

Study Funding Agreement

This document sets out the key terms of a study funding agreement. It is not exhaustive of all of the issues to be considered in such an agreement.

The study funding agreement proposed to be entered into between QR Network Pty Limited (**QR**) and the applicable 'Funding User' (**Agreement**) will set out:

- (a) the terms on which QR will, in respect of each of the three sequential Stages (as described below), procure the performance of the engineering, design, investigative study and project management services (including preparing the required reports (**Reports**))(**Services**); and
- (b) two alternative payment regimes for the costs incurred by QR in performing the Services under the Agreement.

The Concept Stage will involve a preliminary assessment of the commercial and technical feasibility of the proposed 'extension' of the rail transport infrastructure network (**Network**) as contemplated under QR's Network Access Undertaking (**Extension**).

The Pre-Feasibility Stage will progress the Concept Stage and will also involve the selection of a preferred alternative for the construction of the Extension, the development of preliminary planning for the Extension (including indicative budgeting and timeframes) to a specified accuracy, and the development of preliminary designs.

The Feasibility Stage will progress the Pre-Feasibility Stage and will also involve the development of detailed planning for the Extension (including detailed budgeting, timeframes and procurement strategies) to a specified accuracy, and advanced designs.

1 Approval of Work Plans

For each Stage, QR will be required to develop and submit a Work Plan for the User Committee's approval on or before the applicable submission date.

QR will be required to include the following in each Work Plan in reasonable detail:

- (c) the incremental capacity increase of the relevant part of the Network (**Capacity Increment**), and the scope of the Extension which is to be investigated to achieve the Capacity Increment;
- (a) a schedule (including dates) and budget for the Services to be completed during the Stage;
- (b) the matters to be included in the Report , including
 - (1) details on the scope standard and design of the Extension, including the performance standards and capacity analysis on which that design has been prepared (together with copies of an static and dynamic modelling results and any other technical or engineering studies, advices or reports on which the Report is based);
 - (2) an outline of the procurement methodology for the Extension works;
 - (3) a schedule for the construction and development of the Extension;

- (4) an estimate of the costs of the construction and development of the Extension to the level of definition specified in the relevant definition of the Stage;
- (c) identifying any Authority Approvals to be obtained for the Stage; and
- (d) such other matters as the User Committee requires to be addressed.

Once approved by Decision of the User Committee, the Work Plan will be the 'Approved Work Plan' for that Stage. If the User Committee rejects a Work Plan, it will be required to give written reasons and suggest ways in which QR might modify the Work Plan so as to address the User Committee's concerns. QR will be required to resubmit the Work Plan for the User Committee's approval within 14 days" receipt of the notice.

QR will be required to agree that the scope of works, budget for construction and completion of the Extension, schedule for the construction and completion of the Extension and the procurement methodology which is proposed to be developed in the Feasibility Stage will be of sufficient detail and in such form as to enable the 'scope of works', 'target cost', 'target schedule' and 'procurement methodology' in a standard user funding agreement for construction, to be populated.

QR will not be permitted to incur any costs in excess of the amount approved in an Approved Work Plan.

QR will not be entitled to vary an Approved Work Plan but will be entitled to propose a variation to an Approved Work Plan (which the User Committee will be required promptly to approve or reject in accordance with the procedure summarised above).

The User Committee will be entitled to direct QR to vary an Approved Work Plan. If so:

- (e) QR will be required to promptly implement the variation unless to do so would require QR to breach a Law or an Access Agreement (if the Extension were undertaken). QR will be required (on request by a Participating Funding User) to notify each Participating Funding User of any change to the budget or schedule for the Services in lieu of any such variation; and
- (f) QR will be entitled to a variation of the budget for the relevant Stage to the extent necessary to reflect the impact of the variation, provided that it has given notified the User Committee of any impact on the budget within 14 days after receipt of the variation direction.

