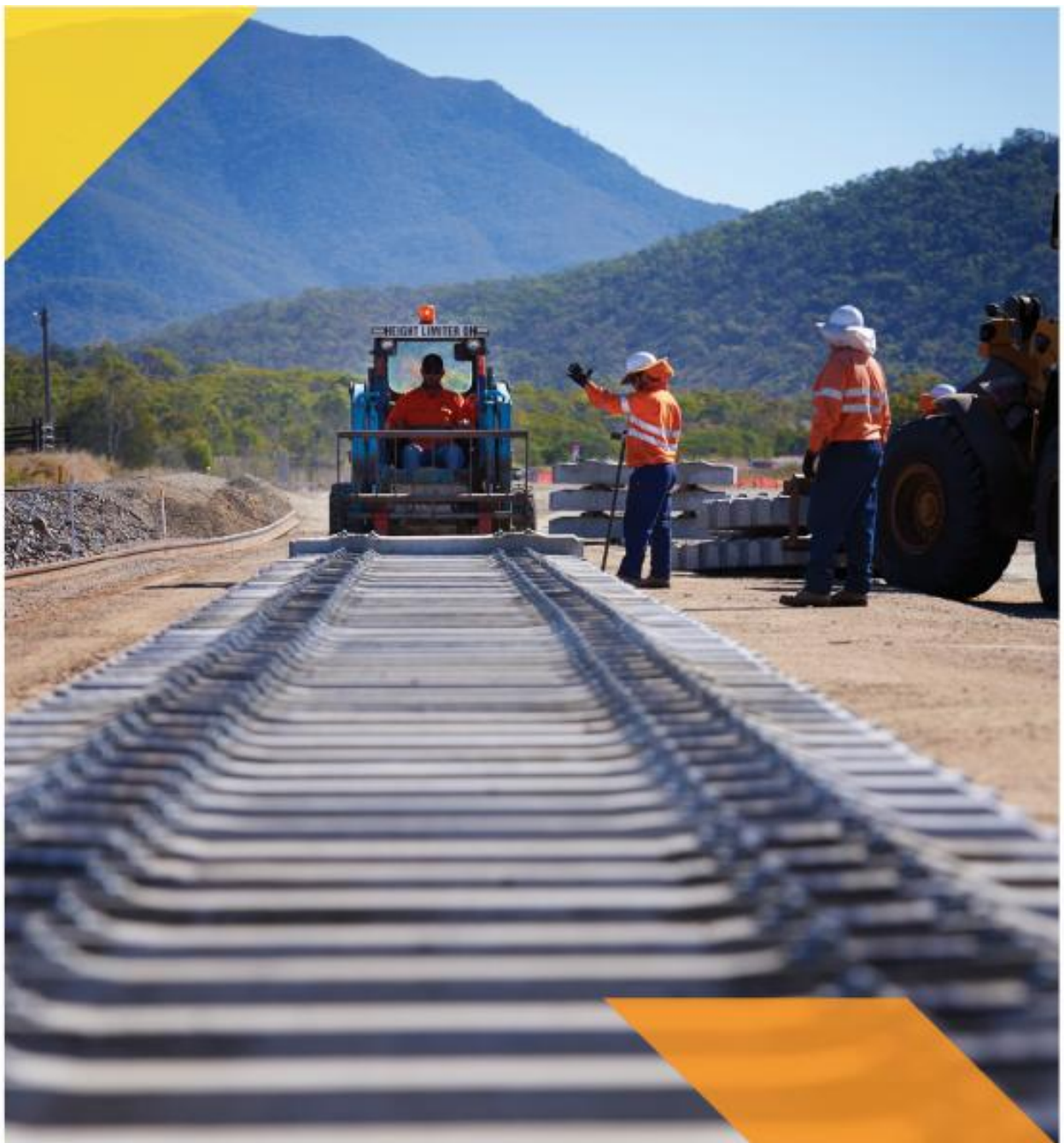

Standard User Funding Agreement (**SUFA**) –
SUFA Template Legal Documents
(Volume 2A)



Contents

VOLUME 2A - CORE SUFA DOCUMENTS

Trust Deed (TD)

Subscription and Unitholders Deed (SUHD)

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VOLUME 2B - STATE DOCUMENTS

Extension Infrastructure Agreement (EIA)

Integrated Network Deed (IND)

QCA submission draft
18 December 2012

[NewCo Pty Ltd]

Aurizon Network Pty Ltd

User Funding - Trust Deed of [Name of Trust]

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Date

Party

[NewCo Pty Ltd] [ACN] of Level 14, Railcentre 1, 305 Edward Street, Brisbane, Queensland (**Trustee**)

Aurizon Network Pty Ltd ABN 78 132 181 116 of Level 14, Railcentre 1, 305 Edward Street, Brisbane, Queensland (**Aurizon Network**)

Background

- A This Deed is the trust deed of **[Name of Trust]**.
 - B Aurizon Network proposes to subscribe for one Ordinary Unit in the Trust on establishment of the Trust.
 - C Aurizon Network has appointed the Trustee, and the Trustee has agreed to act, as the first trustee of the Trust.
-

Agreed terms

1 Interpretation

1.1 Definitions

In this Deed:

Accounting Standards means:

- (a) the Accounting Standards as defined in the Corporations Act; and
- (b) other generally accepted accounting principles and practices in Australia which are not inconsistent with the accounting standards referred to in **paragraph (a)**.

Application Price of a Unit means the price payable in accordance with **clause 10**.

Assets means all the property, rights and income of the Trust, but excludes:

- (a) application money or property in respect of which Units have not yet been issued;
- (b) proceeds of redemption which have not yet been paid;
- (c) any amount to which a Unit Holder is presently entitled; and

(d) uncalled amounts on Partly Paid Units.

Associate has the meaning given in the Corporations Act.

Aurizon Preference Unit Holder means a Preference Unit Holder that is Aurizon Network or a Related Body Corporate of Aurizon Network.

Books Closing Date has the meaning given in **clauses 12.8(c)(iv) or 12.8(d)(iv)**, as applicable.

Business Day means a day which is not a Saturday, Sunday or public holiday in Brisbane.

Call means:

- (a) while the Unit Holders Deed is in force, a “Unit Call” (as defined in the Unit Holders Deed); and
- (b) otherwise, a notice from the Trustee to a Unit Holder (in accordance with **clause 9.2**) requiring the Unit Holder to pay part or all of the Unit Holder’s Uncalled Amount.

Call Amount:

- (a) while the Unit Holders Deed is in force, means a “Unit Call Amount” (as defined in the Unit Holders Deed); and
- (b) otherwise has the meaning given in **clause 9.2(a)(i)**.

Call Notice has the meaning given in **clause 9.2(a)**.

Claim includes any claim, demand, liability, cost, expense, damage, loss, proceeding, suit, litigation, investigation, audit, action or cause of action, whether judicial, administrative, investigative or otherwise, and whether arising in contract, tort (including negligence), under statute or otherwise, of whatever nature, known or unknown, liquidated or unliquidated.

Class means a class of Units, and if there are no classes of Units on issue all Units are taken to be Ordinary Units.

Consequential Loss means, subject to **paragraphs (e), (f) and (g)** of this definition:

- (a) any special, indirect or consequential loss;
- (b) any economic loss in respect of any Claim in tort;
- (c) any loss of profits, loss of production, loss of revenue, loss of use, loss of contract, loss of opportunity, loss of reputation, loss of goodwill or wasted overheads whatsoever; and
- (d) any loss arising out of any Claim by a third party,

but does not include:

- (e) a loss (including a loss arising out of a Claim by a third party) in respect of:

- (i) the cost of repairing, replacing or reinstating any real or personal property of any person (including a Unit Holder) that has been lost, damaged or destroyed; or
- (ii) personal injury to or death of any person;
- (f) in respect of any personal injury Claim, special loss or economic loss as those terms are used in the context of personal injury Claims; or
- (g) the payment by the Trustee to a Unit Holder of any amount which represents the Unit Holder's share of any Distributable Sum.

Consolidated Group has the meaning given to that expression in Part 3-90 of the Tax Act.

Core Infrastructure Agreement has the meaning given in the Unit Holders Deed.

Corporations Act means the *Corporations Act 2001* (Cth).

Deed means this document.

Distributable Amount has the meaning given in **clause 12.4(a)**.

Distributable Income for a Distribution Period means the distributable income of the Trust for that Distribution Period determined in accordance with **clause 12.2**.

Distributable Sum has the meaning given in **clauses 12.8(c)(iv)** or **12.8(d)(iv)**, as applicable.

Distribution Account means the account established under **clause 12.6(a)**.

Distribution Calculation Date means the last day of a Financial Year and such other day or days as the Trustee determines.

Distribution Period means:

- (a) for the first distribution period, the period from the commencement of the Trust to the next Distribution Calculation Date;
- (b) for the last distribution period, the period from the day after the preceding Distribution Calculation Date to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the period from the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date or any other interim date that the Trustee may determine.

Due Date of a Call has the meaning given in **clause 9.2(a)(ii)**.

Eligible Investor means:

- (a) a person that:
 - (i) is a Wholesale Client;

- (ii) is an “Australian Resident” (as defined in *Income Tax Assessment Act 1997* (Cth)); and
 - (iii) is not a unit trust; or
- (b) Aurizon Network Pty Ltd ABN 78 132 181 116, or a Related Body Corporate of Aurizon Network Pty Ltd,

but, unless approved by the Trustee in accordance with **clause 6.9**, does not include:

- (c) any “exempt entity” (as defined in section 995-1 of the *Income Tax Assessment Act 1997* (Cth)); or
- (d) any person referred to in section 102MD of the *Income Tax Assessment Act 1936* (Cth).

[Drafting Note:

Wholly owned Related Body Corporate

Ownership of Preference Units by a Related Body Corporate of the party to a linked Umbrella Agreement will be considered on a transaction-by-transaction basis provided that both the Related Body Corporate and the party to the linked Umbrella Agreement are members of the same wholly-owned group during the Construction Period. If ownership of Preference Units by a Related Body Corporate is permitted, the Unit Holders Deed would be amended to include a “change in control” restriction during the Construction Period (the purpose of which would be to prevent, during the Construction Period, the Preference Units being held by a Preference Unit Holder that is not a member of the same wholly-owned group as the party to the linked Umbrella Agreement). The Unit Holders Deed would also be amended to include consequences for an unauthorised “change in control” which would include the suspension of the Preference Unit Holder’s voting rights and rights to distributions.

Exempt entity or section 102MD fund

*Ownership of Preference Units by an exempt entity (as defined in section 995-1 of the *Income Tax Assessment Act 1997* (Cth)) or a section 102MD (of the *Income Tax Assessment Act 1936* (Cth)) fund would be determined on a transaction-by-transaction basis and only permitted if it did not cause the Trust or the Trustee to be taxed as a company.]*

Expert has the meaning given in the Unit Holders Deed.

Extension Infrastructure Lease has the meaning given in the Unit Holders Deed.

Financial Year means:

- (a) when the Trust commences, the period from the day of commencement of the Trust to the next 30 June or such other day determined by the Trustee;
- (b) when the Trust is terminated, the period which commences on the day after the preceding Financial Year ended and which ends on the day the Trust is wound up; and
- (c) in all other circumstances, a period of 12 Months ending on 30 June or such other date determined by the Trustee.

Fraud Trigger Event means the Trustee commits fraud.

Fully Paid Unit means a Unit on which the Application Price has been fully paid.

Governmental Agency means any government, whether Federal, state or Territory, municipal or local, and any agency, authority, commission, department, instrumentality, regulator or tribunal thereof, including the Commissioner of Taxation and Australian Tax Office.

Gross Negligence means any negligence committed by the Trustee in connection with this Deed or the Unit Holders Deed involving such wanton and reckless conduct as constitutes an utter disregard for the harmful, foreseeable and avoidable consequences which result from such conduct.

GST has the meaning given in the GST Law.

GST Law has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Initial Subscription Amount has the meaning given in the Unit Holders Deed.

Initial Subscription Date means the date on which the first Units in the Trust are issued to a Unit Holder.

Insolvency Event means, in relation to the Trustee, Aurizon Network or a Related Body Corporate of Aurizon Network, as applicable (the **Insolvent Party**), the happening of any of the following events:

- (a) it is, or states that it is, unable to pay all of its debts as and when they become due and payable, or it has failed to comply with a statutory demand as provided in section 459F(1) of the Corporations Act;
- (b) an application or order is made for the winding up or dissolution, or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution, of the Insolvent Party (other than for the purposes of reconstruction or amalgamation whilst solvent), and the application is not dismissed, the order is not set aside, or the resolution is not withdrawn (as applicable), within 30 days;
- (c) an administrator, provisional liquidator or liquidator, or person having a similar or analogous function under the laws of any relevant jurisdiction, is appointed in respect of the Insolvent Party, or any action is taken to appoint any such person, and the appointment or action is not stayed, withdrawn or dismissed within 30 days;
- (d) a “controller” (as defined in the Corporations Act) is appointed in respect of any property of the Insolvent Party;
- (e) it is deregistered under the Corporations Act;
- (f) a distress, attachment or execution is levied or becomes enforceable against any property of the Insolvent Party;
- (g) it enters into, or takes any action to enter into, an arrangement (including a scheme of arrangement or deed of company arrangement other than a

solvent scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of its creditors or members or a moratorium involving any of them; or

- (h) anything analogous to, or of a similar effect to, anything described above under the law of any relevant jurisdiction occurs in respect of it.

Insolvency Trigger Event means, while the Trustee is a Related Body Corporate of Aurizon Network:

- (a) an Insolvency Event occurs in relation to the Trustee or Aurizon Network; or
- (b) an Insolvency Event occurs in relation to a Related Body Corporate of the Trustee or Aurizon Network, in respect of which the Trustee has guaranteed the performance of any obligations of that Related Body Corporate.

Integrated Network Deed has the meaning given in the Unit Holders Deed.

Law includes any law or legal requirement, including common law, in equity, under statute, regulation or by-law, any condition of any authorisation, and any decision, directive, guidance, guideline or requirements of any Governmental Agency.

Loss means any loss, liability, cost, charge, expense, diminution in value or deficiency of any kind or character which the Trustee pays, suffers or incurs or is liable for including:

- (a) liabilities on account of Tax (other than any Tax assessed to the Trustee directly as a result of the Trustee making a determination under **clause 12.5** to accumulate Distributable Income);
- (b) interest and other amounts payable to third parties; and
- (c) legal costs (on a full indemnity basis) and other expenses reasonably incurred in connection with investigating or defending any Claim, whether or not resulting in any liability and all amounts paid in settlement of any Claim.

Month means a calendar month.

Net Distributable Amount for a Distribution Period means the "Preference Income" (as defined in the Unit Holders Deed) for that Distribution Period less the tax payable by the Trust on that "Preference Income".

Net Income means the amount calculated by the Trustee (or caused to be calculated) as the "net income" for each Financial Year in accordance with section 95(1) of the Tax Act.

Nominated Retirement Date means:

- (a) for the purposes of **clause 15.1**, the date which a retiring Trustee nominates in a notice given under **clause 15.1(c)** as the date on which its retirement as trustee of the Trust will take effect; and

- (b) for the purposes of **clauses 15.2, 15.3, 15.4 and 15.10**, the date on which the Trustee is, but for the operation of **clause 15.11(a)**, required to retire as trustee of the Trust.

Notice has the meaning given in **clause 23.1**.

Ordinary Resolution means a resolution of the relevant Class of Units where the required majority is a simple majority.

Ordinary Unit means a Unit that has the rights, powers, obligations, liabilities and restrictions attaching to an Ordinary Unit under this Deed and, while the Unit Holders Deed is in force, the Unit Holders Deed.

Ordinary Unit Holder means a person that holds Ordinary Units.

Other Transaction Documents means:

- (a) the Unit Holders Deed;
- (b) the Project Management Agreement;
- (c) the Extension Infrastructure Lease;
- (d) the Rail Corridor Agreement;
- (e) each Umbrella Agreement;
- (f) the Core Infrastructure Agreement; and
- (g) the Integrated Network Deed.

Paid Up Amount of a Unit, at any time, means the amount that:

- (a) the Unit Holder has paid in respect of the Application Price; and
- (b) the Trustee has applied in paying up the Unit as at that time,

less the amount of any capital returned to the Unit Holder pursuant to **clause 9.4(a)**.

Partly Paid Unit means a Unit on which the Application Price has not been fully paid.

Preference Unit means a Unit in respect of which the terms of issue are as set out in **clause 7.1**.

Preference Unit Holder means a person recorded on the Register as a holder of Preference Units (including persons jointly registered).

Project Management Agreement has the meaning given in the Unit Holders Deed.

Rail Corridor Agreement has the meaning given in the Unit Holders Deed.

Redemption Price of a Unit means the price calculated in accordance with **clause 11.2**.

Register means the register of Unit Holders kept by the Trustee showing the number and class of Units held by each Unit Holder.

Registered Scheme means a trust which is registered as a managed investment scheme under Chapter 5C of the Corporations Act.

Related Body Corporate has the meaning given in section 50 of the Corporations Act.

Relevant Preference Unit Holders means the Preference Unit Holders excluding any Aurizon Preference Unit Holder and **Relevant Preference Unit Holder** means any one of them.

Replacement Appointment Notice has the meaning given in **clause 15.10(a)**.

Replacement Election Notice has the meaning given in **clauses 15.6(c), 15.7(b) and 15.8(c)**.

Reserve Account has the meaning given in **clause 12.9(a)**.

Special Resolution means a resolution of the relevant Class of Units where the required majority is 75%.

Special Preference Resolution means a resolution of Preference Unit Holders where:

- (a) an Aurizon Preference Unit Holder that is a Related Body Corporate of the Trustee is not entitled to vote; and
- (b) the required majority is 75% of the Preference Unit Holders that are entitled to vote.

Specified Date for a Call has the meaning given in **clause 9.5(a)(i)(B)**.

Stamp Duty includes any duty or stamp duty and any transaction or registration duty or similar charge imposed by any Governmental Agency, and includes any interest, fine, penalty, charge or other amount in respect of the above but excludes GST.

State means the State of Queensland.

Subscription Agreement means a document entered into by the Trustee and an applicant for Units, under which the applicant applies for a specified number and class of Units and agrees to pay the Application Price for them. Under a Subscription Agreement, the Application Price may be payable either in full on or before issue of the Units or by way of instalments in accordance with **clause 8.1(a)**.

Supplier has the meaning given in **clause 22.3**.

Tax includes:

- (a) any tax, levy, impost, deduction, charge, rate, compulsory loan, withholding or duty by whatever name called, levied, imposed or assessed under the Tax Act or any other Law in Australia or elsewhere;
- (b) unless the context otherwise requires, Stamp Duty or GST;

- (c) any interest, penalty, charge, fine or fee or other amount of any kind assessed, charged or imposed on or in respect of anything listed in **paragraph (a) or (b)** above.

Tax Act means the *Income Tax Assessment Act 1936* (Cth) (**1936 Act**), the *Income Tax Assessment Act 1997* (Cth) (**1997 Act**), or both the 1936 Act and the 1997 Act, as appropriate, and, to the extent applicable, the *Taxation Administration Act 1953* (Cth) and includes tax laws having a similar or corresponding object or effect in any jurisdiction.

Tax Law means any law or legal requirement, including common law, in equity, under statute, regulation or by-law, under which Tax is imposed, assessed, charged or administered by any Governmental Agency and includes, without limitation, the Tax Act.

Tax Return means any Tax return or similar document relating to the Tax affairs of any entity required to be prepared and lodged under a Tax Law.

Trigger Event means:

- (a) the Trustee does not comply with clause **[18.1]** of the Unit Holders Deed by implementing a “Reserve Decision” (as defined in the Unit Holders Deed) without the decision first being approved by the applicable majority of applicable Preference Unit Holders in accordance with clause **[18.1]** of the Unit Holders Deed;
- (b) the Trustee does not comply with clause **[18.2]** of the Unit Holders Deed by failing to comply with a direction given by the applicable majority of applicable Preference Unit Holders in respect of the exercise of a “Reserve Power” (as defined in the Unit Holders Deed) in accordance with clause **[18.2]** of the Unit Holders Deed;
- (c) the Trustee commits Wilful Default or Gross Negligence;
- (d) a Fraud Trigger Event; or
- (e) an Insolvency Trigger Event.

Trigger Notice has the meaning given to that term in **clause 15.5(b)**.

Trust means the trust constituted under this Deed.

Umbrella Agreement has the meaning given in the Unit Holders Deed.

Unanimous Resolution means a resolution of the relevant Class of Units where the required majority is 100%.

Uncalled Amount means, in respect of a Unit, the Application Price of the Unit **less** the Paid Up Amount of the Unit.

Unit means an undivided share in the beneficial interest in the Trust.

Unit Holder means a person recorded on the Register as a holder of Units (including persons jointly registered).

Unit Holders Deed means the document titled “User Funding – [Name of Trust] Subscription and Unit Holders Deed” to be entered into between the Trustee and the subscribers for the initial Units.

Wholesale Client has the meaning given by section 761G of the Corporations Act.

Wilful Default means an intentional breach of the terms of this Deed or the Unit Holders Deed.

1.2 Interpretation

Unless expressed to the contrary, in this Deed:

- (a) headings are for convenience only and do not affect the interpretation of this Deed;
- (b) where the day on or by which any thing is to be done is not a Business Day, it must be done on or by the preceding Business Day;
- (c) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded;
- (d) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (e) “includes” means includes without limitation;
- (f) no rule of construction will apply to the disadvantage of one party on the basis that that party put forward the documents comprising this Deed;
- (g) words in the singular include the plural and vice versa;
- (h) words importing one gender will include every gender;
- (i) references to clauses and schedules are references to clauses of, and schedules to, this Deed; and
- (j) a requirement for a person to obtain consent or approval of another person requires that person to obtain the consent or approval in writing;
- (k) a reference to:
 - (i) a person includes any company, partnership, joint venture, unincorporated association, corporation or other body corporate and a government or statutory body or authority;
 - (ii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified, consolidated, re-enacted or replaced;
 - (iii) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (iv) a right includes a benefit, remedy, discretion and power;
 - (v) time is to local time in Brisbane, Queensland;

- (vi) \$ or dollars is a reference to Australian currency;
- (vii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
- (viii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmission; and
- (ix) a party includes that party's successors according to law and permitted assigns and any person to whom it novates its rights and obligations.

1.3 Unit Holders Deed overrides

- (a) While the Unit Holders Deed is in force:
 - (i) if there is any inconsistency between the provisions of this Deed and those of the Unit Holders Deed, the provisions of the Unit Holders Deed prevail; and
 - (ii) all provisions of this Deed are read as being subject to the Unit Holders Deed.
- (b) **Clause 1.3(a)** is not limited by the fact that a provision of this Deed is stated to be subject to the Unit Holders Deed and other provisions of this Deed (apart from this **clause 1.3**) are not expressly stated to be subject to the Unit Holders Deed.

2 Constitution of the Trust

2.1 Appointment of Trustee

Aurizon Network appoints the Trustee, and the Trustee agrees to act, as the trustee for the Unit Holders upon the terms of this Deed.

2.2 Declaration of trust

The Trustee declares that the Trustee holds, and must at all times hold, the Assets on trust for the Unit Holders.

2.3 Assets held separately

To the extent that the nature of an Asset permits, the Assets must be:

- (a) clearly identified as property of the Trust; and
- (b) held separately from the assets of the Trustee and the assets of any other person.

3 Commencement and effect of Deed

3.1 Commencement

The Trust commences on the date Units are first issued.

3.2 Trust Deed enforceability

This Deed is to be legally enforceable by the Unit Holders against the Trustee and by the Trustee against each Unit Holder and all persons claiming through a Unit Holder as if they were parties to this Deed.

4 Name of Trust

The Trust is called **[Name of Trust]** or by such other name as the Trustee determines from time to time.

5 Principal objective of Trust

The principal objective of the Trust is to:

- (a) design, supply, procure, construct, commission and complete new rail infrastructure, and/or modifications and/or upgrades of and/or additions to existing rail infrastructure, as agreed between the Trustee and the Unit Holders;
- (b) lease (or sublease, as applicable) that infrastructure; and
- (c) generate returns for the Preference Unit Holders by deriving rent from the lease (or sublease, as applicable) of that infrastructure.

6 Units

6.1 Nature of Units

- (a) The beneficial interest in the Trust is divided into Units.
- (b) Subject to the rights, obligations or restrictions attaching to any particular Unit or Class, a Unit confers an interest in the Assets as a whole, subject to the liabilities of the Trust.
- (c) A Unit does not confer an interest in a particular Asset.
- (d) At any time, all the Units in a Class are of equal value.
- (e) All Units are Ordinary Units unless otherwise specified in their terms of issue.

6.2 Fractions of Units

- (a) The Trustee may issue Units in fractions of a Unit calculated to up to four decimal places.
- (b) Where any calculation performed under this Deed would result in the issue of a fraction of a Unit, otherwise than where the Trustee has offered the issue of Units in fractions of up to four decimal places:
 - (i) the number of Units to be issued will be rounded downwards to the nearest whole Unit; and
 - (ii) any excess amount resulting from this rounding down is an Asset.

- (c) The provisions of this Deed relating to Units and Unit Holders apply to fractions of Units in the proportion which the fraction bears to one Unit.

6.3 Consolidation and division of Units

- (a) Units may be consolidated or divided as determined by the Trustee.
- (b) Where the Trustee consolidates or divides Units of the same Class, it must ensure that all Units of the Class are consolidated or divided on the same basis.
- (c) Where the Trustee consolidates or divides the Units in one Class, it must ensure that the consolidation or division is fair and equitable as between all Classes.

6.4 Rights attaching to Units

- (a) A Unit Holder holds a Unit subject to the rights and obligations attaching to that Unit.
- (b) Except as otherwise set out in this Deed, each Unit Holder must not:
 - (i) interfere with any rights or powers of the Trustee under this Deed;
 - (ii) purport to exercise a right in respect of an Asset, or claim any interest in an Asset (for example, by lodging a caveat affecting an Asset); or
 - (iii) require an Asset to be transferred to the Unit Holder (or any other person).

6.5 Joint holders

Persons registered jointly as a Unit Holder hold as joint tenants and not as tenants in common:

- (a) unless the Trustee otherwise agrees; or
- (b) unless specifically provided otherwise in clauses [12.2(b)(i) and 25.2(b)] of the Unit Holders Deed.

6.6 Transfer of Units

- (a) A Unit Holder may transfer Units only:
 - (i) to an Eligible Investor; and
 - (ii) with the prior consent of the Trustee (which may not be unreasonably withheld).
- (b) Transfers must be in a form approved by the Trustee (acting reasonably) and, if the Trustee requires, be lodged with the Trustee duly stamped.
- (c) A transfer is not effective until recorded in the Register.
- (d) While the Unit Holders Deed is in force, the Trustee must not register a transfer of Units unless:
 - (i) the transferee has become a party to, and agreed to be bound by, the Unit Holders Deed; and

- (ii) the transfer is in accordance with the Unit Holders Deed.
- (e) The Trustee will not register a transfer of Units if in the Trustee's opinion, the transfer would:
 - (i) result in the Trust having more than 20 members determined under section 601ED of the Corporations Act; or
 - (ii) contravene **clause 6.6(a)(i)**.

6.7 Issue of additional Units

Subject to **clause 6.8**, where the Trustee has issued Units in any Class, the Trustee may issue additional Units in that Class:

- (a) to all existing Unit Holders of that Class proportionately to their respective existing holdings or in proportions agreed between them; or
- (b) to an Eligible Investor that is not an existing Unit Holder of that Class, with the approval of:
 - (i) a Special Resolution of the Unit Holders holding Ordinary Units; and
 - (ii) where there are Preference Units on issue, a Unanimous Resolution of the Unit Holders holding Preference Units.

6.8 Restrictions on issue of additional Units

The Trustee must not:

- (a) while the Unit Holders Deed is in force, issue Units of any Class to any person that is not an existing Unit Holder unless the applicant has become a party to, and agreed to be bound by, the Unit Holders Deed; or
- (b) issue additional Units if in the Trustee's opinion the issue would result in the Trust having more than 20 members determined under section 601ED of the Corporations Act.

6.9 Eligible Investors

- (a) Notwithstanding **paragraphs (c) and (d)** of the definition of Eligible Investor for the purposes of this Deed and subject to **clause 6.9(c)**, the Trustee may approve a person to be an Eligible Investor for the purposes of the Deed.
- (b) Subject to **clause 6.9(d)**, if the Trustee proposes to approve a person as an Eligible Investor, the Trustee must:
 - (i) notify the Unit Holders and provide reasonable particulars regarding the proposal; and
 - (ii) consider whether approving the person as an Eligible Investor may result in the Trust being taxed in a similar manner to a company and in doing so consider:
 - (A) any submissions made to the Trustee by Unit Holders, provided that such submissions are made within the time

- period set by the Trustee (in its absolute discretion) having regard to the circumstances, time and manner in which it is proposed that the person become an Eligible Investor; and
- (B) any advice obtained by the Trustee from external taxation advisers.
 - (c) If, after taking into account the matters referred to in **clause 6.9(b)(ii)** (where applicable), the Trustee, in its absolute discretion, forms the opinion that the approval of a person as an Eligible Investor would result in the Trust being taxed in a similar manner to a company, the Trustee must not approve that person under **clause 6.9(a)**.
 - (d) **Clause 6.9(b)** does not apply to the process contemplated by clause **8.7** of the Unit Holders Deed.

7 Classes of Units

7.1 Preference Units

- (a) Subject to this Deed, the Trustee may issue Preference Units to which the following rights, powers, obligations, liabilities and restrictions attach:
 - (i) the Preference Units have the right to receive distributions of Distributable Income in priority to Ordinary Units;
 - (ii) the only voting rights are as expressly provided in this Deed or the terms of issue; and
 - (iii) unless other expressly provided for in this Deed, the Preference Units have no right to receive a return of capital from the Trust.
- (b) While the Unit Holders Deed is in force and subject to this Deed, the Trustee may issue Preference Units, the terms of issue of which must be as set out in this Deed and the Unit Holders Deed and as summarised in schedule **11** of the Unit Holders Deed.

7.2 Other Classes

In addition to Preference Units issued under **clause 7.1**, the Trustee may, subject to this Deed and with the approval of:

- (a) a Special Resolution of the Unit Holders holding Ordinary Units; and
- (b) where there are Preference Units on issue, a Unanimous Resolution of the Unit Holders holding Preference Units,

issue Units of different Classes, with different proprietary and other rights and different liabilities as provided in this Deed or specified in the terms of issue or, subject to the Trustee's duties and the terms of issue of each Class of Units, at any time categorise any Units into a Class.

7.3 Other Class rights

- (a) Except to the extent specified in this Deed or the terms of issue of Units of a Class, all Units will rank *pari passu*.

- (b) A separate Class does not constitute a separate trust.

8 Partly Paid Units and Calls – general provisions

8.1 Partly Paid Units

- (a) The Trustee may issue Partly Paid Units in respect of which the Application Price is payable in instalments, by paying the Initial Subscription Amount and by making instalment payments:
 - (i) in response to Calls; or
 - (ii) as prescribed in the terms of issue of the Units.
- (b) Units are Fully Paid Units on and from the time that:
 - (i) the Application Price of the Units has been paid in full; or
 - (ii) the full amount of the outstanding liability of the Unit Holders of those Units to pay to the Trustee any Uncalled Amount is extinguished under **clause 8.5**.

8.2 Lien

- (a) The Trustee has a first and paramount lien on the Units registered in the name of a Unit Holder where:
 - (i) the Trustee has issued Partly Paid Units and a Call is due but unpaid on those Units; or
 - (ii) the Application Price of Units is payable by instalments and an instalment is due but unpaid on those Units.
- (b) The lien is in respect of the amount of the Calls or instalments due and unpaid at any time, and interest and expenses incurred because that amount is not paid.

8.3 Lien on distributions

The lien under **clause 8.2** extends to all distributions of Distributable Income from time to time payable in respect of the Units.

8.4 Liability of joint holders

Joint holders of Partly Paid Units are jointly and severally liable to pay all amounts due and payable on the Partly Paid Units held by them.

8.5 Extinguishment of liability on Calls

- (a) The Trustee may agree to extinguish the liability of a Unit Holder holding Partly Paid Units to pay to the Trustee any amount unpaid on the Partly Paid Units held by that Unit Holder.
- (b) While the Unit Holders Deed is in force, the liability of a Preference Unit Holder to pay to the Trustee any amount unpaid on the Partly Paid Units held by that Unit Holder will be extinguished at the time, and in the circumstances, contemplated in clause **[6.9(b)]** of the Unit Holders Deed.

- (c) For the avoidance of doubt, if the liability of a Preference Unit Holder to pay to the Trustee any amount unpaid on the Partly Paid Units is extinguished in accordance with the provisions of the Unit Holders Deed, the subsequent termination of the Unit Holders Deed will not affect that extinguishment.

8.6 Uncalled Amount on winding up of the Trust

On the winding up of the Trust, a holder of Partly Paid Units has no liability to the Trust in respect of its Uncalled Amount except to the extent of Calls made prior to the date specified by the Trustee as the date the winding up commenced.

9 Calls and failure to pay Calls

9.1 Unit Holders Deed applies to Calls for Preference Units

While the Unit Holders Deed is in force, the rights, powers and obligations of the Trustee and the Preference Unit Holders in relation to making Calls, paying Calls and failure to pay Calls are governed by the Unit Holders Deed and this **clause 9** does not apply.

9.2 Calls

- (a) At any time after the issue of a Partly Paid Unit, the Trustee may make a Call on part or all of any Uncalled Amount by notice in writing to the Unit Holder (**Call Notice**) specifying:
 - (i) the amount of the Call (**Call Amount**); and
 - (ii) the date the amount must be paid (**Due Date**).
- (b) A Unit Holder that receives a Call Notice must pay the Call Amount no later than the Due Date.
- (c) The Trustee may determine the time at which payments made by a Unit Holder in response to a Call Notice are applied in paying up the Unit Holder's Partly Paid Units, which may be later than the Due Date.
- (d) The Trustee may:
 - (i) revoke a Call at any time before the Call Amount is applied in paying up the Unit Holder's Partly Paid Units (including after the Call Amount has been paid), in which case:
 - (A) if the Call Amount has been paid, that amount will be refunded by the Trustee to the Unit Holder;
 - (B) if the Call Amount has not been paid, the amount of the Call will cease to be payable; and
 - (C) in either case, the amount of the Uncalled Amount will be adjusted accordingly; or
 - (ii) postpone a Call or extend the time for payment of a Call.

9.3 Application of Call Amounts

- (a) The Trustee must make Calls and apply Call Amounts only in furtherance of the objectives of the Trust and in payment of expenses of the Trust.
- (b) To the extent that any Call Amounts received are not immediately required for the purposes referred to in **clause 9.3(a)**, the Trustee may invest those amounts in any form of cash or cash style investment or similar short term investment (for example, financial institution deposits or cash management trusts).

9.4 Return of amounts paid in response to Call

- (a) The Trustee must return to the Unit Holder any Call Amount paid in response to a Call which the Trustee determines is not required for the purpose of the Call.
- (b) Any amount returned by the Trustee under **clause 9.4(a)**, must be deducted from the Unit Holder's Paid Up Amount and added to the Unit Holder's Uncalled Amount.

9.5 Failure to pay a Call or instalment

- (a) If a Unit Holder fails to pay a Call or an instalment in respect of any Partly Paid Units on or before the Due Date:
 - (i) the Trustee must give a notice to that Unit Holder not later than five Business Days after the Due Date that:
 - (A) requires payment of the amount and any interest payable under **clause 9.5(a)(ii)**; and
 - (B) specifies a further due date for payment which is not earlier than two Business Days after the date of service of the notice (**Specified Date**); and
 - (ii) interest will accrue on the outstanding amount until that amount, together with the interest thereon, has been paid, at a rate of interest determined by the Trustee or as set out in the terms of issue of the Units.
- (b) If the requirements of any notice issued under **clause 9.5(a)(i)** are not complied with by the defaulting Unit Holder by the Specified Date:
 - (i) all voting rights and entitlements to the distribution of Distributable Amounts in connection with the Partly Paid Units are suspended;
 - (ii) the Trustee may, at any time following the Specified Date while the Call or instalment remains unpaid, apply any distribution which is or may otherwise become payable to the defaulting Unit Holder under this Deed towards any amounts then owing by the defaulting Unit Holder (including accrued interest and all costs and expenses incurred by the Trustee in relation to the unpaid Call); and

- (iii) the Partly Paid Units of the defaulting Unit Holder are liable to be forfeited under **clause 9.6**.
- (c) At any time while a Call or instalment remains unpaid, the Trustee may agree to extend the time for payment or waive or permit the remedy of any default by a defaulting Unit Holder.
- (d) Upon the remedy of a default at any time prior to the forfeiture of the Units under **clause 9.6**, the Unit Holder's voting rights and entitlements to distributions shall be restored.

