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Dr Malcolm Roberts
Chairman
Queensland Competition Authority
Level 27, 145 Ann Street
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Standard User Funding Agreement (SUFA)

Dear Malcolm

On 20 December 2012, Aurizon Network submitted a voluntary draft amending access undertaking, the 2012 Standard User Funding Agreement Draft Amending Access Undertaking (2012 SUFA DAAU), in order to amend the 2010 Access Undertaking (UT3).

As I stated in the cover letter to the 2012 SUFA DAAU, there were then a series of key issues where Aurizon Network and our customers held different views. At that time, we indicated a desire by the interested parties to work toward resolving those issues.

Over the past six months, Aurizon Network and the Queensland Resources Council (QRC) working group of coal company representatives (the 'QRC Working Group') have together worked through a list of key issues in close consultation. I am pleased to advise that the discussions have resulted in agreed positions which resolve these issues and deliver an improved SUFA package. In most cases the agreed outcomes have been progressed to detailed drafting. In limited cases the drafting is not agreed although the parties remain agreed on the principle. I understand that the QRC will write to the QCA to confirm that this outcome has been achieved.

As a result, Aurizon Network is withdrawing the 2012 SUFA DAAU and is re-submitting the attached Draft Amending Access Undertaking (2013 SUFA DAAU) for consideration by the QCA. The re-submission and Schedule 1 of this letter are intended to facilitate the timely review of the 2013 SUFA DAAU, and ultimately approval of the SUFA documentation.

The 2013 SUFA DAAU is comprised of the following documents:

Volume	Document name and date	Note
1	Explanatory Notes, 2012 SUFA DAAU	As modified by this letter and its schedule
2	SUFA Template Legal Documents dated July 2013 (Replacement Volume 2)	These documents replace the template documents provided in Volume 2 of the 2012 SUFA DAAU
3	Regulatory Notes, 2012 SUFA DAAU	Forms part of the 2013 SUFA DAAU on an unchanged basis
4	Draft Amending Access Undertaking, 2012 SUFA DAAU	Forms part of the 2013 SUFA DAAU on an unchanged basis

Replacement Volume 2 is comprised of the eight legal documents that constitute a SUFA transaction, as listed below.

- the Subscription and Unit Holders Deed*
- the Trust Deed*
- the Rail Corridor Agreement
- the Project Management Agreement*
- the Umbrella Agreement
- the Extension Infrastructure Sub-Lease (previously named the Extension Infrastructure Lease)*
- the Extension Infrastructure Head-Lease (previously named the Extension Infrastructure Agreement)
- the Integrated Network Deed

Each of the four legal documents in Replacement Volume 2 that is asterisked above is different from the equivalent document in the 2012 SUFA DAAU, and is therefore provided in tracked format (against its equivalent in the 2012 SUFA DAAU) as well as clean format.

Each of the remaining four legal documents in Replacement Volume 2 is unchanged from the equivalent document in the 2012 SUFA DAAU, apart from a set of drafting modifications, and is therefore provided only in clean format. The drafting modifications comprise replacement of each reference to an old agreement name, ie Extension Infrastructure Lease and Extension Infrastructure Agreement, are replaced with a reference to the applicable new agreement name, ie Extension Infrastructure Sub-Lease or Extension Infrastructure Head-Lease. These nomenclature changes have no substantive effect on any affected legal document.

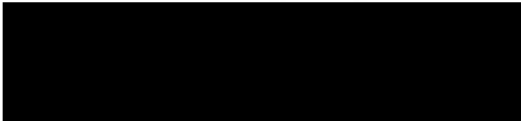
The due date for submissions on the 2012 SUFA DAAU is currently 31 July 2013. We propose that this due date or a date shortly after this date apply to submissions on the 2013 SUFA DAAU, given the nature of the changes and the provision of documentation tracked to the 2012 SUFA DAAU.