2 Procurement of Services and Reports

For each Stage, QR will be required to procure the performance and completion of the Services (and the Reports) in accordance with applicable Laws, Authority Approvals and the Approved Work Plan so as to achieve the nominated Capacity Increment. QR will be required to do so expeditiously and without unreasonable or unnecessary delay.

QR will be required to use its best endeavours to complete a Stage (and applicable Report) before the completion date nominated in the Approved Work Plan. QR will not be permitted to commence any Stage until the previous Stage has been completed.

QR may identify any developments which have occurred, or which QR believes may occur, which may have an adverse impact on QR's ability to complete the study in accordance with the Approved Work Plan (including the timeframes for completion), or to meet, assuming the Extension will proceed to execution, the target date for the Extension to be commissioned,

QR will be required to give each Participating Funding User a copy of each Report once it is completed.

If the Report does not address all matters required by the Approved Work Plan, a Funding User may require QR to address the deficiencies in the Report.

QR must, on the request of the User Committee:

- (a) allow a peer review team to independently assess and confirm the capacity analysis undertaken by QR and the technical, engineering and environmental studies, advices and reports obtained by QR in the course of the study; and
- (b) allow an audit of QR's costs incurred in undertaking the study.

3 Notice to progress the Stages

If a Funding Party wishes to proceed to the next Stage, the Funding Party will be required to give a written election notice by QR within 28 days after the date on which the Services for the current Stage are completed. Upon receipt of such election notice, QR will be required to promptly notify the Funding User whether any other 'funding users' under an Equivalent Agreement have issued similar notices of election.

If a Funding Party gives no notice of election, it will cease to be a Participating Funding Party and a member of the User Committee and the Agreement will terminate. Similar provisions shall apply to other 'funding users' under Equivalent Agreements who similarly give no notice of election.

If, as a result of the above, there is no Participating Funding User other than the Funding User on and from the end of the relevant Stage, then, for the purposes of applying the Agreement to each subsequent Stage (to the extent that the Funding User elects to proceed to that Stage), references in the Agreement to:

- (a) the 'User Committee' will be taken to be references to the 'Funding User'; and
- (b) 'Decisions' will be taken to be references to approvals, agreement, rejections or other decisions notified by the Funding User to QR.

4 Alternative payment regimes

QR will be required to take all steps reasonably required to ensure that costs incurred in performing the Services are included in the regulatory asset base.

In doing so, QR must:

- (a) ensure that the Extension is included in the 'Coal Rail Infrastructure Master Plan' (as defined in the Access Undertaking);
- (b) seek acceptance from the 'Customer Group' (as defined in the Access Undertaking) of the scope of work for each Stage and seek regulatory approval of the QCA if the Customer Group does not accept the scope of work; and
- (c) where required by the User Committee, seek regulatory pre-approval from the QCA for the standard of works and procurement strategy applicable to each Stage.

1. Alternative 1 - Underwriting arrangement

- (a) If, despite QR complying with sections (a) – (c) above, some or all of QR's costs incurred in undertaking the Services are not included in the regulatory asset base by the agreed date, the Funding User will be required to reimburse QR for its 'Underwriting Proportion' (see explanation below) of such costs which are not included in the regulatory asset base, to the extent that those costs:
 - (1) are set out in the costs schedule;
 - (2) were reasonably and properly incurred by QR; and
 - (3) do not exceed the budget contained in an Approved Work Plan for the relevant Stage.
- (b) Where section (a) of Alternative 1 above applies, QR will be required to submit an invoice to the Funding User for the costs claimed plus GST. Following such invoice, the payment procedure set out in section 3 below will apply.

The 'Underwriting Proportion' for each Stage during which the Funding User is a Participating Funding User will be calculated by dividing the Funder User's capacity request (mtpa) by the Capacity Increment (mtpa) and multiplying that amount by 100.

