Trust on the basis of its share of total project costs as projected as at the date of closure. This reallocation mechanism acts as a 'true-up' on the basis of each PU Holder's share of total project costs as incurred during the project delivery phase.</p> <p>The mandatory reallocation would only proceed if a materiality threshold in terms of the extent of reallocation entailed would be met.</p>
6. Reimbursement and remuneration of Aurizon Network entities for services rendered	<p>Reimbursement of costs of Aurizon Network entities</p> <p>Reimbursement of all costs incurred by Aurizon Network as the PM and as the Trustee.</p> <p>Other remuneration of Aurizon Network entities</p> <p>Aurizon Network as the Trustee is not entitled to any other remuneration (ie other than cost reimbursement).</p> <p>Aurizon Network as the PM is entitled to a project management fee, the size of which is dependent on the achievement of project outcomes (e.g. on time and on budget delivery). The PM Fee is fully at risk, but shall never be negative, and the project outcomes/PM Fee matrix, which is to be specified at closure and used to determine the PM Fee following project completion, is to be determined on a transaction specific basis.</p>	<p>Greater specification of costs to be reimbursed</p> <p>Initial position retained. The cost recovery mechanisms for Aurizon Network as PM and the Trustee have been codified in some detail.</p> <p>Other remuneration of Aurizon Network entities</p> <p>Initial position on the Trustee's other remuneration is retained.</p> <p>Initial position on entitlement of Aurizon Network as the PM to a PM Fee is retained.</p>
7. Funding mechanism	<p>Provision of working capital as determined on a retrospective basis</p> <p>After payment of an initial contribution by each PU Holder equal to 15% of its share of the project's target cost, the Trustee would call from each PU Holder on the basis of costs incurred (i.e. a retrospective funding mechanism).</p>	<p>Provides a lower level of working capital as determined on a prospective basis</p> <p>After payment of an initial contribution by each PU Holder equal to 10% of its share of the project's target cost, the Trustee would call from each PU Holder on the basis of costs to be incurred and available cash holdings (i.e. a prospective funding mechanism).</p> <p>The funding mechanism provides the trust with a level of working capital consistent with the expected level of trust expenditure, and reduces the amount of working capital required as the project approaches the end of the project delivery phase.</p>
8. Management of PU Holder default risk	<p>Higher commitment with credit support requirements</p> <p>Each PU Holder is to be contractually committed to fund up to 150% of its proportionate share of the project's target cost at closure.</p> <p>Each PU Holder that did not meet an undefined credit policy at closure is required to provide a bank guarantee in respect of its proportionate share of the trust's expected future calls from time to time during the project delivery process.</p> <p>This credit policy requirement is to be reviewed once, 12 months after closure, and the need for a bank guarantee reassessed at that point. Any new or additional bank guarantee required following that review is to be provided promptly, and any existing bank guarantee not required following that review is to be released promptly.</p>	<p>Lower commitment with stronger credit support requirements</p> <p>Ability to purchase defaulter's interests</p> <p>Each PU Holder is to be contractually committed to fund up to 130% of its proportionate share of the project's target cost at closure.</p> <p>At closure, a PU Holder will be required under a defined credit policy to provide a bank guarantee for the project delivery phase if it does not hold a Standard & Poors long term rating of BBB- or better or if it is not guaranteed by an entity that holds such a rating.</p> <p>If, at any time during the project delivery phase, a PU Holder (or its guarantor, if applicable) fails to meet the credit policy requirements, the PU Holder can be required by the Trustee to provide a bank guarantee.</p>

Key issue	Initial Aurizon Network position	Submitted Aurizon Network position
	Where a PU Holder defaults, a market sale process would be conducted.	<p>Where a PU Holder defaults in paying a Loan Call or providing a required bank guarantee, there is to be an option process that grants non-defaulting PU Holders the right but not the obligation to acquire the defaulter's SUFA interests. If that process, which is to be conducted within a tight timeframe, is unsuccessful, non-defaulting PU Holders have the right but not the obligation to provide shortfall loans, and simultaneously a market sale process of the defaulting PU Holder's PUs is to be initiated by the Trustee.</p> <p>Security documentation to facilitate the market sale process is required from each PU Holder at closure. That security documentation is not required from the end of the project delivery phase.</p>
9. Determination of rent	<p>Principle documented</p> <p>The rent payable by Aurizon Network to a Trust is to be a defined share of the capital return on the rail system augmented by the Trust's assets.</p> <p>That share is to be determined by:</p> <ul style="list-style-type: none"> - while the current pricing methodology remains in place, a detailed formula specified in the EIL; and - while access regulation remains in place but the current pricing methodology does not apply, a method to be developed that complies with a general objective set out in the EIL. 	<p>Documented in detail, including post regulation</p> <p>The initial Aurizon Network position is retained, subject to one addition (discussed below), and has been documented more comprehensively.</p> <p>When regulation ceases to apply, the rent payable is to be determined in accordance with an objective specific to the post-regulatory period, as set out in the EIL.</p>
10. Trustee identity	<p>Aurizon Network as Trustee</p> <p>Trustee to be Aurizon Network, with PU Holders to have some reserve powers over the Trustee (see item below).</p>	<p>Include Trustee replacement procedure</p> <p>PU Holder powers over Trustee</p> <p>Trustee to be a wholly-owned Aurizon Network subsidiary. PU Holders to have more extensive powers over the Trustee and the ability to block defined fundamental decisions by means of reserve decisions (see item 11 in this Table 2).</p> <p>In the event of the occurrence of specified 'trigger events', the PU Holders may replace an Aurizon Network-owned Trustee with an independent Trustee.</p>
11. Reserve powers and reserve decisions	<p>Principle documented</p> <p>The Trustee must exercise 'Reserve Powers' (being specified contractual rights under the PMA) if directed to do so by a specified majority of PU Holders.</p> <p>The Trustee must not implement any 'Reserve Decision' without the consent of a specified majority of PU Holders (and Aurizon Network's consent).</p>	<p>Broadened scope of reserved powers and reserve decisions</p> <p>The Trustee must exercise 'Reserve Powers' (being any contractual rights under the PMA, RCA and EIL) if directed to do so by a specified majority of PU Holders. The ability of PU Holders to direct the Trustee to exercise 'Reserve Powers' has been greatly enhanced.</p> <p>The Trustee must not implement any 'Reserve Decision' without the consent of a specified majority of PU Holders (and Aurizon Network's consent). The range of 'Reserve Decisions' has been expanded.</p>
12. Project delivery control (following closure)	<p>Limited control rights</p> <p>PU Holders (acting through the Trustee) are to agree any voluntary change to the scope, target cost(s) or target date(s) for availability.</p> <p>PU Holders to have no control rights over any works contracts.</p>	<p>Broadened control rights</p> <p>No change on need for PU Holders' agreement (acting through the Trustee) to these voluntary changes.</p> <p>In addition, PU Holders (acting through the Trustee) to have a veto right over each defined milestone in the lifecycle of each major works contract if the action proposed by Aurizon Network (e.g. contract execution) would be inconsistent with the agreed</p>