There is one key issue that is not addressed in the new submission, namely the Expansion Process. Aurizon Network has tabled a draft of a proposed Expansion Process to the QRC Working Group and reflected this proposal in our UT4 DAAU for review by all stakeholders. A series of meetings with the QRC Working Group will aim to agree the terms of the Expansion Process quickly and in parallel with the QCA's consideration of the 2013 SUFA DAAU. In addition, we understand that the QRC has a number of other amendments which it will propose, which we have not discussed and agreed at this point.

We appreciate the QCA's support for the joint approach of reaching agreement on the key outstanding issues related to SUFA before making this re-submission. We look forward to continuing to work with you and your team on the development of SUFA.

Please contact Colin Keel or me if you have any questions.

Sincerely



Michael Carter
Chief Executive Officer
Aurizon Network Pty Ltd

22 July 2013

Enclosures:
Schedule 1: Summary of Key Changes in the 2013 SUFA DAAU
Replacement Volume 2

Copy to:

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Schedule 1: Summary of Key Changes in the 2013 SUFA DAAU

1 Introduction

This schedule summarises the changes to the December 2012 documentation suite (December 2012 Suite) in respect of these key issues as detailed in the July 2013 documentation suite ('July 2013 Suite'). In addition to changes in respect of these key issues, the July 2013 Suite also reflects additional minor changes that improve drafting, or address errors and inconsistencies.

This schedule is a high level summary of complex commercial and legal arrangements set out in full in the July 2013 Suite. Of necessity, this schedule oversimplifies those arrangements. In the event of any conflict between this schedule and the July 2013 Suite, reliance should be placed on the July 2013 Suite.

2 Identity and corporate status of Trustee

2.1 Key issues

Notwithstanding the extensive 'Reserve Powers' and 'Reserve Decisions' granted to the Preference Unit (PU) holders over the trustee under the December 2012 Suite, the QRC Working Group was concerned over the potential conflict of interest by an Aurizon Network-owned trustee as a counterparty to the bilateral SUFA commercial agreements with Aurizon Network. At the time of issuing the December 2012 Suite, Aurizon Network was concerned over the potential for an independent trustee to perform its role inappropriately.

The QRC Working Group and Aurizon Network have now reached agreement that the adoption of an independent professional trustee and augmented rights of Aurizon Network and the PU holders to replace the incumbent trustee together constitute an appropriate commercial position.

2.2 Summary of agreed position

Under the July 2013 Suite the trustee will, at all times during a SUFA transaction, be an independent professional trustee company, whereas under the December 2012 Suite the initial trustee was to be initially an Aurizon Network affiliate.

As a result of this change in position, in the July 2013 Suite the provisions that recognised the 'related party' linkage between Aurizon Network and the (Aurizon Network-owned) trustee, such as Aurizon Network's guarantee of the trustee's obligations, have been modified or removed.

Also, in order to address concerns over the action of any particular incumbent trustee, the procedure for removing the existing trustee and appointing a replacement trustee has been modified so that either the PU holders or Aurizon Network may require the existing trustee to retire without cause and be replaced by another professional trustee company.

These modifications have been documented in the Subscription and Unit Holders Deed and the Trust Deed.

3 Transfer of SUFA interests

3.1 Key issues

The QRC Working Group was concerned that the restrictions on transfer of SUFA interests in the December 2012 Suite would unduly limit PU holders' ability to finance the user funding commitments and to sell their PUs as they see fit. Aurizon Network considered that it was important to achieve full alignment of commercial interests between the PU holders and the holders, during the project delivery phase, of the access rights over the capacity created by the expansion, in the light of the significant governance rights granted to PU holders during this phase. Aurizon Network also considered this alignment should be continued during the operating phase because of the common interests of Aurizon Network and the PU holders in the performance of the coal chain.