9.6 Forfeiture of Partly Paid Unit

- (a) If any part of a Call or instalment remains unpaid after the Specified Date (or such later date as the Trustee may agree under **clause 9.5(c)**), and the Trustee has not waived the default by the defaulting Unit Holder in accordance with **clause 9.5(c)**, then any Partly Paid Units in respect of which the notice under **clause 9.5(a)(i)** has been given may be forfeited at such time as the Trustee determines.
- (b) For the avoidance of doubt, a forfeiture of Units under this **clause 9.6** is not a disposal of Units, and the Units remain the property of the Unit Holder subject to the restrictions set out in this **clause 9** until the Units are sold or otherwise disposed of in accordance with this **clause 9**.
- (c) Where Units are forfeited, all entitlements to the distribution of Distributable Income and capital in connection with the forfeited Units, which have not been paid before forfeiture, must be applied in accordance with **clauses 9.12** and **9.13** as if they formed part of the proceeds of sale of the forfeited Units.

9.7 Unit Holder's rights on forfeiture

Without affecting the obligations and liability of a Unit Holder, and the rights of the Trustee, from the date of forfeiture of any Units of a Unit Holder:

- (a) the Unit Holder has no Claim against the Trustee or the Trust in respect of the forfeited Units; and
- (b) the Trustee must hold the forfeited Units on trust for the Unit Holder.

9.8 Sale of forfeited Units

- (a) The Trustee may offer the forfeited Units for sale (as agent for the holder of the forfeited Units).
- (b) Forfeited Units may be sold or otherwise disposed of to an Eligible Investor.

9.9 Cancellation of forfeiture

At any time before sale or disposition under **clause 9.8**, the forfeiture of Units may be cancelled on such terms as the Trustee thinks fit, and will be cancelled when the Unit Holder pays to the Trustee the full amount owing in respect of such forfeited Units. In such circumstances, the Trustee must issue to the Unit Holder a statement signed by an authorised officer of the Trustee confirming

that the forfeiture of such Units has been cancelled and confirming the date of such cancellation.

9.10 Continuing liability of former holder

The former holder of a Partly Paid Unit that has been forfeited or transferred remains liable to pay to the Trustee on demand:

- (a) all money that at the date of forfeiture, transfer or sale was payable by such former holder to the Trustee in respect of the forfeited, transferred or sold Partly Paid Unit; and
- (b) all costs incurred in connection with the forfeiture, transfer or sale, including any costs incurred in connection with any proceedings brought against the former holder to recover the Call or instalment.

9.11 Evidence of forfeiture

A statement signed by an authorised officer of the Trustee that:

- (a) a Partly Paid Unit has been forfeited on a stated date; and
 - (b) no forfeiture of Units has been cancelled in accordance with **clause 9.9**,
- is conclusive evidence of that fact as against all persons claiming to be entitled to the forfeited Units.

9.12 Proceeds of sale of forfeited Unit

- (a) Where Units are forfeited pursuant to **clause 9.6**, the Trustee may:
 - (i) receive the consideration, if any, given for the forfeited Units on the sale or disposal; and
 - (ii) execute a transfer of such Units in favour of the person to whom the Units are sold or disposed of and that person must then be registered as the holder of those Units.
- (b) The person acquiring the Units:
 - (i) is not obliged to ensure that any part of the money that has been paid for the Units is paid to the former holder of the Units; and
 - (ii) will not be affected by any irregularity or invalidity in the proceedings in relation to the forfeiture, sale or disposal of the Units.

9.13 Application of proceeds of sale of forfeited Units

- (a) Where forfeited Units are sold or disposed of, the Trustee must deduct from the consideration received:
 - (i) all money that, at the date of forfeiture, was payable to the Trustee in respect of the forfeited Units;
 - (ii) all costs incurred in connection with the forfeiture, including any costs incurred in connection with any proceedings brought against the former holder to recover the Call or instalment; and

- (iii) all amounts that have been or will be incurred for commissions, Taxes, transfer fees and other usual charges, if any, on the sale or disposal of the Units.
- (b) The Trustee may retain the amounts deducted as Assets, but the balance remaining (if any) must be paid to the Unit Holder whose Units were forfeited.

9.14 Trustee not liable

The Trustee is not liable to any former or current holder of Units for any Loss (including Consequential Loss) incurred in relation to the sale or disposal of the forfeited Units.

10 Application for and issue of Units

10.1 Units issued on Initial Subscription Date

Units issued on the Initial Subscription Date will be issued for an Application Price of **[\$1.00]** per Unit.

10.2 Subsequent Unit issues

- (a) Any Units issued after the Initial Subscription Date will be offered at an Application Price determined by the Trustee and set out in the application form or Subscription Agreement for the Units.
- (b) The Application Price may be rounded as the Trustee determines. Any excess application money or property which results from rounding becomes an Asset of the Trust.

10.3 Application for Units

A person who wishes to subscribe for Units must lodge an application for Units by executing a Subscription Agreement or a form approved by the Trustee.

10.4 Person must be Eligible Investor

The Trustee must reject an application for Units lodged by a person who is not an Eligible Investor.

10.5 Payment of Application Price

- (a) On acceptance of an application for Units the applicant must pay the Application Price set out in the application form or Subscription Agreement for the Units.
- (b) The Application Price for Units is payable either in full on or before issue of the Units or by way of instalments in accordance with **clause 8.1(a)**, in accordance with the terms of issue of the Units or the terms of the applicable Subscription Agreement.

10.6 Issue date

Units are taken to be issued when:

- (a) the Trustee accepts the application for Units; or

- (b) the Trustee receives the initial instalment of the Application Price, whichever happens later.

10.7 Uncleared funds

Units issued against application money paid other than in cleared funds are void if the funds are not subsequently cleared within one Month of receipt of the application.

11 Redemption / repurchase procedures

11.1 Redemption of Units

- (a) The Trustee may redeem or repurchase any Units:
 - (i) by giving notice to the Unit Holder that the Units are to be redeemed or repurchased on a date specified in the notice; or
 - (ii) at the request of the Unit Holder, on a date determined by the Trustee.
- (b) While the Unit Holders Deed is in force, the Trustee must not redeem or repurchase any Units except in accordance with the Unit Holders Deed.
- (c) The Trustee may deduct from the proceeds of redemption or repurchase any money due and payable to the Trustee by the Unit Holder.
- (d) The Trustee is not obliged to pay any part of any Redemption Price out of the Trustee's own funds, and may decide to purchase or arrange for the purchase of Units the subject of a redemption offer or request.

11.2 Redemption Price

- (a) The Redemption Price for Preference Units is determined in accordance with terms of issue of the Preference Units.
- (b) The Redemption Price for Ordinary Units is the fair value of the Ordinary Units, determined taking into account the rights attaching to any Preference Units (if any) on issue at the time of the redemption of the Ordinary Units.

11.3 Redemption Price including Distributable Income

- (a) The Trustee may determine the extent, if any, to which any component of the Redemption Price of a Unit comprises a distribution of Distributable Income of the Trust.
- (b) The Trustee must notify a person whose Units have been redeemed, within 90 days after the end of the relevant Financial Year, of that amount of Distributable Income.
- (c) The Unit Holder is presently and absolutely entitled to Distributable Income determined to be a component of the Redemption Price.

11.4 Payment

- (a) The Trustee may only satisfy a redemption of Preference Units by the payment of cash.
- (b) The Trustee may satisfy a redemption of Ordinary Units by payment of cash, settlement in kind or transfer of Assets to the Unit Holder in specie.
- (c) If a redemption of Ordinary Units is satisfied by a transfer of Assets to the Unit Holder in specie, the value of the Assets transferred will be calculated at market value, as determined by the Trustee, and the expenses incurred in transferring the Assets will be borne by that Unit Holder.

11.5 Cancellation of Units on redemption

On a redemption of Units the Trustee must cancel the Units redeemed and alter the Register to reflect the cancellation.

12 Distributions

12.1 Receipts, provisioning and categories

- (a) The Trustee must receive and collect all income of the Trust.
- (b) The Trustee may determine whether any item is income or capital of the Trust.
- (c) The Trustee may maintain any reserves or provisions the Trustee considers appropriate.
- (d) The Trustee may apportion or keep separate accounts of the different categories and sources of income that relate to different types of investments of the Trust, and the costs, charges and expenses attributable to each of those types of income.

12.2 Determination of Distributable Income

- (a) The Trustee may determine the Distributable Income for each Distribution Period by way of a standing determination of principles for calculating the Distributable Income, the application of which is capable of independent verification, and may change the principles from time to time.
- (b) Unless the Trustee determines otherwise or the Unit Holders Deed provides otherwise, the Distributable Income of the Trust for a Distribution Period is equal to the amount of the Net Income of the Trust for that Distribution Period, calculated as if that Distribution Period was a Financial Year.
- (c) For the avoidance of doubt, the preparation of the financial statements in accordance with the Accounting Standards of itself is not to be regarded as a determination of the method for calculating the Distributable Income of the Trust pursuant to this **clause 12.2**.

12.3 Present entitlement

- (a) Subject to **clauses 12.3(b), 12.3(c) and 12.5(a)** and clauses [15.3 and 15.5] of the Unit Holders Deed and any other preferential rights of a Class in respect of Distributable Income, each Unit Holder on the Register at close of business on a Distribution Calculation Date is presently and absolutely entitled to a share of the Distributable Income for that Distribution Period:
 - (i) pro rata to the number of Units they respectively hold as at that time; or
 - (ii) where there are Partly Paid Units on issue, pro rata in the proportion that the total Paid Up Amounts of that Unit Holder's Units bears to the aggregate Paid Up Amounts of all Units on issue.
- (b) At any time before a Distribution Calculation Date, other than the last day of a Financial Year, the Trustee may determine that no Distributable Income is to be distributed on that Distribution Calculation Date, in which case no Unit Holder has a present entitlement on that Distribution Calculation Date to a share of Distributable Income for that Distribution Period.
- (c) The Ordinary Unit Holders will not be presently entitled to any Distributable Income at any time that Preference Units are on issue.

12.4 Distributable Amount

- (a) The Distributable Amount for a Distribution Period is the Distributable Income for that Distribution Period which the Trustee determines to distribute, together with any amount the Trustee determines to distribute to the Unit Holders as a capital amount or distribution of a Reserve Account in respect of that Distribution Period.
- (b) The Trustee must distribute to a Unit Holder that Unit Holder's entitlement to the Distributable Amount (after any accumulations under **clause 12.5** and any deductions under **clause 12.7**) on or before the date which is 14 Business Days after the end of the Distribution Period.

12.5 Trustee may accumulate income

- (a) At any time before the end of a Distribution Period, the Trustee may accumulate the Distributable Income for that Distribution Period.
- (b) The Trustee may at any time resort to the accumulated Distributable Income and distribute all or part of that accumulated Distributable Income as a distribution of Distributable Income.
- (c) While the Unit Holders Deed is in force, the Trustee must accumulate Distributable Income and distribute accumulated Distributable Income in accordance with the Unit Holders Deed.

12.6 Distribution Account

- (a) The Distributable Amount is to be transferred to an account (**Distribution Account**), and ceases to be an Asset as at close of business on the Distribution Calculation Date.
- (b) The Distributable Amount held in the Distribution Account must be held by the Trustee on trust for distribution among the persons entitled to that Distributable Amount.
- (c) The Trustee may invest the Distributable Amount held in the Distribution Account, pending payment of the Distributable Income, in such investments the Trustee sees fit (including a bank account).
- (d) Income earned from the investment of the Distributable Amount held in the Distribution Account is income of the Trust.

12.7 Deduction of Tax and other amounts

- (a) The Trustee may deduct the following amounts from a Unit Holder's share of the Distributable Amount:
 - (i) Tax paid, or which the Trustee anticipates will be payable, by the Trustee on account of, or in respect of, the Unit Holder on the amount of the Distributable Income otherwise distributable to that Unit Holder;
 - (ii) a charge made by a person on account of Tax imposed in respect of amounts received from that Unit Holder or paid to the Unit Holder during the Distribution Period; and
 - (iii) any other amount the Trustee is required by law to deduct, and all amounts deducted must be applied in reimbursing the Trust for any corresponding amount paid or reimbursed out of the Trust or reimbursing the Trustee for the payment of the Tax to the person or authority entitled to the Tax.
- (b) A Unit Holder is only entitled to be paid the Unit Holder's share of the Distributable Amount less the amount the Trustee determines to deduct.

12.8 Trust taxed like a company

- (a) If in respect of a Financial Year the Trust is taxed in a similar manner to a company, this **clause 12.8** applies instead of **clauses 12.2 to 12.7**.
- (b) If this **clause 12.8** applies, the Trustee determines that each of 31 March, 30 June, 30 September and 31 December is a Distribution Calculation Date.
- (c) While the Unit Holders Deed is in force, this **clause 12.8(c)** applies:
 - (i) As soon as practicable after the end of the Distribution Period, the Trustee must determine the Net Distributable Amount (plus such other amount as the Trustee determines) of the Trust in respect of the Distribution Period.

- (ii) The Trustee must provide for, and pay from the Assets when appropriate, all Tax payable by the Trust in respect of the Distribution Period.
 - (iii) The Unit Holders do not have a present entitlement at the end of a Distribution Period to the Net Distributable Amount (plus such other amount as the Trustee determines) of the Trust in respect of the Distribution Period.
 - (iv) In respect of each Distribution Period, the Trustee may, subject to clause **12.8(e)**, determine to pay the Net Distributable Amount (plus such other amount as the Trustee determines) for that Distribution Period as a distribution in respect of the Distribution Period (each a **Distributable Sum**) to the Unit Holders on the Register on any date determined by the Trustee (**Books Closing Date**) provided that the Books Closing Date is not more than 30 Business Days after the end of the Distribution Period.
 - (v) In respect of a Distributable Sum:
 - (A) the Trustee must take all necessary or desirable steps in relation to distributions, including the franking of the distributions to the maximum extent permitted under the Tax Act; and
 - (B) the Trustee must take any steps or actions as may reasonably be required in order to comply with the requirements of the Tax Act.
 - (vi) Each Unit Holder on the Register at close of business on a Books Closing Date is, subject to clause **12.8(e)**, entitled to a share of the Distributable Sum, pro rata in the proportion that the total Paid Up Amounts of that Unit Holder's Units bears to the aggregate Paid Up Amounts of all Units on issue as at that time.
- (d) This **clause 12.8(d)** applies where **clause 12.8(c)** does not apply:
- (i) As soon as practicable after the end of the Distribution Period, the Trustee must determine the income of the Trust in respect of the Distribution Period. Unless the Trustee determines otherwise prior to the end of the Distribution Period, income will be calculated in accordance with normal accounting principles.
 - (ii) The Trustee must provide for, and pay from the Assets when appropriate, all Tax attributable to the income of the Trust.
 - (iii) Unit Holders do not have a present entitlement at the end of a Distribution Period to the income of the Trust.
 - (iv) The Trustee may, from time to time determine to pay an amount as a distribution in respect of the Distribution Period (each a **Distributable Sum**) to the Unit Holders on the Register on any date determined by the Trustee (**Books Closing Date**).

- (v) In respect of a Distributable Sum:
 - (A) the Trustee may take all necessary or desirable steps in relation to distributions, including the franking of the distributions; and
 - (B) the Trustee must take any steps or actions as may reasonably be required in order to comply with the requirements of the Tax Act.
- (vi) Each Unit Holder on the Register at close of business on a Books Closing Date is entitled to a share of the Distributable Sum, pro rata to the number of Units they respectively hold as at that time.
- (e) The Ordinary Unit Holders will not be entitled to any part of the Net Distributable Amount or a share of the Distributable Sum at any time that Preference Units are on issue.

12.9 Reserve Account

- (a) If determined by the Trustee, any net realised and unrealised capital gains or losses of the Trust may be separated from the other receipts, profits and gains of the Trust and credited to an account (**Reserve Account**).
- (b) The Trustee may distribute to the Unit Holders from time to time, as at a date determined by the Trustee, an amount equal to so much of the net realised capital gains credited to a Reserve Account as the Trustee may determine.
- (c) The Trustee must adjust the Reserve Account for the amount distributed.
- (d) Each Unit Holder on the Register at close of business on the date determined by the Trustee is entitled to a share of the distribution from the Reserve Account, pro rata in the proportion that the total Paid Up Amounts of that Unit Holder's Units bears to the aggregate Paid Up Amounts of all Units on issue at that time.
- (e) Any amount in a Reserve Account may be capitalised by a determination of the Trustee. The capitalisation is effected by dividing the number of Units held by Unit Holders by a proportion determined by the Trustee which takes into account the number of Units held by the Unit Holder, the amount to be capitalised and other matters determined relevant by the Trustee.
- (f) The Trustee must adjust the Reserve Account and update the Register to reflect the Units issued on a capitalisation.

12.10 Distributions of capital

- (a) Subject to any rights, powers, obligations, liabilities and restrictions applicable to a Class, the Trustee may determine to distribute capital to Unit Holders (or Unit Holders of a Class) in addition to any other distributions to be made to Unit Holders (or Unit Holders of that Class) in respect of a Distribution Period.

- (b) Subject to any rights, powers, obligations, liabilities and restrictions applicable to a Class, each Unit Holder on the Register at close of business on the date determined by the Trustee is entitled to a share of the distribution of capital:
 - (i) pro rata to the number of Units they respectively hold as at that time; or
 - (ii) where there are Partly Paid Units on issue, pro rata in the proportion that the total Paid Up Amounts of that Unit Holder's Units bears to the aggregate Paid Up Amounts of all Units on issue as at that time.

12.11 Unit Holder may direct payments

The Trustee may act on a direction given by a Unit Holder in such form as the Trustee requires to pay to a third party nominated in the direction all or part of the Unit Holder's entitlement to distributions of Distributable Amounts under this **clause 12** or under **clause 20** on winding up.

12.12 Fractions

If the share of Distributable Amounts for a person determined under this **clause 12** includes a fraction of a cent, the share is to be adjusted to the nearest cent below the amount calculated under this clause (as appropriate) and the fraction of the cent becomes an Asset of the Trust.

12.13 Trustee's liability for Tax

- (a) Except as provided in **clause 12.13(b)**, the Trustee:
 - (i) does not incur any liability;
 - (ii) is not obliged to account to anyone (including any Unit Holder or former Unit Holder); and
 - (iii) is not liable for any Loss (including Consequential Loss) or damage,

as a result of the exercise of any discretion or power under this **clause 12**, or in respect of any determination of fact or law made as part of, or as a consequence of, the exercise of such discretion or power, despite any error or miscalculation in any provision made for Tax.
- (b) The Trustee is personally liable to pay any Tax assessed to the Trustee directly as a result of the Trustee making a determination under **clause 12.5** to accumulate Distributable Income.

12.14 Compensation if Ordinary Unit Holder directs Trustee not to make distributions

- (a) In this **clause 12.14**, the terms "Access Regulator", "Access Undertaking" and "Preference Income" have the meaning given in the Unit Holders Deed.
- (b) If the Ordinary Unit Holder directs the Trustee not to distribute Preference Income under clause **[15.5(a)]** of the Unit Holders Deed, the

Ordinary Unit Holder must pay a compensation amount to the Trustee for the benefit of the Trust, calculated in accordance with **clause 12.14(c)**, on the unpaid Preference Income accumulated each Month, for the period from the day after the Distribution Calculation Date on which that Preference Income would have been distributed had the Preference Income continued to be distributed each Month, until the Distribution Calculation Date on which distributions recommence.

- (c) The compensation amount payable by the Ordinary Unit Holder under **clause 12.14(b)** will be calculated at the rate, determined by the Trustee acting reasonably, equal to:
 - (i) the pre-tax equivalent of the then applicable weighted average cost of capital set by the Access Regulator in the Access Undertaking, expressed as a percentage per annum; **[Drafting note: The current applicable rate is 10.76 percent per annum.]**
 - (ii) **less** the average rate of earnings on investment of the Preference Income during the applicable period, expressed as percentage per annum.
- (d) The compensation amount payable by the Ordinary Unit Holder under **clause 12.14(b)** is an Asset and included in Preference Income.
- (e) Any compensation amount which has accrued which the Ordinary Unit Holder has not paid to the Trust as at each Distribution Calculation Date will thereafter itself be considered unpaid Preference Income and require the payment of compensation in accordance with **clause 12.14(b)** until paid to the Trust.

12.15 Indemnity if Ordinary Unit Holder directs Trustee not to make distributions

The Ordinary Unit Holder must indemnify and keep indemnified the Trustee for all costs and expenses incurred or payable by the Trustee in connection with any Tax assessed to the Trustee directly as a result of the Ordinary Unit Holder directing the Trustee to accumulate, and the Trustee so accumulating, "Preference Income" (as defined in the Unit Holders Deed) under clause **[15.5(a)]** of the Unit Holders Deed.

13 Powers and duties of the Trustee

13.1 General powers of Trustee

- (a) Subject to **clause 13.1(b)**, the Trustee has all the powers over and in respect of the Trust that it is legally possible to confer on a trustee and as though the Trustee were the absolute owner of the Assets and acting in its personal capacity, including the ability to:
 - (i) borrow and raise money and incur liabilities and obligations of any kind;

- (ii) guarantee liabilities of any person or provide indemnities in respect of such liabilities;
 - (iii) encumber or otherwise deal with any Assets;
 - (iv) institute, prosecute and compromise legal proceedings;
 - (v) undertake any activity (including carrying on or participation in a business);
 - (vi) enter into leases and subleases, whether as landlord or tenant (including for a term in excess of 21 years); and
 - (vii) exercise any right attaching to any Assets.
- (b) While the Unit Holders Deed is in force:
- (i) the Trustee's exercise of rights, powers and discretions is subject to the approval, consent or direction of Unit Holders to the extent provided in the Unit Holders Deed;
 - (ii) the Unit Holders may give directions to the Trustee, requiring the Trustee to exercise rights, powers and discretions as directed, to the extent provided in the Unit Holders Deed;
 - (iii) all money received as payment of the Application Price of a Unit must be applied or held for subsequent application in furtherance of the principal objective of the Trust or in payment of expenses of the Trust in accordance with the Unit Holders Deed; and
 - (iv) the Trustee must only invest the Assets in accordance with the Unit Holders Deed.

13.2 Trustee's duties

The Trustee must:

- (a) devote as much of the Trustee's time and attention as is reasonably required, having regard to the services provided by agents, delegates and nominees, for the management, operation and administration of the business and affairs of the Trust;
- (b) manage, operate and administer the business and affairs of the Trust in a proper and efficient manner and, subject to the provisions of this Deed and the Unit Holders Deed, in the best interests of the Unit Holders;
- (c) perform its obligations under this Deed:
 - (i) honestly; and
 - (ii) with the degree of care and diligence of a reasonable prudent person of business;
- (d) not make use of information acquired from any other person as a result of the Trustee being the trustee of the Trust in order to:
 - (i) gain an improper advantage for the Trustee or another person; or

- (ii) cause detriment to the Preference Unit Holders; and
- (e) have a reasonable basis for forming opinions.

13.3 Valuation of Assets

- (a) The Trustee may cause an Asset to be valued at any time.
- (b) The value of an Asset is the Asset's market value or the value determined by an independent valuation expert appointed by the Trustee.

13.4 Delegation, service providers and advisers

- (a) The Trustee may appoint any person:
 - (i) as its agent, delegate or nominee to perform some or all of its duties, with or without the power to sub-delegate; and
 - (ii) to provide any service which the Trustee requires in relation to the Trust.
- (b) While the Unit Holders Deed is in force, appointments under **clause 13.4(a)** are subject to the Unit Holders Deed.
- (c) The Trustee may appoint as an adviser any person that, in the Trustee's opinion, has appropriate expertise to provide any advice which the Trustee requires in relation to the Trust.

13.5 Extent of authorisation

The Trustee may include in the appointment provisions to:

- (a) protect and assist those dealing with the agent, delegate or nominee; and
 - (b) limit the Trustee's liability,
- as the Trustee thinks fit.

13.6 Trustee's liability for agents, delegates and nominees

The Trustee is liable for the acts or omissions of any agent, delegate or nominee.

13.7 Exercise of discretions

Subject to **clause 13.1(b)**, the Trustee may decide how and when to exercise the Trustee's powers and discretions.

13.8 Trustee's interest in the Trust and transactions

- (a) The Trustee, and any Related Body Corporate of the Trustee, may hold Units in the Trust in any capacity.
- (b) The Trustee and any Associate of the Trustee may:
 - (i) deal with the Trust or any Unit Holder;
 - (ii) be interested in any contract or transaction with the Trust or any Unit Holder, and retain for the Trustee's or Associate's own benefit

- any profits or benefits derived from any such contract or transaction;
 - (iii) enter a contract or transaction in relation to which the Trust may become liable to pay fees, costs, brokerage, commissions or other remuneration to the Trustee or Associate;
 - (iv) act in the same or a similar capacity in relation to any other trust; or
 - (v) deal with itself in relation to the Assets where, in relation to such dealings, the Trustee or Associate is acting in different capacities.
- (c) The Trustee may:
- (i) engage in a dispute with itself in another capacity or with an Associate; or
 - (ii) institute, prosecute and compromise legal proceedings against itself in another capacity or against an Associate.

13.9 No exclusivity

The functions and duties of the Trustee are not exclusive, and the Trustee or any Associate of the Trustee may perform similar functions and duties for others and, without limitation, may act as a trustee or engage in any other commercial, financial or related activity.

13.10 Financial reports and audit

- (a) The Trustee must:
- (i) maintain accounting records for the Trust, which correctly record and explain the transactions and financial position of the Trust;
 - (ii) prepare financial reports for the Trust; and
 - (iii) appoint an auditor to audit the financial reports for the Trust, and have those financial reports audited.
- (b) The Trustee must provide to the Unit Holders a copy of the audited financial reports for the Trust in respect of each Financial Year.

13.11 Ratification of Trustee action

- (a) Despite any other provision of this Deed, but subject to **clause 13.11(b)**, the Unit Holders can by:
- (i) Ordinary Resolution of Unit Holders holding Ordinary Units; and
 - (ii) where there are Preference Units on issue, Ordinary Resolution of Unit Holders holding Preference Units,
- ratify any action taken by the Trustee and once ratified the Trustee shall have no liability to Unit Holders in respect of that action.
- (b) While the Unit Holders Deed is in force, any action of the Trustee which requires the approval, consent or direction of a particular majority of the

Unit Holders pursuant to, and in accordance with, the relevant provisions of the Unit Holders Deed, can only be ratified by that same majority.

13.12 Authorisations

The Trustee must at all times hold all necessary licences and approvals or obtain such exemptions so as to enable the Trustee to act as trustee of the Trust.

14 Payments

14.1 Payment method

Payments by the Trustee to a Unit Holder can be paid in any manner the Trustee decides.

14.2 Cheques

- (a) Cheques issued by the Trustee that are not presented within six Months, or such lesser period as determined by the Trustee, may be cancelled.
- (b) Where a cheque which is cancelled was drawn in favour of a Unit Holder, the Trustee may either:
 - (i) hold the money for the Unit Holder; or
 - (ii) pay the money in accordance with the legislation relating to unclaimed money.

14.3 Electronic transfer

Where the Trustee attempts to make a payment to a Unit Holder by electronic transfer of funds or any other means and the transfer is unsuccessful, the Trustee may either:

- (a) hold the money for the Unit Holder; or
- (b) pay the money in accordance with the legislation relating to unclaimed money.

14.4 Payments to joint holders

A payment to any one of persons registered jointly as a Unit Holder discharges the Trustee in respect of the payment.

14.5 Tax and other amounts owing

The Trustee may deduct from any amount to be paid to a person who is, or has been, a Unit Holder, or received from a person who is, or has been, a Unit Holder:

- (a) any amount of Tax (or an estimate of Tax); or
- (b) any other amount owed by the Unit Holder to the Trustee or any other person,

which the Trustee:

- (c) is required or authorised to deduct by law or by this Deed; or

- (d) considers should be deducted.

15 Retirement and replacement of Trustee

15.1 Voluntary retirement by Trustee

- (a) The Trustee may retire with effect on a date which is at least three Months after the date of a notice to Unit Holders of that retirement (or such shorter period as the Unit Holders unanimously agree).
- (b) At least 20 Business Days, prior to the date upon which the retirement by the Trustee under **clause 15.1(a)** is to take effect (**Nominated Retirement Date**), the Trustee must appoint, with effect on the date upon which the Trustee's retirement is to take effect, a replacement trustee.
- (c) The retiring Trustee must notify the Unit Holders of the identity of the replacement trustee appointed under **clause 15.1(b)**.
- (d) Any replacement trustee appointed under **clause 15.1(b)** must satisfy the requirements in **clause 15.12**.
- (e) If the Trustee is a Related Body Corporate of Aurizon Network, the Trustee may appoint a Related Body Corporate of Aurizon Network as the replacement trustee under **clause 15.1(b)**.
- (f) If the Trustee retires and does not appoint a replacement trustee in accordance with **clause 15.1(b)**:
 - (i) if the Trustee is a Related Body Corporate of Aurizon Network:
 - (A) the Relevant Preference Unit Holders may, by Ordinary Resolution, appoint a replacement trustee, provided that such replacement trustee satisfies the requirements in **clause 15.12**; and
 - (B) if a replacement trustee is not appointed in accordance with **clause 15.1(f)(i)(A)** by the date which is 20 Business Days before the Nominated Retirement Date, then any Relevant Preference Unit Holder may apply to the Supreme Court of Queensland for the appointment of a replacement trustee that satisfies the requirements in **clause 15.12**; or
 - (ii) if the Trustee is not a Related Body Corporate of Aurizon Network:
 - (A) a replacement trustee that satisfies the requirements in **clause 15.12** may be appointed by:
 - (1) Ordinary Resolution of the Preference Unit Holders; and
 - (2) Ordinary Resolution of the Ordinary Unit Holders; and
 - (B) if a replacement trustee is not appointed in accordance with **clause 15.1(f)(ii)(A)** by the date which is 20 Business Days

before the Nominated Retirement Date, then any Unit Holder may apply to the Supreme Court of Queensland for the appointment of a replacement trustee that satisfies the requirements in **clause 15.12**.

15.2 Compulsory retirement by Ordinary Unit Holder

- (a) While the Trustee is a Related Body Corporate of Aurizon Network, the Ordinary Unit Holders may, by Ordinary Resolution, at any time require the Trustee to retire with effect on the date specified in the Ordinary Resolution (**Nominated Retirement Date**), and the Trustee must retire as requested.
- (b) If the Trustee is required to retire under **clause 15.2(a)**, then:
 - (i) the Ordinary Unit Holders must, by Ordinary Resolution, appoint a replacement trustee that satisfies the requirements in **clause 15.12**; and
 - (ii) if a replacement trustee is not appointed in accordance with **clause 15.2(b)(i)** by the date which is 20 Business Days before the Nominated Retirement Date, then any Unit Holder may apply to the Supreme Court of Queensland for the appointment of a replacement trustee that satisfies the requirements in **clause 15.12**.
- (c) A replacement trustee appointed under **clause 15.2(b)(i)** or **clause 15.2(b)(ii)** may be a Related Body Corporate of Aurizon Network.

15.3 Compulsory retirement by Preference Unit Holders

- (a) If the Trustee ceases to be a Related Body Corporate of Aurizon Network and, immediately following that cessation, the Trustee does not satisfy the requirements in **clause 15.12**, then the Preference Unit Holders may, by Ordinary Resolution, require the Trustee to retire with effect on the date specified in the Ordinary Resolution (**Nominated Retirement Date**), and the Trustee must retire as requested.
- (b) If the Trustee is required to retire under **clause 15.3(a)**, then:
 - (i) a replacement trustee that satisfies the requirements in **clause 15.12** may be appointed by:
 - (A) Ordinary Resolution of the Preference Unit Holders; and
 - (B) Ordinary Resolution of the Ordinary Unit Holders; and
 - (ii) if a replacement trustee is not appointed in accordance with **clause 15.3(b)(i)** by the date which is 20 Business Days before the Nominated Retirement Date, then any Unit Holder may apply to the Supreme Court of Queensland for the appointment of a replacement trustee that satisfies the requirements in **clause 15.12**.

15.4 Compulsory retirement by Unit Holders

- (a) At any time when the Trustee is not a Related Body Corporate of Aurizon Network, other than when **clause 15.3(a)** applies, the Preference Unit Holders and Ordinary Unit Holders may:
 - (i) by Ordinary Resolution of the Preference Unit Holders; and
 - (ii) by Ordinary Resolution of the Ordinary Unit Holders,require the Trustee to retire with effect on the date specified in the Ordinary Resolutions (**Nominated Retirement Date**), and the Trustee must retire as requested.
- (b) If the Trustee is required to retire under **clause 15.4(a)**, then:
 - (i) a replacement trustee that satisfies the requirements in **clause 15.12** may be appointed by:
 - (A) Ordinary Resolution of the Preference Unit Holders; and
 - (B) Ordinary Resolution of the Ordinary Unit Holders; and
 - (ii) if a replacement trustee is not appointed in accordance with **clause 15.4(b)(i)** by the date which is 20 Business Days before the Nominated Retirement Date, then any Unit Holder may apply to the Supreme Court of Queensland for the appointment of a replacement trustee that satisfies the requirements in **clause 15.12**.

15.5 Compulsory retirement by Relevant Preference Unit Holders - Trigger Notice

- (a) This **clause 15.5** only applies while the Trustee is a Related Body Corporate of Aurizon Network.
- (b) Subject to **clauses 15.5(c)** and **15.5(d)**, if a Relevant Preference Unit Holder, acting reasonably, believes that a Trigger Event has occurred, the Relevant Preference Unit Holder may give the Trustee a notice (copying any Aurizon Preference Unit Holder(s)) stating that the Trigger Event has occurred and setting out reasonable details of the nature of the Trigger Event (**Trigger Notice**).
- (c) A Relevant Preference Unit Holder must not give a Trigger Notice in respect of a Trigger Event unless the giving of the Trigger Notice has first been approved by an Ordinary Resolution of Relevant Preference Unit Holders (and any Trigger Notice which is given without such approval will be of no effect).
- (d) If a Trigger Notice in respect of a Trigger Event (other than a Fraud Trigger Event) is not given:
 - (i) in the case of an Insolvency Trigger Event, prior to, or within 60 Business Days after, the date the Trustee notifies the Relevant Preference Unit Holders of the occurrence of the Insolvency Trigger Event under **clause 15.6(a)**; or

- (ii) in the case of any other Trigger Event (other than a Fraud Trigger Event), within 60 Business Days after any Relevant Preference Unit Holder first becomes aware, or ought reasonably to have become aware, of the occurrence of the Trigger Event,

then:

- (iii) no Relevant Preference Unit Holder may thereafter give a Trigger Notice in respect of that Trigger Event; and
- (iv) any Trigger Notice in respect of the Trigger Event which is thereafter given by a Relevant Preference Unit Holder will be of no effect.

15.6 Compulsory retirement by Relevant Preference Unit Holders – Insolvency Trigger Event

- (a) Promptly after the occurrence of an Insolvency Trigger Event, the Trustee must notify the Relevant Preference Unit Holders of the occurrence of the Insolvency Trigger Event.
- (b) Within 15 Business Days after a Relevant Preference Unit Holder gives the Trustee a Trigger Notice in respect of an Insolvency Trigger Event, the Trustee may refer the matter to an Expert to determine whether or not the Insolvency Trigger Event:
 - (i) has occurred; and
 - (ii) ceased to subsist within ten Business Days after the Relevant Preference Unit Holder gave the Trustee a Trigger Notice in respect of the Insolvency Trigger Event.
- (c) If a Relevant Preference Unit Holder gives the Trustee a Trigger Notice in respect of an Insolvency Trigger Event and:
 - (i) the Trustee does not refer the matter to an Expert under **clause 15.6(b)** and the Insolvency Trigger Event does not cease to subsist within ten Business Days after the Relevant Preference Unit Holder gives the Trustee a Trigger Notice in respect of the Insolvency Trigger Event; or
 - (ii) the Trustee refers the matter to an Expert under **clause 15.6(b)** and the Expert determines that the Insolvency Trigger Event occurred and did not cease to subsist within ten Business Days after the Relevant Preference Unit Holder gave the Trustee a Trigger Notice in respect of the Insolvency Trigger Event,then within 15 Business Days after:
 - (iii) if **clause 15.6(c)(i)** applies, the date the Relevant Preference Unit Holder gives the Trustee a Trigger Notice in respect of the Insolvency Trigger Event; or
 - (iv) if **clause 15.6(c)(ii)** applies, the date the Expert makes its determination,

the Relevant Preference Unit Holders may, subject to **clause 15.9**, jointly give the Trustee a notice (copying any Aurizon Preference Unit Holder(s)) stating that they intend to appoint a replacement trustee (a **Replacement Election Notice**).