The only costs which the Funding User will be required to pay under the Agreement, for the costs incurred by QR in performing its obligations under the Agreement or in undertaking the Services, are the costs which the Funding User is required to pay as calculated under this regime.

2. Alternative 2 - Funding User's funded arrangement

- (1) Within 5 days after the end of the month during the performance of a Stage, QR will be required to give the Funding User an invoice for the Funding User's Proportion of the costs incurred by QR in the relevant month provided that those costs: are set out in the costs schedule;
- (2) were reasonably and properly incurred by QR; and
- (3) do not exceed the budget contained in an Approved Work Plan for the relevant Stage.

Following such invoice, the payment procedure set out in section 3 below will apply.

Within 14 days after the costs of a Stage which have been partly or wholly funded by the Funding User have been included in the regulatory asset base, QR will be required to refund to the Funding User the Funding User's Underwriting Proportion of the costs included in the regulatory asset base, plus interest calculated at the agreed rate (unless otherwise agreed by users to be incorporated into the calculation of costs under the Construction Agreement).

3. Payment procedure - applicable under each Alternative

The Funding User will be required to:

- (a) pay the full invoiced amount in immediately available funds within 30 days' receipt without deduction; and
- (b) give notice to QR and each Participating Funding User of any invoiced amount which it disputes and intends to withhold from payment, within 21 day's receipt of the invoice.

Manifest errors will be corrected through a revised invoice. Disputed invoices which are not resolved within 14 days of receipt of notice will be resolved via the dispute process set out in the Agreement.

The Funding User will not be responsible to pay any amount or to rectify any default or breach of contract by any other Participating Funding User (past or present).

5 Confidentiality and ownership of IP

Subject to standard exceptions permitting disclosure (including to the QCA), each party will be bound to protect the confidential information of the other party.

QR will own all intellectual property rights which are developed by, or on behalf of, QR in the performance of the Services and QR will be required to grant the Funding User an irrevocable licence to any such intellectual property rights for any purpose in connection with the Extension.

6 Subcontractors

QR will be permitted to subcontract its obligations under the Agreement to any subcontractor who is approved by the User Committee (or who is appointed by QR pursuant to an Approved Work Plan), provided that:

- (a) the appointment is on arm's length commercial terms or terms approved by the User Committee. Each subcontractor which is a Related Body Corporate of QR will be required to be appointed on terms approved by the User Committee;
- (b) QR remains liable for the performance of its obligations under the Agreement and the acts and omissions of its subcontractors and does not make any representation to any subcontractor which implies that the Funding User will be liable in any way for the loss, claim, action, damage, liability, cost, charge, expense, outgoing or payment of the subcontractor performing the Services; and
- (c) QR's rights under the appointment are assignable to the Participating Funding Users and their nominees.

7 Insurance

QR will be required to, at its cost, obtain and maintain insurance with a corporation licensed to conduct insurance business in Australia for the risks and on the terms which will be set out in the insurance schedule. QR will be required to give copies of the insurance policies to the Funding User or User Committee on request. QR will be responsible for payment of all excesses and deductibles. QR will not be permitted to do anything to make any such insurance policy become void or voidable.

8 Exclusion of consequential loss

No party will be liable for any economic loss, loss of profits, loss of production, loss of revenue, loss of use, loss of contract, loss of opportunity, loss of goodwill or wasted overheads, or any loss arising out of any third party claims (other than third party claims in respect of loss or destruction of or damage to property or injury to any person).

9 Establishment of the User Committee and Approved Rules

Promptly after execution of the Agreement, QR will be required to establish the User Committee. The User Committee will comprise a representative from the Funding User and each other 'funding user' under an agreement equivalent to the Agreement (**Equivalent Agreement**) (each a **Participating Funding User**).

The parties will be required to warrant that each Equivalent Agreement will be on the same terms as the Agreement.

User Committee decisions will be made in accordance with the rules of the committee (which will be set out in the agreement) (**Decisions**).