Key issue	Initial Aurizon Network position	Submitted Aurizon Network position
		<p>scope, the agreed procurement methodology or 'Good Industry Practice'.</p> <p>Exercise of these negative control rights to be subject to a dispute resolution process.</p>
<p>13. Restrictions on transfers of PU Holders' interests</p>	<p>Restrictions in place</p> <p>Each PU Holder's PUs and UA to be 'stapled' during the life of the transaction.</p> <p>Each transfer of PUs during and after the project delivery phase is subject to ownership restrictions set out in the SUHD and administered by the Trustee that are intended to prevent adverse tax outcomes for other PU Holders.</p>	<p>Restrictions modified</p> <p>Each PU Holder's PUs and UA to be 'stapled' during the project delivery phase. With Aurizon Network's consent, on a transaction specific basis, one PU Holder entity may be a party to the UA and another PU Holder entity to hold the PUs, provided that the two entities initially have identical economic ownership and continue to do so.</p> <p>After the project delivery phase, each PU Holder's transfer of its PUs is to be subject to Aurizon Network's consent.</p> <p>Position on PU transfer restriction to avoid adverse tax outcomes is retained.</p>
<p>14. Tax risk allocation and tax management of the Trust</p>	<p>One-off tax indemnity compensation payment and no tax management framework</p> <p>Each PU Holder to provide a tax indemnity to the Trustee and Aurizon Network, with the amount payable under the indemnity to be paid as a single one-off compensation amount. The compensation amount is to be determined following the event that caused the additional tax cost to the Trustee or Aurizon Network or both on the basis of projected tax cost by year and discounting by means of a defined discount rate (discounted basis).</p> <p>Each transfer of PUs during and after the project delivery phase is subject to ownership restrictions set out in the SUHD and administered by the Trustee that are intended to ensure the Trust does not become:</p> <p>(i) a Registered Managed Investment Scheme; or</p> <p>(ii) taxed like a company.</p>	<p>Annual tax indemnity payment and established tax management framework</p> <p>Each PU Holder to provide a tax indemnity to the Trustee and Aurizon Network, with the compensation amount payable under the indemnity to be paid on an annual basis following the event that caused the additional tax cost. The annual compensation amount will be determined based on the annual as-incurred additional tax cost of each indemnified party.</p> <p>The following position is retained on PU transfer restrictions in order to ensure the Trust does not become:</p> <p>(i) a Registered Managed Investment Scheme; or</p> <p>(ii) taxed like a company.</p>

Note: This table is a guide to and summary of complex commercial and legal arrangements set out in full in the SUFA documents. Of necessity, the table oversimplifies those arrangements. In the event of any conflict between the table and the SUFA documents, reliance should be placed on the SUFA documents.

6 Conclusion

Through consultation and the involvement with the industry nominated CWG, Aurizon Network has developed a robust SUFA framework providing access seekers with a new option to meet the cost of rail infrastructure extensions to accommodate their requirements and timeframes. The SUFA framework reflects the compromises made by Aurizon Network, including those influenced by management of operational risks, funding issues and tax and financial outcomes.

Aurizon Network considers that the SUFA framework achieves an acceptable balance between the interests of Aurizon Network (as the railway manager with pre-existing network-wide obligations) and PU Holders (for each individual SUFA project embedded within Aurizon Network's network) for a "base case" SUFA transaction. If subsequent modifications are made to the SUFA framework, this may require significant restructuring to retain commercial balance between the various competing interests. Aurizon Network accepts that some matters may not be fully agreed. If adjustments to the SUFA template documentation are required for a specific transaction, they are best collaboratively assessed and negotiated on a transaction specific basis.

A. Glossary

The definitions provided in this glossary are for the purpose of the explanatory notes only. The definitions provided in the various SUFA documents apply in respect of those documents.