Following discussion in the first half of 2013, the QRC Working Group and Aurizon Network agreed that 'stapling' of PU holders' rights and interests during the project delivery phase was appropriate. After further consideration and risk assessment, Aurizon Network concluded that the ownership of

PU's by 'unaligned' parties during the operating phase could be mitigated by Aurizon Network having the opportunity to acquire the PUs of a PU holder seeking to sell its PUs. Consequently Aurizon Network and the QRC Working Group have agreed that the position on transfer of SUFA interests in the July 2013 Suite, namely 'stapling' during the project delivery phase and neither 'stapling' nor an Aurizon Network consent requirement during the operating phase, constitutes an appropriate commercial position.

3.2 Summary of agreed position

For the **project delivery phase** of a SUFA transaction the July 2013 Suite position is the same as the December 2012 Suite position, namely that ownership of PUs is 'stapled' to the PU holder's interest in the associated Umbrella Agreement, under which the PU holder holds contingent access rights.

For the **project delivery** and **operating phases** of a SUFA transaction, the July 2013 Suite position is that any PU holder that seeks to transfer PUs must provide Aurizon Network with an opportunity to bid for them, and must not sell the PUs to a third party buyer if the terms of its bid are less favourable to the vendor than the terms in an Aurizon Network bid. Subject to meeting these sale process restrictions, each PU holder is free to sell its PUs to any buyer, provided that the buyer has a suitable tax status and meets standard transfer requirements. The December 2012 Suite by contrast provided that Aurizon Network's consent was required for any transfer of PUs by a PU holder (other than Aurizon Network) during the **operating phase**.

In summary, the July 2013 Suite provides PU holders with significantly greater freedom over the disposal of their PUs during the operating phase than was provided in the December 2012 Suite.

These changes have been effected in the Subscription and Unit Holders Deed.

4 Project Management Liability

4.1 Key issues

The QRC Working Group was concerned that the liability arrangements in the PMA in the December 2012 Suite were not commercially balanced. Following discussions of this concern, Aurizon Network and the QRC Working Group agreed that two modifications of the liability arrangements, as detailed below, achieve an appropriate commercial balance.

4.2 Summary of agreed position

Under the July 2013 Suite:

- the cap on the project manager's (ie Aurizon Network's) liability was modified so that it does not apply to wilful default claims, gross negligence claims, fraud claims and trustee liabilities arising from relevant third party claims against the trustee;
- the trustee indemnifies the project manager for all losses arising from third party claims against the project manager to the extent such claims are not caused by the project manager's breach, negligence or fraud; and
- the project manager is liable to the trustee in respect of 'defects' (as defined in the Project Management Agreement) that are caused by the project manager's breach or negligence (subject to the general limitations on, and exclusions of, the project manager's liability).

These changes have been effected in the Project Management Agreement.

5 Optimisation

5.1 Key Issues

The QRC Working Group was concerned that optimisation risk could be transferred to the trustee in situations where Aurizon Network had, without reference to the trustee, decided on the treatment of the project delivery issues that gave rise to that optimisation risk. Following discussions of this concern, Aurizon Network and the QRC Working Group have agreed that a clarification of the allocation of optimisation risk, as detailed below, provides greater clarity and achieves an appropriate commercial position.

5.2 Summary of agreed position

Under the July 2013 Suite the trustee takes optimisation risk in respect of scope and standard, as those terms are used in Aurizon Network's access undertaking, only if and to the extent that the trustee has expressly required such scope and standard, whether at the time of entry into a SUFA transaction or subsequently. This is a clarification of the optimisation risk allocation position in the December 2012 Suite, under which the trustee would take optimisation risk in respect of scope and standard required (but not necessarily 'expressly required') by the trustee. The optimisation risk allocation position in the December 2012 Suite could have been construed as referring to both:

- scope and standard that is implied to be required by the trustee, and
- scope and standard that is expressly required by the trustee.

This change has been effected in the Project Management Agreement.

6 Replacement Project Manager

6.1 Key issues

The QRC Working Group was concerned that the December 2012 Suite did not provide the trustee with an effective sanction in the event of ongoing poor (project delivery) performance by Aurizon Network as project manager.