15.7 Compulsory retirement by Relevant Preference Unit Holders – Fraud Trigger Event

- (a) Within ten Business Days after a Relevant Preference Unit Holder gives the Trustee a Trigger Notice in respect of a Fraud Trigger Event, the Trustee may refer the matter to an Expert to determine whether or not the Fraud Trigger Event has occurred.
- (b) If a Relevant Preference Unit Holder gives the Trustee a Trigger Notice in respect of a Fraud Trigger Event and:
 - (i) the Trustee does not refer the matter to an Expert under **clause 15.7(a)**; or
 - (ii) the Trustee refers the matter to an Expert under **clause 15.7(a)** and the Expert determines that the Fraud Trigger Event occurred, then within 15 Business Days after:
 - (iii) if **clause 15.7(b)(i)** applies, the date the Relevant Preference Unit Holder gives the Trustee the Trigger Notice in respect of the Fraud Trigger Event; or
 - (iv) if **clause 15.7(b)(ii)** applies, the date the Expert makes its determination,

the Relevant Preference Unit Holders may, subject to **clause 15.9**, jointly give the Trustee a notice (copying any Aurizon Preference Unit Holder(s)) stating that they intend to appoint a replacement trustee (also a **Replacement Election Notice**).

15.8 Compulsory retirement by Relevant Preference Unit Holders – other Trigger Events

- (a) Within 15 Business Days after a Relevant Preference Unit Holder gives the Trustee a Trigger Notice in respect of a Trigger Event (other than an Insolvency Trigger Event or Fraud Trigger Event), the Trustee may refer the matter to an Expert to determine whether or not the Trigger Event:
 - (i) has occurred; and
 - (ii) was remedied, or deemed to be remedied, within ten Business Days after the date the Relevant Preference Unit Holder gave the Trustee the Trigger Notice in respect of the Trigger Event.
- (b) If a Trigger Event referred to in **clause 15.8(a)** is not capable of being remedied, the Trigger Event will, for the purpose of **clause 15.8(a)**, be deemed to have been remedied by the Trustee if the Trustee:
 - (i) in its personal capacity, offers to pay reasonable compensation to Relevant Preference Unit Holders for any “Loss” (as defined in the

Unit Holders Deed), other than any Consequential Loss (for which the Trustee is not required to compensate the Relevant Preference Unit Holders), suffered or incurred by the Relevant Preference Unit Holders as a result of the occurrence of the Trigger Event;

- (ii) in its capacity as trustee of the Trust, provides the Relevant Preference Unit Holders with a program specifying all reasonable matters required to be performed, procured or addressed by the Trustee to prevent the recurrence of the Trigger Event; and
 - (iii) in its capacity as trustee of the Trust, diligently commences, and continues, to perform, procure or address the matters specified in the program referred to in **clause 15.8(b)(ii)**.
- (c) If a Relevant Preference Unit Holder gives the Trustee a Trigger Notice in respect of a Trigger Event referred to in **clause 15.8(a)** and:
- (i) the Trustee does not refer the matter to an Expert under **clause 15.8(a)** and the relevant Trigger Event was not remedied, or deemed to be remedied, within ten Business Days after the date the Relevant Preference Unit Holder gave the Trustee the Trigger Notice in respect of the Trigger Event; or
 - (ii) the Trustee refers the matter to an Expert under **clause 15.8(a)** and the Expert determines that the Trigger Event occurred and was not remedied, or deemed to be remedied, within ten Business Days after the date the Relevant Preference Unit Holder gave the Trustee the Trigger Notice in respect of the Trigger Event,
- then within 15 Business Days after:
- (iii) if **clause 15.8(c)(i)** applies, the date the Relevant Preference Unit Holder gives the Trustee the Trigger Notice in respect of the Trigger Event; or
 - (iv) if **clause 15.8(c)(ii)** applies, the date the Expert makes its determination,

all of the Relevant Preference Unit Holders may, subject to **clause 15.9**, jointly give the Trustee a notice (copying any Aurizon Preference Unit Holder(s)) stating that they intend to appoint a replacement trustee (also a **Replacement Election Notice**).

- (d) If a Relevant Preference Unit Holder gives the Trustee a Trigger Notice in respect of a Trigger Event referred to in **clause 15.8(a)**, the Trustee refers the matter to the Expert under **clause 15.8(a)**, and:
- (i) the Expert determines that the Trigger Event did not occur, then:
 - (A) any costs and expenses “Incurred” (as defined under the Unit Holders Deed) by the Trustee in remedying that Trigger Event will be a “Trust Administration Cost” (as defined under the Unit Holders Deed); and

- (B) any offer by the Trustee (in its personal capacity) to pay compensation referred to in **clause 15.8(b)(i)** is of no effect and any requirement to make a payment pursuant to that offer cannot be enforced by the Relevant Preference Unit Holders; or
- (ii) the Expert determines that the Trigger Event did occur but was remedied (other than under **clause 15.8(b)**) by the Trustee within ten Business Days after the date that the Relevant Preference Unit Holder gave the Trustee the Trigger Notice in respect of the Trigger Event, then any offer by the Trustee (in its personal capacity) to pay compensation referred to in **clause 15.8(b)(i)** is of no effect and any requirement to make a payment pursuant to that offer cannot be enforced by the Relevant Preference Unit Holders.

15.9 Replacement Election Notice

- (a) The Relevant Preference Unit Holders must not give a Replacement Election Notice unless the giving of the Replacement Election Notice has first been approved by a Unanimous Resolution of the Relevant Preference Unit Holders (and any Replacement Election Notice which is given without such approval will be of no effect).
- (b) If a Replacement Election Notice is not given within the applicable period specified in this **clause 15** for the giving of the Replacement Election Notice, then:
 - (i) the Relevant Preference Unit Holders may not thereafter give a Replacement Election Notice in respect of the Trigger Event; and
 - (ii) any Replacement Election Notice in respect of the Trigger Event which is thereafter given by the Relevant Preference Unit Holders will be of no effect.

15.10 Replacement Appointment Notice

- (a) Within 120 Business Days after the Trustee is given a Replacement Election Notice, the Relevant Preference Unit Holders may jointly give the Trustee a notice (copying any Aurizon Preference Unit Holder(s)) which:
 - (i) specifies the identity of a replacement trustee that satisfies the requirements in **clause 15.12**;
 - (ii) certifies that the specified replacement trustee satisfies the requirements in **clause 15.12**; and
 - (iii) which specifies the date on which the Trustee must retire which can be no later than 40 Business Days after the date on which the Replacement Appointment Notice is given,
(Replacement Appointment Notice).
- (b) The Relevant Preference Unit Holders must not give a Replacement Appointment Notice unless the giving of the Replacement Appointment

Notice has first been approved by a Unanimous Resolution of the Relevant Preference Unit Holders (and any Replacement Appointment Notice which is given without such approval will be of no effect).

- (c) If the Relevant Preference Unit Holders have not, by Unanimous Resolution, approved a replacement trustee that satisfies the requirements in **clause 15.12** within 120 Business Days after the giving of a Replacement Election Notice, then any Relevant Preference Unit Holder may apply to the Supreme Court of Queensland for the appointment of a replacement trustee that satisfies the requirements in **clause 15.12**.
- (d) If a Replacement Appointment Notice in respect of a Trigger Event is not given to the Trustee within 120 Business Days after the Relevant Preference Unit Holders give the Trustee a Replacement Election Notice in respect of the Trigger Event, then:
 - (i) the Relevant Preference Unit Holders may not thereafter give a Replacement Appointment Notice in respect of the Trigger Event; and
 - (ii) any Replacement Appointment Notice in respect of the Trigger Event which is thereafter given by the Relevant Preference Unit Holders will be taken to be of no effect.
- (e) If a Replacement Appointment Notice is given to the Trustee, the Trustee must retire with effect on and from the date upon which the appointment of the replacement trustee takes effect.

15.11 Mechanism for replacement of trustee on retirement

- (a) If:
 - (i) the Trustee voluntarily retires under **clause 15.1** or is otherwise required to retire under **clause 15.2, 15.3, 15.4** or **15.10**; and
 - (ii) a replacement Trustee has not been appointed on or before the Nominated Retirement Date,then the retirement of the retiring Trustee will not take effect until the appointment of the replacement trustee (whether under this **clause 15.11** or by order of the Supreme Court of Queensland).
- (b) If the applicable majority of applicable Unit Holders have appointed a replacement trustee in accordance with **clause 15.1**, the appointment of the replacement trustee is effected by:
 - (i) the replacement trustee; and
 - (ii) the retiring Trustee (or Preference Unit Holders holding more than 50% of Preference Units then on issue),executing a deed under which the replacement trustee agrees to assume the rights, and be bound by the obligations, of the retiring Trustee under this Deed and the Unit Holders Deed.

- (c) If the Trustee is required to retire in accordance with **clause 15.2**, the appointment of a replacement trustee is effected by:
 - (i) the replacement trustee; and
 - (ii) the retiring trustee (or Ordinary Unit Holders holding more than 50% of Ordinary Units then on issue),
 executing a deed under which the replacement trustee agrees to assume the rights, and be bound by the obligations, of the retiring Trustee under this Deed and the Unit Holders Deed.
- (d) If the Trustee is required to retire in accordance with **clause 15.3** or **clause 15.4**, the appointment of a replacement trustee is effected by:
 - (i) the replacement trustee; and
 - (ii) the retiring trustee (or Preference Unit Holders holding more than 50% of Preference Units then on issue and Ordinary Unit Holders holding more than 50% of Ordinary Units then on issue),
 executing a deed under which the replacement trustee agrees to assume the rights, and be bound by the obligations, of the retiring Trustee under this Deed and the Unit Holders Deed.
- (e) If the Relevant Preference Unit Holders have given the Trustee a Replacement Appointment Notice under **clause 15.10**, the appointment of a replacement trustee is effected by:
 - (i) the replacement trustee; and
 - (ii) the retiring trustee (or all of the Relevant Preference Unit Holders);
 executing a deed under which the replacement trustee agrees to assume the rights, and be bound by the obligations, of the retiring Trustee under this Deed and the Unit Holders Deed.

15.12 Identity of Replacement Trustee

- (a) The identity of any replacement trustee under this **clause 15** must not prejudice the tax position of either the Ordinary Unit Holder or the Preference Unit Holders.
- (b) Except where a Related Body Corporate of Aurizon Network is appointed as replacement trustee under **clause 15.1** or **15.2**, a replacement trustee under this **clause 15**:
 - (i) must not:
 - (A) be Aurizon Network or a Preference Unit Holder or a Related Body Corporate of Aurizon Network or any Preference Unit Holder;
 - (B) subject to **clause 15.12(c)**, directly or indirectly hold shares in any Unit Holder or Related Body Corporate of any Unit Holder;

- (C) be a company in which any Unit Holder or Related Body Corporate of any Unit Holder holds any shares; or
 - (D) have any directors or officers who are also directors or officers of any Unit Holder or Related Body Corporate of any Unit Holder; and
- (ii) must:
- (A) be an independent trustee company;
 - (B) hold the necessary licences and authorisations to be the trustee of the Trust;
 - (C) satisfy the financial prudential requirements prescribed by the Australian Securities and Investments Commission in respect of the holder of an “Australian financial services licence” (as defined in the Corporations Act) that has the authorisations necessary to act as trustee of a wholesale managed investment scheme; and
 - (D) have the appropriate qualifications and experience relevant to acting as a trustee in the context of the principal objectives of the Trust set out in **clause 5**.
- (c) For the purposes of **clause 15.12(b)(i)(B)**, shares held in a nominee or trustee capacity by an independent professional trustee company (or its nominee) are not taken into account unless the shares are held for the benefit of a Unit Holder or Related Body Corporate of a Unit Holder.
- (d) The Preference Unit Holders must not do anything which could cause the replacement trustee to cease to comply with this **clause 15.12**.

15.13 Release

On the replacement of a Trustee, a former trustee is released from all obligations in relation to the Trust arising after the time the former trustee retires or is removed:

- (a) but is not released in respect of any act or omission by the former trustee while acting as trustee of the Trust; and
- (b) remains liable for any Loss for which the former trustee was not entitled to be indemnified or reimbursed out of the Assets.

15.14 Former Trustee to hand over books and records

On retirement or removal, a former trustee of the Trustee must:

- (a) as soon as practicable, give the replacement Trustee any books and records in the former trustee's possession or control that this Deed requires the Trustee to keep in relation to the Trust; and
- (b) give other reasonable assistance to the replacement Trustee to facilitate the change of trustee of the Trust.

15.15 Costs for replacement trustee and retirement

Where the Trustee is a Related Body Corporate of Aurizon Network and:

- (a) that Trustee retires and appoints a replacement trustee which itself is a Related Body Corporate of Aurizon Network under **clause 15.1**;
- (b) the Ordinary Unit Holder requires that Trustee to retire and appoints a replacement trustee which itself is a Related Body Corporate of Aurizon Network under **clause 15.2**; or
- (c) the Preference Unit Holders issue a Replacement Appointment Notice in accordance with **clause 15.10** and appoint a replacement trustee,

then the retiring Trustee is personally liable for all reasonable costs and expenses directly connected with the replacement of it, including negotiating and executing any legal documents to effect the replacement as contemplated under this **clause 15**, but for the avoidance of doubt the costs and expenses for which the retiring Trustee is personally liable do not include the payment of any “sign on” fee associated with the appointment of a replacement trustee or any difference between the costs of that replacement trustee and the retiring Trustee to operate, manage and administer the Trust.

16 Meetings of Unit Holders

16.1 Convening of meetings

- (a) The Trustee may at any time convene a meeting of Unit Holders.
- (b) A meeting may be held at one or more venues using any technology that gives the Unit Holders as a whole a reasonable opportunity to participate. All Unit Holders that participate using that technology are taken to be present at the meeting.

16.2 Unit Holder’s request for meeting

- (a) The Trustee must convene and arrange to hold a meeting of Unit Holders to consider and vote on a proposed resolution on the request of any one Unit Holder.
- (b) The Trustee must convene the meeting within 15 Business Days after the request is given to the Trustee, and the meeting must be held within two Months after the request is given to the Trustee.
- (c) A meeting may be held at one or more venues using any technology that gives the Unit Holders as a whole a reasonable opportunity to participate. All Unit Holders that participate using that technology are taken to be present at the meeting.

16.3 Notice period

Unless otherwise agreed by all Unit Holders, at least ten Business Days’ notice of a meeting must be given to Unit Holders.

16.4 Trustee may determine

Subject to this **clause 16**, the Trustee may determine the time and place at which a meeting of Unit Holders will be convened, and the manner in which the meeting will be conducted.

16.5 Quorum

- (a) The quorum for a meeting of Unit Holders is any Unit Holder or Unit Holders present in person or by proxy together holding or representing at least 50% of all Units in respect of which Unit Holders are entitled to vote.
- (b) In determining a quorum:
 - (i) a person attending personally or as a proxy or representative for a Unit Holder, and also attending as the proxy or representative of another Unit Holder, will be counted separately for each Unit Holder that the person represents (including the person themselves); and
 - (ii) if a Unit Holder has appointed more than one proxy, the proxy Unit Holders will together be counted as one.

16.6 No quorum

- (a) If a quorum is not present within 15 minutes after the scheduled time for the meeting, the meeting is:
 - (i) if convened on the requisition of Unit Holders – dissolved; or
 - (ii) otherwise – adjourned to such place and time as the Trustee decides.
- (b) At any adjourned meeting, those Unit Holders present in person or by proxy or representative constitute a quorum, provided at least two Business Days' notice is given of the adjourned meeting.

16.7 Chair

- (a) The Trustee may appoint a person to chair a meeting of Unit Holders.
- (b) The decision of the chair on any matter relating to the conduct of the meeting is final.

16.8 Adjournment

The chair has power to adjourn a meeting for any reason, where a resolution is passed consenting to the adjournment.

16.9 Proxies and voting

- (a) A Unit Holder may appoint another person as their proxy for any question to be considered at a meeting of Unit Holders.
- (b) An instrument appointing a proxy will be in such form as the Trustee determines.

- (c) The appointment of a proxy is valid if it is signed by or on behalf of the Unit Holder and contains the following information:
 - (i) the Unit Holder's name;
 - (ii) the Trust's name; and
 - (iii) the proxy's name or the name of the office held by the proxy.
- (d) A proxy remains valid:
 - (i) for such period as is specified in the notice of meeting; and
 - (ii) after the Unit Holder who gave the proxy goes into liquidation, unless the Trustee has received notice of that fact before the relevant meeting.
- (e) For an appointment of a proxy for a meeting to be effective, the following documents must be received by the Trustee within the period specified by the Trustee, which period must be not less than 24 hours before the meeting:
 - (i) the proxy's appointment; and
 - (ii) if the appointment is by the Unit Holder's attorney – the authority under which the appointment was signed or a certified copy of the authority.
- (f) If the meeting is adjourned, an appointment of a proxy (and, if applicable, the authority or certified copy of the appointment) received by the Trustee, within the period specified in accordance with **clause 16.9(e)** before the resumption of the meeting, are effective for the remainder of the meeting.
- (g) A proxy is entitled to vote on a show of hands or on a poll.
- (h) A proxy is entitled to speak and vote for a Unit Holder under the terms of their appointment, even if the Unit Holder is present, provided that the Unit Holder is not exercising the right to speak and vote.
- (i) The Trustee may determine that the appointment of a proxy is valid even if the instrument appointing the proxy contains only some of the information required by **clause 16.9(c)**.

16.10 Representatives

- (a) A body corporate may be represented at a meeting by a person appointed in writing.
- (b) The Trustee may accept a certificate as evidence of a person's appointment as a representative of a body corporate.
- (c) The person appointed as representative of a body corporate may exercise on the body corporate's behalf the same powers as the body corporate could if the body were a natural person.

- (d) Where a representative of a body corporate attends a meeting, the body corporate is taken to be present at the meeting in person.

16.11 Trustee not obliged to enquire about appointments

The Trustee is not obliged to enquire whether the appointment of a proxy, attorney or representative has been validly made.

16.12 Voting

- (a) Voting is by a show of hands, unless a poll is duly demanded or the resolution proposed is required by this Deed or applicable law to be decided by a percentage of the number of issued Units.
- (b) A poll may be demanded by the chair, or by Unit Holders present in person or by proxy holding at least 5% of Units.
- (c) A Unit Holder's right to vote is subject to any restrictions for the time being attached to the Class of Units the Unit Holder holds.
- (d) Subject to the rights, obligations and restrictions attaching to any Class, each Unit Holder which is present in person or by proxy has:
 - (i) on a show of hands, one vote; and
 - (ii) on a poll, for each Unit held, one vote.
- (e) In the case of joint Unit Holders, only the first named in the Register may vote unless the Trustee otherwise agrees.
- (f) In the case of an equality of votes on a resolution, the chair does not have a casting vote and the resolution is not passed.

16.13 Resolutions passed at meetings

A resolution is passed at a meeting of Unit Holders:

- (a) on a show of hands (or, where a meeting is held at two or more venues using technology, the verbal equivalent) by the required majority of Unit Holders entitled to vote and present in person or by proxy and voting on the show of hands (or the verbal equivalent); or
- (b) on a poll, by the required majority of votes cast by Unit Holders entitled to vote and present in person or by proxy or representative and voting on the poll.

16.14 Signed resolutions

- (a) A resolution signed by Unit Holders holding the required majority of Unit Holders entitled to vote (or, if there is only one Unit Holder, signed by the Unit Holder) will be a resolution of Unit Holders and will be taken as having been passed at a meeting of Unit Holders and at the time when the last of the Unit Holders constituting the required majority (or, if there is only one Unit Holder, when the Unit Holder) signs the resolution.
- (b) Any approval, consent or agreement of the Unit Holders under this Deed may be given by a resolution signed by the Unit Holders (or, if there is only one Unit Holder, signed by the Unit Holder).

16.15 Required majority

Except where this Deed, the Unit Holders Deed or any applicable law provides otherwise, the “required majority” is an Ordinary Resolution.

16.16 Resolutions binding

- (a) A resolution passed in accordance with this **clause 16** binds all Unit Holders, whether or not they were present at the meeting.
- (b) No objection may be made to any vote cast unless the objection is made at the meeting.

16.17 Non-receipt

- (a) If a Unit Holder does not receive a notice of meeting, the meeting is still valid if:
 - (i) the Trustee gave the notice in accordance with **clause 23**; or
 - (ii) before or at the meeting, the Unit Holder waives the right to receive the notice or otherwise notifies the Trustee that the Unit Holder agrees to any act, matter or resolution proposed in the notice.
- (b) A Unit Holder’s presence at a meeting waives any objection the Unit Holder may have to a failure to give notice of the meeting or the giving of a defective notice of the meeting.

16.18 Class meetings

If any meeting of the Unit Holders of a Class, or a group of Classes, is required to be held, the provisions of this **clause 16** apply with any necessary modifications.

16.19 Variation of Class rights

- (a) Any proposed variation of the rights attaching to the Units in a Class of Units, which in the Trustee’s opinion is adverse to the holders of those Units, is subject to approval by Unanimous Resolution of the holders of Units in that Class.
- (b) If the proposed variation of rights attaching to Units in a Class in the opinion of the Trustee adversely affects the rights of holders of Units in another Class, the variation is also subject to approval by Unanimous Resolution of the holders of Units in that other Class.
- (c) Any proposed resolution which affects Unit Holders generally and does not specifically affect rights attaching to the Units of a particular Class requires only a Unanimous Resolution of Unit Holders without the need for a Unanimous Resolution of each Class.

16.20 Right to vote

All Unit Holders will have the right to vote at a meeting of Unit Holders and on resolutions in writing, except:

- (a) in respect of Units that under their terms of issue have limited voting rights; and

- (b) while the Unit Holders Deed is in force, where a Unit Holder is not entitled to vote under the Unit Holders Deed.

17 Trustee's limitation of liability and indemnity

17.1 Limitation on Trustee's liability

The Trustee has no liability to any Unit Holder in respect of a Claim arising out of, or in any way related to, the Trust, or for any Loss (including Consequential Loss) or damage suffered in any way relating to the Trust, except:

- (a) to the extent that the Trustee has been guilty of fraud, Wilful Default or Gross Negligence; or
- (b) for a Claim in respect of the non-payment by the Trustee of an amount that the Trustee is expressly required to pay under the terms of this Deed or the Unit Holders Deed.

17.2 Indemnity in favour of the Trustee

The Trustee is indemnified out of the Assets against any liability incurred by the Trustee, or on the Trustee's behalf, in respect of a matter relating to the Trust including a matter under an Other Transaction Document:

- (a) except to the extent that the Trustee has been guilty of fraud, Wilful Default or Gross Negligence;
- (b) unless this Deed specifies that the Trustee is not entitled to an indemnity for the liability; or
- (c) unless the Unit Holders Deed specifies that the Trustee is not entitled to an indemnity for the liability.

17.3 Limitation of liability for transactions

The Trustee may refuse to enter into any transaction or a contract (including a "Works Contract" (as defined in the Unit Holders Deed)) unless the Trustee's personal liability is excluded or limited to the Trustee's satisfaction.

17.4 Trustee may rely

The Trustee may take and may act upon:

- (a) the opinion or advice of lawyers in relation to this Deed or generally in connection with the Trust;
- (b) opinions, advice, statements or information from any accountants, auditors, valuers and other professional advisers consulted by the Trustee, in respect of the person's area of expertise;
- (c) statements or information provided by bankers in relation to the Trust's bank accounts;
- (d) a document that the Trustee believes in good faith to be the original or a copy of an appointment by a Unit Holder of a person to act as their agent for any purpose connected with the Trust; and

- (e) the veracity of any other document provided to the Trustee in connection with the Trust, upon which it is reasonable for the Trustee to rely, and the Trustee will not be liable for anything done, suffered or omitted by the Trustee in good faith in reliance upon such opinion, advice, statement, information or document.

17.5 Exclusion of Consequential Loss

The Trustee's liability does not extend to any Consequential Loss suffered by a Unit Holder or any other person, except to the extent that the Trustee has been guilty of fraud.

18 Liability of Unit Holders

18.1 Limitation of Unit Holder's liability

Subject to **clauses 8** and **18.2**, and to the Unit Holders Deed:

- (a) the liability of a Unit Holder (in its capacity as a Unit Holder) is limited to:
 - (i) the amount, if any, which remains unpaid in relation to the Unit Holder's subscription for its Fully Paid Units; or
 - (ii) the liability to pay the Uncalled Amount in relation to its Partly Paid Units (subject to **clause 8.1(b)**);
- (b) a Unit Holder need not indemnify the Trustee if there is a deficiency in the Assets to meet the Claim of any creditor of the Trustee in respect of the Trust; and
- (c) in the absence of a separate agreement with a Unit Holder, the recourse of the Trustee or any creditor, and any person claiming through them, is limited to the Assets.

18.2 Indemnity to Trustee for Tax and other liabilities

A Unit Holder or former Unit Holder indemnifies the Trustee:

- (a) to the extent that the Trustee incurs any liability for Tax that becomes payable by the Trustee (other than Tax properly payable by the Trustee in respect of the Trustee's taxable income or Tax which, under this Deed, is not payable out of the Assets):
 - (i) after the Trust has been wound up; and
 - (ii) in respect of which the Trustee would have been entitled to indemnification under this Deed had the Tax liability arisen before the Trust was wound up (ignoring any limitation on the Trustee's right to indemnification under this Deed other than those limitations set out in **clause 17.1**); and
- (b) to the extent that the Trustee incurs any liability as a result of an act or omission requested by that Unit Holder or former Unit Holder:
 - (i) after the Trust has been wound up; and

- (ii) in respect of which the Trustee would have been entitled to indemnification under this Deed had the liability arisen before the Trust was wound up (ignoring any limitation on the Trustee's right to indemnification under this Deed other than those limitations set out in **clause 17.1**).

19 Remuneration and expenses of Trustee

19.1 Trustee remuneration

- (a) The Trustee is entitled to a fee for services as Trustee of an amount, and payable at such times, as:
 - (i) determined in accordance with the Unit Holders Deed; or
 - (ii) approved by:
 - (A) Special Resolution of Unit Holders holding Ordinary Units; and
 - (B) where there are Preference Units on issue, a Special Preference Resolution.
- (b) The Trustee fee may be paid out of income of the Trust and, to the extent necessary, from Calls.
- (c) The Trustee may accept lower fees than, or waive the entire fee that, the Trustee is entitled to receive under this Deed, or may defer payment for any period. Where payment is deferred, the fee accrues daily (without interest) until paid.

19.2 Expenses

All costs and expenses incurred by the Trustee in connection with the Trust are payable or reimbursable out of the Assets. This includes the costs and expenses connected with the following:

- (a) this Deed and the formation of the Trust;
- (b) the acquisition, disposal, custody and any other dealing with Assets;
- (c) the investigation, negotiation, acquisition, registration, custody, holding, or other dealing with property in which the Trust has a direct or indirect interest (or attempting or proposing to do so) and the receipt, collection or distribution of Distributable Amounts or other Assets;
- (d) the administration of the Trustee, the Trust (including expenses in connection with the Register and any dealings with Units), the Assets and the liabilities of the Trust, including reasonable internal administrative and overhead costs and expenses of the Trustee (for example, salaries, rent and office maintenance) to the extent that they relate to the administration of the Trust;
- (e) convening and holding meetings of Unit Holders, the implementation of any resolutions of Unit Holders, and communications with Unit Holders;

- (f) Tax (other than any Tax assessed to the Trustee directly as a result of the Trustee making a determination under **clause 12.5** to accumulate Distributable Income);
- (g) the engagement of advisers;
- (h) accounting and Tax Laws compliance and administration for the Trust, whether conducted by the Trustee itself or by third parties, and the preparation and audit of the Tax Returns and accounts of the Trust;
- (i) termination of the Trust;
- (j) subject to **clause 15.15**, the retirement or removal of the Trustee and the appointment of a replacement;
- (k) any court proceedings, arbitration or other dispute concerning the Trust including proceedings against the Trustee, except to the extent that the Trustee is found by a court to have committed fraud or Wilful Misconduct or Gross Negligence; and
- (l) complying with any law, and any request or requirement of a regulatory authority, in relation to the Trust.

20 Duration and termination of the Trust

20.1 Date of commencement of wind up

The winding up of the Trust is to commence on the first to occur of:

- (a) a date determined by the Trustee and approved by:
 - (i) Special Resolution of Unit Holders holding Ordinary Units; and
 - (ii) Unanimous Resolution of the Unit Holders holding Preference Units, where:
 - (A) there are Preference Units on issue; and
 - (B) each Preference Unit Holder has paid at least one instalment of the Application Price in addition to the Initial Subscription Amount;
- (b) the date required under the Unit Holders Deed; and
- (c) the date on which the Trust terminates in accordance with another provision of this Deed or by law.

20.2 Wind up on changes to Tax Law

If, at any time, legislation is enacted the result of which is that the Trustee is liable to pay any income tax (other than withholding tax or Tax of a similar nature) on the income of the Trust, other than income not distributed to Unit Holders, the Trustee may call a meeting of the Unit Holders to consider winding up the Trust or taking any other measures proposed by the Trustee, and the Trustee may then commence winding up the Trust or take any other measure if the meeting so decides by:

- (a) Special Resolution of Unit Holders holding Ordinary Units; and
- (b) where there are Preference Units on issue, Unanimous Resolution of the Unit Holders holding Preference Units.

20.3 Perpetuity restriction on issue and redemption of Units

The perpetuity period applicable to the Trust is the period of 80 years from the day prior to the commencement of the Trust. Despite any other provisions in this Deed, no Units may be issued or redeemed after the 80th anniversary of the day preceding the day the Trust commenced, unless that issue or redemption would not offend the rule against perpetuities, or any other rule of law or equity. The specification of a perpetuity period in this **clause 20.3** does not require that the Trust terminate on the expiration of that period.

20.4 Realisation of Assets

As soon as practicable after the date on which the winding up of the Trust commences, the Trustee must sell or realise the Assets in such manner as the Trustee considers appropriate.

20.5 Final distribution

Subject to the rights of any Class and **clause 20.12**, the proceeds from realisation must be distributed among the Unit Holders pro rata to the number of Units they hold as at the date of commencement of the winding up of the Trust.

20.6 Distribution to Ordinary Unit Holder

- (a) The Trustee may satisfy the distribution of a Unit Holder holding Ordinary Units by payment of cash, settlement in kind or transfer of Assets in specie to the Unit Holder.
- (b) If the payment is satisfied by a transfer of Assets in specie, the value of the Assets transferred will be calculated at market value, as determined by the Trustee, and the expenses incurred in transferring the Assets will be borne by that Unit Holder.
- (c) Any distribution to Unit Holders holding Units of any Class other than Ordinary Units must be by payment of cash in accordance with **clause 14**.

20.7 Postponement of realisation

The Trustee may postpone the sale or realisation of any Asset for as long as the Trustee thinks it is desirable to do so in the interests of Unit Holders. The Trustee is not responsible for any Loss (including Consequential Loss) attributable to the postponement.

20.8 Retention of property

- (a) The Trustee may retain for as long as the Trustee thinks fit sufficient Assets as may be required to meet any outgoings or liabilities (actual or contingent) in respect of the Trust.

- (b) If any Asset retained is ultimately found not to be required, then subject to **clause 20.6(a)** the Asset must be sold or realised and the proceeds distributed to the Unit Holders in accordance with this **clause 20**.

20.9 Continuation of powers

The powers, duties and rights of the Trustee (including the rights to remuneration and to indemnities under this Deed or the law) continue following commencement of the winding up to the extent to which they are not inconsistent with this **clause 20**.

20.10 Cancellation of Units

Unless the Trustee determines otherwise, all Units in the Trust will be cancelled and taken to be redeemed from the date of the final distribution under **clause 20.5**.

20.11 Audit

If required by law at the time the Trust is wound up, the Trustee will provide for an independent review or audit by a registered company auditor of the final accounts of the Trust after termination.

20.12 Partly Paid Units

- (a) Subject to **clause 20.12(b)** and the rights of any Class, on a distribution under **clause 20.5** each Unit Holder holding a Partly Paid Unit is entitled to receive a fraction of the distribution payable in respect of a Fully Paid Unit, the fraction to be determined by dividing the Paid Up Amount of the Partly Paid Unit by its Application Price.
- (b) Where on a winding up there are Preference Units on issue:
 - (i) each Preference Unit Holder is entitled to the unpaid amount of any Distributable Income attributed to that Unit Holder's Units as at commencement of the winding up; and
 - (ii) the Preference Units are not entitled to any other distribution.

21 Amendments to this Deed

21.1 Trustee may amend

The Trustee may, by deed, amend this Deed with the approval of:

- (a) a Special Resolution of Unit Holders holding Ordinary Units, or of Unit Holders holding Units of a Class that is affected by the amendment; and
- (b) where there are Preference Units on issue, Unanimous Resolution of the Unit Holders holding Preference Units.

21.2 Registered Scheme

Each Unit Holder acknowledges that if the Trust is required by law to become a Registered Scheme, or in the Trustee's opinion becoming a Registered Scheme is desirable to avoid any adverse consequences as a result of a change to law:

- (a) the Trustee must promptly notify the Unit Holders of the change to law; and
- (b) the Trustee may, by deed, make any amendment to this Deed that the Trustee considers necessary or desirable in order to allow the Trust to become a Registered Scheme without the approval of a resolution of Unit Holders under **clause 21.1**.

22 GST

22.1 Construction

In this **clause 22**:

- (a) words and expressions which are not defined in this Deed but which have a defined meaning in GST Law have the same meaning as in the GST Law; and
- (b) references to GST payable and input tax credit entitlement include GST payable by, and the input tax credit entitlement of, the representative member for a GST group of which the entity is a member.

22.2 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Deed are exclusive of GST.

22.3 Payment of GST

If GST is payable on any supply made by a party (or any entity through which that party acts) (**Supplier**) under or in connection with this Deed, the recipient will pay to the Supplier an amount equal to the GST payable on the supply.

22.4 Timing of GST payment

The recipient will pay the amount referred to in **clause 22.3** in addition to, and at the same time that, the consideration for the supply is to be provided under this Deed.

22.5 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient before the Supplier is entitled to payment of an amount under **clause 22.3** and the recipient can withhold payment of the amount until the Supplier provides a tax invoice or an adjustment note, as appropriate.

22.6 Adjustments

If there is an adjustment event in relation to a supply that results in the amount of GST on a supply being different from the amount in respect of GST already recovered by the Supplier, the Supplier within 14 days of becoming aware of the adjustment event:

- (a) on giving seven days notice, may recover from the recipient the amount by which the amount of GST on the supply exceeds the amount already recovered; and

- (b) must refund to the recipient the amount by which the amount already recovered exceeds the amount of GST on the supply, to the extent that the Supplier is entitled to a refund or credit from the Commissioner of Taxation.

22.7 Reimbursements

Where a party is required under this Deed to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

23 Notices

23.1 General

A notice, demand, certification, process or other communication (**Notice**) relating to this Deed must be in writing in English and signed by a person duly authorised by the sender and may be given by an agent of the sender.

23.2 How to give a Notice

In addition to any other lawful means, a Notice may be given by being:

- (a) personally delivered;
- (b) left at the party's current business address for Notices;
- (c) sent to the party's current postal address for Notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
- (d) sent by fax to the party's current fax number for Notices.

23.3 Particulars for delivery of Notices

- (a) Particulars for the giving of Notices are initially the particulars set out in schedule 1 of the Unit Holders Deed.
- (b) A party may change its particulars for the giving of Notices by Notice to each other parties to the Unit Holders Deed.
- (c) A Notice given to a party which is signed is evidence that the Notice has been signed by a person duly authorised by the sender and that party is entitled to rely on that Notice without further inquiry or investigation.

23.4 Notices by post

Subject to **clause 23.6**, a Notice is given if posted:

- (a) within Australia to an Australian postal address, three Business Days after posting; or

- (b) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, ten Business Days after posting.

23.5 Notices by fax

Subject to **clause 23.6**, a Notice is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

23.6 After hours Notices

If a Notice is given:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or public holiday in that place.

23.7 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this Deed may be served by any method contemplated by this **clause 23** or in accordance with any applicable law.

23.8 Notice to joint holders

A Notice may be given by the Trustee to the persons jointly registered as a Unit Holder by giving the notice to the person first named in the Register in respect of the Unit.

23.9 Signature to notice

The signature to any Notice to be given by the Trustee may be written or printed or stamped and the signature may be that of any authorised officer of the Trustee.

24 General

24.1 Severability

- (a) Subject to **clause 24.1(b)**, if a provision of this Deed is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this Deed.
- (b) **Clause 24.1(a)** does not apply if severing the provision:
 - (i) materially alters the scope and nature of this Deed; or
 - (ii) would be contrary to public policy.

24.2 Indemnity

It is not necessary for the Trustee to incur expense or make a payment before enforcing any indemnity conferred by this Deed.