Term	Meaning
<i>Aurizon Holdings</i>	Means Aurizon Holdings Limited, the ultimate parent of Aurizon Network.
<i>Brownfield</i>	Means, in reference to a project or development, that the project or development entails disruption to and modification of existing operational assets.
<i>Customer Working Group (CWG)</i>	Means the industry-nominated customer working group which Aurizon Network has consulted and involved over the course of developing SUFA Model 3.
<i>Deed Poll Guarantee (DPG)</i>	Means the State Document under which Aurizon Holdings guarantees the performance of Aurizon Network and the Trust under the EIA and IND to QTH.
<i>Extension Infrastructure</i>	Means the SUFA assets.
<i>Extension Infrastructure Agreement (EIA)</i>	Means the core SUFA document under which QTH leases all Extension Infrastructure to the Trust, and the Trust assumes some lease obligations, and Aurizon Network assumes the remaining lease obligations, to QTH.
<i>Extension Infrastructure Lease (EIL)</i>	Means the core SUFA document under which Aurizon Network subleases all Extension Infrastructure, from the Trust, and Aurizon Network agrees to pay sub-lease rentals to the Trust.
<i>Extension Process</i>	Means the technical, commercial and regulatory processes by which Aurizon Network conducts the development of each CQCN project to the point of commercial closure.
<i>Good Industry Practice</i>	Means the engineering, technical, operational, commercial, contractual and risk management practices and other business practices that would reasonably be expected from a prudent, efficient and experienced developer of brownfield rail infrastructure in Australia under comparable conditions.
<i>Greenfield</i>	Means, in reference to a project or development, that the project or development does not entail disruption to or modification of existing operational assets.
<i>Hybrid Funding</i>	Means a SUFA project for which Aurizon Network is a PU Holder and one or more access seekers is/are PU Holder(s).
<i>Independent Engineer (IE)</i>	Means an engineer engaged by both Aurizon Network and the Trustee that has the role set out in the PMA.

Term	Meaning
<i>Independent Network Deed (IND)</i>	Means the State Document governing <ul style="list-style-type: none"> - the circumstances and process under which QTH may dispose of EIA assets following the EIA's termination, and, - if such a disposal occurs, the disposition of the disposal proceeds.
<i>Major Works Contract</i>	Means a proposed or executed works contract for which the PM (acting reasonably) determines the contract price as at execution exceeds the greater of: <ul style="list-style-type: none"> - 2% of the Extension's Target Cost as at commercial closure; and - \$20 million.
<i>NewCo</i>	Means the subsidiary of Aurizon Network that is the Trustee.
<i>Operating Performance Risk Allowance (OPRA)</i>	Has the meaning given in Section 3 of Volume 3 of this submission.
<i>Ordinary Unit (OU)</i>	Means the ordinary unit(s) in the Trust.
<i>Ordinary Unit Holder</i>	Means Aurizon Network.
<i>Project Manager (PM)</i>	Means Aurizon Network as the Trust's project manager.
<i>Project Management Agreement (PMA)</i>	Means the core SUFA document between Aurizon Network as PM and the Trustee as service recipient under which the PM agrees to perform substantially all aspects of the project delivery process for the SUFA project.
<i>Project Management Fee (PM Fee)</i>	Means the fee payable by the Trustee to the PM that, together with the Trustee's reimbursement of the PM's costs, constitutes the PM's remuneration under the PMA.
<i>Preference Units (PUs)</i>	Means preference units in the Trust.
<i>Preference Unit Holder (PU Holder)</i>	Means each holder of PUs, being either an access seeker that has agreed to fund part of a SUFA transaction or, if it agrees to subscribe to PUs for the transaction, Aurizon Network.
<i>Rail Corridor Agreement (RCA)</i>	Means the core SUFA document under which Aurizon Network licenses the Trust to use Aurizon Network-controlled land and modify Aurizon Network-leased infrastructure.
<i>Relevant Action</i>	Has the meaning given in Section B.
<i>Reserve Decision</i>	Means a fundamental decision in respect of the Trust that requires defined PU Holder and OU Holder support, as specified in the SUHD.
<i>Reserve Power</i>	Means the ability of a defined set of PU Holders to direct the Trustee how to exercise a right under the RCA, PMA or EIL.

Term	Meaning
<i>State Documents</i>	Means the EIA, the IND and the DPG.
<i>Standard User Funding Agreement (SUFA)</i>	Means the commercial arrangement, as documented in the core SUFA documents and the State Documents, by which a CQCN extension project that is funded partially or exclusively by access seekers may be delivered and operated.
<i>Subscription and Unit Holders Deed (SUHD)</i>	Means the core SUFA document that governs subscriptions to, and operation of, the Trust.
<i>System Integrity Risk</i>	Has the meaning given in Section 2.2.2.
<i>Trust</i>	Means the unit trust formed to implement and administer each SUFA transaction on behalf of the PU Holders and the OU Holder.
<i>Trust Deed (TD)</i>	Means the core SUFA document that establishes the Trust and appoints the Trustee as its trustee.
<i>Trustee</i>	Means the Trustee of the Trust. The initial Trustee will be NewCo, a wholly owned subsidiary of Aurizon Network.
<i>Umbrella Agreement (UA)</i>	Means the core SUFA document under which Aurizon Network provides each PU Holder (other than an Aurizon Network PU Holder) with contingent access rights, and each PU Holder indemnifies Aurizon Network and the Trustee in respect of tax risk.
<i>WACC</i>	Means the weighted average cost of capital set by the QCA.

B. Key material issues and considerations

The following key material issues and considerations are considered below:

- A. Trustee Identity;
- B. Stapling and PU trading restrictions;
- C. Project delivery control;
- D. Liability;
- E. PM remuneration;
- F. Trustee remuneration; and
- G. Non-discrimination provision (**NDP**).

A Trustee identity

A separate unit trust (**Trust**) for each SUFA transaction will be established for each SUFA transaction. The Trustee will be a subsidiary of Aurizon Network.