QR will not be obliged to comply with a Decision if it notifies the Participating Funding Users, within the agreed time, that to implement the Decision would be unsafe or would cause QR to breach a Law or an Access Agreement. QR must then convene a meeting to discuss what changes need to be made to the Decision to overcome the issue.

The Approved Rules of the User Committee will deal with:

- (a) Calling meetings;
- (b) Chairperson;
- (c) Quorum; and
- (d) Voting thresholds.

Promptly after execution of the Agreement, QR will be required to:

- (a) procure that each Participating Funding User approve the Approved Rules; and

- (b) keep the Funding User informed of progress in respect of the establishment of the User Committee and the approval by Participating Funding Users of the Approved Rules.

If requested by a Participating Funding User, QR will be required to procure that each Participating Funding User enter into a covenant in favour of each other Participating Funding User to be bound by the Approved Rules. The Funding User will be required to acknowledge that, by its execution of the Agreement, it approves the Approved Rules as those of the User Committee, and, if requested by QR, will be required to execute a covenant as contemplated above in the form reasonably required by QR.

QR will be required to promptly notify each Participating Funding User upon becoming aware of any event which may impact any Participating Funding User's right to be a member or otherwise participate and/or vote in respect of the User Committee.

10 Dispute resolution

The parties must negotiate in good faith to attempt to resolve the dispute.

If the dispute remains unresolved within 20 Business Days of the dispute arising, the parties may agree to refer the dispute to an expert (appointed by agreement between the parties, and if the dispute is not agreed within 10 Business Days, the expert will be the person as nominated by the President of Engineers Australia – QLD division) for determination. Expert determination will (in the absence of manifest error) be final and binding upon the parties (and the parties will be liable for expert's costs in equal shares).

Where the parties have not agreed to resolve the dispute by expert determination, either party may commence court proceedings.

QR will be required to join any relevant other 'funding users' under an Equivalent Agreement to the dispute process (or to join the Funding User to any dispute process under the relevant Equivalent Agreement), if the dispute concerns the User Committee or if QR considers that a dispute (either under this Agreement or an Equivalent Agreement) may be relevant to the Funding User or any other 'funding user' under an Equivalent Agreement.

11 Termination and Step-in rights

The parties will be permitted to terminate the Agreement at any time by written agreement.

The Funding User will be permitted to terminate the Agreement for its convenience at any time by giving notice to QR.

QR will be permitted to terminate the Agreement if the Funding User:

- (a) becomes insolvent;
- (b) commits a material breach of the Agreement which is not capable of remedy or which is capable of remedy and is not remedied within 20 Business Days; or
- (c) commits a material breach of the Agreement which it has previously breached and remedied, (**Event of Default**).

If, at the time of termination by written agreement between the parties or for convenience by the Funding Party, the Stage currently being performed by QR has not reached completion (and for which there is already an Approved Work Plan), the Funding User's payment obligations under the Agreement will continue to apply to the Services which are undertaken by QR after termination to the extent that those Services are required to be undertaken under the Approved Work Plan.

If QR has committed an Event of Default, the Participating Funding Users will be permitted to step-in and complete the Services and Reports for each Stage themselves, provided that the User Committee has given notice of such step-in to QR.

Upon receipt of such notice, QR will be required to:

- (a) allow the Participating Funding Users to step-in and complete the Services and Reports for each Stage themselves;
- (b) assign (within its power to do so) to the Participating Funding Users all of its rights under the subcontracts it has in connection with the Services to enable the Participating Funding Users to instruct the subcontractors;
- (c) give the User Committee copies of all documents which are reasonably necessary for the Participating Funding Users to undertake the Services and Reports;
- (d) on reasonable notice, give the Participating Funding Users access to all areas of the Network as reasonably required to undertake the Services and Report (subject to compliance with safety and other restrictions stipulated by QR); and
- (e) continue to comply with such other obligations under the Agreement as the Funding Party may specify.