24.3 Applicable law

This Deed will be governed by and construed in accordance with the laws applicable in the State.

Executed as a deed.

Executed by [NewCo Pty Ltd] in)
accordance with section 127 of the)
Corporations Act 2001 (Cth):

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Date: / /

Executed by Aurizon Network Pty Ltd)
in accordance with section 127 of the)
Corporations Act 2001 (Cth):

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Date: / /

[NewCo Pty Ltd]

Aurizon Network Pty Ltd

Preference Subscribers listed in Schedule 1

User Funding - [Name of Trust] Subscription and Unit Holders Deed

General notes: This document assumes that each of Aurizon Network and the Trustee, has obtained, or will obtain, all consents or approvals necessary for it to enter into this document and all other Transaction Documents. Each of Aurizon Network and the Trustee will only execute this document after all such consents and approvals have been obtained on terms satisfactory to it (in its absolute discretion) and provided favourable tax rulings have been obtained in respect of Aurizon Network, the Trustee and Preference Unit Holders.

This document assumes that each Preference Unit Holder has any necessary ACCC authorisation to negotiate and otherwise perform its obligations and exercise its rights (including the sharing of information) under this document and each Transaction Document.

The Transaction Documents are drafted on the assumption that there are two or more Preference Unit Holders and that Aurizon Network (or a related party of Aurizon Network) will be a Preference Unit Holder.

Clause cross references to other Transaction Documents are square bracketed and highlighted in yellow and will need to be confirmed on a transaction-by-transaction basis having regard to any amendments made to those Transaction Documents.

The process contemplated for the timing of entry into the various Transaction Documents is as follows:

- (a) The Trustee and Aurizon Network will execute the Trust Deed.
- (b) The relevant State parties will execute the Extension Infrastructure Agreement and Integrated Network Deed. The documents annexed to this Deed will be the form of the documents which have been executed by the relevant State parties.
- (c) Each Preference Unit Holder will execute this Deed and (except in the case of an Aurizon Preference Unit Holder) an Umbrella Agreement for that Preference Unit Holder.
- (d) The Trustee and Aurizon Network will execute this Deed.
- (e) On completion of the process described in clause 5 of this Deed (including the provision of Bank Guarantees and executed Security Documentation by each applicable Preference Unit Holder), Aurizon Network and the Trustee will execute the Extension Infrastructure Agreement, the Integrated Network Deed, Umbrella Agreements with the Preference Unit Holders and the bilateral agreements between Aurizon Network and the Trustee (namely, the Project Management Agreement, the Rail Corridor Agreement and the Extension Infrastructure Lease).

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Date

Parties

[NewCo Pty Ltd] [ACN] of Level 14, Railcentre 1, 305 Edward Street, Brisbane, Queensland (**Trustee**)

Aurizon Network Pty Ltd ABN 78 132 181 116 of Level 14, Railcentre 1, 305 Edward Street, Brisbane, Queensland (**Aurizon Network**)

Preference Subscribers listed in schedule 1 (Preference Subscribers)

Background

- A Each Preference Subscriber requires access (or additional access) to Aurizon Network's railway network in order to facilitate the transportation by rail of coal (or additional coal) from a specific coal mine nominated by each Preference Subscriber to a specific unloading point nominated by each Preference Subscriber.
- B The Extension is required in order to create sufficient capacity for Aurizon Network to provide each Preference Subscriber (or its nominated railway operator) the access (or additional access) to Aurizon Network's railway network required by each Preference Subscriber.
- C The Preference Subscribers, the Trustee and Aurizon Network have agreed to enter into the arrangements contemplated by the Trust Deed, this Deed and other Transaction Documents under which, broadly speaking, each Preference Subscriber will fund its respective share of the cost of designing, supplying, procuring, constructing, testing, commissioning and completion of the Extension.
- D Aurizon Network:
- (a) will operate and maintain the Extension as part of its railway network; and
 - (b) will earn revenue from users of its railway network (including the Extension) through the access charges payable by those users.
- E In anticipation of the establishment of the Trust:
- (a) Aurizon Network has appointed the Trustee, and the Trustee has agreed to act, as trustee of the Trust;
 - (b) the Trustee and Aurizon Network have executed the Trust Deed; and
 - (c) Aurizon Network (as ordinary subscriber) has agreed to subscribe for one fully paid Ordinary Unit in the Trust.

- F Each Preference Subscriber has agreed to subscribe for a specified number of partly paid Preference Units in the Trust, on the terms set out in this Deed and the Trust Deed and which are summarised in **schedule 11** of this Deed.
- G The Trustee, Aurizon Network and the Preference Subscribers have entered into this Deed to set out their agreement in respect of certain aspects of the operation of the Trust.
- H Aurizon Network has entered into this Deed to:
- (a) confirm Aurizon Network's agreement to enter into the other Transaction Documents (other than the Trust Deed), subject to this Deed; and
 - (b) guarantee the Trustee's obligations in accordance with the terms of this Deed.
- I Under the Rail Corridor Agreement, Aurizon Network (as landholder) will:
- (a) licence the Trustee to access and use certain rail corridor land for the purpose of the Trustee (or a person authorised by it) operating, managing, repairing, maintaining and modifying the Extension in accordance with the Rail Corridor Agreement and Extension Infrastructure Lease; and
 - (b) grant the Trustee a non-exclusive licence, right and privilege to modify the Landholder Infrastructure in accordance with the terms of the Rail Corridor Agreement.
- J Under the Project Management Agreement, the Trustee will appoint Aurizon Network (as project manager) to project manage the design, supply, procurement, construction, testing, commissioning and completion of the Extension.
- K Under the Extension Infrastructure Lease:
- (a) the Trustee will sublease the "Subleased Extension Infrastructure", and lease the "Leased Extension Infrastructure", to Aurizon Network (as sublessee and lessee, respectively); and
 - (b) Aurizon Network (as sublessee and lessee) will pay to the Trustee, by way of rent, an amount equal to a share of the access revenue it receives from users of the railway network (including the Extension).
- L Under the Trust Deed and this Deed, Preference Subscribers will, via distributions from the Trust, receive a share of the rent received by the Trustee under the Extension Infrastructure Lease, after payment of certain expenses.
- M Aurizon Network, the Trustee and each Preference Subscriber (other than a Preference Subscriber which on the issue of Preference Units will be an Aurizon Preference Unit Holder) will execute a separate Umbrella Agreement.
- N Under each Umbrella Agreement, Aurizon Network agrees to provide the Preference Subscriber (or its nominated railway operator) with the access (or additional access) to Aurizon Network's railway network (including the Extension) required by the Preference Subscriber.

Agreed terms

1 Interpretation

1.1 Definitions

In this Deed:

Acceptable Credit Company has the meaning given in **schedule 6**.

Access Legislation means any State or Commonwealth legislation which regulates third party access to the Railway Network (and which initially is the *Queensland Competition Authority Act 1997* (Qld)).

Access Regulator means any body with responsibility for regulating third party access to the Railway Network under the Access Legislation (and which initially is the Queensland Competition Authority).

Access Rights has the meaning given in the Umbrella Agreement.

Access Undertaking means an access undertaking, policy, code or other similar document applicable to any aspect of access to the Railway Network which has been approved by the Access Regulator in accordance with the Access Legislation.

Additional Option Units has the meaning given in **clause 8.6(d)(iv)**.

Additional True-up Statement has the meaning given in **clause 9.3(h)**.

Affected Segment means:

- (a) for a Reserve Decision or Reserve Power in respect of a variation to the Scope of Works, Target Cost and/or "Target Available Date" (as defined in the Project Management Agreement) for a Segment, that Segment; or
- (b) for any other Reserve Decision or Reserve Power the exercise of which the Independent Engineer determines would materially and adversely affect the final Project Costs for, or capacity of, a Segment, that Segment.

Affected Users for a Reserve Decision or Reserve Power means each "Segment Unit Holder" (as defined in **item 2 of schedule 7**) for each Affected Segment for that Reserve Decision or Reserve Power, and **Affected User** means any one of them.

Affected User Notice has the meaning given in **clause 18.4(a)**.

Affected User's Unit Holder's Proportion means for an Affected User that proportion calculated in accordance with the calculation methodology in **item 5 of schedule 7**.

Aggregate Sale Price means the amount calculated in accordance with **clause 8.6(i)(ii)**.

Allocated Option Units has the meaning given in **clause 8.6(c)(iv)**.

Allocation Principles means the principles set out in **schedule 2**.

Application Price has the meaning given in the Trust Deed.

Assets has the meaning given in the Trust Deed.

Auditor means a person to be appointed as auditor in accordance with **clause 16.3(a)**.

Aurizon Preference Unit Holder means a Preference Unit Holder who is Aurizon Network or a Related Body Corporate of Aurizon Network.

Authorised Counterparties has the meaning given in **clause 17.1(b)**.

Available has the meaning given in the Project Management Agreement.

Available Cash Holding as at a date means the aggregate value of the investments of the Trust as contemplated under **clauses 17.1(a) and 17.1(b)**, **less** costs and expenses Incurred but not paid, as at that date.

Available Date for a Segment has the meaning given in the Project Management Agreement.

Bank Account has the meaning given in **clause 14.2(b)**.

Bank Account Reconciliation Date means the later to occur of the following dates:

- (a) the date which is 30 Business Days after the Project Manager gives the Final Reconciliation Statement to the Trustee under the Project Management Agreement; and
- (b) if the amount specified in the Final Reconciliation Statement is disputed, ten Business Days after the date that the dispute is resolved in accordance with the dispute resolution process under the Project Management Agreement.

Bank Account Reconciliation Statement has the meaning given in **clause 14.6(b)**.

Bank Guarantee means a bank guarantee (or bank guarantees) (if applicable) required to be given by a Preference Subscriber or Preference Unit Holder as security under this Deed.

Bank Guarantee Notice has the meaning given in **clause 10.7(b)(iii)**.

Bid has the meaning given in **clause 8.7(b)**.

Buffer Amount for a Month means the lesser of:

- (a) 5% of the Target Trust Capital Cost as at the last day of the previous Month; and
- (b) the amount equal to:
 - (i) the aggregate of the “Estimated Project Costs” (as defined in the Project Management Agreement) for all of the Segments as set out in the most recent “Monthly Report” (as defined in the Project

Management Agreement) given by the Project Manager to the Trustee under the Project Management Agreement, **less**

- (i) the aggregate of the actual Project Costs incurred for all of the Segments as set out in that "Monthly Report".

Business Day means a day that is not a Saturday, Sunday or public holiday in Brisbane.

Call means a Loan Call or a Unit Call.

Call Amount means a Unit Call Amount or Loan Contribution.

Call Statement means a statement the Trustee is required to give to each Preference Unit Holder setting out details of Loan Calls and Unit Calls in accordance with **clause 6**.

Capital Loan Balance of a Preference Unit Holder at a time means the amount of that Unit Holder's Loan Balance that comprises amounts the Trustee has determined are attributable to Trust Capital Costs at that time.

Change in Control in relation to any entity (the first mentioned entity) means:

- (a) a change in the entity that Controls the first mentioned entity (other than if the Ultimate Holding Company of the first mentioned entity remains the same following the change);
- (b) an entity that Controls the first mentioned entity ceases to Control that entity (other than if the Ultimate Holding Company of the first mentioned entity remains the same following the change); or
- (c) if the first mentioned entity is not Controlled, another entity acquires Control of the first mentioned entity.

Charge has the meaning given in **clause 12.4(a)**.

Chargee has the meaning given in **clause 12.4(a)**.

Chargor has the meaning given in **clause 12.4(a)**.

Claim includes any claim, demand, liability, cost, expense, damage, loss, proceeding, suit, litigation, investigation, audit, action or cause of action, whether judicial, administrative, investigative or otherwise, and whether arising in contract, tort (including negligence), under statute or otherwise, of whatever nature, known or unknown, liquidated or unliquidated.

Commencement Date means the date on which the Trustee notifies each Party in accordance with **clause 4.6** that this Deed has been executed and delivered to it by all the entities named in **schedule 1**.

Confidential Information of a Disclosing Party means:

- (a) the terms of this Deed;
- (b) the terms of the Trust Deed; and
- (c) information disclosed (whether before or after the date of this Deed) by, or on behalf of, the Disclosing Party to the Recipient which:

- (i) is by its nature confidential or commercially sensitive;
- (ii) is identified by the Disclosing Party as confidential or commercially sensitive;
- (iii) the Recipient knows, or ought to know, is confidential or commercially sensitive; or
- (iv) relates to the business, operations or financial affairs of the Disclosing Party or a Related Body Corporate of it,

but does not include those terms of this Deed or the Trust Deed, or any other information, which:

- (d) are or become public knowledge other than by:
 - (i) breach of this Deed or by a breach of confidentiality by the Recipient or any third party to whom the Recipient has disclosed the information; or
 - (ii) breach of confidentiality by a Preference Unit Holder, the "Independent Engineer" (as defined in the Project Management Agreement), the "PUH Engineer" (as defined in the Project Management Agreement) or an "Auditor" or "Expert" (as defined in each Transaction Document);
- (e) are in the possession of the Recipient or a Related Body Corporate of it without restriction in relation to disclosure before the date of receipt; or
- (f) have been independently developed or acquired by the Recipient or a Related Body Corporate of it.

Consequential Loss means, subject to **paragraphs (e), (f) and (g)** of this definition:

- (a) any special, indirect or consequential loss;
- (b) any economic loss in respect of any Claim in tort;
- (c) any loss of profits, loss of production, loss of revenue, loss of use, loss of contract, loss of opportunity, loss of reputation, loss of goodwill or wasted overheads whatsoever; and
- (d) any loss arising out of any Claim by a third party,

but does not include:

- (e) a loss (including a loss arising out of a Claim by a third party) in respect of:
 - (i) the cost of repairing, replacing or reinstating any real or personal property of any person (including a Unit Holder) that has been lost, damaged or destroyed; or
 - (ii) personal injury to or death of any person;
- (f) in respect of any personal injury Claim, special loss or economic loss as those terms are used in the context of personal injury Claims; or

- (g) the payment by the Trustee to a Unit Holder of any amount which represents the Unit Holder's share of any Distributable Amount or Distributable Sum (as applicable).

Consolidated Group has the meaning given in the Umbrella Agreement.

Construction Period means the period commencing on the Commencement Date and ending on the last day of the Month during which the Available Date for the last Segment to become Available occurs.

Control, in relation to an entity, includes:

- (a) control as defined in section 50AA of the Corporations Act;
- (b) the power (whether legally enforceable or not) to control, whether directly or indirectly:
 - (i) the composition of the board of directors of that entity;
 - (ii) more than one half of the voting power of the board of directors or any class of shareholders of that entity (or both); or
 - (iii) the management of the affairs of that entity; or
- (c) holding more than one half of the issued share capital (either beneficially or otherwise) of that entity.

Corporations Act means the *Corporations Act 2001* (Cth).

Credit Policy means the principles set out in **schedule 6**.

Creditworthiness Change Notice has the meaning given in **clause 10.7(a)**.

Current Amount has the meaning given in **clause 10.5(a)**.

Deed means this document, including the **schedules** and **annexures** to it.

Default Notice has the meaning given in **clause 8.3(a)**.

Defaulting Unit Holder has the meaning given in **clause 8.3(a)**.

Deleted Segment has the meaning given in **clause 5.6(b)(i)(C)**.

Disclosing Party has the meaning given in **clause 22.1(a)**.

Dispute has the meaning given in **clause 21.1(a)** and includes:

- (a) a matter referred to an Expert for determination under this Deed; and
- (b) a "Dispute" (as defined in the Project Management Agreement or the Extension Infrastructure Lease) if Aurizon Network and/or the Trustee joins the Preference Unit Holders to the dispute resolution process under the Project Management Agreement or the Extension Infrastructure Lease, as applicable, in accordance with **clause 21.9**.

Dispute Notice has the meaning given in **clause 21.1(a)**.

Dispute Resolution Process means:

- (a) the dispute resolution process under **clause 21**; and

- (b) if Aurizon Network and/or the Trustee joins the Preference Unit Holders to the dispute resolution process under the Project Management Agreement or the Extension Infrastructure Lease in accordance with **clause 21.9**, the dispute resolution process under the Project Management Agreement or the Extension Infrastructure Lease, as applicable.

Distributable Amount has the meaning given in the Trust Deed.

Distributable Income has the meaning given in the Trust Deed.

Distributable Sum has the meaning given in the Trust Deed.

Distribution Calculation Date has the meaning given in the Trust Deed.

Distribution Period has the meaning given in the Trust Deed.

Early Termination Amount means:

- (a) for the purpose of **clause 5.3**, in respect of a First Round Defaulting Subscriber, the amount payable by that First Round Defaulting Subscriber to a First Round Non-Defaulting Subscriber as calculated in accordance with **clause 5.3(a)(iv)(A)**;
- (b) for the purpose of **clause 5.9**, in respect of a Second Round Defaulting Subscriber, the amount payable by that Second Round Defaulting Subscriber to a Second Round Non-Defaulting Subscriber as calculated in accordance with **clause 5.9(b)(ii)(A)**; and
- (c) for the purpose of **clause 5.13**, in respect of a Third Round Defaulting Unit Holder, the amount payable by that Third Round Defaulting Unit Holder to a Third Round Non-Defaulting Unit Holder as calculated in accordance with **clause 5.13(a)(i)**.

Eligible Investor has the meaning given in the Trust Deed.

Estimated Final Trust Costs for a Segment means the amount which the Independent Engineer (acting reasonably) estimates will be the total Trust Costs to be Incurred by the Trustee in respect of that Segment, being:

- (a) the actual Trust Costs Incurred by the Trustee in respect of that Segment up to the last day of the Construction Period to the extent information in respect of those costs is available at that time; and
- (b) the additional Trust Costs which the Independent Engineer reasonably estimates will be Incurred by the Trustee in respect of that Segment and not already included in **paragraph (a)**.

Estimated Final Trust Costs Statement has the meaning given in **clause 9.1(a)**.

Estimated Net Operating Expenses for a period means the Trustee's estimate of the amount (if any) by which outgoings of the Trust will exceed income receipts of the Trust for that period.

Estimated Terminal Available Date has the meaning given in the Project Management Agreement.

ETA Notice has the meaning given in **clause 5.3(a)(iv)(B)**, **clause 5.9(b)(ii)(B)** and **clause 5.13(a)(ii)** (as applicable).

Estimated Trust Administration Costs for a period means the Trustee's estimate of Trust Administration Costs that will be Incurred in that period.

Event of Default has the meaning given in **clause 19.1**.

Expert has the meaning given in **clause 21.2(b)**.

Extension means the new rail infrastructure, and/or modifications and/or upgrades of and/or additions to existing rail infrastructure, generally described in **item 1.1 of schedule 1**, as varied in accordance with **clause 5.6** and **clause 17.7(a)**.

Extension Infrastructure Agreement means, subject to **clause 1.6**, the document in the form set out in **annexure E**.

[Drafting note: The definition of Extension Infrastructure Agreement may need to be revised if there is more than one Extension Infrastructure Agreement (for example, one in respect of the railway infrastructure leased from Queensland Treasury Holdings Pty Ltd and one in respect of the railway infrastructure leased from Queensland Rail Limited).]

Extension Infrastructure Lease means, subject to **clause 1.6**, the document in the form set out in **annexure A**.

Extension Land has the meaning given in the Rail Corridor Agreement.

Extinguishment Date has the meaning given in **clause 6.9**.

Failure to Pay Loan Call Notice has the meaning given in **clause 8.3(b)**.

Final Certificate has the meaning given in the Project Management Agreement.

Final Reconciliation Statement has the meaning given in the Project Management Agreement.

Financial Obligations means any obligation of a Preference Unit Holder to:

(a) pay, or cause to be paid, an amount of money, including damages for breach; or

(b) provide security or additional or replacement security,

each in accordance with the terms of the Transaction Documents.

Financial Year has the meaning given in the Trust Deed.

First Round Defaulting Subscriber has the meaning given in **clause 5.3(a)(iii)**.

First Round Non-Defaulting Subscriber has the meaning given in **clause 5.3(a)(iv)(A)**.

Fully Paid Unit has the meaning given in the Trust Deed.

Governmental Agency means any government, whether Federal, State or Territory, municipal or local, and any agency, authority, commission, department, instrumentality, regulator or tribunal thereof, including the Commissioner of Taxation and Australian Taxation Office.

Gross Negligence has the meaning given in the Trust Deed.

GST has the meaning given in the GST Law.

GST Law has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Head Company has the meaning given in the Umbrella Agreement.

Income Statement has the meaning given in **clause 15.7(a)**.

Incurred has the meaning given in **clause 16.1**.

Independent Engineer has the meaning given in the Project Management Agreement.

Initial Bank Guarantee Amount for a Preference Subscriber means the amount, if any, set out in **item 4.2 of schedule 1** for the Subscriber.

Initial Call Notice has the meaning given in **clause 5.10(b)**.

Initial Call Statement means a statement given under **clause 5.15(a)(i)**.

Initial Loan Contribution for a Preference Unit Holder means the amount payable as the first instalment of that Preference Unit Holder's Unit Holder Loan under **clause 5.11**, set out in **item 4.2 of schedule 1**, as varied in accordance with this Deed.

Initial Subscription Amount for a Preference Subscriber means the aggregate amount of the first instalment payable by that Preference Subscriber in respect of the Application Price for the issue of each Preference Unit to the Preference Subscriber, set out in **item 4.2 of schedule 1**, as varied in accordance with this Deed.

Initial Unit Call has the meaning given in **clause 5.15(a)(ii)**.

Initial Unit Call Amount for a Preference Unit Holder means the amount of that Preference Unit Holder's Initial Loan Contribution.

Integrated Network Deed means, subject to **clause 1.6**, the document in the form set out in **annexure F**.

[Drafting note: The definition of Integrated Network Deed may need to be revised if there is more than one Integrated Network Deed (for example, one in respect of the railway infrastructure leased from Queensland Treasury Holdings Pty Ltd and one in respect of the railway infrastructure leased from Queensland Rail Limited).]

Interest Rate means, for any day in a Month, the annual interest rate that is the sum of:

- (a) 2%; and

- (b) the Commonwealth Bank of Australia’s “Corporate Overdraft Reference Rate” (monthly charging cycle) quoted by the Commonwealth Bank of Australia on its public website for the last trading day of the previous Month (or in the event that such a rate is not quoted at, or in respect of, any relevant date, such other similar rate as is quoted by a major commercial bank agreed by the Parties or, failing agreement, as determined by an Expert under **clause 21.3**).

Issuer has the meaning given in **clause 10.1(b)**.

Joint Venture means, in respect of a Preference Subscriber for which **clause 25** is specified in **schedule 1** to apply, the unincorporated joint venture specified in **schedule 1** in respect of that Preference Subscriber.

Joint Venture Participants means, in respect of a Preference Subscriber for which **clause 25** is specified in **schedule 1** to apply, the joint venture participants specified in **schedule 1** for the Joint Venture for that Preference Subscriber, and **Joint Venture Participant** means any one of those joint venture participants.

Landholder has the meaning given in the Rail Corridor Agreement.

Landholder Infrastructure has the meaning given in the Rail Corridor Agreement.

Law includes any law or legal requirement, including at common law, in equity or under statute, regulation or by-law, any condition of any authorisation, and any decision, directive, guidance, guideline or requirements of any Governmental Agency.

Lessee has the meaning given in the Extension Infrastructure Lease.

Linked Umbrella Agreement for a Preference Unit Holder that is not itself a party to an Umbrella Agreement means the Umbrella Agreement for an entity under which that Preference Unit Holder is a “Linked Unit Holder” (as defined in the Umbrella Agreement for that entity).

Liquidity Requirement for a Month means the sum of:

- (a) the amount by which the Liquidity Target for the Month exceeds the Available Cash Holding as at the last day of the previous Month; and
- (b) Estimated Trust Administration Costs for that Month and the following two Months.

Liquidity Target for a Month means the sum of:

- (a) the Buffer Amount for that Month; and
- (b) the Rolling Three Month Net Cash Outgoing for that Month.

Loan Balance of a Preference Unit Holder at any time means:

- (a) the total amount of Loan Contributions that have been made by that Preference Unit Holder as at that time; **less**

- (b) amounts that have been repaid to that Preference Unit Holder as at that time (which, for the avoidance of doubt, includes amounts that have been repaid by the Trustee in applying the amount to pay up a Unit Call).

Loan Call means a notice to a Preference Unit Holder from the Trustee specifying that the Preference Unit Holder must pay a Loan Contribution.

Loan Call Default has the meaning given in **clause 8.3(a)**.

Loan Contribution for a Preference Unit Holder means:

- (a) the Initial Loan Contribution for that Preference Unit Holder; and/or
- (b) an amount paid or to be paid, as the context requires, by that Preference Unit Holder as a Unit Holder Loan,

as applicable.

Loan Rights has the meaning given in **clause 8.6(j)(iii)**.

Loss means any loss, liability, cost, charge, expense, diminution in value or deficiency of any kind or character which a Party pays, suffers or incurs or is liable for including:

- (a) interest and other amounts payable to third parties; and
- (b) legal costs and other expenses reasonably incurred in connection with investigating or defending any Claim, whether or not resulting in any liability and all amounts paid in settlement of any Claim.

Management Services Agreement means a written agreement under which the Trustee appoints Aurizon Network to provide administrative, management and trustee support services in accordance with **clause 17.4**.

Mandatory Reallocation Process means the process described in **clause 9.3**.

Matching Notice has the meaning given in **clause 9.3(e)**.

Matching Units has the meaning given in **clause 9.3(e)**, and are Preference Units which are the subject of a Matching Notice.

Material Adverse Change means:

- (a) any change to Tax Law which compromises the performance of the Trust or the value of returns to Unit Holders;
- (b) any act, event or circumstance as a result of which the Trustee would be taxed in the same or similar manner as a company;
- (c) a change to the interpretation of any Tax Law (whether by any court or the relevant Government Agency) which compromises the performance of the Trust or the value of returns to Unit Holders;
- (d) a change to any law which may result in adverse financial outcomes for a Unit Holder or the Trustee under this Deed;

- (e) a restriction on the capacity of any of the Unit Holders continuing their investment in the Trust; or
- (f) a change or restriction of any other kind (other than a decision of an Access Regulator) which, in the Trustee's opinion, is likely to compromise the performance of the Trust or the value of returns to Unit Holders.

Month means a calendar month.

Net Cash Outgoing for a Month means the total of the Trust Capital Costs that the Trustee anticipates will be Incurred in that Month less the total of the Trust Capital Recoveries that the Trustee anticipates will be received in that Month.

Non-Defaulting Unit Holders has the meaning given in **clause 8.3(c)(iii)**.

Notice has the meaning given in **clause 23.1**.

Operating Loan Balance of a Preference Unit Holder means the amount of that Preference Unit Holder's Loan Balance that comprises amounts the Trustee has determined are attributable to Trust Administration Costs.

Option Assets has the meaning given in **clause 8.6(a)**.

Option Notice has the meaning given in **clause 8.6(c)**.

Option Units has the meaning given in **clause 8.6(c)(i)**.

Ordinary Unit has the meaning given in the Trust Deed.

Ordinary Unit Holder means Aurizon Network on issue of an Ordinary Unit to it.

Original Preference Units for a Preference Unit Holder means the number of Preference Units on issue to that Preference Unit Holder as at the date the Estimated Final Trust Costs Statement is given by the Independent Engineer to the Trustee under **clause 9.1(a)**.

Outstanding Amounts has the meaning given in **clause 13.2(a)**.

Paid Up Amount has the meaning given in the Trust Deed.

Partial Bid has the meaning given in **clause 8.7(b)**.

Participating Interest means, in respect of a Preference Subscriber for which **schedule 1** specifies that **clause 25** applies, the participating interest specified in **schedule 1** for each Joint Venture Participant in the Joint Venture for that Preference Subscriber.

Parties means at a time the parties to this Deed at that time, and **Party** means any one of them.

Partly Paid Unit has the meaning given in the Trust Deed.

Per Option Unit Loan Amount has the meaning given in **clause 8.6(c)(ii)**.

Per Option Unit Umbrella Agreement Rights has the meaning given in **clause 8.6(c)(vi)**.

Per Option Unit Unpaid Loan Call Amount has the meaning given in **clause 8.6(c)(iii)**.

Preference Income means Distributable Income derived while there are Preference Units on issue, calculated (without double counting) as follows:

- (a) lease rental payments received under the Extension Infrastructure Lease; **plus**
- (b) interest or other returns on any investment of the Trust; **plus**
- (c) amounts received by the Trust:
 - (i) calculated on the basis of the Interest Rate or any other interest rate prescribed under a Transaction Document;
 - (ii) from a Unit Holder under **clause 8.1**;
 - (iii) from the Lessee under the Extension Infrastructure Lease;
 - (iv) from the Ordinary Unit Holder as compensation under clause 12.14 of the Trust Deed; or
 - (v) from any other person under a Transaction Document; **plus**
- (d) any "Optimisation Fee" (as defined in the Project Management Agreement) for a Segment, received by the Trust; **less**
- (e) after the Trustee gives each Preference Unit Holder a Call Statement referred to in **clause 6.5(g)**, operating expenses of the Trust (determined without taking into account amounts by way of depreciation, amortisation and other non-cash items),

provided that:

- (f) an amount referred to in **paragraphs (a) to (d)** of this definition excludes the amount of any GST received by the Trust; and
- (g) an amount referred to in **paragraph (e)** of this definition excludes the GST component of any operating expenses of the Trust to the extent that the Trustee (or the representative member of the GST group of which the Trustee is part) is entitled to claim an input tax credit in respect of such costs, expenses or liabilities.

Preference Subscribers means the parties listed as "Preference Subscribers" in **item 4 of schedule 1** as amended under **clause 5.6(b)**, and **Preference Subscriber** means any one of them.

Preference Unit Holder means a Preference Subscriber on issue of Preference Units to that Preference Subscriber.

Preference Unit has the meaning given in the Trust Deed.

Prescribed Majority means, in respect of a Reserve Decision or Reserve Power, a Special Majority or Unanimous Agreement as set out in **clause 18, schedule 4 or schedule 5** (as applicable).

Price Sensitive Information means any information in relation to:

- (a) the calculation of “Internal Costs” (as defined in the Project Management Agreement); or
- (b) a Works Contract (including any terms of a Works Contract) which is:
 - (i) specified in, or determined under, the Procurement Methodology to be ‘Price Sensitive Information’ for the purpose of this definition; or
 - (ii) specified in the Works Contract to be ‘Price Sensitive Information’ for the purpose of this definition but only where the specification of that information as ‘Price Sensitive Information’ has been approved by the Trustee in accordance with the Project Management Agreement and the giving of the Trustee’s approval in relation to this matter has been approved in accordance with **clause 18.1**.

Proceedings has the meaning given in **clause 21.7(b)(i)**.

Procurement Methodology has the meaning given in the Project Management Agreement.

Project Costs has the meaning given in the Project Management Agreement.

Project Management Agreement means, subject to **clause 1.6**, the document in the form set out in **annexure B**.

Project Manager means the project manager appointed under the Project Management Agreement.

Projected Cash Holdings for a period means the aggregate value of the investments of the Trust under **clauses 17.1(a)** and **17.1(b)**, as at the start of the period **plus**:

- (a) Trust income; and
- (b) any Trust Recoveries,

that the Trustee anticipates will be received during the period.

Projected Liquidity Requirement for a period is the amount (if any) by which, in the Trustee’s opinion, the aggregate of:

- (a) Estimated Net Operating Expenses for the period; and
- (b) any Trust Capital Costs:
 - (i) that have been Incurred but not paid at the time the Call Statement for the period is issued; and
 - (ii) that are anticipated to be paid during the period (and does not include any amount referred to under **paragraph (b)(i)** of this definition),

is greater than the Projected Cash Holdings for that period.

PUH Engineer means the engineer appointed by the applicable Preference Unit Holders under **clause 17.5**.

Qualified Investor means a person that is:

- (a) an Eligible Investor that:
 - (i) is seeking new or additional access to the Railway Network; or
 - (ii) is an end user of the Railway Network, where an operator is seeking access for transportation of the end user's product; or
- (b) Aurizon Network or a Related Body Corporate of Aurizon Network.

Rail Corridor Agreement means, subject to **clause 1.6**, the document in the form set out in **annexure C**.

Railway Network means Aurizon Network's central Queensland coal railway network (and includes the Extension).

Reallocation Notice has the meaning given in **clause 5.6**.

Recalculated Unit Holder's Proportion has the meaning given in **clause 9.5(a)**.

Recalculated Unit Holder's Proportion Statement has the meaning given in **clause 9.5(a)**.

Receipt Units has the meaning given in **clause 9.3(d)(i)**.

Recipient has the meaning given in **clause 22.1**.

Reconciliation Materiality Threshold means where, for any Preference Unit Holder, the number of Preference Units which is calculated by deducting the Revised Preference Units for that Preference Unit Holder from the Original Preference Units for that Preference Unit Holder is a positive number that is greater than or equal to the number which is 5% of the Original Preference Units for that Preference Unit Holder.

Redemption Price has the meaning given in **clause 2.2(d)**.

Register has the meaning given in the Trust Deed.

Related has the meaning given in **clause 3.1(a)**.

Related Body Corporate has the meaning given in the Trust Deed.

Replacement Project Manager has the meaning given in the Project Management Agreement.

Reserve Decision has the meaning given in **clause 18.1(a)**.

Reserve Power has the meaning giving in **clause 18.2(a)**.

Reviewed Amount has the meaning given in **clause 10.5(a)**.

Revised Preference Units for a Preference Unit Holder means the number of Preference Units calculated by multiplying the Revised Unit Holder's Proportion for that Preference Unit Holder by the Total Original Preference Units.

Revised UHP Calculation Methodology means the methodology in **item 4 of schedule 7**.

Revised Unit Holder's Proportion for a Preference Unit Holder means the percentage calculated for that Preference Unit Holder in accordance with the Revised UHP Calculation Methodology.

Rolling Three Month Net Cash Outgoing for a Month means the Net Cash Outgoing for that Month and the immediately following two Months.

Sale Assets has the meaning given in **clause 8.3(e)**.

Sale Notice has the meaning given in **clause 8.7(a)**.

Sale Offer has the meaning given in **clause 8.7(a)**.

Sale Proceeds has the meaning given in **clause 8.7(h)**.

Scope of Works has the meaning given in the Project Management Agreement.

Second Round Defaulting Subscriber has the meaning given in **clause 5.9(a)(ii)**.

Second Round Non-Defaulting Subscriber has the meaning given in **clause 5.9(b)(ii)(A)**.

Security Delivery Date has the meaning given in **clause 5.1(a)**.

Security Documentation means the security documents to be entered into by each Preference Subscriber in accordance with **clause 5.1** in the form set out in **schedule 9** of this Deed.

Segments means the sections of railway corridor described as such in **item 1** of **schedule 1**, as varied in accordance with **clause 5.4**.

[Drafting note: A Segment is a contiguous portion of the Railway Network in respect of which:

(a) capacity is required by either:

(i) one Preference Subscriber; or

(ii) two or more Preference Subscribers in fixed percentages as between one another within that portion, and

(b) Works are required, whether within or outside the area of that Segment, to provide that capacity.

Each element of the Scope of Works will be allocated to one or more Segments on the basis that Works required to create capacity on a Segment are allocated to that Segment.]

Shortfall has the meaning given in **clause 8.3(c)**.

Shortfall Loans has the meaning given in **clause 8.3(c)**.

Special Majority means a resolution passed by Preference Unit Holders holding not less than 75% of the total number of Preference Units on issue, excluding Preference Units held by any Unit Holder that is not entitled to vote on the resolution.

State means the State of Queensland.

Subscribers means Aurizon Network (as ordinary subscriber) and the Preference Subscribers, and **Subscriber** means any one of them.

Subscription Agreement has the meaning given in the Trust Deed.

Supplier has the meaning given in **clause 24.3(c)**.

Target Cost has the meaning given in the Project Management Agreement.

Target Trust Capital Cost at any time means the sum of:

- (a) the Target Cost for the Extension;
- (b) the Trust Administration Costs at that time; and
- (c) Estimated Trust Administration Costs for the balance of the Construction Period that the Trustee determines will be capital expenditure and which have not otherwise been included in **paragraph (b)** of this definition,

at that time.

Tax has the meaning given in the Trust Deed.

Tax Deferred Component means that portion (if any) of the Distributable Amount which is a “non-assessable part” as that term is defined in section 104-70 of the *Income Tax Assessment Act 1997* (Cth).

Tax Indemnity Amount:

- (a) for a Preference Unit Holder that is a party to an Umbrella Agreement, has the meaning given in that Preference Unit Holder’s Umbrella Agreement; and
- (b) for a Preference Unit Holder that is not a party to an Umbrella Agreement, has the meaning given in the Linked Umbrella Agreement for that Preference Unit Holder.