A.1.1 Approach

NewCo, an Aurizon Network subsidiary will be the Trustee for the Trust's unit holders, subject to their right of oversight and removal. NewCo, like any Trustee, will have fiduciary obligations to the unit holders to act in their best interests.

The structure includes significant reserve powers and reserve decisions which allow the unit holders to direct activities of the Trustee. If NewCo fails certain tests, including failure to comply with the reserve powers and directions, there is a contractual right to replace NewCo as Trustee.

A.1.2 Rationale

The State requires Aurizon Holdings to guarantee the performance of Aurizon Network and the Trustee under the Extension Infrastructure Agreement (**EIA**) and Interface Network Deed (**IND**) by entering into a Deed Poll Guarantee (**DPG**) in favour of QTH. This is consistent with existing lease arrangements and the State is seeking to preserve its position under the arrangement. Aurizon Network accepts this requirement but it leaves Aurizon Holdings exposed to loss should the activities of the Trust allow the State to call on the DPG. For this reason, it is in the legitimate business interests of Aurizon Network to have a related party undertake the role of Trustee to provide sufficient oversight of the activities of the trust.

Aurizon Network's approach is also based on the principle that a SUFA project should not adversely affect Aurizon Network or the Aurizon Holdings group of companies. An Aurizon Network related entity acting as Trustee is an important component in achieving recognition of the extension infrastructure funding as equity on Aurizon Network's balance sheet.

It is also important for effective and timely decision making that the Trustee be a party with access to knowledge about construction and operation of railways. An Aurizon Network-related entity is the best qualified party in respect of railway specific experience related to enhancements of the CQCN.

The contractual structure seeks to deliver system integrity through contractually allocating key roles to Aurizon Network as project manager, landholder and lessee. System integrity can still be influenced by the actions of the Trustee as counterparty to key agreements, particularly if the Trustee inappropriately exercises its role at or beyond the extremes permitted in the contractual structure.

NewCo has every intention to comply with the obligations as Trustee, but in performing the role will not inappropriately seek to impact system integrity.

Concerns have been raised about the potential conflict of NewCo as Trustee and counterparty to Aurizon Network in key contracts. To provide comfort to PU Holders that NewCo will act appropriately, the structure includes substantial reserve powers and reserve decisions where unit holders can direct NewCo and significant transparency of information to unit holders. The intention of this is to put PU Holders in a similar position to being the direct counterparty to the agreements.

In addition if NewCo fails to comply with these reserve powers or reserve decisions then PU Holders can replace NewCo with a Trustee of their choice.

The proposed position delivers an appropriate balance of facilitating Aurizon Network's legitimate business interests while providing comfort that NewCo will act appropriately in the interests of the unit holders.

B Stapling and Preference Unit trading restrictions

The SUFA framework requires a commercial link between each PU Holder and each entity that obtains the access rights created by that SUFA transaction (**Stapling**). It also addresses restrictions on the transfer of PUs over the life of a SUFA transaction.

B.1.1 Approach

SUFA's purpose is to provide a mechanism for an access seeker to contribute funding to a SUFA project and obtain associated access rights on a Stapled basis. Aurizon Network considers that the SUFA framework is not a passive investment vehicle in parts of its regulated rail infrastructure for parties with no need for access rights. In this context, Aurizon Network has assessed the effects of Stapling over the SUFA project lifecycle. As a consequence, Aurizon Network's position on Stapling for a SUFA project for the project delivery phase (i.e. the first three years) is different from its position for the (post-completion) operational phase (i.e. the subsequent 40 to 50 years).

Under Aurizon Network's approach, Stapling may be achieved by either:

- 1) a single legal entity owning both PUs and access rights; or
- 2) one legal entity owning PUs and another legal entity owning the access rights, provided that they have identical economic ownership (e.g. one wholly owns the other, or a third legal entity wholly owns both of them).

Project delivery phase

SUFA interests and access rights must be Stapled during the project delivery phase.

Operational phase

SUFA interests and access rights need not be Stapled during the post-completion operational phase. Any change to the ownership of PUs must be subject to Aurizon Network's consent at its discretion.

Consequences of non-compliance (both phases)

If the Stapling requirement is not met at any point during the construction period or a transfer of PUs occurs without Aurizon Network's consent after the construction period, Aurizon Network would be entitled to procure the suspension of the voting and information rights of the relevant PU Holder along with the right to receive distributions.

Aurizon Network would also be able to procure suspension of these rights in the event of any 'upstream' change in the ownership of the PU Holder that resulted in either a termination of Stapling during the construction period or a change in the beneficial ownership of the PU Holder (other than due to a change in control of the PU Holder's holding company or change consented to by Aurizon Network).

B.1.2 Rationale

Project delivery phase

During this phase, there must be an alignment of commercial interests between the PU Holders, the holder of the associated access rights and the coal supply chain. In this phase of the project, the PU Holders have significant governance rights in respect of matters such as changes to project scope, acceleration and project delivery control. As is standard in a project delivery setting, these rights need to be exercised on a timely basis to avoid project delays and additional delivery costs. For example, if a change in law entails a change in project scope during the project delivery phase, those governance rights will be exercised on a 'best-for-project' basis if the PU Holders face consequences in respect of both:

- 1) delivery (e.g. cost, time and quality); and
- 2) access availability (e.g. capacity, timing and reliability).

The inclusion of material governance rights for PU Holders during the project delivery phase was on the basis that the commercial interests of Aurizon Network and PU Holders will be broadly aligned. As an example, the PMA grants PU Holders with rights to dispute Aurizon Network's approach in the event of a scope change being required under a change of law or other events outside Aurizon Network's control. Such a dispute would be complex and time consuming for parties to expedite, and this would be exacerbated considerably if an unrelated PU Holder with no interest in delivery of the project could impose delays and otherwise obstruct delivery during the project delivery phase.