Poor time performance is already a separate 'trigger' for project manager replacement and the QRC Working Group considered that poor cost performance should also become a separate 'trigger'. Aurizon Network considers that this additional 'trigger' is unnecessary, for two reasons. Firstly, projects that overrun budget are usually late also, so the time 'trigger' would provide a 'trigger' for such a project. Secondly and more importantly, Aurizon Network is taking optimisation risk in respect of each SUFA project and bears significant financial risk if poor project delivery performance results in imprudent expenditure.

Aurizon Network and the QRC Working Group explored different options in respect of modifying the existing 'trigger' that relates to the project manager's breach of its PMA obligations (the 'general breach trigger'). The preferred option was a broadening of the 'general breach trigger', as detailed in Section 6.2 below, and a clarification of both:

- what constitutes a breach by Aurizon Network as project manager that, if uncured, permits the trustee to engage a replacement project manager, and
- the cure requirements for any such breach.

Aurizon Network and the QRC Working Group consider that this option would achieve an appropriate commercial balance.

6.2 Summary of agreed position

As discussed above, the July 2013 Suite retains the separate 'trigger' for project manager replacement due to poor time performance set out in the December 2012 Suite.

Under the July 2013 Suite's 'general breach trigger' provisions the trustee may also engage a 'replacement project manager' in the event of both:

- (a) the non-compliance of the project manager (ie Aurizon Network) with any of a number of defined 'material breach' provisions of the PMA; and
- (b) either
 - (i) the project manager has not
 - if the material breach is remediable, either remedied it or paid agreed compensation for it, or
 - if the material breach is not remediable, paid compensation for it and taken action to prevent its re-occurrence by defined deadline(s), or

- (ii) if the material breach is not remediable, the cumulative number of such breaches exceeds a defined threshold.

These changes to the replacement project manager provisions have been effected in the Project Management Agreement.

7 Trustee's involvement in Project Delivery Process

7.1 Key issues

The QRC Working Group was concerned that the December 2012 Suite did not provide the trustee with sufficient governance rights in respect of the project delivery process. Following extensive discussions, the QRC Working Group and Aurizon Network have developed additional governance rights in respect of the trustee that provide an appropriate commercial position for Aurizon Network and the PU holders.

7.2 Summary of agreed position

Under the July 2013 Suite:

- the aspects of the project's scope of works or procurement methodology that are outstanding at the time of entry into a SUFA transaction are to be determined subsequently
- the contract price threshold for a works contract be subject to the 'Major Works Contract' provisions is reduced, so the scope of these provisions is broadened
- the trustee has consent rights over certain 'material variations' to Major Works Contracts proposed by the project manager
- each of the trustee and the project manager has rights in respect of a defined process for modifying the procurement methodology and the standard of works in the event of certain 'material changes' in project delivery circumstances
- after the project manager has proposed a preferred tender for a Major Works Contract, the trustee has rights in respect of a defined process for proposing an alternative preferred tender and, if not agreed by the trustee and the project manager, determining the selected tender
- each of the trustee and the project manager has rights in respect of a defined process for the early termination of a Major Works Contract

Each of these six principal changes is discussed in greater detail below. In respect of these changes a binding dispute resolution process applies where the project manager and the trustee do not reach agreement within defined timeframes. The July 2013 Suite also includes various consequential changes to give effect to the principal changes.

Completion of the project's scope of works or procurement methodology

- Aurizon Network and the QRC Working Group expect that the parties to a SUFA transaction will seek to agree the documentation of the project's scope of works or procurement methodology in the process of negotiating a SUFA transaction. However it may not be both possible and prudent to document certain aspects of the scope of works or the procurement methodology as at the time of entry into a SUFA transaction. If this situation arises, following execution of the SUFA documents within which those aspects will be specified as 'Deferred Decisions', there will be a process for determining how to address each such aspect. If the project manager and the trustee cannot reach agreement on how to address these aspects after a structured process, an expert resolution process is to apply.