Tax Law has the meaning given in the Trust Deed.

Tax Policy means the tax policy set out in **schedule 8**, as modified from time to time under **clause 17.2(c)** or **clause 17.2(d)**.

Tax Policy Notice means a notice given by a Preference Unit Holder to the Trustee pursuant to **clause 17.3(a)**.

Tax Reviewer means an independent Tax expert appointed in accordance with **clause 17.3(b)**.

Terminal Available Date has the meaning given in the Project Management Agreement.

Third Round Defaulting Unit Holder has the meaning given in **clause 5.12(a)**.

Third Round Non-Defaulting Unit Holder has the meaning given in **clause 5.13(a)(i)**.

Total Estimated Final Trust Costs means the sum of the Estimated Final Trust Costs for each Segment comprising the Extension.

Total Original Preference Units means the total number of Preference Units on issue to all Preference Unit Holders as at the date the Estimated Final Trust Costs Statement is given by the Independent Engineer to the Trustee under **clause 9.1(a)**.

Transaction Documents means:

- (a) this Deed;
- (b) the Trust Deed;
- (c) the Project Management Agreement;
- (d) the Extension Infrastructure Lease;
- (e) the Rail Corridor Agreement;
- (f) each Umbrella Agreement;
- (g) the Extension Infrastructure Agreement; and
- (h) the Integrated Network Deed,

and **Transaction Document** means any one of them.

[Drafting note: The definition of Transaction Documents may need to be revised if there is more than one Extension Infrastructure Agreement and Integrated Network Deed.]

Transfer Consideration for each True-up Unit is the amount equal to:

- (a) the Paid Up Amount for the True-Up Unit as at the True-up Date; **less**
- (b) the Tax Deferred Component of any Distributable Amount which the Preference Unit Holder has received, or is presently entitled to receive, in respect of the True-up Unit as at the True-up Date.

Transfer Settlement Date means the date which is ten Business Days after the True-up Statement is given by the Trustee to each Preference Unit Holder under **clause 9.3(g)(ii)**.

Transfer Units has the meaning given in **clause 9.3(d)(ii)**.

True-up Date means the last day of the Month following the Month in which a Unit Holder Reconciliation Statement was given by the Trustee to all Preference Unit Holders under **clause 9.2(a)**.

True-up Statement has the meaning given in **clause 9.3(g)(ii)**.

True-up Units for a Preference Unit Holder means the number of Preference Units calculated in accordance with **clause 9.3(g)(i)**.

True-up Unit Loan Balance for a True-up Unit means the Loan Balance of the transferor of that True-up Unit divided by the Original Preference Units for that transferor as at the True-up Date.

Trust has the meaning given in the Trust Deed.

Trust Administration Costs means all costs, expenses and liabilities, other than Project Costs, Incurred by the Trustee in connection with the Trust including:

- (a) all costs and expenses payable out of the Assets, or reimbursable to the Trustee, under the Trust Deed; and
- (b) all liabilities for which the Trustee is entitled to an indemnity out of the Assets including, for the avoidance of doubt, the cost of any indemnity the Trustee is required to give the Project Manager under the Project Management Agreement,

but does not include the GST component of any costs, expenses or liabilities Incurred by the Trustee which would be Trust Administration Costs under this definition to the extent that the Trustee (or the representative member of the GST group of which the Trustee is part) is entitled to claim an input tax credit in respect of such costs, expenses or liabilities.

Trust Capital Costs means Trust Costs that the Trustee determines are capital expenditure.

Trust Capital Recoveries means Trust Recoveries that the Trustee determines are capital in nature.

Trust Costs means Project Costs and Trust Administration Costs.

[Drafting Note: For the purposes of the template SUFA documentation it is assumed that either:

- (a) *there will no expenditure on the early stages of the Extension's development, such as preliminary works or procurement of long lead items (**Early Works**) until all SUFA documents for that transaction have full force and effect; or*
- (b) *for any Early Works, expenditure will be addressed under a commercial arrangement which is separate from the SUFA documentation for the relevant extension.*

Provisions that address costs incurred before the relevant SUFA documentation takes effect may be required on a transaction-by-transaction basis if customers request, and Aurizon Network agrees, to undertake Early Works.

For each SUFA transaction there are expected to be study costs incurred prior to the establishment of the applicable SUFA unit trust. These costs are to be funded either (a) by Aurizon Network or (b) by access seekers under a 'Technical Services Agreement'. The Trust will reimburse these costs, together with interest, to Aurizon Network or the access seekers (as applicable) as a Trust Cost within a period which is shortly after the SUFA unit trust is established.]

Trust Deed means the trust deed between the Trustee and Aurizon Network (as ordinary subscriber) entitled "User Funding – Trust Deed of **[Name of Trust]**".

Trust Recoveries means amounts received by the Trustee in connection with the Extension, or the Works for the Extension, other than:

- (a) amounts paid to the Trust by Unit Holders under a Transaction Document;
- (b) the amount of any input tax credits received by the Trustee; and

(c) amounts included in Preference Income.

UHP Calculation Methodology means the methodology set out in **item 3** of **schedule 7**.

Ultimate Holding Company has the meaning given in the Corporations Act.

Umbrella Agreement means:

- (a) subject to **clause 1.6**, for a Preference Subscriber, the document set out in **annexure D** which names that Preference Subscriber as a party; and
- (b) for an entity, an agreement titled "*User-Funding – Umbrella Agreement: [insert Extension name]*" between that entity, Aurizon Network and the Trustee.

Umbrella Agreement Rights, for a Non-Defaulting Unit Holder, means the rights determined by multiplying the number of Option Units allocated to the Non-Defaulting Unit Holder under **clause 8.6(g)** or **clause 8.6(h)** (as applicable) by the Per Option Unit Umbrella Agreement Rights and then rounding down to the nearest even number of one-way train services.

Unanimous Agreement means a resolution passed by all of the Preference Unit Holders, excluding any Preference Unit Holder that is not entitled to vote on the resolution.

Unit has the meaning given in the Trust Deed.

Unit Call means a notice to a Preference Unit Holder from the Trustee specifying that Preference Unit Holder must pay a Unit Call Amount.

Unit Call Amount for a Preference Unit Holder means the Initial Unit Call Amount for that Preference Unit Holder and, subsequent to the payment of the Initial Unit Call Amount by that Preference Unit Holder, an amount calculated under **clause 6.4(a)** or **clause 6.5(g)(i)** for that Preference Unit Holder.

Unit Holder has the meaning given in the Trust Deed.

Unit Holder Loans has the meaning given in **clause 4.3(a)**.

Unit Holder Reconciliation Statement has the meaning given in **clause 9.2(a)(ii)**.

Unit Holder's Proportion for a Preference Unit Holder means:

- (a) the proportion:
 - (i) subject to **paragraph (a)(ii)** and **(b)** of this definition, as set out in **item 4.2** of **schedule 1** in respect of that Preference Unit Holder; or
 - (ii) subject to **paragraph (b)** of this definition, if **clause 5.5** applies, as recalculated in accordance with **clause 5.5**; and
- (b) at any time after Preference Units have been issued to a Preference Unit Holder, the proportion which the number of Preference Units held by that

Preference Unit Holder bears to the total number of Preference Units on issue to all Preference Unit Holders, at that time.

Unpaid Loan Calls has the meaning given in **clause 8.6(c)(iii)**.

Wilful Default has the meaning given in the Trust Deed.

Works has the meaning given in the Project Management Agreement.

Works Contract has the meaning given in the Project Management Agreement.

Zero Value Date has the meaning given in the Extension Infrastructure Lease.

1.2 Interpretation

Unless expressed to the contrary, in this Deed:

- (a) headings are for convenience only and do not affect the interpretation of this Deed;
- (b) where the day on or by which any thing is to be done is not a Business Day, it must be done on or by the preceding Business Day;
- (c) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded;
- (d) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (e) "includes" means includes without limitation;
- (f) no rule of construction will apply to the disadvantage of one Party on the basis that that Party put forward the documents comprising this Deed;
- (g) if the documents comprising this Deed contain any ambiguity, discrepancy or inconsistency, then the following order of precedence will apply to resolve that ambiguity, discrepancy or inconsistency:
 - (i) this Deed excluding the schedules; and
 - (ii) the schedules;
- (h) words in the singular include the plural and vice versa;
- (i) words importing one gender will include every gender;
- (j) references to clauses and schedules are references to clauses of, and schedules to, this Deed;
- (k) a requirement for a Party to obtain a consent or approval of another Party requires that Party to obtain the consent or approval in writing; and
- (l) a reference to:
 - (i) a person includes any company, partnership, joint venture, unincorporated association, corporation or other body corporate and a government or statutory body or authority;

- (ii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified, consolidated, re-enacted or replaced;
- (iii) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
- (iv) a right includes a benefit, remedy, discretion and power;
- (v) time is to local time in Brisbane, Queensland;
- (vi) \$ or dollars is a reference to Australian currency;
- (vii) this Deed or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
- (viii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmission; and
- (ix) a party (including a Party) includes that party's successors according to law and permitted assigns and any person to whom it novates its rights and obligations.

1.3 This Deed overrides Trust Deed

If there is any inconsistency between the provisions of this Deed and the provisions of the Trust Deed, then the provisions of this Deed prevail to the extent of inconsistency and the Trust Deed must be read and construed accordingly.

1.4 References to Aurizon Network

- (a) A reference to "Aurizon Network" in this Deed is a reference to Aurizon Network other than in respect of Aurizon Network's rights, powers, obligations and liabilities as Ordinary Unit Holder, as Aurizon Preference Unit Holder, as Preference Unit Holder or as "ordinary subscriber" prior to the issue of the Ordinary Unit to Aurizon Network.
- (b) A reference to "Ordinary Unit Holder" or "ordinary subscriber" is a reference to Aurizon Network in that capacity as Ordinary Unit Holder and "ordinary subscriber", as the context requires.

1.5 References to Subscriber

- (a) A reference to a "Subscriber" in this Deed continues to apply in respect of that Party on issue of Units to that Party.
- (b) Where the context allows, a reference to a "Unit Holder" will include a reference to a "Subscriber".

1.6 References to documents

In this Deed, a reference to a Transaction Document (other than this Deed and the Trust Deed) means, as the case requires:

- (a) prior to execution of a document, the form of that document in the applicable **annexure** (including as varied by agreement between the Parties and any other parties to the applicable Transaction Document, or otherwise in accordance with this Deed, prior to execution of that document); and
- (b) on and after execution of a document, that document as executed and in force from time to time.

1.7 Subscription Agreement

This Deed constitutes a Subscription Agreement between the Trustee and each Subscriber.

1.8 Trustee actions prior to the issue of the Units

- (a) The obligations of the Trustee which are to be performed by the Trustee prior to the issue of the Units in accordance with **clause 5.10** are performed by the Trustee in its personal capacity.
- (b) The Trustee is not liable to any Party in respect of a Claim arising out of, or in any way related to, the Trustee acting in its personal capacity prior to the issue of the Units in accordance with **clause 5.10**, or for any Loss or damages suffered in any way relating to the Trustee acting in its personal capacity prior to the issue of the Units in accordance with **clause 5.10**, except to the extent the Trustee has been guilty of fraud, Wilful Default or Gross Negligence.
- (c) Despite any other provision of this Deed, the Trustee's liability does not extend to Consequential Loss suffered by a Subscriber or any other person in relation to any act or omission arising out of, or in any way related to, the Trustee acting in its personal capacity prior to the issue of the Units in accordance with **clause 5.10**, except to the extent the Trustee has been guilty of fraud.

1.9 Trustee opinions and estimates

Where under this Deed the Trustee is required or permitted to form an opinion, hold a belief or make an estimate, the Trustee must have a reasonable basis for that opinion, belief or estimate.

2 Duration of agreement

2.1 Commencement and termination

- (a) The terms of this Deed commence on the Commencement Date and, subject to **clause 24.1**, continue until
 - (i) the occurrence of any of the following events:

- (A) this Deed is terminated by mutual agreement of all of the Parties;
- (B) all of the Preference Units are redeemed in accordance with the Trust Deed and this Deed;
- (C) the Trust is wound up under the Trust Deed and the Unit Holders have received all of their entitlements under the Trust Deed; or
- (D) the Trust is wound up prior to the Zero Value Date and other than in accordance with clause **20.1** of the Trust Deed; or
- (ii) this Deed terminates under **clause 5.8**, **clause 5.9** or **clause 5.12(c)**.
- (b) Subject to **clause 24.1**, this Deed terminates in respect of a Party which:
 - (i) is a First Round Defaulting Subscriber, in the circumstances and at the time contemplated under **clause 5.3(a)**; or
 - (ii) transfers all of that Party's Unit, on that Party ceasing to be a registered holder of any Units.

2.2 Preference Units terms of issue – redemption

- (a) The terms of issue of each Preference Unit in relation to redemption are as set out in this **clause 2.2**.
- (b) The Trustee must not redeem any Preference Units before the Zero Value Date.
- (c) At any time after the Zero Value Date:
 - (i) the Trustee may redeem all (but not some) of the Preference Units; and
 - (ii) the Trustee must redeem all of the Preference Units if so directed by the Ordinary Unit Holder.
- (d) The Redemption Price for each Preference Unit is the sum of:
 - (i) nil consideration per Preference Unit; and
 - (ii) the unpaid amount of any Distributable Amount or Distributable Sum (if any, as applicable) attributable to that Preference Unit at the time of redemption.
- (e) Each Preference Subscriber acknowledges that nil consideration per Preference Unit represents the fair value of that Preference Subscriber's Preference Units at the time of redemption, on the basis that redemption can only occur after the Zero Value Date.
- (f) On redemption of a Preference Unit Holder's Preference Units, the Trustee must repay to that Preference Unit Holder any outstanding Unit Holder Loan of that Preference Unit Holder.

2.3 Termination without prejudice to rights

Termination of this Deed pursuant to **clause 2.1** is without prejudice to the rights of any Party against any other Party arising from any breach of this Deed or any Claim otherwise arising on or prior to the date of termination.

2.4 Material Adverse Change

- (a) If the Trustee becomes aware of circumstances that may constitute a Material Adverse Change, including as a result of a written submission by one or more Unit Holders, then:
 - (i) the Trustee must, within a reasonable time, give the Unit Holders notice of that fact and provide reasonable particulars; and
 - (ii) consider whether a Material Adverse Change has occurred or is likely to occur and in doing so, consider any:
 - (A) submission made by Unit Holders in writing; and
 - (B) advice obtained by the Trustee from external tax advisers.
- (b) If, in the Trustee's opinion (acting reasonably), a Material Adverse Change occurs, or is reasonably likely to occur, then the Trustee will notify the Unit Holders of that fact and the Parties must negotiate in good faith to agree amendments to the Transaction Documents as may be required to put in place an arrangement that mitigates the risk and any adverse consequences of the Material Adverse Change and substantially achieves the commercial and financial outcomes of the Transaction Documents that would have applied in the absence of the Material Adverse Change.

2.5 Termination of the Trust other than in accordance with Transaction Documents

If the Trust is wound up prior to the Zero Value Date other than in accordance with clause [20.1] of the Trust Deed, then the Parties must negotiate in good faith to agree a process to address this matter, provided that in no circumstances can any Party be required to agree a process which results in:

- (a) a capital or lump sum payment by it; or
- (b) any disadvantage (financial, Tax or otherwise) to Aurizon Network, the Head Company or the Ordinary Unit Holder (including, taking into account any amount payable to the Trustee under an arrangement referred to in clause [3.6] of the Extension Infrastructure Lease).

2.6 Zero Value Date

On and from the Zero Value Date, the Preference Unit Holders have no further rights (other than the rights granted to the Preference Unit Holders under **clause 2.2**) and no further obligations or liabilities under this Deed or the Trust Deed, other than those obligations and liabilities:

- (a) expressly referred to in **clause 24.1**; or

- (b) arising from any breach of this Deed or any Claim otherwise arising prior to the Zero Value Date.

3 Guarantee by Aurizon Network

3.1 Application

This **clause 3**, and the guarantee and indemnity given by Aurizon Network under it, applies:

- (a) while the Trustee is a Related Body Corporate of Aurizon Network (**Related**) and is the trustee of the Trust;
- (b) where the Trustee ceases to be Related, after the Trustee has ceased to be Related, but only in respect of acts or omissions of, or obligations incurred by, the Trustee whilst it was Related; and
- (c) where the Trustee is Related but ceases to be the trustee of the Trust, after the Trustee has ceased to be the trustee of the Trust, but only in respect of acts or omissions of, or obligations incurred by, the Trustee whilst acting as trustee of the Trust.

3.2 Guarantee and indemnity

- (a) Subject to this **clause 3**, Aurizon Network unconditionally and irrevocably guarantees to each Preference Unit Holder the due and punctual performance by the Trustee of the Trustee's obligations under the Trust Deed and this Deed.
- (b) Subject to this **clause 3**, as a separate undertaking, Aurizon Network unconditionally and irrevocably indemnifies each Preference Unit Holder against all Loss the Preference Unit Holder suffers or incurs to the extent that the Trustee is, or would be, liable to the Preference Unit Holder in respect of that Loss.
- (c) Aurizon Network's liability under this **clause 3.2** is limited to the liability which Aurizon Network would have had if Aurizon Network were the trustee of the Trust in place of the Trustee and:
 - (i) was entitled to exercise all the rights, benefits and defences available to the Trustee; and
 - (ii) had the benefit of any exclusions or limitations of liability which impact the liability of the Trustee.
- (d) The guarantee in **clause 3.2(a)** and the indemnity in **clause 3.2(b)** will not extend to any Consequential Loss suffered or claimed by any Preference Unit Holder.

3.3 Liability not affected

- (a) Aurizon Network's liability under this **clause 3** is absolute and is not affected by anything which might otherwise operate to release or exonerate Aurizon Network in whole or in part including:

- (i) the grant to the Trustee of any time, waiver or other indulgence or concession;
 - (ii) any transaction or arrangement that may take place between the Trustee, the Preference Unit Holders, Aurizon Network or any other person;
 - (iii) the Preference Unit Holders exercising or not exercising any other security or any of the rights conferred on them by law or under this Deed, the Trust Deed or any other agreement or failing to take security;
 - (iv) any discharge or release of any obligation of the Trustee, any other guarantor or any other person;
 - (v) any insolvency, legal limitation, incapacity, disability, reorganisation, change in condition, nature or status or other circumstance related to the Trustee;
 - (vi) the Trustee's obligations, or any part of them, becoming wholly or partially illegal, void, voidable, or unenforceable;
 - (vii) failure by the Preference Unit Holders to give notice to Aurizon Network of any default by the Trustee under this Deed or the Trust Deed;
 - (viii) any laches, acquiescence, delay, acts or omissions on the part of the Preference Unit Holders;
 - (ix) any variation or novation of a right of the Preference Unit Holders; and
 - (x) any alteration of this Deed, the Trust Deed or any agreement entered into in the performance of this Deed or the Trust Deed, with or without the consent of Aurizon Network.
- (b) The guarantee and indemnity under this **clause 3** is a continuing guarantee and indemnity.
 - (c) In addition to Aurizon Network's obligations as guarantor, Aurizon Network agrees that any obligations which may not be enforceable against it as guarantor will be enforceable against it as if it were the principal obligor in respect of the obligation.
 - (d) The guarantee and indemnity under this **clause 3** may be enforced against Aurizon Network without the Preference Unit Holders being required to exhaust any remedy they may have against the Trustee under this Deed and the Trust Deed.
 - (e) If a claim that payment or transfer to the Preference Unit Holders in connection with this Deed or the Trust Deed is void or voidable under laws relating to insolvency or protection of creditors is upheld, conceded or compromised, then the Preference Unit Holders are entitled immediately as against Aurizon Network to the rights to which they would

have been entitled under this **clause 3** if all or part (as applicable) of the payment or transfer had not occurred.

- (f) Aurizon Network must not take the benefit of any right against the Trustee or any other person in respect of amounts paid under this guarantee and indemnity, or Claim or exercise any right to any payment against the Trustee, without the consent of the Preference Unit Holders, such consent not to be unreasonably withheld or given subject to unreasonable conditions.
- (g) If the Trustee fails to perform any of its obligations under this Deed or the Trust Deed, then Aurizon Network agrees to pay or reimburse the Preference Unit Holders on demand for all the Preference Unit Holders' costs, charges and expenses (including legal costs and expenses on a full indemnity basis or solicitor and own client basis, whichever is the higher) in connection with enforcing the Preference Unit Holders' rights under this **clause 3**.

4 Application and Application Price

4.1 Application by Preference Subscribers

Each Preference Subscriber irrevocably:

- (a) applies for the number of Preference Units set out in respect of that Preference Subscriber in **item 4.2** of **schedule 1** as applicable at the time the Trustee issues the Units;
- (b) agrees to pay the Application Price for each of those Preference Units by instalments in accordance with the Trust Deed and this Deed; and
- (c) acknowledges that the Preference Units to be issued to it will be issued as Partly Paid Units at an Application Price of **[\$1.00]**.

4.2 Acceptance of applications by Preference Subscribers

The Trustee accepts each Preference Subscriber's application and, subject to **clause 5**, must issue Partly Paid Units to each Preference Subscriber in accordance with the Trust Deed and this Deed, provided that the Preference Subscriber pays the Preference Subscriber's Initial Subscription Amount not later than five Business Days after the Commencement Date.

4.3 Unit Holder Loans

- (a) Each Preference Subscriber must advance loans to the Trustee as provided in this Deed (**Unit Holder Loans**).
- (b) Unit Holder Loans:
 - (i) do not bear interest; and
 - (ii) are repayable in accordance with this Deed.

4.4 Application by Aurizon Network

Aurizon Network (as ordinary subscriber) irrevocably:

- (a) applies for one Ordinary Unit;
- (b) agrees to pay the Application Price for the Ordinary Unit; and
- (c) acknowledges that the Ordinary Unit will be issued to it as a Fully Paid Unit at an Application Price of \$1.00.

4.5 Acceptance of application by Aurizon Network

The Trustee accepts Aurizon Network's application (as ordinary subscriber), and will issue one Ordinary Unit to Aurizon Network in accordance with the Trust Deed and this Deed, subject to Aurizon Network (as ordinary subscriber) paying the full amount of the Application Price for the Ordinary Unit.

4.6 Trustee to notify execution

The Trustee must promptly notify each Party of the date on which:

- (a) this Deed has been executed and delivered to the Trustee by all Parties named in this Deed; and
- (b) the applicable Umbrella Agreement has been executed and delivered to the Trustee by each Preference Subscribers (other than a Preference Subscriber which on the issue of Preference Units will be Aurizon Preference Unit Holder).

5 Transaction commitment process

[Drafting Note: *The arrangement for the transition from entry into the Unit Holders Deed to the funding of the Trust (**Transition**) is relatively simple, on the basis that this is a template document. The process in this **clause 5** may require up to 40 Business Days after the execution of the Unit Holders Deed before the Transition is completed.*

Any more complex Transition arrangement, which calls for measures such as re-scoping or the replacement of defaulting Preference Subscribers, may result in material additional delay between: (1) the point at which the transaction is priced and the target availability dates are set, and (2) the formation of the Trust and/or execution of the remaining Transaction Documents.

This additional delay may require consequential changes in the transaction pricing and target availability dates (eg because the wet season will require program adjustments, for which reason termination of the Unit Holders Deed and the negotiation of a replacement agreement are likely to be required).]

5.1 Delivery of Security Documentation

- (a) For the purposes of securing the performance of its obligations under the Transaction Documents, each Preference Subscriber must execute and deliver to the Trustee, within ten Business Days after the Commencement Date (**Security Delivery Date**), the Security Documentation creating in favour of the Trustee a charge over:
 - (i) all present and future Preference Units of that Preference Subscriber;

- (ii) the Loan Balance of that Preference Subscriber from time to time; and
 - (iii) in the case of a Preference Subscriber, other than a Aurizon Network Preference Unit Holder, all present and future rights of that Preference Subscriber under the Umbrella Agreement which has been executed by that Preference Subscriber.
- (b) Each Preference Subscriber must, as soon as practicable (but in any event no later than five Business Days) after the execution of the Security Documentation:
 - (i) register the Security Documentation, or file or record such other notices or documents relating to the Security Documentation in each jurisdiction where such registration, filing or recording may be required, to perfect the security created by the Security Documentation and to protect further the rights of the Trustee under the Security Documentation; and
 - (ii) provide evidence of such filing, registration and/or recording to the Trustee.
- (c) On receipt of the Security Documentation from a Preference Subscriber in accordance with this **clause 5.1**, the Trustee must promptly notify all other Parties of the receipt of that Security Documentation.

5.2 Preference Subscribers to provide Bank Guarantees

- (a) This **clause 5.2** only applies to a Preference Subscriber if an Initial Bank Guarantee Amount is specified in **item 4.2** of **schedule 1** for that Preference Subscriber.
- (b) On or before the Security Delivery Date, each Preference Subscriber to which this **clause 5.2** applies, must deliver to the Trustee a Bank Guarantee for that Preference Subscriber's Initial Bank Guarantee Amount.
- (c) Promptly (and in any event no later than two Business Days) after the Security Delivery Date, the Trustee must notify all Parties of details of:
 - (i) each Preference Subscriber which delivered to the Trustee a Bank Guarantee by the Security Delivery Date;
 - (ii) the Initial Bank Guarantee Amount of each Bank Guarantee delivered by each Preference Subscriber to the Trustee; and
 - (iii) the amount guaranteed under a Bank Guarantee delivered by a Preference Subscriber to the Trustee which is less than the Initial Bank Guarantee Amount of that Preference Subscriber.

5.3 Termination for non-provision of Bank Guarantee and/or Security Documentation

(a) If:

- (i) a Preference Subscriber to which **clause 5.2** applies does not deliver to the Trustee a Bank Guarantee in accordance with **clause 5.2** by the Security Delivery Date; or
- (ii) a Preference Subscriber does not deliver to the Trustee the executed Security Documentation in accordance with **clause 5.1** by the Security Delivery Date,

then:

- (iii) this Deed (other than this **clause 5.3** and the provisions which survive termination of this Deed under **clause 24.1**) automatically terminates in respect of that Preference Subscriber (**First Round Defaulting Subscriber**) and (for the avoidance of doubt):
 - (A) the First Round Defaulting Subscriber ceases to be a Preference Subscriber under this Deed;
 - (B) no Preference Units will be issued to the First Round Defaulting Subscriber; and
 - (C) the First Round Defaulting Subscriber's Umbrella Agreement ceases to be a Transaction Document; and
- (iv) the Trustee must promptly after the Security Delivery Date:
 - (A) calculate the Early Termination Amount payable by the First Round Defaulting Subscriber to each remaining Preference Subscriber that is not a First Round Defaulting Subscriber (**First Round Non-Defaulting Subscriber**) in accordance with the following formula:

[Drafting Note: The amount to be inserted in the definition of "ILC_{FRDS}" will be determined on a transaction-by-transaction basis and is designed to be a genuine pre-estimate of the loss that would be suffered by the other Preference Subscribers following default by a Preference Subscriber.]

$$ETA_{FRNDS} = ILC_{FRDS} \times UHP_{FRNDS} / Total\ UHP_{FRNDS}$$

where:

ETA_{FRNDS} = The Early Termination Amount payable by the First Round Defaulting Subscriber to the relevant First Round Non-Defaulting Subscriber

ILC_{FRDS} = \$[insert]

UHP_{FRNDS} = The relevant First Round Non-Defaulting Subscriber's Unit Holder's Proportion as at the Commencement Date

Total UHP_{FRNDS} = The sum of the Unit Holder's Proportions for all of the First Round Non-Defaulting Subscribers as at the Commencement Date; and

- (B) give a notice (**ETA Notice**) to the First Round Defaulting Subscriber and each First Round Non-Defaulting Subscriber specifying the Early Termination Amount which is payable by the First Round Defaulting Subscriber to each First Round Non-Defaulting Subscriber as calculated in accordance with **clause 5.3(a)(iv)(A)**.
- (b) The First Round Defaulting Subscriber must, within ten Business Days after the Trustee gives the First Round Defaulting Subscriber an ETA Notice, pay to each First Round Non-Defaulting Subscriber, as a liquidated debt due, the Early Termination Amount which is payable to that First Round Non-Defaulting Subscriber as specified in the ETA Notice.
- (c) Except for the amount payable under **clause 5.3(b)**, any interest accruing on that amount under **clause 5.14** and any other provisions of this Deed which survive termination under **clause 24.1**:
- (i) the Trustee and the First Round Defaulting Subscriber have no further liability to each other in connection with the termination of that Preference Subscriber's participation pursuant to **clause 5.3(a)(iii)**; and
- (ii) the First Round Non-Defaulting Subscribers have no further Claim against the First Round Defaulting Subscriber in respect of any Loss (including Consequential Loss) arising from the First Round Defaulting Subscriber's failure to provide the Bank Guarantee and/or Security Documentation in accordance with **clause 5.1** or **clause 5.2** (as applicable).
- (d) Each Preference Subscriber acknowledges that the Early Termination Amount payable by the First Round Defaulting Subscriber to each First Round Non-Defaulting Subscriber under **clause 5.3(b)** is a genuine pre-estimate of the Loss to each First Round Non-Defaulting Subscriber in the circumstance in which the Early Termination Amount is payable and constitutes not more than fair and reasonable compensation for the occurrence of such circumstance.

5.4 Removal of Segment if Bank Guarantee and/or Security Documentation not provided

If:

- (a) there are one or more First Round Defaulting Subscribers; and
- (b) the First Round Defaulting Subscriber(s) is or are (as applicable) the only Preference Subscribers for a Segment (as specified in **item 1 of schedule 1** as at the Commencement Date),

then immediately after the Security Delivery Date, that Segment will cease to be a Segment for the purposes of this Deed and the other Transaction Documents.

5.5 Recalculation of Unit Holder's Proportions if Bank Guarantee and/or Security Documentation not provided

If there are one or more First Round Defaulting Subscribers, then within five Business Days after the Security Delivery Date the Trustee must:

- (a) where **clause 5.4** applies, calculate the revised Target Trust Capital Cost; and
- (b) calculate for each First Round Non-Defaulting Subscriber, the Preference Subscriber's:
 - (i) revised Unit Holder's Proportion (calculated in accordance with the UHP Calculation Methodology);
 - (ii) revised number of Preference Units being the Preference Subscriber's Unit Holder's Proportion of the Target Trust Capital Cost (as revised, if applicable) multiplied by 1.3 and divided by the Application Price per Preference Unit;
 - (iii) revised Initial Subscription Amount (being the number of the Preference Subscriber's Preference Units multiplied by $[\$1 \times 10^{-6}]$);
 - (iv) revised Initial Loan Contribution (being the Preference Subscriber's revised Unit Holder's Proportion of the Target Trust Capital Cost (as revised, if applicable) multiplied by 0.10); and
 - (v) if **clause 5.2** applies to the Preference Subscriber, revised Initial Bank Guarantee Amount (calculated by increasing the Initial Bank Guarantee Amount by the percentage which is equivalent to the percentage increase in the number of Preference Units for that Preference Subscriber after the revised number of Preference Units has been calculated in accordance with **clause 5.5(b)(ii)**).

5.6 Reallocation Notice

If there are one or more First Round Defaulting Subscribers, then within five Business Days after the Security Delivery Date the Trustee must give to each other Party a notice (**Reallocation Notice**):

- (a) setting out, for each First Round Non-Defaulting Subscriber, that Subscriber's:

- (i) revised Unit Holder's Proportion;
- (ii) revised number of Preference Units;
- (iii) revised Initial Subscription Amount;
- (iv) revised Initial Loan Contribution; and
- (v) if **clause 5.2** applies to the Preference Subscriber, revised Initial Bank Guarantee Amount,

and the revised Target Trust Capital Cost (if applicable), each as calculated under **clause 5.5**, including reasonable details of each calculation; and

(b) attaching:

- (i) a revised version of **schedule 1** (which will be taken to replace the then existing **schedule 1**), updated by the Trustee to:
 - (A) delete the details relating to any First Round Defaulting Subscribers;
 - (B) specify for each First Round Non-Defaulting Subscriber, the Preference Subscriber's revised Unit Holder's Proportion, number of Preference Units, Initial Subscription Amount, Initial Loan Contribution and Initial Bank Guarantee Amount (if applicable), each as calculated under **clause 5.5**;
 - (C) if **clause 5.4** applies, delete from **item 1** of **schedule 1** each Segment (**Deleted Segment**) which has ceased to be a Segment in accordance with **clause 5.4**; and
 - (D) if **clause 5.4** applies, revise the description of the Extension in **item 1.1** of **schedule 1** to the extent necessary as a consequence of the deletion of the Deleted Segment(s); and
- (ii) a revised **schedule 7** (which will be taken to replace the then existing **schedule 7**), updated by the Trustee to:
 - (A) for each Segment for which a First Round Defaulting Subscriber is a "Segment Unit Holder" (as defined in **item 1.1** of **schedule 7**), delete from the table in **item 2** of **schedule 7** for that Segment the row relating to that First Round Defaulting Subscriber (so that, for the avoidance of doubt, the First Round Defaulting Subscriber will not be specified as a "Segment Unit Holder" for that Segment and will not have a "Unit Holder's Capacity" specified for that Segment in **item 2** of **schedule 7**); and
 - (B) if **clause 5.4** applies, delete from **item 2** of **schedule 7** each Deleted Segment which has ceased to be a Segment in accordance with **clause 5.4**; and
- (iii) if **clause 5.4** applies, a revised version of the form of the Project Management Agreement set out in **annexure B** (which will be

taken to replace the then existing **annexure B**), updated by the Trustee to:

- (A) delete the Scope of Works for the Deleted Segment(s) from schedule 2 of the Project Management Agreement; and
- (B) delete the Target Cost, “Target Available Date” and “Weather Delay Period” (each as defined in the Project Management Agreement) for the Deleted Segment(s) from schedule 3 of the Project Management Agreement.

5.7 First Round Non-Defaulting Subscribers’ rights and obligations on receipt of Reallocation Notice

- (a) If the number of Preference Units allocated to any First Round Non-Defaulting Subscriber increases by more than [zero%] on a revision under **clauses 5.5** and **5.6**, then that Preference Subscriber may, within ten Business Days after receiving the Reallocation Notice, notify the Trustee that the Preference Subscriber wishes to terminate participation in this Deed.

[Drafting note: The percentage in clause 5.7(a) is to be agreed on a transaction-by-transaction basis. If the parties cannot agree this percentage or consider that it should be zero, then this clause 5.7 will need to be amended as necessary.]

- (b) If:
 - (i) the number of Preference Units allocated to each First Round Non-Defaulting Subscriber increases by no more than [zero%]; or
 - (ii) each of the First Round Non-Defaulting Subscribers whose allocation of Preference Units increases by more than [zero%] does not give a notice to the Trustee under, and within the time required by, **clause 5.7(a)**,

then each First Round Non-Defaulting Subscriber:

- (iii) continues to be bound by this Deed;
- (iv) must pay Loan Calls and Unit Calls in accordance with this Deed;
- (v) if **clause 5.2** applies to the Preference Subscriber and the amount of the revised Initial Bank Guarantee Amount exceeds the Initial Bank Guarantee Amount as at the Commencement Date, must, within five Business Days after the Trustee gives the Preference Subscriber the Reallocation Notice, deliver to the Trustee:
 - (A) a replacement Bank Guarantee for the Subscriber’s revised Initial Bank Guarantee Amount as specified in the Reallocation Notice (in exchange for the initial Bank Guarantee delivered by the Preference Subscriber to the Trustee under **clause 5.2(b)**); or
 - (B) an additional Bank Guarantee for the difference between the Preference Subscriber’s Initial Bank Guarantee Amount as

- at the Commencement Date and the Preference Subscriber's revised Initial Bank Guarantee Amount; and
- (vi) if **clause 5.2** applies to the Preference Subscriber and the amount of the revised Initial Bank Guarantee Amount is less than the Initial Bank Guarantee Amount as at the Commencement Date, may deliver to the Trustee a replacement Bank Guarantee for the Preference Subscriber's revised Initial Bank Guarantee Amount as specified in the Reallocation Notice (in exchange for the initial Bank Guarantee delivered by the Preference Subscriber to the Trustee under **clause 5.2(b)**).

5.8 Termination on withdrawal of First Round Non-Defaulting Subscriber

- (a) If **clause 5.7(a)** applies to a First Round Non-Defaulting Subscriber and that Preference Subscriber notifies the Trustee under, and within the time required by, **clause 5.7(a)** that the Preference Subscriber wishes to terminate participation in this Deed, then the Trustee must promptly terminate this Deed by notice in writing to each other Party.
- (b) If the Trustee terminates this Deed under **clause 5.8(a)**:
 - (i) no Party will have any liability (other than those obligations and liabilities expressly referred to in **clause 24.1**) to any other Party in connection with that termination; and
 - (ii) the Trustee will not issue any Preference Units to Preference Subscribers, and must return the Initial Subscription Amounts.