Operational phase

There should be an alignment of commercial interests between each PU Holder and Aurizon Network during the operational phase because of both parties' interests in the performance of the coal chain. The continued ownership of PUs by the PU Holders at the closure of a SUFA transaction would generally meet this requirement as those PU Holders are expected to be coal supply chain participants. However there may be potential owners of the PUs whose commercial interests are unaligned with Aurizon Network's commercial interests, and the ownership of PUs by such entities would not be in Aurizon Network's legitimate business interests.

The State requires Aurizon Holdings to guarantee the performance of the Trust under the EIA. This is consistent with existing lease arrangements and the State is seeking to preserve the position it currently enjoys. Aurizon Network accepts this requirement but it leaves Aurizon Holdings exposed to loss should the activities of the Trust allow the State to call on the guarantee. The PU Holders have significant rights to direct the Trustee and may impact the risk to which Aurizon Holdings is exposed under this arrangement.

In order to address the diverse range of potential changes of ownership of PUs over the multi-decade life of a SUFA transaction, Aurizon Network should be able to protect its legitimate business interests by having the right to consent to, or withhold consent from, a proposed transfer of PUs.

Consequences of non-compliance (both phases)

In order to ensure that PU Holders comply with the PU trading restrictions specified, effective remedies are required.

During the project delivery phase, a suspension of voting and information rights would operate to ensure that an unaligned party cannot exercise rights as PU Holder in respect of project delivery control. Distribution rights may also be suspended, although distributions during the construction period are expected to be modest (if infrastructure is delivered in stages) or nil.

During the operational phase, the suspension of distribution rights is the only effective deterrent to a non-compliant transfer of PUs.

C Project delivery control

Each SUFA project requires a PM to manage and expedite project delivery. However, the extent of control and oversight of the PM by the Trustee must be clearly set out.

C.1.1 Approach

The PMA assigns responsibility to Aurizon Network for substantially all aspects of the project delivery process, subject to specific veto rights and positive control rights granted to the Trustee (subject to the direction of the PU Holders). Any discretionary changes to project scope or the dates for completion and availability require the agreement of both the Trustee (subject to the direction of the PU Holders) and Aurizon Network. Any mandatory change to project scope that is not agreed by Aurizon Network and the Trustee is to be subject to a binding expert determination process under the Project Management Agreement (**PMA**).

To balance the interest of the parties, the Trustee is provided veto rights at key points of each Major Works Contract. In addition, the Trustee is able to control major disputes under Works Contracts, subject to consultation with Aurizon Network and not settling any dispute in a manner which unreasonably impacts Aurizon Network without Aurizon Network's agreement.

C.1.2 Rationale

As discussed in **section 3.3**, PU Holders have a legitimate interest in the project delivery process, which must be balanced against Aurizon Network's pre-existing obligations in relation to delivering capacity and other responsibilities on the network. The proposed arrangements provide substantial control to Aurizon Network while affording transparency and levels of control to the Trustee (and effectively the PU Holders). This strikes a reasonable balance between the parties' interests.

This approach is in accordance with the public interest to ensure that:

- 1) a single party, the accredited rail infrastructure manager, is responsible for all rail safety interfaces for each SUFA; and
- 2) a single party is ultimately responsible for managing and coordinating workplace health and safety on an integrated basis for each brownfield SUFA project, which should result in optimal workplace health and safety outcomes.

Similarly, enabling the PU Holders or the Trustee to compel Aurizon Network to deliver a SUFA project in a manner that does not take into account Aurizon Network's concerns would be inconsistent with Aurizon Network's legitimate business interests, and the public interest.

To provide further incentive and alignment of interests, a performance-based PM Fee will provide Aurizon Network as PM with a strong commercial incentive to deliver a SUFA project by the target dates for availability and within target cost(s). This PM Fee will bring about a substantial degree of alignment of business interests between Aurizon Network and the PU Holders. Aurizon Network will also be taking prudence risk in respect of its project delivery decisions. These commercial incentives will encourage Aurizon Network to deliver a SUFA project consistent with agreed scope, cost, time and quality parameters. In the event of poor performance, Aurizon Network can be replaced as PM. Nonetheless, even when replaced as PM, there is still a need to protect Aurizon Network's legitimate business interests during construction to ensure that network operation is unaffected.

C.1.3 CWG Alternative

The CWG proposed an alternative project delivery control regime under which the Trustee have an unfettered right to approve or reject major works contracts at critical points in their creation, with a failure to respond being a deemed rejection, and that a rejection disputed by Aurizon Network should be subject to binding resolution by an expert.

Aurizon Network considers that:

- 1) this does not strike an appropriate balance of the issues above, as the unfettered involvement of the PU Holders provides too great a level of control given the respective parties interests;
- 2) the Alternative Control Regime could result in numerous protracted disputes the resolution of which may have material adverse effects on time and cost outcomes and force a significant

- element of risk and contingency in its target dates for completion and availability in order to allow for unknown levels of rejections and PM disputes.
- 3) The Alternative Control Regime could place Aurizon Network in a position where it was ultimately forced to use a contractor that offered either a construction methodology that Aurizon Network considered dangerous or a construction management team that Aurizon Network considered to lack the necessary experience in safe delivery of rail infrastructure. It is against the public interest for commercial contracts to include a dispute resolution mechanism that could compel a contracted party to act in a manner that it considers unsafe and also contrary to Aurizon Network's legitimate business interests.
 - 4) the Alternative Control Regime could adversely affect Aurizon Network's legitimate business interests, for example if Aurizon Network were required to enter into contracts that were inconsistent with its technical requirements, or if an expert addressing a project's construction dispute forced Aurizon Network to close its operational railway to suit that project over existing users. Aurizon Network does not consider that an expert to a construction dispute should determine technical standards for new assets when Aurizon Network has full responsibility for the operational life of those assets.