Broadening of 'Major Works Contract' definition

A 'Major Works Contract' is any works contract with a value, which is to be set prior to execution of a SUFA transaction, equal to the lesser of \$10m and a threshold determined on a project specific basis. That threshold will be the amount that is the estimated contract value for the proposed works contract in the "Selection Group" that has the lowest estimated contract value. The "Selection Group" is the group of proposed works contracts that is comprised of the smallest number of proposed works contracts with an aggregate estimated contract value of at least 90% of the aggregate estimated contract value of all proposed works contracts.

Trustee's consent rights on 'material variations'

These rights arise in the context of the project manager proposing a 'material variation' to a Major Works Contract that is not due to a change in the project's scope of works. The trustee is free (at its discretion) to consent or withhold consent. If the trustee withholds its consent, the proposed 'material variation' is referred to an expert, who is to determine, on the basis of specified decision-making rules, whether the 'material variation' should be adopted or not.

Modification of procurement methodology and standard of works

The trustee and the project manager have substantially the same rights as one another in the event of a material change in circumstances, as measured from the date when the project scope of works and procurement methodology was agreed or determined, relating to the project (a 'Material Change').

Either the trustee or the project manager (the 'initiating party') may notify the other party (the 'responding party') of the initiating party's view that a 'Material Change' has occurred and proposed changes to the procurement methodology or the standard of works. If the trustee and the project manager cannot reach agreement on whether a 'Material Change' has occurred, an expert is to determine whether it has occurred. If a 'Material Change' has occurred the responding party may submit alternative proposed changes to the procurement methodology or the standard of works. If the trustee and the project manager cannot reach agreement on how to address a 'Material Change' after a structured process comprised of consultation, position modification and decision-making stages, an expert is to determine, on the basis of specified decision-making rules, whether the trustee's position, the project manager's position or no change in position should be adopted for that 'Material Change'.

Tender selection for Major Works Contract

After the project manager has issued a tender evaluation in respect of a Major Works Contract and recommended a preferred tender to the trustee, the trustee may (at its discretion) not consent to that preferred tender and propose an alternative preferred tender. If the trustee does so and the project manager does not consent to the alternative preferred tender, the trustee and the project manager follow a structured process comprised of consultation and decision-making stages. If they do not reach agreement, an expert is to determine, on the basis of specified decision-making rules, whether the preferred tender, the alternative preferred tender or neither of those two tenders should be selected.

Early termination of a Major Works Contract

When the project manager becomes aware that a Major Works Contract is capable of being terminated early, the project manager must notify reasonable details to the trustee and they must meet to consult with one another shortly afterwards. Following that notification and meeting, either of them may bring about the termination of that Major Works Contract.

All of these changes have been effected in the Project Management Agreement.

8 Compensation arrangement upon termination of Extension Infrastructure Head-Lease (EIHL) other than for Aurizon cause

8.1 Key issues

The QRC Working Group was concerned that, if the EIHL was terminated other than for Aurizon cause, Aurizon Network was only required to negotiate in good faith, subject to specified constraints, an arrangement to compensate the trustee. The QRC Working Group considered that, if Aurizon Network and the trustee were unable to agree a replacement arrangement in such circumstances, a binding dispute process should determine that arrangement.

Aurizon Network and the QRC Working Group have agreed that the continuation of rent being payable by Aurizon Network to the trustee, and any detriment to Aurizon Network being payable by the trustee to Aurizon Network, comprise a commercially appropriate arrangement.

8.2 Summary of agreed position

If the EIHL was terminated other than for Aurizon cause, Aurizon Network continues to be required to pay rent on the basis that prevailed prior to termination. However Aurizon Network is entitled to recover from the trustee the 'detriment', if any, that Aurizon Network experiences as a result of leasing formerly SUFA assets under its infrastructure lease with QTH. Aurizon Network may also

recover interest in respect of its holding cost on such 'detriments'. If the trustee does not agree with Aurizon Network's 'detriment' claims and/or calculations, the trustee may dispute them in accordance with the dispute resolution process of the Extension Infrastructure Sub-Lease (EISL).