5.9 Termination for failure to provide increase in Bank Guarantee

- (a) If:
 - (i) **clause 5.7(b)(v)** applies in respect of a First Round Non-Defaulting Subscriber; and
 - (ii) that First Round Non-Defaulting Subscriber (**Second Round Defaulting Subscriber**) does not deliver an additional or replacement Bank Guarantee to the Trustee under, and within the time required by, **clause 5.7(b)(v)**,then the Trustee must promptly terminate this Deed by notice to each other Party.
- (b) If this Deed terminates under **clause 5.9(a)**:
 - (i) the Trustee will not issue any Preference Units to Preference Subscribers, and must return the Initial Subscription Amounts;
 - (ii) the Trustee must:
 - (A) calculate the Early Termination Amount payable by the Second Round Defaulting Subscriber to each First Round Non-Defaulting Subscriber that is not a Second Round

Defaulting Subscriber (**Second Round Non-Defaulting Subscriber**) in accordance with the following formula:

[Drafting Note: The amount to be inserted in “ ILC_{SRDS} ” will be determined on a transaction-by-transaction basis and is designed to be a genuine pre-estimate of the loss that would be suffered by the other Preference Subscribers following default by a Subscriber.]

$$ETA_{SRNDS} = ILC_{SRDS} \times UHP_{SRNDS} / Total\ UHP_{SRNDS}$$

where:

ETA_{SRNDS} = The Early Termination Amount payable by the Second Round Defaulting Subscriber to the relevant Second Round Non-Defaulting Subscriber

ILC_{SRDS} = \$[insert]

UHP_{SRNDS} = The relevant Second Round Non-Defaulting Subscriber's Unit Holder's Proportion as revised under **clauses 5.5 and 5.6**

Total UHP_{SRNDS} = The sum of the Unit Holder's Proportions for all of the Second Round Non-Defaulting Subscribers each as revised under **clauses 5.5 and 5.6**; and

- (B) give a notice (**ETA Notice**) to the Second Round Defaulting Subscriber and each Second Round Non-Defaulting Subscriber specifying the Early Termination Amount which is payable by the Second Round Defaulting Subscriber to each Second Round Non-Defaulting Subscriber as calculated in accordance with **clause 5.9(b)(ii)(A)**;
- (iii) the Second Round Defaulting Subscriber must, within ten Business Days after the Trustee gives the Second Round Defaulting Subscriber an ETA Notice, pay to each Second Round Non-Defaulting Subscriber, as a liquidated debt due, the Early Termination Amount which is payable to that Second Round Non-Defaulting Subscriber as specified in the ETA Notice;
- (iv) except for the amount payable under **clause 5.9(b)(iii)** and any interest accruing on that amount under **clause 5.14** and any other provisions of this Deed which survive termination under **clause 24.1**:
 - (A) the Trustee and the Second Round Defaulting Subscriber have no further liability to each other in connection with the termination of this Deed under **clause 5.9(a)**; and

- (B) the Second Round Non-Defaulting Subscribers have no further Claim against the Second Round Defaulting Subscriber in respect of any Loss (including Consequential Loss) arising from:
 - (1) the Second Round Defaulting Subscriber's failure to provide the additional or replacement Bank Guarantee under **clause 5.7(b)(v)**; or
 - (2) the termination of this Deed under **clause 5.9(a)**; and
- (v) each Preference Subscriber acknowledges that the Early Termination Amount payable by the Second Round Defaulting Subscriber to each Second Round Non-Defaulting Subscriber under **clause 5.9(b)(iii)** is a genuine pre-estimate of the Loss to each Second Round Non-Defaulting Subscriber in the circumstance in which the Early Termination Amount is payable and constitutes not more than fair and reasonable compensation for the occurrence of such circumstance.

5.10 Issue of Units

The Trustee must, within five Business Days after the Security Delivery Date or, if **clause 5.2** applies, the date on which the last additional or replacement Bank Guarantee that is required under **clause 5.7(b)(v)** is delivered to the Trustee within the period specified in **clause 5.7(b)(v)**:

- (a) simultaneously issue the Ordinary Unit to Aurizon Network and all Preference Units to the Preference Subscribers, and apply the Initial Subscription Amount paid by each Preference Unit Holder in paying up that Preference Unit Holder's Preference Units, by the same amount for each Preference Unit; and
- (b) on issue of the Preference Units, Call from each Preference Unit Holder the Initial Loan Contribution in respect of that Preference Unit Holder, by notice (**Initial Call Notice**).

5.11 Initial Loan Contribution Call

Each Preference Unit Holder must pay that Preference Unit Holder's Initial Loan Contribution within five Business Days after the Initial Call Notice is given to that Preference Unit Holder in accordance with **clause 5.10**.

5.12 Consequences if not all Initial Loan Contributions received

- (a) If a Preference Unit Holder (**Third Round Defaulting Unit Holder**) does not pay its Initial Loan Contribution within the time prescribed in **clause 5.11** or such later date as the Trustee determines, then the Trustee may decide to repay each Preference Unit Holder (that is not a Third Round Defaulting Unit Holder) that Preference Unit Holder's Initial Loan Contribution within ten Business Days after the date the Initial Loan Contributions were due.

- (b) The Trustee acknowledges that payment of an Initial Loan Contribution on demand by the Trustee under a Bank Guarantee is accepted as payment of that Initial Loan Contribution, on the date the payment is received from the Issuer.
- (c) If the Trustee repays the Initial Loan Contributions under **clause 5.12(a)**:
 - (i) the Trustee must not make any Unit Calls on Preference Unit Holders and their liability in respect of Unit Calls is extinguished; and
 - (ii) this Deed terminates (other than those obligations and liabilities expressly referred to in **clauses 5.13 and 24.1**).

5.13 Termination for failure to pay Initial Loan Contribution

If this Deed terminates under **clause 5.12(c)(ii)**:

- (a) the Trustee must:
 - (i) calculate the Early Termination Amount payable by each Third Round Defaulting Unit Holder to each Second Round Non-Defaulting Subscriber that is not a Third Round Defaulting Unit Holder (**Third Round Non-Defaulting Unit Holder**) in accordance with the following formula:

[Drafting Note: The amount to be inserted in “ ILC_{TRDS} ” will be determined on a transaction-by-transaction basis and is designed to be a genuine pre-estimate of the loss that would be suffered by the other Preference Subscribers following default by a Subscriber.]

$$ETA_{TRNDS} = ILC_{TRDS} \times UHP_{TRNDS} / Total\ UHP_{TRNDS}$$

where:

ETA_{TRNDS} = The Early Termination Amount payable by a Third Round Defaulting Unit Holder to the relevant Third Round Non-Defaulting Unit Holder

ILC_{TRDS} = [insert]

UHP_{TRNDS} = The relevant Third Round Non-Defaulting Unit Holder’s Unit Holder’s Proportion as revised under **clauses 5.5 and 5.6**

Total UHP_{SRNDS} = The sum of the Unit Holder’s Proportions for all of the Third Round Non-Defaulting Unit Holders each as revised under **clauses 5.5 and 5.6**; and

- (ii) give a notice (**ETA Notice**) to the Third Round Defaulting Unit Holder and each Third Round Non-Defaulting Unit Holder specifying the Early Termination Amount which is payable by the Third Round Defaulting Unit Holder to each Third Round Non-

Defaulting Unit Holder as calculated in accordance with **clause 5.13(a)(i)**;

- (b) the Third Round Defaulting Unit Holder must, within ten Business Days after the Trustee gives the Third Round Defaulting Unit Holder an ETA Notice, pay to each Third Round Non-Defaulting Unit Holder, as a liquidated debt due, the Early Termination Amount which is payable to that Third Round Non-Defaulting Unit Holder as specified in the ETA Notice;
- (c) except for the amount payable under **clause 5.13(b)** and any interest accruing on that amount under **clause 5.14** and any other provisions of this Deed which survive termination under **clause 24.1**:
 - (i) the Trustee and the Third Round Defaulting Unit Holder have no further liability to each other in connection with the termination of this Deed under **clause 5.12(c)(ii)**; and
 - (ii) the Third Round Non-Defaulting Unit Holders have no further Claim against the Third Round Defaulting Unit Holder in respect of any Loss (including Consequential Loss) arising from:
 - (A) the Third Round Defaulting Unit Holder's failure to pay the Initial Loan Contribution; or
 - (B) the termination of this Deed under **clause 5.12(c)(ii)**; and
- (d) each Preference Unit Holder acknowledges that the Early Termination Amount payable by the Third Round Defaulting Unit Holder to each Third Round Non-Defaulting Unit Holder under **clause 5.13(b)** is a genuine pre-estimate of the Loss to each Third Round Non-Defaulting Unit Holder in the circumstance in which the Early Termination Amount is payable and constitutes not more than fair and reasonable compensation for the occurrence of such circumstance.

5.14 Interest on Early Termination Amounts

- (a) If a First Round Defaulting Subscriber, Second Round Defaulting Subscriber or Third Round Defaulting Unit Holder does not pay the full amount of an Early Termination Amount payable to any First Round Non-Defaulting Subscriber, Second Round Non-Defaulting Subscriber or Third Round Non-Defaulting Unit Holder (as applicable) on or before the due date for payment, then that First Round Defaulting Subscriber, Second Round Defaulting Subscriber or Third Round Defaulting Unit Holder (as applicable) must pay interest on the amount not paid.
- (b) Interest will accrue on the amount not paid from the due date for payment until that amount, together with the interest thereon, has been paid.
- (c) Interest will be calculated at the Interest Rate, and any interest accrued but unpaid at the end of each Month will be capitalised and will thereafter itself bear interest.

5.15 Initial Unit Call and repayment of Initial Loan Contribution

- (a) Unless this Deed terminates under **clauses 5.8(a), 5.9(a) or 5.12(c)(ii)**, the Trustee must, within seven Business Days after the end of the Month in which the Initial Loan Contributions are Called:
 - (i) give to each Preference Unit Holder a Call Statement (**Initial Call Statement**); and
 - (ii) include in that Initial Call Statement a Call (**Initial Unit Call**) for that Preference Unit Holder's Initial Unit Call Amount.
- (b) The Trustee must, on a date determined by the Trustee, which must not be later than the last Business Day of the Month in which the Initial Unit Call is made, repay each Preference Unit Holder's Initial Loan Contribution.
- (c) Each Preference Unit Holder directs the Trustee to apply any repayment of that Preference Unit Holder's Initial Loan Contribution in paying up the Unit Holder's Preference Units for the amount of the Initial Unit Call.
- (d) The Trustee must apply the repayment of each Preference Unit Holder's Initial Loan Contribution by paying up all of its Preference Units at the same time, by the same amount for each Unit.

5.16 Execution of Transaction Documents

- (a) The Trustee must execute:
 - (i) the Umbrella Agreement for each Preference Unit Holder (other than an Aurizon Preference Unit Holder);
 - (ii) the Project Management Agreement;
 - (iii) the Rail Corridor Agreement;
 - (iv) the Extension Infrastructure Lease;
 - (v) the Extension Infrastructure Agreement; and
 - (vi) the Integrated Network Deed,immediately after the Trustee applies the Initial Unit Call Amount for each Preference Unit Holder in paying that Preference Unit Holder's Preference Units, and promptly deliver to Aurizon Network each document referred to in this **clause 5.16(a)**.
- (b) Aurizon Network must execute:
 - (i) the Umbrella Agreement for each Preference Unit Holder (other than an Aurizon Preference Unit Holder);
 - (ii) the Project Management Agreement;
 - (iii) the Rail Corridor Agreement;
 - (iv) the Extension Infrastructure Lease;
 - (v) the Extension Infrastructure Agreement; and

- (vi) the Integrated Network Deed,
immediately after the Trustee executes and delivers them to Aurizon Network under **clause 5.16(a)**.
- (c) For the avoidance of doubt, if this Deed terminates under **clauses 5.8(a), 5.9(a) or 5.12(c)(ii)**, neither the Trustee nor Aurizon Network is required to execute the other Transaction Documents and the other Transaction Documents will not come into force or effect.

6 Loan Calls and Unit Calls after initial Calls

6.1 Loan Contributions during Construction Period

- (a) The Trustee must calculate the Liquidity Requirement for each Month after the Month in which the Initial Unit Call is made until (and including) the last Month of the Construction Period.
- (b) The Trustee must calculate the amount of each Preference Unit Holder's Loan Contribution for each Month referred to in **clause 6.1(a)** as follows:
 - (i) if the Liquidity Requirement for the Month is a positive amount, the Loan Contribution for each Preference Unit Holder for that Month is the Unit Holder's Proportion of the Liquidity Requirement; and
 - (ii) if the Liquidity Requirement for the Month is nil or a negative amount, the Loan Contribution for each Preference Unit Holder for that Month is \$0.00.

6.2 Call Statements

Within seven Business Days after the start of each Month referred to in **clause 6.1(a)**, the Trustee must give to each Preference Unit Holder a Call Statement for that Month and include in the Call Statement a Loan Call for the amount of the Loan Contribution for the Preference Unit Holder for that Month.

6.3 Emergency Loan Calls

- (a) If, at any time, the Trustee is, or is likely to be, required to take urgent or emergency action which requires funds in excess of the funds then available to the Trustee, and which have not been provided for in the most recent Loan Call made under **clause 6.2**, then the Trustee may issue an emergency Loan Call to each Preference Unit Holder stating:
 - (i) the amount of funds required;
 - (ii) the circumstances, in reasonable detail, giving rise to the necessity for obtaining such funds; and
 - (iii) the Loan Contribution from the Preference Unit Holder, being that Unit Holder's Proportion of the amount of funds required.
- (b) Each Preference Unit Holder must pay that Preference Unit Holder's Loan Contribution as soon as practicable (and in any event within five Business Days) after receipt of an emergency Loan Call made by the Trustee under **clause 6.3(a)**.

- (c) For the avoidance of doubt, the provisions of this Deed in respect of Loan Calls apply to emergency Loan Calls made under **clause 6.3(a)**.

6.4 Unit Calls during Construction Period

- (a) In the Call Statement for a Preference Unit Holder for each December and June after the Month in which the Initial Unit Call is made until (and including) the last Month of the Construction Period, the Trustee must include, in addition to any Loan Call for that Month, a Unit Call for a Unit Call Amount equal to the amount of that Preference Unit Holder's Capital Loan Balance as at the last day of the immediately preceding Month, adjusted in accordance with **clause 6.4(c)** if applicable.
- (b) Where the Trustee has issued Call Statements in accordance with **clause 6.4(a)**, the Trustee must, on the last Business Day of December or June as applicable, repay in accordance with **clause 7.2** each Preference Unit Holder's Capital Loan Balance as at the last day of the preceding Month, adjusted in accordance with **clause 6.4(c)** if applicable.
- (c) If, at any time, paying up the full amount of the Capital Loan Balances of all Preference Unit Holders would have the effect that the aggregate of the Paid Up Amounts of all Preference Units would exceed 80% of the Target Trust Capital Cost at the time the Call Statement is issued, the Trustee must reduce the Unit Call Amounts that would otherwise be Called from each Preference Unit Holder under **clause 6.4(a)** so that the aggregate of the Paid Up Amounts of all Preference Units equals 80% of the Target Trust Capital Cost.

6.5 Loan repayments and Unit Calls after Construction Period

- (a) After the end of the Construction Period, the Trustee must from time to time make repayments of each Preference Unit Holder's Capital Loan Balance in accordance with **clause 6.5(d)**.
- (b) To the extent that the Trustee determines the Capital Loan Balances have been applied to Trust Capital Costs, the Trustee must, at the time a repayment is made, make a Unit Call for the amount of the repayment.
- (c) To the extent the Trustee determines the Capital Loan Balances will not be required to fund Trust Capital Costs, the Trustee must not make a Unit Call for the amount of the repayment.
- (d) The Trustee must apply the following principles in determining when and how repayments of Capital Loan Balances will be made:
 - (i) the Trustee will at all times retain aggregate Capital Loan Balances that the Trustee believes are sufficient to meet Trust Capital Costs the Trustee anticipates may be Incurred; and
 - (ii) where the Trustee anticipates that any Trust Capital Recoveries will be received at some future time, the Trustee will not make Unit Calls that would result in the aggregate Capital Loan Balances

being less than the Trustee's estimate of the amount of the anticipated Trust Capital Recoveries.

- (e) Within seven Business Days after the end of the Month in which the Trustee receives the Final Certificate from the Project Manager, the Trustee must:
 - (i) give each Preference Unit Holder a Call Statement which includes a Unit Call for that Preference Unit Holder's Capital Loan Balance to the extent the Trustee determines the Capital Loan Balance has been applied to Trust Capital Costs; and
 - (ii) repay the remaining amount of each Preference Unit Holder's outstanding Capital Loan Balance (which is the Capital Loan Balance minus the amount specified in **clause 6.5(e)(i)**) but must not make a Unit Call for that amount.
- (f) For the avoidance of doubt, repayment of the Capital Loan Balances under this **clause 6.5** does not preclude the Trustee from making subsequent Calls under **clause 6.6**.
- (g) Within seven Business Days after the end of the Month in which the Trustee determines that the revenue of the Trust is likely to exceed the expenses of the Trust on an ongoing basis, the Trustee must give each Preference Unit Holder a Call Statement and:
 - (i) include in the Call Statement a Unit Call for a Unit Call Amount equal to the amount of that Unit Holder's Operating Loan Balance; and
 - (ii) repay that Preference Unit Holder's Operating Loan Balance in accordance with **clause 7.2**.
- (h) For the avoidance of doubt, repayment of the Operating Loan Balances does not preclude the Trustee from making subsequent Calls under **clause 6.6**.

6.6 Loan Calls after Construction Period

- (a) After the end of the Construction Period the Trustee may, from time to time (but not more than once per Month):
 - (i) give each Preference Unit Holder a Call Statement for a specified period; and
 - (ii) include in the Call Statement a Loan Call for the amount of the Unit Holder's Loan Contribution for that period.
- (b) The amount of each Preference Unit Holder's Loan Contribution for a period will be that Unit Holder's Proportion of the Projected Liquidity Requirement for that period.
- (c) Any Call under this **clause 6.6** is subject to **clause 6.9**.

6.7 Call Statements

A Call Statement must contain the information set out in **schedule 3**.

6.8 Disputes do not affect obligation to pay

Each Preference Unit Holder must pay all Loan Contributions in accordance with the applicable Call Statement issued to it despite the existence of any Dispute.

6.9 Maximum Call Amounts

(a) The total of the Call Amounts that each Preference Unit Holder is obliged to pay under this Deed is the lesser of:

- (i) the aggregate Application Price for all Preference Units of that Preference Unit Holder; and
- (ii) the Unit Holder's Proportion of the total amount of Trust Costs Incurred prior to the later of:
 - (A) the date the Trustee gives the Call Statement under **clause 6.5(e)(i)**; and
 - (B) the date the Trustee gives the Call Statement under **clause 6.5(g)**,

(Extinguishment Date).

(b) On and from the Extinguishment Date, the liability of each Preference Unit Holder to pay any further Call Amounts is extinguished, and all Preference Units of that Preference Unit Holder are deemed to be Fully Paid Units other than in respect of any Call Amounts that had been Called on or before the Extinguishment Date but which have not been paid by that Preference Unit Holder.

(c) The Trustee must:

- (i) include in the Call Statement given to each Preference Unit Holder on the Extinguishment Date a statement that all of its Preference Units are deemed to be Fully Paid Units as at:
 - (A) in respect of any Preference Unit Holder who has paid all Call Amounts called prior to the Extinguishment Date - the Extinguishment Date; or
 - (B) in respect of any Preference Unit Holder who has not paid all Call Amounts called prior to the Extinguishment Date - the date of payment in full of those outstanding Call Amounts; and
- (ii) promptly after the date on which the Preference Units of a Preference Unit Holder are deemed to be fully paid:
 - (A) record in the Register that those Preference Units are Fully Paid Units as at that date; and

- (B) release all Security Documentation and any Bank Guarantee (if applicable) in respect of that Preference Unit Holder.

6.10 Expenses after Preference Units Fully Paid

- (a) If, after all Preference Units are deemed to be Fully Paid Units under **clause 6.9(b)**, the Trustee determines that the revenue of the Trust is, or is likely to be, at any time insufficient to fully cover the expenses of the Trust, then each Preference Unit Holder must, within ten Business Days of a demand by the Trustee from time to time, pay to the Trustee its Unit Holder's Proportion of the Trustee's estimate of the amount by which the expenses of the Trust are likely to exceed the revenue of the Trust.
- (b) For the avoidance of doubt, the obligation of a Preference Unit Holder to pay the Trustee under **clause 6.10(a)** is a contractual obligation and does not constitute a Call.

7 Payments of Calls and repayments of Loans

7.1 Payment of Loan Contributions

Each Preference Unit Holder must pay that Preference Unit Holder's Loan Contribution for a Month to the Trustee by the later of:

- (a) the 17th Business Day of that Month; and
- (b) the tenth Business Day after the Trustee gives the Call Statement for that Month.

7.2 Payment of Unit Calls

- (a) Each Preference Unit Holder directs the Trustee to apply any repayment of that Preference Unit Holder's Loan Balance in paying up that Preference Unit Holder's Preference Units for the amount of any Unit Call outstanding at the time the repayment is made.
- (b) The Trustee must apply the repayments of the Preference Unit Holders' Loan Balances as directed under **clause 7.2(a)** on the last Business Day of the Month in which the Unit Calls are made, by paying up the Preference Units of all of the Preference Unit Holders at the same time by the same amount for each Preference Unit.
- (c) If the amount that is to be repaid to a Preference Unit Holder is less than the amount of that Preference Unit Holder's outstanding Unit Calls at the time the repayment is to be made under **clause 7.2(a)**, then that Preference Unit Holder remains liable to pay the balance of the Unit Call and **clause 8** applies.

7.3 Proportionate repayment

Any repayment of Unit Holder Loans under this Deed must be made pro rata to each Preference Unit Holder, in the proportion that the total Paid Up Amounts on that Preference Unit Holder's Preference Units bears to the aggregate Paid Up Amounts of all Preference Units then on issue.

8 Failure to pay Calls

8.1 Interest on overdue Call payments

- (a) If for any reason a Preference Unit Holder does not pay an amount payable under or in connection with this Deed on or before the due date for payment, then that Preference Unit Holder must pay interest to the Trustee in respect of that unpaid amount.
- (b) Interest will accrue on the amount not paid from the due date for payment until that amount, together with the interest thereon, has been paid.
- (c) Interest will be calculated at the Interest Rate, and any interest accrued but unpaid at the end of each Month will be capitalised and will thereafter itself bear interest.
- (d) An amount of interest paid by a Preference Unit Holder under this **clause 8.1** (including any interest which is capitalised):
 - (i) does not constitute a payment of a Call Amount;
 - (ii) is not applied towards that Preference Unit Holder's Loan Balance or in paying up that Preference Unit Holder's Partly Paid Units; and
 - (iii) is an Asset of the Trust and included in Preference Income.

8.2 Failure to meet obligations

- (a) Each Preference Unit Holder acknowledges and agrees that:
 - (i) the performance of that Preference Unit Holder's obligation to meet the terms of a Call promptly and when due is critical to the success and financial wellbeing of the Trust;
 - (ii) if a Preference Unit Holder fails to make a payment in accordance with the terms of a Call, the Trust will suffer irreparable harm and the other Preference Unit Holders will suffer Loss (including Consequential Loss); and
 - (iii) the default provisions in the Trust Deed and in this Deed are in recognition of these matters and are reasonable to protect the Trust and the interests of Preference Unit Holders generally.
- (b) The Trustee acknowledges that payment of a Call Amount on demand by the Trustee under a Bank Guarantee is accepted as payment of a Call on the date the payment is received from the Issuer.
- (c) Where, at any time:
 - (i) a Preference Unit Holder fails to pay a Loan Call for a Month within five Business Days after the due date for payment of such Loan Call; and
 - (ii) the Trustee, in its absolute discretion, and without limiting the Trustee's rights under this **clause 8**, gives a notice to the Preference Unit Holder under this **clause 8.2(c)**,

then the Preference Unit Holder must provide to the Trustee, within ten Business Days after the Trustee gives the notice to the Preference Unit Holder:

- (iii) where the Preference Unit Holder has not provided a Bank Guarantee, a Bank Guarantee; or
- (iv) where the Preference Unit Holder has provided a Bank Guarantee but it is for an amount less than the Reviewed Amount, an additional or replacement Bank Guarantee,

in each case so that the Preference Unit Holder will have provided a Bank Guarantee or Bank Guarantees which, in aggregate, is or are equal to the Reviewed Amount.

8.3 Failure to pay Loan Call

- (a) Where a Preference Unit Holder (**Defaulting Unit Holder**) fails to pay a Loan Call for a Month on or before the due date for such payment (**Loan Call Default**), the Trustee must give a notice to the Defaulting Unit Holder (copying the other Preference Unit Holder(s)) stating that a Loan Call Default has occurred and giving the Defaulting Unit Holder a period of five Business Days within which to remedy the Loan Call Default (**Default Notice**).

- (b) If:

- (i) a Defaulting Unit Holder has not provided a Bank Guarantee, or an additional or replacement Bank Guarantee, in accordance with this Deed, or the amount in the Defaulting Unit Holder's Bank Account (if any) is less than the amount of outstanding Loan Calls of that Defaulting Unit Holder; and
- (ii) either:
 - (A) the Defaulting Unit Holder fails to rectify all outstanding Loan Call Defaults within five Business Days after receiving the Default Notice; or
 - (B) the Defaulting Unit Holder has, at any time, failed to pay Loan Calls on or before the due dates for payment on four separate occasions and has received a Default Notice for each occasion,

then the Trustee must give a notice to the Defaulting Unit Holder (copying the other Preference Unit Holder(s)) stating that a default has occurred and has not been remedied and that **clause 8.3(c)** applies (**Failure to Pay Loan Call Notice**).

- (c) With immediate effect from the date of the Failure to Pay Loan Call Notice:
 - (i) the Defaulting Unit Holder loses all rights to participate in the Extension and, unless otherwise expressly stated in this Deed and

other than accrued rights, ceases to have any further rights under the Transaction Documents;

- (ii) the Defaulting Unit Holder must comply with the process set out in **clause 8.6**; and
- (iii) each of the Preference Unit Holders who have paid their Loan Calls (**Non-Defaulting Unit Holders**) will, subject to the process described in **clause 8.6** first being undertaken, have the right, but not the obligation, to pay any:
 - (A) Loan Call that the Defaulting Unit Holder has failed to pay; and
 - (B) future Loan Calls the Defaulting Unit Holder becomes liable to pay and fails to pay by the due date,(together the **Shortfall**) by way of loans to the Trustee, in addition to the Unit Holder Loans, in proportions agreed between the Non-Defaulting Unit Holders and the Trustee (**Shortfall Loans**).
- (d) Each Non-Defaulting Unit Holder will have the right, but not the obligation, to participate in, and the Trustee must comply with, the process set out in **clause 8.6** prior to the commencement of the process set out in **clause 8.7**.
- (e) Even if Shortfall Loans are advanced to the Trustee in accordance with **clause 8.3(c)(iii)** if:
 - (i) the Trustee has first complied with **clause 8.6**; and
 - (ii) the Option Assets have not been transferred to Non-Defaulting Unit Holders in accordance with **clause 8.6**,

the Trustee may, without the consent of the Defaulting Unit Holder, in accordance with **clause 8.7**:

- (iii) exercise its power of sale or enforce any other rights conferred by the Security Documentation for that Defaulting Unit Holder, in order to sell (or otherwise dispose of):
 - (A) all of the Preference Units held by the Defaulting Unit Holder;
 - (B) all of the rights of the Defaulting Unit Holder in respect of its Unit Holder Loans;
 - (C) by way of novation to the purchaser, the Umbrella Agreement of the Defaulting Unit Holder; and
 - (D) all of the accrued rights of the Defaulting Unit Holder in its capacity as a Preference Unit Holder under the Transaction Documents; and
- (iv) if any Shortfall Loans have been advanced to the Trustee in accordance with **clause 8.3(c)(iii)**, as agent for the Non-Defaulting

Unit Holder(s) who have made Shortfall Loans, sell all of the rights of those Non-Defaulting Unit Holder(s) in respect of their Shortfall Loans,

(together the **Sale Assets**).

8.4 Shortfall Loans

A Shortfall Loan made by a Non-Defaulting Unit Holder in accordance with **clause 8.3(c)(iii)**:

- (a) is payable to the Trustee at such times and on such terms agreed between that Non-Defaulting Unit Holder and the Trustee;
- (b) does not bear interest;
- (c) will rank pari passu with each other Shortfall Loan; and
- (d) will not be repayable by the Trustee except in circumstances where the Trustee sells the Sale Assets in accordance with this **clause 8.7** and the Shortfall Loans are taken to be Unit Holder Loans advanced by the purchaser which are repayable in accordance with this Deed.

8.5 Suspension or permanent cessation of Works for Extension

- (a) If a Defaulting Unit Holder fails to pay a Loan Call for a Month by the due date for payment, and:
 - (i) the Defaulting Unit Holder has not remedied that breach;
 - (ii) the Non-Defaulting Unit Holders have not provided Shortfall Loans in accordance with **clause 8.3(c)(iii)** which, in aggregate, equal the Shortfall;
 - (iii) the Trustee has not completed a transfer of the Option Assets in accordance with **clause 8.6**; and
 - (iv) the Trustee has not completed a sale of the Sale Assets in accordance with **clause 8.7**,

by the date which is:

- (v) one Month after the due date for payment of the relevant Loan Call, then the Trustee may direct the Project Manager (or the Replacement Project Manager if one has been appointed under the Project Management Agreement) to suspend all or any part of the Works for the Extension, and if the Trustee does so, then the Trustee may:
 - (A) require that each Non-Defaulting Unit Holder pay to the Trustee, within five Business Days of a demand by the Trustee from time to time, a pro rata proportion (being the proportion that the total Paid Up Amounts on that Non-Defaulting Unit Holder's Preference Units bears to the aggregate Paid Up Amounts of the Preference Units of all Non-Defaulting Unit Holders) of the costs and expenses

- arising from the suspension of all, or the relevant parts, of the Works for the Extension (including, for example, demobilisation costs, suspension fees payable under Works Contracts, and Losses arising from breach of Works Contracts), and for the avoidance of doubt, the obligation of a Non-Defaulting Unit Holder to pay the Trustee an amount under this **clause 8.5(a)(v)(A)** is a contractual obligation and does not constitute a Call; and
- (B) take such action against the Defaulting Unit Holder as the Trustee considers appropriate for recovery of any Loss suffered by the Trust as a result of that Defaulting Unit Holder's failure to pay the Loan Call, including any Loss (including Consequential Loss) arising from the suspension of all, or the relevant parts, of the Works for the Extension; and
- (vi) three Months after the due date for payment of the relevant Loan Call, then the Trustee may direct the Project Manager (or the Replacement Project Manager if one has been appointed under the Project Management Agreement) to permanently cease to carry out all or any part of the Works for the Extension, and if the Trustee does so, then the Trustee may:
- (A) require that each Non-Defaulting Unit Holder pay to the Trustee, within five Business Days of a demand by the Trustee from time to time, a pro rata proportion (being the proportion that the total Paid Up Amounts on that Non-Defaulting Unit Holder's Preference Units bears to the aggregate Paid Up Amounts of the Preference Units of all Non-Defaulting Unit Holders) of the costs and expenses arising from the permanent cessation of all, or the relevant parts, of the Works for the Extension (including, for example, demobilisation costs and/or early termination fees payable under Works Contracts, Losses arising from breach of Works Contracts, and costs under the Rail Corridor Agreement of removing the Extension and remediating the Extension Land), and for the avoidance of doubt, the obligation of a Non-Defaulting Unit Holder to pay the Trustee an amount under this **clause 8.5(a)(vi)(A)** is a contractual obligation and does not constitute a Call; and
 - (B) take such action against the Defaulting Unit Holder as the Trustee considers appropriate for recovery of any Loss suffered by the Trust as a result of that Defaulting Unit Holder's failure to pay the Loan Call, including any Loss (including Consequential Loss) arising from the permanent cessation of all, or the relevant parts, of the Works for the Extension.

- (b) If the Trustee directs the Project Manager (or the Replacement Project Manager if one has been appointed under the Project Management Agreement) to suspend or permanently cease to carry out all or any part of the Works for the Extension under **clause 8.5(a)**, then:
 - (i) each Preference Unit Holder acknowledges that giving effect to the suspension or permanent cessation may cause the Trustee to breach a Works Contract;
 - (ii) the Defaulting Unit Holder indemnifies the Trustee and all Non-Defaulting Unit Holders for any Loss (including Consequential Loss) arising from such breach. Without limitation, this includes amounts payable by a Non-Defaulting Unit Holder under **clause 8.5(a)(v)(A)** or **clause 8.5(a)(vi)(A)**; and
 - (iii) each Preference Unit Holder acknowledges that it has no Claim against the Trustee for any Loss (including Consequential Loss) arising from such breach.
- (c) If the Trustee directs the Project Manager (or the Replacement Project Manager if one has been appointed under the Project Management Agreement) to suspend the carrying out of all or any part of the Works for the Extension under **clause 8.5(a)**, then the Trustee may direct the Project Manager (or the Replacement Project Manager if one has been appointed under the Project Management Agreement) to recommence the carrying out of all or any parts of those Works for the Extension, in which case the Trustee may:
 - (i) make Loan Calls on the Preference Unit Holders for costs and expenses arising from the recommencement of all, or the relevant parts, of the Works for the Extension (including, for example, remobilisation costs, recommencement fees payable under Works Contracts, and Losses arising from recommencement of Works Contracts); and
 - (ii) take such action against the Defaulting Unit Holder as the Trustee considers appropriate for recovery of any Loss suffered by the Trust as a result of that Defaulting Unit Holder's failure to pay the Loan Call, including any Loss (including Consequential Loss) arising from the recommencement of all, or the relevant parts, of the Works for the Extension.

8.6 Option

- (a) In consideration of each Preference Unit Holder agreeing to pay \$1.00 to each other Preference Unit Holder on demand, each Preference Unit Holder grants to each other Preference Unit Holder the option described in this **clause 8.6** over the following assets:
 - (i) all of the Preference Units held by the Preference Unit Holder;
 - (ii) all of the rights of the Preference Unit Holder in respect of its Unit Holder Loans;

- (iii) all of the rights and obligations of the Preference Unit Holder in respect of its Umbrella Agreement; and
 - (iv) all of the accrued rights of that Preference Unit Holder in its capacity as a Preference Unit Holder under the Transaction Documents,
- (together the **Option Assets**).
- (b) To secure the rights of each other Preference Unit Holder, each Preference Unit Holder hereby irrevocably appoints the Trustee and each of its directors severally as the attorney of the Preference Unit Holder, with power to sign all documents and do all things necessary in the name of the Preference Unit Holder to effect the transfer of the Option Assets in accordance with this **clause 8.6**.
 - (c) If a Defaulting Unit Holder has lost its right to participate in the Extension in accordance with **clause 8.3(c)(i)**, then the Trustee must provide to each Non-Defaulting Unit Holder, within five Business Days after the Failure to Pay Loan Call Notice was given to the Defaulting Unit Holder, a notice (**Option Notice**) specifying:
 - (i) the number of Preference Units held by the Defaulting Unit Holder (**Option Units**) and the Paid Up Amount per Option Unit;
 - (ii) the amount of the Unit Holder Loans attributable to each Option Unit (being the aggregate amount of the Defaulting Unit Holder's Unit Holder Loans divided by the number of Option Units) (**Per Option Unit Loan Amount**);
 - (iii) the amount of the unpaid Loan Calls that the Defaulting Unit Holder is liable to pay as at the date of the Option Notice (**Unpaid Loan Calls**) attributable to each Option Unit (being the Unpaid Loan Calls divided by the number of Option Units) (**Per Option Unit Unpaid Loan Call Amount**);
 - (iv) the number of Option Units being offered for sale by the Defaulting Unit Holder to the Non-Defaulting Unit Holder (being the proportion of the Option Units equivalent to the proportion that the number of Preference Units held by that Non-Defaulting Unit Holder bears to the aggregate number of Preference Units held by all Non-Defaulting Unit Holders) (**Allocated Option Units**);
 - (v) the date which is five Business Days after the date of the Option Notice (**expiry date**);
 - (vi) where the Defaulting Unit Holder is not an Aurizon Preference Unit Holder, the proportion of the 'Nominated Access Rights' (as defined in the Umbrella Agreement for the Defaulting Unit Holder) under the Defaulting Unit Holder's Umbrella Agreement attributable to each Option Unit (being the 'Nominated Access Rights' as defined in the Umbrella Agreement, expressed as a number of one-way train services for each origin-destination combination

referred to in the Umbrella Agreement, divided by the number of Option Units, and without rounding) (**Per Option Unit Umbrella Agreement Rights**); and

- (vii) a statement confirming that the Non-Defaulting Unit Holder has an option under this **clause 8.6** to purchase from the Defaulting Unit Holder the relevant proportion of the Option Assets on the terms set out in the Option Notice if the Non-Defaulting Unit Holder complies with this **clause 8.6**,

which, in the absence of manifest error, is final and binding on the Parties.