C.1.4 Conclusion

The approach to project delivery control is intended to balance the legitimate business interests of the PU Holders and Aurizon Network. The Trustee's governance rights should rarely be exercised, provided Aurizon Network performs its PM duties competently, and will facilitate Aurizon Network's initial and subsequent projections of cost and time outcomes for the project, and with the PM Fee as an incentive, provide greater security of delivering against the target availability, completion dates and target costs specified in the PMA.

D Liability

Generally, Aurizon Network is not liable for loss arising from its performance under the SUFA model, except to the extent that such loss arises from Aurizon Network's fraud, gross negligence, or wilful default. However under the PMA, Aurizon Network is liable to the Trustee for loss arising from Aurizon Network's breach or negligence, subject to the extent of this loss being limited to the amount of the Aurizon Network's PM Fee otherwise payable. This SUFA model feature relates to the degree to which Aurizon Network is liable to the Trustee, PU Holders or others for loss that occurs in respect of a SUFA project.

D.1.1 Approach

Aurizon Network's approach is based on the principle that PU Holders should be responsible for all costs and risks of a SUFA project, except where Aurizon Network assumes risk on a commercial basis.

D.1.2 Rationale

While unregulated project developers customarily accept such performance risks, subject to a limited degree of risk transfer to its contractors under commercial contracts that price the contractual risk assumed, Aurizon Network's regulatory regime does not permit Aurizon Network to price performance risk as part of its remuneration. Given that regime, the SUFA documentation provides for Aurizon Network to be remunerated for the services that it provides under a cost recovery model. The project management fee under the PMA is the sole exception to this general principle to ensure better alignment of interests between the PM and PU Holders.³

Under the cost recovery model, Aurizon Network as service provider does not price any risk. As the PU Holders (through the Trustee) are not paying Aurizon Network as service provider to assume the risk of its performance, the PU Holders should assume such performance risk. Any arrangement that imposes more liability or risk on Aurizon Network than proposed without permitting Aurizon Network to price that liability and risk on a commercial basis would be inefficient and contrary to Aurizon Network's legitimate business interests.

³ The application of the cost recovery model is discussed in greater detail in **Section F** (Trustee remuneration) and **Section E** (PM remuneration).

Notwithstanding this general approach, Aurizon Network, following discussions with the CWG, is prepared to accept a limited degree of contractual risk on its performance under the SUFA framework. The risk that Aurizon Network is prepared to assume is the loss to the SUFA project attributable to Aurizon Network's fraud, gross negligence, or wilful default. Aurizon Network considers the acceptance of this risk on an uncompensated basis to be a material concession to PU Holders.

In addition, Aurizon Network is prepared to take a greater degree of risk on the PMA as Aurizon Network is able to earn an incentive based PM fee under the PMA. Aurizon Network is liable for loss arising from Aurizon Network's breach or negligence, subject to the extent of that loss being limited to Aurizon Network's PM fee.

Aurizon Network considers that it should be subject to liability for loss on a very restricted basis, since Aurizon Network is not able to price risk on a commercial basis as a regulated business.

E PM Remuneration

PU Holders through the Trust provide remuneration (including cost reimbursement) to Aurizon Network for its PM activities. This requires structuring of the remuneration to achieve an alignment of business interests between Aurizon Network and the PU Holders.

E.1.1 Approach

Aurizon Network has adopted a remuneration structure made up of two elements, being cost recovery and the PM Fee.

Most of the costs of the project management activities are expected to relate to the direct and indirect costs of:

- 1) employment of Aurizon Network staff; and
- 2) engagement of Aurizon Network consultants who serve in similar roles to Aurizon Network staff within Aurizon Network's project delivery function.

Aurizon Network's approach is to seek reimbursement for personnel costs within its Aurizon Network's project delivery function on a cost recovery basis. Cost recovery is to be implemented by determination of the hours spent on the SUFA project by relevant project delivery staff. This charging method is broadly similar to the approach adopted by providers of professional services in the Australian market, except that Aurizon Network will set unit cost charges, which are intended to achieve revenues consistent with full cost recovery (and no more). In contrast, professional services providers set unit rates, which are intended to provide returns in excess of full cost recovery.

The balance of project management costs, e.g. the cost of site visits, will be recovered on a cost reimbursement basis.

For convenience, the cost recovery approach set out above is called the 'Full Cost Recovery Model'.

In addition to recovering its costs as determined under the Full Cost Recovery Model, Aurizon Network intends to charge a 1% handling fee on all such costs in lieu of the recovery of holding costs, since Aurizon Network will fund such costs in advance of their recovery of them from the Trustee. This may be for a period averaging around six weeks. In other words Aurizon Network incurs working capital costs that are otherwise not recoverable. Aurizon Network also intends to charge a 7% margin on its costs as determined under the Full Cost Recovery Model in order to reflect the labour-related costs that Aurizon Network incurs due to the SUFA project's delivery outside Aurizon Network's project delivery function (e.g. corporate overheads, general management, internal audit, etc). Without this margin, Aurizon Network would be unable to recover these costs outside its project delivery function.

In respect of these margins, Aurizon Network considers that a suitable parallel is the pricing of contracts by major construction and industrial services contractors in contestable markets. Typically in such a contract, when the service provider is required to provide working capital, that working capital is priced into the contract at an implied interest rate significantly higher than the services provider's incremental cost of debt finance. Also, when an operating division of a major contractor is pricing a contract, typically it adds to its estimate of divisional costs a margin of a size comparable to Aurizon Network's 7% margin to reflect overhead costs incurred at the holding company level.

E.1.2 Rationale

Aurizon Network recognises and understands CWG concerns that a cost recovery mechanism in isolation would result in a poor alignment of the business interests of PU Holders and Aurizon Network. For example, Aurizon Network would have no commercial motivation to limit the amount of total project costs that it incurs since it would be able to recover all of those costs regardless of quantum. Aurizon Network agrees that a cost reimbursement arrangement alone does not provide suitable commercial incentives for the service provider to meet the principal's project requirements.

In order to achieve a much greater degree of alignment of the commercial interests of PU Holders and Aurizon Network, Aurizon Network proposes the payment of a PM Fee by the PU Holders (through the Trustee) to Aurizon Network as PM. The PM Fee will supplement, and is distinct from, the recovery of project management costs under the cost recovery element.

Aurizon Network proposes that, for each SUFA transaction on a transaction specific basis, a performance/fee matrix would be developed and agreed in advance with PU Holders, and documented in the form of the PMA that is part of the SUFA documentation suite at execution. Example of performance measures are actual project cost in relation to target and actual dates of availability in relation to target dates for availability. Following completion of a SUFA project, the agreed matrix in the PMA would be applied to determine the PM Fee payable to Aurizon Network.

In negotiating a performance/fee matrix for any SUFA project, Aurizon Network will adopt the principle that its Aurizon Network's risk-return profile as PM, taking both elements of remuneration into account, should be consistent with the risk-return profile available in contestable markets to providers of project management services for the delivery of large and complex transport infrastructure projects within a highly-trafficked operational transport environment (the **Consistency Principle**). Aurizon Network notes that the adoption of this Consistency Principle would prevent Aurizon Network from using its position as the CQCN's sole rail infrastructure manager to set its remuneration in the PMA for a SUFA project on terms that are more favourable to it than are generally available in contestable markets.

Aurizon Network intends that each PM Fee matrix will provide for a zero PM Fee if PM fails to meet the contractually specified project outcomes. The PM Fee cannot be negative, i.e. the matrix will set a floor of zero on the PM Fee. If this position was adopted, taking the two elements of compensation together Aurizon Network would be exposed to potential downside, setting aside its exposure on optimisation risk and any liability for fraud, gross negligence, or wilful default.

Aurizon Network proposes to place the PM Fee that is otherwise payable, in the light of Aurizon Network's performance as PM, fully at risk in respect of Aurizon Network's negligence in respect of, or breach of, the PMA.

E.1.3 CWG views

In consultation to date, the CWG did not have an in-principle concern with:

- 1) the two element structure of project manager remuneration, or
- 2) the concept of a PM Fee being agreed on a transaction specific basis,

as proposed by Aurizon Network. However, the CWG considered that the PM Fee matrix should be set on the basis that the floor on the PM Fee should be a negative amount.

Aurizon Network does not agree with this position since it would result in Aurizon Network being exposed to potential 'downside', even setting aside its exposure on optimisation risk and any liability for fraud, gross negligence, or wilful default. Aurizon Network considers that such an outcome would not comply with the objective that PU Holders should be responsible for all costs and risks of a SUFA project.

E.1.4 Conclusion

Aurizon Network considers that the two element structure of project management remuneration proposed by Aurizon Network would achieve a substantial degree of alignment between Aurizon Network as PM and the Trustee as principal.

F Trustee Remuneration

This item relates to how PU Holders provide remuneration (including cost reimbursement) to the Trustee for performing the role of Trustee.

F.1.1 Approach

Aurizon Network has adopted a remuneration structure made up of a single element, namely cost recovery.

Most of the costs of the Trustee's activities are expected to relate to:

- 1) the direct and indirect costs of employment of personnel; and
- 2) the engagement of external contractors, e.g. providers of audit or tax management services.

In respect of item (1), the costs may relate either to personnel dedicated to the SUFA trust in question or to specialist personnel who perform a range of duties. Some, if not all, of these personnel may be employees of the Aurizon group of companies within disciplines such as tax and revenue accounting, in which case Aurizon Network would provide their services to the Trustee under a cost recovery arrangement very similar to the 'Full Cost Recovery Model' adopted for cost recovery under the PMA.

The balance of the costs incurred by the Trustee, e.g. fees payable to external contractors under item (2) and outgoings for personnel such as travel costs, will be recovered on a cost reimbursement basis.

F.1.2 Rationale

In consultation to date, on the assumption that the Trustee was to be a wholly-owned subsidiary of Aurizon Network, the CWG did not support this position and had one in-principle concern over the proposed remuneration structure. This concern was that there was no requirement for the Trustee to be an efficient provider of Trustee services, and that the Trustee should only be able to recover its costs to the extent that it complied with this requirement.

Aurizon Network considered the inclusion of such a requirement but did not include it, as it could result in the Trustee receiving less than full cost recovery without providing the Trustee with any compensation for assumption of this risk. In other words, the Trustee could recover less than 100% of its costs, but could not cover more than 100%, which is an uncommercial arrangement.

F.1.3 Conclusion

Aurizon Network considers that a remuneration structure made up of a single element, namely cost recovery, is appropriate when the Trustee is a wholly-owned Aurizon Network subsidiary.