- (d) A Non-Defaulting Unit Holder may, at its election:
 - (i) reject all of its Allocated Option Units and associated Option Assets;
 - (ii) agree to purchase a lesser number of Allocated Option Units and associated Option Assets;
 - (iii) agree to purchase all of its Allocated Option Units and associated Option Assets; or
 - (iv) agree to purchase all of its Allocated Option Units and associated Option Assets and state an additional maximum number of Option Units and associated Option Assets that it would be prepared to purchase (**Additional Option Units**),

by notice given to the Defaulting Unit Holder and the Trustee on or before the expiry date specified in the Option Notice. The Non-Defaulting Unit Holder's notice is irrevocable.

- (e) If a Non-Defaulting Unit Holder does not give a notice under **clause 8.6(d)** on or before the expiry date specified in the Option Notice, then that Non-Defaulting Unit Holder is deemed to have given a notice under **clause 8.6(d)(i)** rejecting all of its Allocated Option Units and associated Option Assets.
- (f) If the aggregate of all Allocated Option Units and Additional Option Units (if any) that Non-Defaulting Unit Holders have agreed to purchase under **clause 8.6(d)** constitute less than the total number of Option Units, then all of the Non-Defaulting Unit Holders will be deemed to have rejected all of the Option Units, this **clause 8.6** will cease to apply, and the Trustee may sell the Option Units in accordance with **clause 8.7**.
- (g) If the aggregate of all Allocated Option Units and Additional Option Units (if any) that Non-Defaulting Unit Holders have agreed to purchase under **clause 8.6(d)** constitute all of (but no more than) the total number of Option Units, each Non-Defaulting Unit Holder must be allocated all of its Allocated Option Units and Additional Option Units (if any).
- (h) If the aggregate of all Allocated Option Units and Additional Option Units that Non-Defaulting Unit Holders have agreed to purchase under **clause**

8.6(d) exceeds the number of Option Units, then the Option Units must be allocated among Non-Defaulting Unit Holders as follows:

- (i) each Non-Defaulting Unit Holder must be allocated all of the Allocated Option Units that it has agreed to purchase; and
 - (ii) any remaining Option Units that have not been allocated under **clause 8.6(h)(i)** must be allocated to those Non-Defaulting Unit Holders who have agreed to purchase Additional Option Units on a pro-rata basis (calculated having regard to the proportion that the number of Additional Option Units that a Non-Defaulting Unit Holder agreed to purchase bears to the aggregate number of Additional Option Units that all Non-Defaulting Unit Holders agreed to purchase).
- (i) One Business Day after the expiry date specified in the Option Notice, the Trustee must notify the Defaulting Unit Holder and each Non-Defaulting Unit Holder who has exercised its option in accordance with **clause 8.6(d)** of:
- (i) the allocations effected under **clause 8.6(g)** or **clause 8.6(h)** (as applicable), including a calculation showing how the allocations were made; and
 - (ii) the Aggregate Sale Price for that Non-Defaulting Unit Holder, being the amount calculated in accordance with the following formula:

$$\text{ASP} = \text{OU} \times (\text{PUA} + \text{LA} + \text{ULC})$$

where

- ASP = the Aggregate Sale Price payable by a Non-Defaulting Unit Holder in respect of the Option Units and associated Option Assets allocated to it under **clause 8.6(g)** or **clause 8.6(h)** (as applicable)
- OU = the number of Option Units allocated to that Non-Defaulting Unit Holder
- PUA = the Paid Up Amount per Option Unit
- LA = the Per Option Unit Loan Amount
- ULC = the Per Option Unit Unpaid Loan Call Amount.

- (j) Upon the giving of a notice referred to in **clause 8.6(i)**, the Defaulting Unit Holder, as seller, and each Non-Defaulting Unit Holder to which

Option Units have been allocated, as buyer, are immediately bound under an unconditional contract for the sale and purchase of:

- (i) the Option Units allocated to the relevant Non-Defaulting Unit Holder, free and clear from all security interests and other third party rights;
 - (ii) the Umbrella Agreement Rights for the relevant Non-Defaulting Unit Holder, free and clear from all security interests and other third party rights; and
 - (iii) the Defaulting Unit Holder's rights to be repaid Unit Holder Loans to the extent of the amount calculated by multiplying the number of Option Units allocated to the relevant Non-Defaulting Unit Holder by the Per Option Unit Loan Amount (**Loan Rights**).
- (k) On the date being ten Business Days after the expiry date specified in the Option Notice, the Defaulting Unit Holder must:
- (i) sell, and each Non-Defaulting Unit Holder which has been allocated Option Units must purchase, the Option Units and Loan Rights allocated to the Non-Defaulting Unit Holder; and
 - (ii) transfer to each Non-Defaulting Unit Holder which has been allocated Option Units their applicable Umbrella Agreement Rights (and the Defaulting Unit Holder is taken to agree that its Umbrella Agreement is terminated and is of no further force or effect, other than in respect of any accrued liabilities of that Defaulting Unit Holder).
- (l) By no later than 5.00pm on the date being ten Business Days after the expiry date specified in the Option Notice:
- (i) the Defaulting Unit Holder must deliver to each Non-Defaulting Unit Holder which has been allocated Option Units executed transfers for the Option Units allocated to that Non-Defaulting Unit Holder;
 - (ii) the Defaulting Unit Holder must take all steps necessary to transfer to each Non-Defaulting Unit Holder which has been allocated Option Units their applicable Loan Rights;
 - (iii) each of Aurizon Network, the Trustee and each relevant Non-Defaulting Unit Holder must execute a "Transferee Umbrella Agreement" (as defined in the Umbrella Agreement for the Defaulting Unit Holder) in respect of the Umbrella Agreement Rights transferred to that Non-Defaulting Unit Holder;
 - (iv) each Non-Defaulting Unit Holder must pay its Aggregate Sale Price to the Trustee; and
 - (v) each Non-Defaulting Unit Holder who is required to provide a Bank Guarantee must provide an additional or replacement Bank Guarantee, so that the Non-Defaulting Unit Holder will have provided a Bank Guarantee or Bank Guarantees which, in

aggregate, is or are equal to the amount which will be the Reviewed Amount as a consequence of the change in the Non-Defaulting Unit Holder's Unit Holder's Proportion following the transfer of the Option Units allocated to the Non-Defaulting Unit Holder.

- (m) As soon as reasonably practicable after the date referred to in **clause 8.6(l)**, the Trustee must determine:
- (i) the total amount of all costs Incurred by the Trustee in connection with the Defaulting Unit Holder's default and the sale of all Option Assets (excluding any costs which are the subject of payments referred to in **clause 8.6(m)(iii)**);
 - (ii) the total of the amounts of:
 - (A) the unpaid Loan Calls of the Defaulting Unit Holder; and
 - (B) any interest which has accrued under **clause 8.1** in respect of the unpaid Loan Calls of the Defaulting Unit Holder; and
 - (iii) the total of the amounts (if any) paid by all Non-Defaulting Unit Holders under **clauses 8.5(a)(v)(A)** and **8.5(a)(vi)(A)**.
- (n) Promptly after the Trustee makes the determinations referred to in **clause 8.6(m)**, the Trustee must apply or pay (as applicable) the total of the Aggregate Sale Price received by it from all applicable Non-Defaulting Unit Holders under **clause 8.6(l)(iv)** in the following manner:
- (i) firstly, towards the payment of the amounts referred to in **clause 8.6(m)(i)** (and, for the avoidance of doubt, any amounts applied by the Trustee under this sub-paragraph will be retained by the Trustee as part of the Assets);
 - (ii) secondly, to the extent there is any balance remaining after the application of **clause 8.6(n)(i)**, towards the payment of the amounts referred to in **clause 8.6(m)(ii)** (and, for the avoidance of doubt, any amounts applied by the Trustee under this sub-paragraph will also be retained by the Trustee as part of the Assets);
 - (iii) thirdly, to the extent there is any balance remaining after the application of **clauses 8.6(n)(i)** and **8.6(n)(ii)**, by reimbursing to Non-Defaulting Unit Holders who paid the amounts referred to in **clause 8.6(m)(iii)** the amounts that they each paid (provided that if the balance remaining is less than the amount referred to in **clause 8.6(m)(iii)**, the Trustee will only be obliged to reimburse the Non-Defaulting Unit Holders an amount equal to the balance remaining in the proportions that the total amount paid by each Non-Defaulting Unit Holder under **clauses 8.5(a)(v)(A)** and **8.5(a)(vi)(A)** bears to the amount referred to in **clause 8.6(m)(iii)**); and

- (iv) finally, to the extent there is any balance remaining after the application of **clauses 8.6(n)(i), 8.6(n)(ii) and 8.6(n)(iii)**, by paying the balance remaining to the Defaulting Unit Holder.
- (o) The Defaulting Unit Holder agrees and acknowledges that payment by a Non-Defaulting Unit Holder of its Aggregate Sale Price to the Trustee in accordance with **clause 8.6(l)(iv)** constitutes full and complete satisfaction of the Non-Defaulting Unit Holder's obligations to pay the Defaulting Unit Holder for the Option Units and associated Option Assets allocated to the Non-Defaulting Unit Holder.
- (p) If the Defaulting Unit Holder does not comply with **clause 8.6(l)**, the Trustee will effect the transfer of the Option Assets under the power of attorney granted to it under **clause 8.6(b)**.
- (q) If:
 - (i) any Non-Defaulting Unit Holder which has been allocated Option Units:
 - (A) fails to pay its Aggregate Sale Price in the time, and otherwise in accordance with the requirements, specified in **clause 8.6(l)**; or
 - (B) if applicable, fails to provide an additional or replacement Bank Guarantee in accordance with **clause 8.6(l)(v)**; or
 - (ii) the process described in this **clause 8.6** is for any reason not completed by 5.00pm on the date which is ten Business Days after the expiry date specified in the Option Notice,
 then the Trustee:
 - (iii) must, by notice to the Parties, advise the Parties that the process described in this **clause 8.6** is abandoned;
 - (iv) must return to each Non-Defaulting Unit Holder any moneys paid by it to the Trustee under this **clause 8.6**; and
 - (v) may commence the process described in **clause 8.7**.
- (r) Upon completion of the sale and purchase of all of the Option Assets in accordance with **clause 8.6(l)**:
 - (i) the Trustee must release the Defaulting Unit Holder from the charges created by the Security Documentation; and
 - (ii) if the Defaulting Unit Holder has provided a Bank Guarantee, then the Trustee must, subject to the Trustee's rights of recourse to the Bank Guarantee under **clause 10.3**, return that Bank Guarantee to the Defaulting Unit Holder.

8.7 Sale of Sale Assets

- (a) If the Trustee is exercising its power of sale or enforcing any other rights conferred by the Security Documentation in accordance with **clause**

8.3(e), the Trustee must, by written notice (**Sale Notice**), offer the Sale Assets for sale (**Sale Offer**) by way of an open tender process seeking offers from any third party (including the Non-Defaulting Unit Holders and the Ordinary Unit Holder, but excluding the Defaulting Unit Holder and any Related Body Corporate of the Defaulting Unit Holder).

- (b) If the Sale Offer occurs during the Construction Period, the Trustee must offer for sale all, and not part only, of the Sale Assets, on the basis that all of the Sale Assets must be sold, whether to one or more bidders, provided that any bid for Preference Units must also include a bid for the other Sale Assets in the proportion those Sale Assets bear to the Preference Units bid for. In such circumstances the Trustee will not be obliged to consider a bid for the Sale Assets (**Bid**) where that Bid is to purchase some only of the Sale Assets (**Partial Bid**) unless, when aggregated with other Partial Bids, sufficient Partial Bids are received to purchase, in total, all of the Sale Assets.

*By way of example, and to assist in the interpretation of **clause 8.7(b)**:*

- *a bid for 30% of the Preference Units held by the Defaulting Unit Holder must also include a bid for 30% of all rights of the Defaulting Unit Holder in respect of its Unit Holder Loans, 30% of the rights and obligations of the Defaulting Unit Holder under the Umbrella Agreement and 30% of all the accrued rights of the Defaulting Unit Holder in its capacity as a Preference Unit Holder under the Transaction Documents, and would constitute a valid Partial Bid.*
 - *a bid for 100% of the Preference Units held by the Defaulting Unit Holder which did not include an offer to acquire any of the rights and obligations of the Defaulting Unit Holder under the Umbrella Agreement would not constitute a valid Bid or Partial Bid.*
- (c) If the Sale Offer occurs after the end of the Construction Period, the Trustee may offer for sale all or part only of the Sale Assets, and the Trustee will be obliged to consider Bids, including Partial Bids.
- (d) The Trustee must specify in the Sale Notice that all bids from prospective purchasers must include the following terms:
- (i) the amount of the consideration offered by the prospective purchaser (which must be payable in cash in Australian currency);
 - (ii) the prospective purchaser must, as a term of its bid for the Sale Assets (or its bid for a less than 100% undivided interest in the Sale Assets), agree to pay to the Trustee, in addition to the consideration offered by the prospective purchaser for the Sale Assets (or interest in them), the amount being:
 - (A) all (or a relevant portion of) Loan Calls that the Defaulting Unit Holder is liable to pay as at the date of completion of the sale of the Sale Assets; **less**

- (B) if any Shortfall Loans have been advanced to the Trustee in accordance with **clause 8.3(c)(iii)**, the amount of those Shortfall Loans (or a relevant portion of those Shortfall Loans),

which amount will be calculated by the Trustee as at the date of completion of the sale of the Sale Assets;

- (iii) the prospective purchaser must execute any documents required by the Trustee, in the form reasonably required by the Trustee, under which the prospective purchaser agrees to assume the rights, and be bound by the obligations, of the Defaulting Unit Holder under the Transaction Documents, with effect on and from the completion of the sale of the Sale Assets (irrespective of when the prospective purchaser becomes the registered holder of the applicable Preference Units); and
- (iv) the prospective purchaser must provide to the Trustee:
 - (A) if required in accordance with the Credit Policy, a Bank Guarantee for the amount which will be the Reviewed Amount for that prospective purchaser (assuming, and determined as at the date of, the completion of the sale of the Sale Assets); and
 - (B) the Security Documentation in accordance with the requirements for Security Documentation under **clause 5.1**.
- (e) Any party eligible under **clause 8.7(a)** to participate in the tender process will have the right to make a Bid within a period of 20 Business Days from the date of the Sale Notice, and the Sale Offer must remain open for that period.
- (f) If any Bids which comply with the terms of **clause 8.7(d)** are received by the Trustee within the period referred to in **clause 8.7(e)**:
 - (i) the Trustee must, within ten Business Days, evaluate the Bids and accept a Bid, or one or more Partial Bids, provided that if the Sale Offer occurs during the Construction Period, then the accepted Bid, or accepted Partial Bids in aggregate, must relate to all of the Sale Assets; and
 - (ii) without limiting the Trustee's duties under section 420A of the Corporations Act, in evaluating the Bids, the Trustee is entitled to take into account the following:
 - (A) the interests of the Trust;
 - (B) the ability of the prospective purchaser to comply with the terms of the Credit Policy;
 - (C) the genuine demand by the prospective purchaser for the Access Rights of the Defaulting Unit Holder;

- (D) the port capacity which the prospective purchaser holds or has the ability to hold; and
 - (E) any optimisation risk arising from the location of the mine or mines of the prospective purchaser,
- and is not bound to sell the Sale Assets to:
- (F) the bidder that provided a Bid that offers; or
 - (G) the bidders that provided Partial Bids which, in aggregate, offer,
- the highest price.
- (g) Upon acceptance by the Trustee of a Bid, the Trustee will serve notice on the purchaser (copying the Preference Unit Holder(s)) stating that the Bid has been accepted, and as soon as reasonably practicable thereafter complete the sale of the Sale Assets in accordance with the terms of the offer accepted by the Trustee, provided that completion of the sale of the Sale Assets is conditional on that purchaser:
- (i) paying the Trustee:
 - (A) the consideration offered by the purchaser under **clause 8.7(d)(i)**; and
 - (B) the amount determined under **clause 8.7(d)(ii)**; and
 - (ii) providing to the Trustee the Security Documentation and, if applicable, Bank Guarantee in accordance with **clause 8.7(d)(iv)**.
- (h) On receipt of the consideration received from the sale of the Sale Assets and the amount determined under **clause 8.7(d)(ii)** (together the **Sale Proceeds**), the Trustee must apply or pay (as applicable) the Sale Proceeds in the following manner:
- (i) firstly, the Trustee must deduct from the Sale Proceeds all costs, liabilities and expenses incurred by the Trustee in conducting the sale of the Sale Assets (and, for the avoidance of doubt, any amounts deducted by the Trustee under this sub-paragraph will be retained by the Trustee as part of the Assets);
 - (ii) secondly, to the extent there is any balance remaining after the application of **clause 8.7(h)(i)**, towards the payment of unpaid Loan Calls of the Defaulting Unit Holder together with any interest which has accrued under **clause 8.1** in respect of the unpaid Loan Calls of the Defaulting Unit Holder (and, for the avoidance of doubt, any amounts applied by the Trustee under this sub-paragraph will also be retained by the Trustee as part of the Assets);
 - (iii) thirdly, to the extent there is any balance remaining after the application of **clauses 8.7(h)(i)** and **8.7(h)(ii)**, the Trustee must reimburse to each Non-Defaulting Unit Holder the amounts they

have paid under **clause 8.5(a)(v)(A)** or **8.5(a)(vi)(A)** (if any) (provided that if the balance remaining is less than the total of the amounts paid by all Non-Defaulting Unit Holders under **clauses 8.5(a)(v)(A)** and **8.5(a)(vi)(A)**, the Trustee will only be obliged to reimburse the Non-Defaulting Unit Holders an amount equal to the balance remaining in the proportions that the total amount paid by each Non-Defaulting Unit Holder under **clauses 8.5(a)(v)(A)** and **8.5(a)(vi)(A)** bears to the total of the amounts paid by all Non-Defaulting Unit Holders under **clauses 8.5(a)(v)(A)** and **8.5(a)(vi)(A)**);

(iv) fourthly, to the extent there is any balance remaining after the application of **clauses 8.7(h)(i)**, **8.7(h)(ii)** and **8.7(h)(iii)**, the Trustee must pay to the relevant Non-Defaulting Unit Holder(s), as consideration for the purchase by the purchaser of the Non-Defaulting Unit Holder(s)' rights in respect of the Shortfall Loans, an amount not exceeding the amount of the Shortfall Loans, provided that if the balance remaining is less than the amount of the Shortfall Loans:

(A) the Trustee will only be obliged to pay to the relevant Non-Defaulting Unit Holder(s) an amount equal to the balance remaining in the proportions that the total amount of Shortfall Loans advanced by each Non-Defaulting Unit Holder bears to the aggregate amount of all Shortfall Loans; and

(B) if any Shortfall Loans have been advanced to the Trustee in accordance with **clause 8.3(c)(iii)**, for the avoidance of doubt all of the Non-Defaulting Unit Holder(s)' rights in respect of the Shortfall Loans will pass to the purchaser and the relevant Non-Defaulting Unit Holder(s) will have no right or entitlement to be repaid the balance remaining by the Trustee; and

(v) finally, to the extent that there is any balance remaining after the application of **clauses 8.7(h)(i)**, **8.7(h)(ii)**, **8.7(h)(iii)** and **8.7(h)(iv)**, the balance remaining will be payable to the Defaulting Unit Holder,

provided that the Trustee will not apply or pay any part of the Sale Proceeds under **clauses 8.7(h)(ii)**, **8.7(h)(iii)**, **8.7(h)(iv)** or **8.7(h)(v)** until the Trustee has been able to finally determine, and apply or pay (as applicable), the amount required to be applied or paid under the immediately preceding sub-paragraph of this **clause 8.7(h)**.

(i) In exercising its power of sale, or enforcing any other rights conferred by the Security Documentation, the Trustee must comply with the requirements of **clause 12.1** which apply to a transfer of Units by a Preference Unit Holder.

- (j) Upon completion of the sale and purchase of all of the Sale Assets in accordance with **clause 8.7(g)**:
 - (i) the Trustee must release the Defaulting Unit Holder from the charges created by the Security Documentation; and
 - (ii) if the Defaulting Unit Holder has provided a Bank Guarantee, then the Trustee must, subject to the Trustee's rights of recourse to the Bank Guarantee under **clause 10.3**, return that Bank Guarantee to the Defaulting Unit Holder.

8.8 Indemnity to Trustee

- (a) Subject to compliance by the Trustee with **clause 8.7** and any other duties or obligations imposed on the Trustee, whether by statute or otherwise (including under section 420A of the Corporations Act), in conducting the sale process contemplated under **clause 8.7**, to the extent permitted by law each Preference Unit Holder indemnifies the Trustee against any Loss (including Consequential Loss) incurred or suffered by the Trustee in connection with or arising out of any sale of the Sale Assets.
- (b) Each Preference Unit Holder's liability under the indemnity in **clause 8.8(a)** is limited to its Unit Holder's Proportion of such Loss and/or Consequential Loss.
- (c) To the extent permitted by law, if the Trustee believes that it has complied with **clause 8.7** and the duties and obligations referred to in **clause 8.8(a)** in conducting the Sales Process, the Trustee is entitled to indemnification under this **clause 8.8** even if it is alleged that the Trustee did not comply with **clause 8.7** or any other duties or obligations imposed on the Trustee whether by statute or otherwise (including under section 420A of the Corporations Act). However, the Trustee must repay any amount paid by a Preference Unit Holder under the indemnity, and interest (calculated in accordance with the Interest Rate) on that amount, if it is ultimately determined by an Expert or court that the Trustee did not comply with the requirements in **clause 8.7** or any other duties or obligations imposed on the Trustee under section 420A of the Corporations Act.

8.9 Suspension of Unit Calls

The Trustee must not make any Unit Calls during the period from the date of the Loan Call Default by a Defaulting Unit Holder:

- (a) if one or more Non-Defaulting Unit Holders have exercised the option under **clause 8.6** in respect of the Defaulting Unit Holder's Option Assets, until the transfer of all of the Defaulting Unit Holder's Preference Units has taken effect; or
- (b) otherwise, until the completion of the sale of the Defaulting Unit Holder's Sale Assets under **clause 8.7**,

and for the avoidance of doubt:

- (c) the Trustee may continue to make Loan Calls under **clause 6.1**;
- (d) any Loan Calls made are to be made on all Preference Unit Holders (including the Defaulting Unit Holder); and
- (e) any payment of a Loan Call by the Defaulting Unit Holder after the Trustee issues an Option Notice or Sale Notice does not remedy the default, but the amount of the payment will reduce the amount of unpaid Loan Calls.

9 Estimated Final Trust Costs and Mandatory Reallocation Process

9.1 Estimated Final Trust Costs Statement

- (a) Within 15 Business Days after the end of the Construction Period, the Independent Engineer must give to the Trustee a statement (**Estimated Final Trust Costs Statement**) setting out:
 - (i) the Estimated Final Trust Costs for each Segment comprising the Extension; and
 - (ii) the Total Estimated Final Trust Costs for the Extension.
- (b) To determine the Estimated Final Trust Costs for each Segment under **clause 9.1(a)(i)**, the Independent Engineer must ensure that the Estimated Final Trust Costs are allocated to a Segment which are directly attributable to that Segment or otherwise allocated to a Segment applying the Allocation Principles.
- (c) The Trustee must provide the Independent Engineer with all information (other than Price Sensitive Information) it reasonably requires to determine the Estimated Final Trust Costs for each Segment comprising the Extension and Total Estimated Final Trust Costs for the Extension.
- (d) The Estimated Final Trust Costs Statement given by the Independent Engineer to the Trustee under **clause 9.1(a)** must be accompanied by reasonable details of the calculation of the Estimated Final Trust Costs for each Segment and the Total Estimated Final Trust Costs for the Extension.
- (e) In the absence of fraud or manifest error, the Estimated Final Trust Costs for each Segment and the Total Estimated Final Trust Costs for the Extension set out in the Estimated Final Trust Costs Statement is final and binding on the Parties.

9.2 Unit Holder reconciliation

- (a) By no later than the last Business Day of the Month following the Month in which the Construction Period ends, the Trustee must:
 - (i) calculate the Revised Unit Holder's Proportion for each Preference Unit Holder in accordance with the Revised UHP Calculation Methodology; and

- (ii) give to each Preference Unit Holder a statement (**Unit Holder Reconciliation Statement**) setting out:
 - (A) the number of Revised Preference Units for each Preference Unit Holder; and
 - (B) whether the Reconciliation Materiality Threshold has been met in respect of any one or more Preference Unit Holder.
- (b) When calculating the number of Revised Preference Units for each Preference Unit Holder, the Trustee must round either up or down the number of Preference Units it calculates for that Preference Unit Holder to the nearest whole number so that the total number of Revised Preference Units for all Preference Unit Holders is equal to the Total Original Preference Units.
- (c) The Unit Holder Reconciliation Statement given by the Trustee to the Preference Unit Holders under **clause 9.2(a)** must be accompanied by reasonable details of the calculation of the number of Revised Preference Units for each Preference Unit Holder and the Reconciliation Materiality Threshold.
- (d) In the absence of fraud or manifest error:
 - (i) the number of Revised Preference Units for each Preference Unit Holder; and
 - (ii) the statement as to whether the Reconciliation Materiality Threshold has been met in respect of any Preference Unit Holder,
 each set out in the Unit Holder Reconciliation Statement are final and binding on the Parties.

9.3 Mandatory Reallocation Process

- (a) If the Unit Holder Reconciliation Statement states that the Reconciliation Materiality Threshold has been met in respect of any Preference Unit Holder, then the Mandatory Reallocation Process set out in **clauses 9.3, 9.4 and 9.5** applies and the Trustee and the Preference Unit Holders must comply with the Mandatory Reallocation Process.
- (b) If the Unit Holder Reconciliation Statement states that the Reconciliation Materiality Threshold has not been met in respect of any of the Preference Unit Holders, then **clauses 9.3** (other than this **clause 9.3(b)**), **9.4** and **9.5** do not apply.
- (c) To secure the rights of the Preference Unit Holders under **clause 9**, each Preference Unit Holder hereby irrevocably appoints the Trustee and its directors as the attorney of that Preference Unit Holder with power to sign all documents and do all other things in the name of that Preference Unit Holder to effect the transfer of the True-up Units, and the True-up Unit Loan Balance attributable to the True-up Units, and otherwise complete the transfer of the True-up Units, and the True-up Unit Loan

Balance attributable to the True-up Units, as set out in the True-up Statement and in accordance with the Mandatory Reallocation Process.

- (d) Subject to the provisions of this **clause 9.3**, if the Mandatory Reallocation Process applies, the Preference Unit Holders acknowledge and agree that where:
- (i) the number of Revised Preference Units for a Preference Unit Holder is greater than the number of Original Preference Units for that Preference Unit Holder, that Preference Unit Holder is entitled and obliged to have transferred to it the number of Preference Units by which the number of Revised Preference Units for that Preference Unit Holder exceeds the number of Original Preference Units for that Preference Unit Holder (**Receipt Units**) in accordance with the Mandatory Reallocation Process;
 - (ii) the number of Revised Preference Units for a Preference Unit Holder is less than the number of Original Preference Units for that Preference Unit Holder, that Preference Unit Holder must transfer the number of Preference Units by which the number of Revised Preference Units for that Preference Unit Holder is less than the number of Original Preference Units for that Preference Unit Holder (**Transfer Units**) in accordance with the Mandatory Reallocation Process; and
 - (iii) the number of Revised Preference Units for a Preference Unit Holder is equal to the number of Original Preference Units for that Preference Unit Holder, that Preference Unit Holder is neither entitled and obliged to have transferred to it, nor obliged to transfer, any Preference Units in accordance with the Mandatory Reallocation Process.
- (e) By no later than five Business Days before the True-up Date, two Preference Unit Holders, one of whom is entitled and obliged to have Preference Units transferred to it, and the other of whom is obliged to transfer Preference Units, may jointly give a notice (**Matching Notice**) to the Trustee stating that these Preference Unit Holders irrevocably elect not to receive a certain number of Receipt Units or transfer a certain number of Transfer Units (as applicable for each of those Preference Unit Holders) (**Matching Units**), and that accordingly the Matching Units will not constitute True-up Units for the purposes of the Mandatory Reallocation Process, provided that the number of Transfer Units and the number of Receipt Units specified in the Matching Notice must be equal.
- (f) A Preference Unit Holder may be a party to a number of arrangements described in **clause 9.3(e)** with any other Preference Unit Holders provided that the sum of the number of Matching Units to be transferred or received by it (as applicable), as specified in each Matching Notice for that Preference Unit Holder, does not exceed the total number of Transfer Units or Receipt Units (as applicable) which that Preference

Unit Holder is obliged to transfer or entitled and obliged to receive (as applicable) to give effect to **clause 9.3(d)**.

- (g) On the True-up Date, the Trustee must:
 - (i) deduct from the total number of Transfer Units or Receipt Units for each Preference Unit Holder, the total number of Matching Units for that Preference Unit Holder, to determine the net number of Preference Units to be transferred or received by that Preference Unit Holder (**True-up Units**); and
 - (ii) give each Preference Unit Holder a statement (**True-up Statement**) setting out for each Preference Unit Holder:
 - (A) the number of True-up Units (if any);
 - (B) the transferor and transferee of each True-up Unit;
 - (C) the Transfer Settlement Date; and
 - (D) the True-up Unit Loan Balance for each True-up Unit.
- (h) Within five Business Days after the date on which the True-up Statement is given by the Trustee under **clause 9.3(g)(ii)**, the Trustee must give each Preference Unit Holder a further statement (**Additional True-up Statement**) setting out for each Preference Unit Holder the Transfer Consideration to be paid or received by it.
- (i) The True-up Statement and the Additional True-up Statement given by the Trustee to each Preference Unit Holder must be accompanied by reasonable details of the calculation of each matter required to be included in the True-up Statement or the Additional True-up Statement (as applicable).
- (j) In the absence of fraud or manifest error, the True-up Statement and the Additional True-up Statement are final and binding on the Parties.
- (k) On the True-up Date each Preference Unit Holder is deemed:
 - (i) if it is the transferor of a True-up Unit:
 - (A) to have agreed to transfer the unencumbered beneficial interest in each True-up Unit it is required to transfer to the transferee of that True-up Unit as set out in the True-up Statement; and
 - (B) to have agreed to transfer the unencumbered beneficial interest in the True-up Unit Loan Balance attributable to each True-up Unit to the transferee of that True-up Unit as set out in the True-up Statement; and
 - (ii) if it is the transferee of a True-up Unit, to have agreed to accept a transfer of the beneficial interest in that True-up Unit and the True-up Unit Loan Balance attributable to that True-up Unit.
- (l) On the Transfer Settlement Date each Preference Unit Holder must:

- (i) if it is the transferor of a True-up Unit:
 - (A) transfer the unencumbered legal interest in each True-up Unit it is required to transfer to the transferee of that True-up Unit as set out in the True-up Statement; and
 - (B) transfer the unencumbered legal interest in the True-up Unit Loan Balance attributable to each True-up Unit to the transferee of that True-up Unit as set out in the True-up Statement; and
- (ii) if it is the transferee of a True-up Unit:
 - (A) accept a transfer of that True-up Unit and the True-up Unit Loan Balance attributable to that True-up Unit; and
 - (B) pay the applicable transferor the Transfer Consideration for each True-up Unit transferred to it by that applicable transferor.
- (m) If a transferee of a True-up Unit does not comply with **clause 9.3(I)(ii)(B)**, then the Trustee must effect the transfer under the power of attorney granted to it under **clause 9.3(c)**, and the Transfer Consideration which remains unpaid in respect of those True-up Units is a debt due and payable by the relevant transferee to the relevant transferor for those True-up Units.
- (n) If a transferee of a True-up Unit does not comply with **clause 9.3(I)(ii)(B)** then, without limiting any rights of that transferor against that transferee, that transferee hereby irrevocably directs the Trustee, on and from the date the Trustee is notified by the transferor of that failure to pay the Transfer Consideration, to pay that portion of the Distributable Amount or Distributable Sum (as applicable) that is payable to that transferee in respect of all Preference Units held by that transferee to the relevant transferor until the Trustee is notified by the transferor that the relevant Transfer Consideration, together with interest which will accrue on the Transfer Consideration from the Transfer Settlement Date, has been paid to the relevant transferor in full.
- (o) The interest referred to in **clause 9.3(n)** will be calculated at the Interest Rate, and any interest accrued but unpaid at the end of each Month will be capitalised and will thereafter itself bear interest.
- (p) For the purposes of **clause 9.3(n)** the transferor of a True-up Unit who has not been paid the Transfer Consideration for a True-up Unit must:
 - (i) promptly, and in any event not later than three Business Days, after the Transfer Settlement Date, notify the Trustee and the transferee that it has not received the payment of the Transfer Consideration, or has only received payment of part of the Transfer Consideration, for that True-up Unit from that transferee (including the identity of that transferee); and

- (ii) subsequently on receipt of the full amount of the Transfer Consideration (and interest) for that True-up Unit from that transferee, promptly, and in any event not later than three Business Days after receipt of payment, notify the Trustee and the transferee that it has received that payment for that True-up Unit.
- (q) For the purposes of **clause 9.3(n)**, any notice given by a transferor to the Trustee under **clause 9.3(p)** is evidence that the transferee, as named in that notice, has failed to pay to that transferor the Transfer Consideration for a True-up Unit, and the Trustee is entitled to rely on that notice without further inquiry or investigation and is not liable to any Party in respect of any Claim arising from its reliance on that notice.
- (r) Promptly, and in any event no later than three Business Days, after the Transfer Settlement Date the Trustee must record the transfer of the True-up Units in the Register subject to and in accordance with **clause 6.6** of the Trust Deed.
- (s) The Parties agree that **clause 12.1** does not apply to a transfer of a Preference Unit made under this **clause 9.3**.
- (t) Each Preference Unit Holder agrees that any stamp duty payable in respect of a transfer of a True-up Unit, or the True-up Unit Loan Balance attributable to the True-up Unit, will be borne equally by the transferor and transferee of that True-up Unit.

9.4 Adjustments for each True-up Unit

- (a) For each True-up Unit, the transferee and transferor of that True-up Unit agree as between them that:
 - (i) for any income in respect of a True-up Unit received by a transferee after the True-up Date which relates (in whole or in part) to a period prior to the True-up Date, the transferee must pay the transferor an amount equal to that portion of the income which relates to the period prior to the True-up Date; and
 - (ii) for a Call in respect of a True-up Unit:
 - (A) the transferor must pay any Calls in respect of that True-up Unit which fall due and payable on a date prior to the True-up Date; and
 - (B) the transferee must pay any Calls in respect of that True-up Unit which fall due and payable on a date on or after the True-up Date, whether or not a Call Statement for that Call was issued prior to the True-up Date.
- (b) Any dispute between a transferee and a transferor in respect of a True-up Unit under this **clause 9.4** is a matter for resolution between that transferee and transferor and does not otherwise affect the operation of this Deed or the rights and obligations of that transferee or transferor as a Preference Unit Holder under this Deed.

9.5 Recalculation of the Unit Holder's Proportion

- (a) Promptly, and in any event not later than three Business Days, after the Transfer Settlement Date the Trustee must give each Preference Unit Holder a statement (**Recalculated Unit Holder's Proportion Statement**) setting out the recalculated Unit Holder's Proportion for each Preference Unit Holder (**Recalculated Unit Holder's Proportion**).
- (b) The Trustee must calculate the Recalculated Unit Holder's Proportion for each Preference Unit Holder by dividing the number of Preference Units held by a Preference Unit Holder immediately following the Transfer Settlement Date by the total number of Preference Units on issue as at the Transfer Settlement Date.
- (c) The Recalculated Unit Holder's Proportion Statement given by the Trustee to each Preference Unit Holder under **clause 9.5(a)** must be accompanied by reasonable details of the calculation of the Recalculated Unit Holder's Proportion for each Preference Unit Holder.
- (d) In the absence of fraud or manifest error, the Recalculated Unit Holder's Proportion for each Preference Unit Holder set out in the Recalculated Unit Holder's Proportion Statement is final and binding on the Parties.
- (e) If a Preference Unit Holder breaches its obligation to pay the Transfer Consideration for any True-up Unit under **clause 9.3(I)**, that Preference Unit Holder is nonetheless obliged to comply with its obligations under this Deed on the basis of its Recalculated Unit Holder's Proportion.