G Non-discrimination provision (NDP)

The NDP sets out how Aurizon Network will act in respect of SUFA projects during the project delivery and operational phases. The NDP applies to certain specified Aurizon Network requirements and obligations as:

- a) licensor of the Trustee (under the RCA); and
- b) sublessee of SUFA infrastructure (under the EIL).

The issues giving rise to CWG concerns over discrimination arise in two distinct sets, one for the project delivery phase (documented in the RCA) and another for the operational phase (documented in the EIL). Each is considered in turn.

In essence, the NDP requires Aurizon Network to not act, in respect of each of certain specified matters, on a basis that is materially more onerous on the SUFA project (or its infrastructure) than Aurizon Network would have acted in respect of the relevant matter on a 'reference project' (or its infrastructure) in similar circumstances. The 'reference project' is defined as a notional project comparable in size and nature to the SUFA project but funded by Aurizon Network (i.e. the notional project is not a SUFA project). The NDP therefore restricts Aurizon Network from discriminating against a SUFA project on the grounds of its funding mechanism.

G.1.1 Approach

Project delivery phase

For the project delivery phase, Aurizon Network (as both operator of the existing operational railway and project manager of the SUFA project to augment it), needs to balance conflicting interests in the operational, project delivery (PM) and safety spheres. Due to this inherent conflict, the PMA enables Aurizon Network when acting as PM to consider interests other than the project delivery interest in the performance its PM role. In the absence of this provision, Aurizon Network would be contractually exposed for balancing these conflicting interests, even though granting the project delivery interest absolute priority would be very damaging to Aurizon Network, as well as its existing customers. Aurizon Network considers that the removal of this provision would result in Aurizon Network as PM having legal duties to the Trustee that would be contrary to Aurizon Network's legitimate business interests and the wider Coal Supply Chain's interests.

The NDP principle in the RCA applies to the following "Relevant Actions":

- Aurizon Network's 'landholder requirements', which are Aurizon Network's requirements relating to access to, and use of, land and infrastructure
- Aurizon Network's determination of an Interface Risk Management Plan governing the treatment of operational and project construction risks and more significantly interface risks that relate to the interface between a SUFA project's assets and the railway network, if the Trustee and Aurizon Network are unable to agree such a plan
- Aurizon Network's approval of designs and specification in respect of the SUFA infrastructure,
- the requirements of Aurizon Network's protection officers, and
- Aurizon Network's arrangement of various forms of site access,

Operational phase

The NDP principle in the EIL applies to maintenance and insurance as 'Relevant Actions'.

Implementation of NDP

A standard procedure applies if the Trustee considers that Aurizon Network is not complying with its NDP obligation in respect of a Relevant Action:

- Following a Trustee notice claiming such non-compliance in respect of a specific Relevant Action, Aurizon Network shall respond promptly as to whether it has complied with its NDP obligation in respect of that Relevant Action.
- If Aurizon Network agrees that it has not complied, Aurizon Network must promptly perform again that Relevant Action in accordance with the NDP principle.

- If Aurizon Network considers that it has already complied with the NDP principle, the Trustee may refer the compliance dispute to resolution by the CEOs of each of Aurizon Network and the Trustee.
- If they fail to reach agreement, the compliance dispute goes to expert binding determination.
- If the expert determines that Aurizon Network has not complied with the NDP principle in respect of that Relevant Action, Aurizon Network must promptly perform again that Relevant Action, having regard to the NDP principle.

Until Aurizon Network performs again the Relevant Action following the completion of the dispute resolution process, Aurizon Network's previous position on the Relevant Action (i.e. the position under dispute) will continue to apply. The expert is not empowered to determine how the Relevant Action should be implemented.

G.1.2 Rationale

The NDP provides PU Holders with comfort that Aurizon Network does not treat assets funded by PU holders differently from similar infrastructure assets funded by Aurizon Network. During the project delivery phase, Aurizon Network has a commercial incentive not to impose overly restrictive landholder requirements under the RCA, as this will reduce the prospect of earning its PM Fee. Similarly, during the operational phase it is in Aurizon Network's own commercial interests to maintain SUFA infrastructure to a suitable standard so that Aurizon Network may provide access over the rail corridor augmented by the SUFA infrastructure and receive revenue from access customers.

The CWG proposed that the expert should be capable of making binding determinations as to the outcome of NDP disputes. However Aurizon Network has recognised as a result of its consultation process that the CWG considers the NDP principle to be of considerable value. Even though Aurizon Network considers that the adoption of the NDP provision may result in unnecessary and protracted disputes that could place considerable demands on Aurizon Network's senior management, in the interests of compromise Aurizon Network has agreed to include it with respect of certain Relevant Actions in the RCA and the EIL. Aurizon Network considers the insertion of the NDP provision to be a material concession to potential PU Holders.

Aurizon Network considers that the CQG's proposal on the expert's powers would be against Aurizon Network's legitimate business interests as it would permit an expert on a construction project to impose requirements or specify obligations on one part of the railway network that are inconsistent with their equivalent on other parts of the network, thus resulting in the network being unable to be operated as an integrated whole with associated inefficiencies and increased risk. While this would not be an issue if the expert complies with the NDP, there is still room for problems where Aurizon Network and the expert disagree.

Aurizon Network considers that the empowerment of an expert to make binding determinations as to the outcome of NDP disputes would be against both Aurizon Network's legitimate business interests and the public interest, since the expert's decision-making may fragment Aurizon Network's integrated responsibility for rail safety and workplace health and safety. In Aurizon Network's view it is against the public interest, as well as Aurizon Network's legitimate business interests, for a commercial contract to include a dispute resolution mechanism that may operate to compel Aurizon Network to act in a manner that it considers unsafe.