9.6 Subsequent increases or decreases to the Final Project Cost

The Parties acknowledge and agree that there is no further recalculation of Unit Holder's Proportions or reallocation of Preference Units between Preference Unit Holders upon the final actual total Project Costs for a Segment or the Extension being determined, even if that cost differs from the Estimated Final Trust Costs for each Segment or the Total Estimated Final Trust Costs for the Extension.

10 Requirements for and use of Bank Guarantees

10.1 Requirements for Bank Guarantee

A Bank Guarantee required to be provided under this Deed must:

- (a) be an unconditional and irrevocable bank guarantee in favour of the Trustee;
- (b) be issued by an authorised deposit-taking institution under the *Banking Act 1959* (Cth) which holds a long-term credit rating by Standard & Poors Rating Services of at least A (or the equivalent rating by another internationally recognised ratings agency) (**Issuer**);
- (c) require the Issuer to pay on demand by the Trustee, without recourse to the Party providing the Bank Guarantee or any other person, an amount or amounts up to the amount specified in the Bank Guarantee;

- (d) have no expiry date, or have an expiry date no earlier than 12 Months after the date of issue of the Bank Guarantee;
- (e) state that the Bank Guarantee is assignable by the Trustee to an assignee of the Trustee under **clause 12.6** (subject to the relevant Issuer and the Party providing the Bank Guarantee being given notice of the identity of the assignee); and
- (f) otherwise be in a form, and upon terms, acceptable to the Trustee (acting reasonably).

10.2 Purpose of Bank Guarantee

A Party provides a Bank Guarantee as security for the due and proper performance of that Party's obligations as a Preference Unit Holder to pay Call Amounts, and any other amounts payable by that Party as a Preference Unit Holder under the Trust Deed or this Deed.

10.3 Recourse to Bank Guarantee

- (a) The Trustee may only draw on the Bank Guarantee of a Preference Unit Holder in circumstances where that Preference Unit Holder fails to pay, by the due date, any amount that is payable by that Preference Unit Holder to the Trustee under the Trust Deed or this Deed or where this Deed otherwise gives the Trustee the express right to draw on the Bank Guarantee.
- (b) If a Preference Unit Holder has failed to pay a Loan Call on or before the date that is five Business Days after the due date for payment of that Loan Call, then the Trustee must draw on the Bank Guarantee of that Preference Unit Holder on the date which is six Business Days after the due date for payment.

10.4 Replacement Bank Guarantee

- (a) If a Bank Guarantee has an expiry date, that Preference Unit Holder must, at least 20 Business Days prior to the expiry of that Bank Guarantee, deliver to the Trustee a replacement Bank Guarantee in accordance with the requirements set out in **clause 10.1** in exchange for the existing Bank Guarantee.
- (b) If a Preference Unit Holder fails to provide a replacement Bank Guarantee as required by **clause 10.4(a)**, then the Trustee must draw down on the existing Bank Guarantee prior to its expiry, and hold the cash drawn down as a cash security deposit in place of the Bank Guarantee.
- (c) The provisions of **clause 10** will apply to the cash security deposit with any necessary amendments.
- (d) A Preference Unit Holder will be entitled to recover from the Trustee the amount of the cash security deposit held by the Trustee for that Preference Unit Holder at any time upon delivery to the Trustee of a Bank Guarantee which satisfies the requirements of **clause 10**.

10.5 Changes to amount of Bank Guarantee

- (a) If, at any time, in the Trustee's opinion, in respect of a Preference Unit Holder that is required to provide a Bank Guarantee, the amount which at that time is:
- (i) the sum of:
 - (A) any Call Amounts called but not yet paid by that Preference Unit Holder; and
 - (B) the Unit Holder's Proportion of the amount which the Trustee (acting reasonably) estimates to be the total Trust Costs to be Incurred by the Trustee prior to the end of the Construction Period;
- less**
- (ii) the amount of the Unit Holder's Proportion of the Liquidity Target, **(Reviewed Amount)** exceeds the amount of the Bank Guarantee then given by that Preference Unit Holder **(Current Amount)**, then the Trustee may, in its absolute discretion, by notice to that Preference Unit Holder, increase the amount of the Bank Guarantee required to be given by that Preference Unit Holder up to the Reviewed Amount.
- (b) Without limiting **clause 10.5(a)**, the Trustee must review the amount of the Bank Guarantee required to be given by a Preference Unit Holder at intervals of not more than three Months, at which time:
- (i) if the Current Amount exceeds the Reviewed Amount, the Trustee must, by notice to that Preference Unit Holder, decrease the amount of the Bank Guarantee required to be given by that Preference Unit Holder to the Reviewed Amount; or
 - (ii) if the Reviewed Amount exceeds the Current Amount, the Trustee may, by notice to that Preference Unit Holder, increase the amount of the Bank Guarantee required to be given by that Preference Unit Holder up to the Reviewed Amount.
- (c) If the Trustee gives a notice increasing the amount of the Bank Guarantee required to be given by a Preference Unit Holder under **clause 10.5(a)** or **clause 10.5(b)(ii)**, that Preference Unit Holder must, within ten Business Days, deliver to the Trustee:
- (i) a further Bank Guarantee for the amount of the increase; or
 - (ii) a replacement Bank Guarantee for the Reviewed Amount in exchange for the existing Bank Guarantee.
- (d) If the Trustee gives a notice decreasing the amount of the Bank Guarantee required to be given by a Preference Unit Holder under **clause 10.5(b)(i)**, that Preference Unit Holder may deliver to the Trustee a replacement Bank Guarantee for the Reviewed Amount in exchange for the existing Bank Guarantee.

10.6 Return of security

For each Preference Unit Holder that has provided a Bank Guarantee, the Trustee must, subject to the Trustee's rights of recourse to the Bank Guarantee under **clause 10.3**, return the Bank Guarantee to that Preference Unit Holder ten Business Days after:

- (a) the later of:
 - (i) the date of termination of this Deed in respect of that Preference Unit Holder; and
 - (ii) the date upon which that Preference Unit Holder has discharged all of its payment obligations under this Deed which arise as a consequence of, or which survive, such termination; or
- (b) the last day of the Construction Period,
whichever occurs first.

10.7 Changes to Bank Guarantee obligation

- (a) A Preference Unit Holder must give the Trustee a notice (**Creditworthiness Change Notice**) if, at any time after the Security Delivery Date, its circumstances have changed such that:
 - (i) it is required under the Credit Policy to provide a Bank Guarantee (where it was not previously required to provide a Bank Guarantee); or
 - (ii) it is no longer required under the Credit Policy to provide a Bank Guarantee (where it was previously required to provide a Bank Guarantee).
- (b) Either:
 - (i) as soon as practicable after receipt of a Creditworthiness Change Notice; or
 - (ii) at any time where the Trustee reasonably believes that a Preference Unit Holder:
 - (A) is required under the Credit Policy to provide a Bank Guarantee (where it was not previously required to provide a Bank Guarantee); or
 - (B) is no longer required under the Credit Policy to provide a Bank Guarantee (where it was previously required to provide a Bank Guarantee),

then the Trustee must:

- (iii) if the Preference Unit Holder is required under the Credit Policy to provide a Bank Guarantee, serve a notice on that Preference Unit Holder (**Bank Guarantee Notice**) requiring the Preference Unit Holder to provide a Bank Guarantee and setting out in reasonable detail the reasons for such requirement; or

- (iv) if the Preference Unit Holder is no longer required under the Credit Policy to provide a Bank Guarantee, return to that Preference Unit Holder any Bank Guarantee previously provided.
- (c) Any Bank Guarantee to be provided in accordance with **clause 10.7(b)(iii)**:
 - (i) must be for the amount specified in the Bank Guarantee Notice, which must not be more than the Reviewed Amount; and
 - (ii) must be provided within ten Business Days of the date of the Bank Guarantee Notice.
- (d) If a Preference Unit Holder is required to provide a Bank Guarantee (including an additional or replacement Bank Guarantee) under this Deed (other than under **clause 5**) and fails to provide such Bank Guarantee in accordance with the requirements of this Deed, then:
 - (i) that Preference Unit Holder will lose all rights to participate in the Extension and, unless otherwise expressly stated and other than accrued rights, will cease to have any further rights under the Transaction Documents; and
 - (ii) that Preference Unit Holder will be considered a Defaulting Unit Holder for the purpose of **clauses 8.6** and **8.7** and the Trustee may, without the consent of that Preference Unit Holder, exercise its power of sale or enforce any other rights conferred by the Security Documentation in order to sell (or otherwise dispose of) the Sale Assets in accordance with the procedure set out in **clause 8.7**.

11 Funding adjustments

11.1 Additional funding

- (a) If in the Trustee's opinion, on the basis of information provided by the Project Manager (or the Replacement Project Manager if one has been appointed under the Project Management Agreement), the total Trust Costs are likely to exceed the aggregate Application Price of all Preference Units then on issue, then the Trustee must:
 - (i) require the Project Manager (or the Replacement Project Manager if one has been appointed under the Project Management Agreement) to convene a meeting of the "Extension Committee" (as defined in the Project Management Agreement) under the Project Management Agreement; and
 - (ii) give the Unit Holders:
 - (A) sufficient of the information received from the Project Manager (or the Replacement Project Manager if one has been appointed under the Project Management Agreement), about:

- (1) the revised estimate of total Project Costs; and
 - (2) the reason for the likely increase in Project Costs, to reasonably enable them to assess the requirements to complete the construction of the Extension; and
- (B) any relevant information about Estimated Trust Administration Costs.
- (b) The Preference Unit Holders must, in good faith, consider and endeavour to agree with the Trustee mechanisms for providing additional funding (whether by issue of additional Preference Units or otherwise) to complete the Works for the Extension.

11.2 Costs if Extension not completed

- (a) If the Preference Unit Holders do not agree with the Trustee mechanisms for providing additional funding to complete the Works for the Extension under **clause 11.1(b)** within 20 Business Days of the meeting of the “Extension Committee” (as defined in the Project Management Agreement) convened by the Project Manager (or the Replacement Project Manager if one has been appointed under the Project Management Agreement) under **clause 11.1(a)(i)**, then the Trustee:
 - (i) must direct the Project Manager (or the Replacement Project Manager if one has been appointed under the Project Management Agreement) to permanently cease to carry out the Works for the Extension; and
 - (ii) may continue to make Loan Calls on the Preference Unit Holders for costs and expenses arising from the permanent cessation of the Works for the Extension (including, for example, demobilisation costs, early termination fees and/or suspension fees payable under Works Contracts, Losses arising from breach of Works Contracts and costs under the Rail Corridor Agreement of removing the Extension and remediating the Extension Land).
- (b) If the Trustee directs the Project Manager (or the Replacement Project Manager if one has been appointed under the Project Management Agreement) to permanently cease to carry out the Works for the Extension under **clause 11.2(a)(i)**, then each Preference Unit Holder:
 - (i) acknowledges that giving effect to the permanent cessation may cause the Trustee to breach a Works Contract;
 - (ii) indemnifies the Trustee for its Unit Holder’s Proportion of any Loss (including Consequential Loss) arising from such breach; and
 - (iii) acknowledges that it has no Claim against the Trustee for any Loss (including Consequential Loss) arising from such breach.
- (c) Any Loan Calls made for the purposes of **clause 11.2(a)(ii)** are made in accordance with **clause 6.1**.

12 Transfers and other dealings with Units

12.1 Transfers by Preference Unit Holders

- (a) Subject to **clause 9.3(s)** but otherwise despite any provision in this Deed or the Trust Deed to the contrary, a Preference Unit Holder, in addition to satisfying any other requirement in relation to the transfer of Preference Units in this Deed or any other Transaction Document, must not transfer all or some of the Preference Units unless that Preference Unit Holder:
 - (i) if the transfer is to take effect after the end of the Construction Period, obtains the prior consent of the Ordinary Unit Holder (acting in its absolute discretion) to that transfer; and
 - (ii) in any case, complies with all requirements in respect of a transfer set out in each Transaction Document, including **clause 12.1(b)**.
- (b) Without limiting **clause 12.1(a)**, a transfer of Preference Units by a Preference Unit Holder must satisfy the conditions in this **clause 12.1(b)** as follows:
 - (i) the transfer is to occur during the Construction Period, the proposed transferee:
 - (A) is a Qualified Investor;
 - (B) executes any documents (including Security Documentation) required by the Trustee, in the form reasonably required by the Trustee, under which the proposed transferee agrees to assume the rights, and be bound by the obligations, of the Preference Unit Holder under this Deed, with effect upon the proposed transferee becoming the registered holder of the Preference Units; and
 - (C) executes documents, in accordance with the requirements of that Preference Unit Holder's Umbrella Agreement, under which the proposed transferee agrees to assume the rights, and be bound by the obligations, of the Preference Unit Holder under the Preference Unit Holder's Umbrella Agreement, with effect upon the proposed transferee becoming the registered holder of the Preference Units;
 - (ii) the transfer is to occur after the end of the Construction Period, the proposed transferee executes any documents required by the Trustee, in the form reasonably required by the Trustee, under which the proposed transferee agrees to assume the rights, and be bound by the obligations, of the Preference Unit Holder under this Deed, with effect upon the proposed transferee becoming the registered holder of the Preference Units;
 - (iii) the transfer is to occur during the Construction Period, the proposed transferee provides a Bank Guarantee where the proposed transferee would be required to provide a Bank

Guarantee under the Credit Policy if it were a Preference Unit Holder;

- (iv) the proposed transferee is an Eligible Investor, and the transfer to the proposed transferee would not otherwise breach the restrictions on transfer in the Trust Deed; and
- (v) the transfer would not result in any person owning a number of Preference Units that is less than 6% of the total number of Preference Units on issue, other than where the transferor Preference Unit Holder holds less than 6% of the total number of Preference Units on issue in which case the transfer must comprise all of that Preference Unit Holder's Preference Units.

[Drafting note: There may need to be additional restrictions on a transaction-by-transaction basis.]

12.2 Transfer by Ordinary Unit Holder

- (a) If an entity will acquire from the Ordinary Unit Holder all of the Ordinary Unit Holder's interest in the parts of the Railway Network which include the Segments, then the Ordinary Unit Holder must transfer to the acquiring entity:

- (i) its Ordinary Unit; and
- (ii) all of its rights and liabilities as Ordinary Unit Holder under this Deed and the Trust Deed,

at the time that the acquiring entity acquires the Ordinary Unit Holder's interest in the relevant parts of the Railway Network.

- (b) If an entity will acquire from the Ordinary Unit Holder an undivided interest in the parts of the Railway Network which include the Segments, then the Ordinary Unit Holder must transfer to the acquiring entity:

- (i) an undivided interest in its Ordinary Unit with the result that the undivided interests in the Ordinary Unit will be held by the Ordinary Unit Holder and the acquiring entity as tenants in common in proportions equivalent to their undivided interests in the relevant parts of the Railway Network; and
- (ii) a proportion of its rights and liabilities as Ordinary Unit Holder under this Deed and the Trust Deed equivalent to the acquiring entity's undivided interest in the relevant parts of the Railway Network,

at the time that the acquiring entity acquires the Ordinary Unit Holder's interest in the relevant parts of the Railway Network.

- (c) In order to give effect to a transfer:
 - (i) in the case of clause **12.2(a)**, the Trustee must register the transfer of the Ordinary Unit to the acquiring entity; and

- (ii) in the case of **clauses 12.2(a)** or **12.2(b)**, each Party and the acquiring entity must execute a deed of assignment and assumption or deed of novation in a form acceptable to the Trustee (acting reasonably) to give effect to the transfer of any rights or liabilities of the Ordinary Unit Holder required under this **clause 12.2**.

12.3 Sale of Units

If:

- (a) the Trustee sells a Preference Unit Holder's Units in accordance with **clause 8.7**, then **clause 12.1** applies to the sale of such Preference Units as if the sale of the Preference Units by the Trustee was a transfer of such Preference Units by the Preference Unit Holder; and
- (b) a Defaulting Unit Holder transfers its Preference Units in accordance with **clause 8.6** then **clause 12.1** applies to the transfer of such Preference Units.

12.4 Charging

- (a) Subject to **clause 12.4(b)**, a Preference Unit Holder (**Chargor**) may mortgage, charge or encumber (**Charge**) all or any of its rights and obligations under this Deed and the assets the subject of security in the Security Documentation, in whole or in part, in favour of any financier, mortgagee or chargee (**Chargee**), provided that the Chargor, the Chargee and the Trustee execute a deed or agreement the terms of which are acceptable to the Trustee (acting reasonably), including, as a minimum, terms consistent with the following:
 - (i) the Trustee acknowledges the existence of the Charge;
 - (ii) the Trustee will give the Chargee a copy of all notices given to the Chargor under this Deed and the Trust Deed, at the same time as they are given to the Chargor;
 - (iii) the Trustee will not redeem or permit the redemption of the Chargor's Preference Units or the transfer (including transfer under **clause 8.6** or sale under **clause 8.7**) of the Chargor's Preference Units without first giving the Chargee a notice of such redemption or transfer;
 - (iv) the Trustee will not permit the mortgaging or charging of the Chargor's Preference Units without the prior written approval of the Chargee, other than as required by the Security Documentation (including perfecting any security the subject of the Security Documentation) for which the Chargee is taken to have approved;
 - (v) the Trustee will not vary this Deed or the Trust Deed without the approval of the Chargee other than in circumstances where the Trustee has an express right under this Deed or the Trust Deed to unilaterally vary such document;

- (vi) the Trustee must give the Chargee notice where the Trustee is directed by the Ordinary Unit Holder to withhold and withholds any Distribution to Preference Unit Holders in accordance with **clause 15.5**;
 - (vii) the Chargee may at any time, and from time to time, by notice to the Trustee exercise its rights under the Charge to act as the agent of the Chargor, and the Trustee will then treat the Chargee in all respects as if the Chargee were the Chargor;
 - (viii) the Chargee must comply with the provisions of this Deed and the Trust Deed, including this **clause 12**, in the exercise of its rights under the Charge; and
 - (ix) the provisions contemplated in **item 5 of schedule 9**.
- (b) Except as expressly provided otherwise in a Transaction Document and/or Security Documentation, a Preference Unit Holder must not, during the Construction Period, Charge:
- (i) any of its rights and obligations under the Trust Deed, this Deed or its Umbrella Agreement; or
 - (ii) any of its rights and obligations in respect of its Preference Units, unless that Preference Unit Holder Charges:
 - (iii) all of its rights and obligations under the Trust Deed, this Deed and its Umbrella Agreement; and
 - (iv) all of its rights and obligations in respect of all of its Preference Units,
- to the same Chargee, provided that the Chargee:
- (v) is required under the terms of a Charge to exercise its rights under that Charge in respect of all (and not part) of the rights and obligations of that Preference Unit Holder; and
 - (vi) undertakes to the Trustee that it will not exercise its rights under that Charge other than in accordance with **clause 12.4(b)(v)**.

12.5 Restrictions on other dealings and assignment generally

Unless expressly permitted under this Deed (including this **clause 12.5**):

- (a) a Preference Unit Holder must not enter into any transaction or dealing in respect of that Preference Unit Holder's Preference Units that may result in a transfer of Preference Units (for example, a put option or call option) where the resultant transfer would not be permitted under the Trust Deed or this Deed; and
- (b) a Unit Holder must not assign, transfer, mortgage, charge, make the subject of a trust or otherwise deal with or encumber all or any of its rights or liabilities under this Deed or the Trust Deed (or procure or

permit any of those things) other than in respect of the same dealing with that Unit Holder's Units in accordance with this **clause 12**.

12.6 Assignment by Trustee

- (a) If the Trustee is replaced by a new trustee of the Trust:
 - (i) the Trustee must procure that the new trustee executes a document by which the new trustee agrees to assume the rights, and be bound by the obligations, of the Trustee under this Deed; and
 - (ii) all other Parties must execute the document as contemplated under **clause 12.6(a)(i)**.
- (b) The Trustee must not otherwise assign or novate its rights, obligations or liabilities under this Deed.

12.7 Change in Control of Preference Unit Holder

- (a) If a Change in Control of a Preference Unit Holder occurs after the end of the Construction Period without the prior consent of the Ordinary Unit Holder (acting in its absolute discretion), then, with effect on the date of the Change in Control, the rights (but not the obligations) attaching to the Preference Unit Holder's Preference Units are suspended as set out in **clause 12.7(b)**, and the suspension of those rights will continue until the earlier of:
 - (i) the date that the Ordinary Unit Holder notifies the Preference Unit Holder that it consents to the Change in Control (acting in its absolute discretion);
 - (ii) the date a further Change in Control occurs with the effect that, after such further Change in Control, the Preference Unit Holder is Controlled by the person that Controlled the Preference Unit Holder immediately prior to the first Change in Control;
 - (iii) the date this Deed terminates in respect of that Preference Unit Holder; and
 - (iv) the date the Trust terminates.
- (b) For the purposes of **clause 12.7(a)**, while the rights attaching to a Preference Unit Holder's Preference Units are suspended:
 - (i) the Trustee must withhold all distributions of the Trust attributable to that Preference Unit Holder and accumulate such distributions while the suspension of those rights continues;
 - (ii) that Preference Unit Holder is not entitled to receive notices or other information under this Deed or any other Transaction Document; and
 - (iii) that Preference Unit Holder is not entitled to vote under this Deed or the Trust Deed.

13 Usual payment arrangements and set offs

13.1 Method of payment

All payments to be made under, or in connection with, this Deed must be paid in Australian currency in cleared and immediately available funds, without set-off or deduction (except as directed under **clauses 7.2, 9.3(n)** or **13.4** or as provided in **clause 13.2**), by:

- (a) electronic payment to an account nominated by the Party entitled to receive the payment; or
- (b) such other method as the Party entitled to receive the payment may reasonably require from time to time.

13.2 Trustee's right of set off

- (a) Subject to **clause 13.3**, the Trustee may deduct from any amounts which are due and payable by the Trustee to a Preference Unit Holder under this Deed any amounts which are due and payable by that Preference Unit Holder to the Trustee under this Deed or the Trust Deed (**Outstanding Amounts**).
- (b) To the extent that an amount is due and payable by a Preference Unit Holder for a Call, the amount the Trustee deducts must be applied to the payment of that Call.
- (c) To the extent that an amount is due and payable by a Preference Unit Holder in respect of any Outstanding Amount other than a Call (including, for example, unpaid interest on an overdue Call), the amount the Trustee deducts from any payment to that Preference Unit Holder is retained as an Asset.

13.3 Exercise of Trustee's right of set off

- (a) If the Trustee exercises the Trustee's right of deduction under **clause 13.2** in respect of a Preference Unit Holder or a Defaulting Unit Holder (as applicable):
 - (i) the Trustee must notify that Preference Unit Holder or Defaulting Unit Holder (as applicable) of the deduction; and
 - (ii) the Outstanding Amount in respect of which the deduction is made by the Trustee will be taken to have been paid by that Preference Unit Holder or Defaulting Unit Holder (as applicable) to the Trustee on the date of the deduction.
- (b) The Trustee must not exercise the Trustee's right of deduction under **clause 13.2** in respect of a Preference Unit Holder to the extent that:
 - (i) if **clause 14** applies – the Trustee can withdraw funds from the Bank Account; or
 - (ii) otherwise – the Trustee can draw on a Bank Guarantee given by that Preference Unit Holder,

to satisfy the Outstanding Amount.

13.4 Payment of Tax Indemnity Amounts

- (a) Each Preference Unit Holder who is a party to an Umbrella Agreement directs the Trustee to:
 - (i) deduct an amount equal to the Tax Indemnity Amount for that Preference Unit Holder from any amounts which are due and payable by the Trustee to that Preference Unit Holder under this Deed if, and to the extent that, that Preference Unit Holder fails to pay the Tax Indemnity Amount on or before the due date for payment under that Preference Unit Holder's Umbrella Agreement; and
 - (ii) pay the amount deducted to the relevant 'Indemnified Entity' (as defined in the Umbrella Agreement) in accordance with the Umbrella Agreement.
- (b) Each Preference Unit Holder who is not a party to an Umbrella Agreement directs the Trustee to:
 - (i) deduct an amount equal to the Tax Indemnity Amount for that Preference Unit Holder from any amounts which are due and payable by the Trustee to that Preference Unit Holder under this Deed if, and to the extent that, the entity that has the obligation to pay the Tax Indemnity Amount for that Preference Unit Holder under that Preference Unit Holder's Linked Umbrella Agreement fails to pay the Tax Indemnity Amount for that Preference Unit Holder on or before the due date for payment under that Preference Unit Holder's Linked Umbrella Agreement; and
 - (ii) pay the amount deducted to the Indemnified Entity (as defined in the Umbrella Agreement) in accordance with the Linked Umbrella Agreement.
- (c) Any amount deducted under **clauses 13.4(a) or 13.4(b)** shall constitute payment of that Tax Indemnity Amount by the Preference Unit Holder to the extent of the amount deducted.

14 Alternative payment arrangements

14.1 Application of alternative payment arrangements

This **clause 14** will commence in respect of a Preference Unit Holder if:

- (a) that Preference Unit Holder does not deliver to the Trustee a replacement Bank Guarantee under, and within the time required by, **clause 10.4**; or
- (b) the Issuer of the Bank Guarantee elects to pay to the Trustee the full or remaining amount of the Bank Guarantee without demand by the Trustee.

14.2 Trustee entitled to draw on Bank Guarantee

The Trustee must promptly (and in any event within 15 Business Days) after this **clause 14** commences in accordance with **clause 14.1** in respect of a Preference Unit Holder:

- (a) where **clause 14.1(a)** applies, draw on the full amount of the Bank Guarantee provided by that Preference Unit Holder;
- (b) establish a separate interest bearing bank account in the Trustee's name (**Bank Account**) for that Preference Unit Holder; and
- (c) deposit the amount drawn by the Trustee under **clause 14.2(a)**, or paid by the Issuer under **clause 14.1(b)**, into the Bank Account.

14.3 Drawing and depositing funds

Where this **clause 14** applies in respect of a Preference Unit Holder in accordance with **clause 14.1**:

- (a) if an amount is due and payable by that Preference Unit Holder to the Trustee under this Deed:
 - (i) the Trustee must draw from the Bank Account:
 - (A) where the amount is a Loan Call and that Preference Unit Holder has failed to pay the Loan Call on or before the date that is five Business Days after the due date for payment of that Loan Call, the outstanding amount of the Loan Call (or, if the balance of the Bank Account is less than the outstanding amount, the balance of the Bank Account) on the day which is six Business Days after the due date for payment;
 - (B) otherwise, the amount that is due and payable (or, if the balance of the Bank Account is less than the outstanding amount, the balance of the Bank Account) as soon as reasonably practicable after the amount becomes due and payable; and
 - (ii) the amount drawn from the Bank Account under **clause 14.3(a)(i)** will be treated as payment by that Preference Unit Holder to the Trustee of the amount that is due and payable (up to the amount drawn from the Bank Account) at the time it is drawn from the Bank Account;
- (b) if an amount is due and payable by that Preference Unit Holder to the Trustee under this Deed and the Trustee cannot draw some or all of the amount from the Bank Account under **clause 14.3(a)** by the due date for payment because there is insufficient funds in the Bank Account:
 - (i) the amount due (together with any interest accruing on that amount under **clause 8.1**) that cannot be drawn from the Bank Account by the due date for payment will, for the avoidance of

doubt, continue to be due and payable by that Preference Unit Holder to the Trustee under this Deed; and

- (ii) if, and when, funds are deposited into the Bank Account, the Trustee must draw from the Bank Account any amount due and payable in accordance with **clause 14.3(a)** in priority to any other amounts that subsequently become due and payable under this Deed; and
- (c) if an amount is due and payable by the Trustee to that Preference Unit Holder under this Deed:
 - (i) the Trustee must, subject to the Trustee's right of set-off under **clause 13.2**, deposit into the Bank Account the amount that is due and payable within the time for payment of that amount under this Deed; and
 - (ii) the amount deposited into the Bank Account will be treated as payment by the Trustee to that Preference Unit Holder of the amount that is due and payable (up to the amount deposited into the Bank Account) on the date the amount is deposited into the Bank Account.

14.4 Funds in Bank Account not Assets

- (a) The Trustee acknowledges that all amounts deposited in a Bank Account under **clauses 14.2(c)** or **14.3(c)** (including any interest earned on amounts in the Bank Account) from time to time in respect a Preference Unit Holder are held jointly on trust for the Trustee and that Preference Unit Holder absolutely and do not form part of the Assets.
- (b) Any interest earnings on amounts deposited in the Bank Account from time to time in respect of a Preference Unit Holder are income of that Preference Unit Holder.
- (c) Despite **clause 14.4(a)**, the Trustee is authorised to, and each Preference Unit Holder hereby irrevocably directs the Trustee to:
 - (i) deposit amounts into the Bank Account as required or permitted under **clauses 14.2, 14.3** and **14.6**; and
 - (ii) draw amounts from the Bank Account (including any interest earnings on amounts in the Bank Account) as permitted under **clauses 14.3** and **14.6**.

14.5 Statement of Bank Account

Within 15 Business Days after the end of each Month after this **clause 14** commences in respect of a Preference Unit Holder, the Trustee must give that Preference Unit Holder a statement for that Month setting out:

- (a) any amounts drawn from the Bank Account during that Month;
- (b) any amounts deposited into the Bank Account during that Month;

- (c) any interest earned on the amount in the Bank Account during that Month;
- (d) the balance of the Bank Account at the end of that Month;
- (e) the sum of all amounts due and payable by that Preference Unit Holder to the Trustee under this Deed at the end of that Month; and
- (f) the sum of all amounts due and payable by the Trustee to that Preference Unit Holder under this Deed at the end of that Month.

14.6 Reconciliation of Bank Account

- (a) On the Bank Account Reconciliation Date, the Trustee must draw from each Bank Account any amounts which the Trustee is entitled to draw from that Bank Account at that time in accordance with **clause 14.3**.
- (b) Within 15 Business Days after the Bank Account Reconciliation Date, the Trustee must give to each Preference Unit Holder to which this **clause 14** applies a statement (**Bank Account Reconciliation Statement**) setting out:
 - (i) the balance of the Bank Account as at the end of the Bank Account Reconciliation Date;
 - (ii) the sum of all amounts due and payable by the Trustee to that Preference Unit Holder under this Deed as at the end of the Bank Account Reconciliation Date;
 - (iii) the sum of all amounts due and payable by that Preference Unit Holder to the Trustee under this Deed as at the end of the Bank Account Reconciliation Date; and
 - (iv) the total statement amount being the sum of the amounts specified in **clauses 14.6(b)(i)** and **14.6(b)(ii)** less the amount specified in **clause 14.6(b)(iii)** (which may be a positive or negative amount).
- (c) If the total statement amount specified in the Bank Account Reconciliation Statement is a positive amount, at the time that the Trustee gives a Preference Unit Holder the Bank Account Reconciliation Statement, the Trustee must pay the total statement amount to that Preference Unit Holder.

15 Income Distributions for Preference Units

15.1 Preference Units terms of issue – income rights

- (a) The terms of issue of each Preference Unit in relation to distributions of Distributable Income are as set out in this **clause 15**.
- (b) The Parties acknowledge that the Ordinary Unit Holders are not presently entitled to any Distributable Income at any time that Preference Units are on issue.

15.2 Principles of calculation of Distributable Income

For the purposes of clause [12.2(a)] of the Trust Deed, while the Preference Units are on issue:

- (a) all Distributable Income is Preference Income; and
- (b) the provisions of this Deed in relation to calculation of Preference Income are a standing determination of principles for calculating the Distributable Income.

15.3 Preference Income

Subject to **clauses 15.4** and **15.5**, each Preference Unit Holder is entitled, as at each Distribution Calculation Date, to a share of the Preference Income for the Distribution Period that ends on that Distribution Calculation Date, pro rata in the proportion that the total Paid Up Amounts on that Unit Holder's Units bears to the aggregate Paid Up Amounts of all Preference Units on issue.

15.4 Distributions for Preference Unit Holders

- (a) The Trustee determines that the last day of each Month is a Distribution Calculation Date for the purposes of the Trust Deed.
- (b) Subject to **clause 15.5** and clause 12.5 of the Trust Deed, if the Preference Income is positive in any Month, then the Trustee must, subject to **clause 15.5**, make a distribution of Distributable Income equal to that amount in respect of that Month.
- (c) If the Preference Income is negative in any Month, the Trustee is not required to make a distribution of Distributable Income in respect of that Month.
- (d) For the avoidance of doubt, where the Preference Income has been negative for any Month(s), the Trustee must take account of this for the purpose of the calculation of the amount of Preference Income for any following Months.

15.5 Ordinary Unit Holder may direct Trustee not to make distributions

- (a) Prior to a Distribution Calculation Date, the Ordinary Unit Holder may direct the Trustee, by notice, that no Preference Income be distributed on and from the Distribution Calculation Date specified in the notice. The Preference Unit Holders will not be entitled to distributions on that and subsequent Distribution Calculation Dates unless and until the Ordinary Unit Holder directs the Trustee that distributions will re-commence from a specified Distribution Calculation Date. The first distribution on recommencement must include all accumulated Preference Income.
- (b) The Trustee must promptly notify the Preference Unit Holders of any direction by the Ordinary Unit Holder under **clause 15.5(a)**.

15.6 Distributable Amount and Distribution Account

Clauses [12.4] and [12.6] of the Trust Deed apply to distributions of Preference Income as if references to 'Distributable Income' included a reference to 'Preference Income'.

15.7 Preference Income Statement

- (a) The Trustee must, as soon as practicable after the end of each Distribution Period, give each Preference Unit Holder a statement (**Income Statement**) setting out:
 - (i) the amount of Preference Income for the Distribution Period;
 - (ii) the method of calculation of that Preference Income; and
 - (iii) the amount of the distribution to be made for that Distribution Period.
- (b) The Trustee must give each Preference Unit Holder, within a reasonable period after the end of each Financial Year, a statement setting out information about the components of the distributions of Preference Income made during the Financial Year that is reasonably required in respect of the Preference Unit Holder's tax return.

16 Allocation of costs, records and auditing

16.1 When costs and expenses Incurred

- (a) For the purposes of this Deed, a cost or expense will be taken to be **Incurred**:
 - (i) in the case of a cost or expense payable by the Trustee to a third party (other than a Related Body Corporate of the Trustee), when the cost or expense is paid by the Trustee; and
 - (ii) in any other case, when the cost or expense is incurred by the Trustee.
- (b) For the avoidance of doubt, when a cost or expense is Incurred for the purposes of this Deed does not affect the calculation of Distributable Income or how the cost or expense is accounted for in the Trust's financial statements.

16.2 Keeping of records

- (a) The Trustee must maintain complete records of and relating to the Extension, including all matters necessary to enable the calculation of:
 - (i) distributions of Preference Income; and
 - (ii) Call Amounts.
- (b) The Trustee must preserve and maintain the records referred to in **clause 16.2(a)**, in respect of each distribution and Call, for a period of not less than five years after the distribution was made or the Call Amount was received.

16.3 Audit of Call Statements or Income Statements

- (a) Any Preference Unit Holder may, within 12 Months after a Call Statement or Income Statement is given, engage an auditor (**Auditor**) in accordance with this clause **16.3** to carry out an audit in order to verify amounts included in that Call Statement or Income Statement.
- (b) Any Preference Unit Holder proposing to engage an Auditor must give each other Preference Unit Holder reasonable prior notice of their intention to do so.
- (c) The Preference Unit Holder proposing to engage an Auditor must nominate an independent auditor approved by the Trustee. The Trustee must approve the proposed Auditor unless the Trustee is of the opinion that that the proposed Auditor has previously breached the terms of any confidentiality undertaking which has previously been given by the proposed Auditor to the Trustee.
- (d) Where Preference Unit Holders holding (in aggregate) less than 50% of the Preference Units on issue engage an Auditor, those Preference Unit Holders are responsible for payment of all fees and reimbursements charged by the Auditor, payable by each of them pro rata in the proportion that the total Paid Up Amounts on each Preference Unit Holder's Preference Units bears to the aggregate Paid Up Amounts of all Preference Units of those Preference Unit Holders who engaged the Auditor.
- (e) Where Preference Unit Holders holding (in aggregate) 50% or more of the Preference Units on issue engage an Auditor, all Preference Unit Holders are responsible for payment of all fees and reimbursements charged by the Auditor, payable by each of them pro rata in the proportion that the total Paid Up Amounts on each Preference Unit Holder's Preference Units bears to the aggregate Paid Up Amounts of all Preference Units on issue.
- (f) Subject to **clause 16.3(g)**, upon at least ten Business Days prior written request given by the Auditor, the Trustee must:
 - (i) give the Auditor reasonable access during normal business hours to the books, accounts and records of the Trustee relevant to the audit; and
 - (ii) otherwise provide reasonable assistance and co-operation to the Auditor in relation to the conduct of the audit,
provided the Auditor has:
 - (iii) given a signed confidentiality undertaking in favour of the Trustee in a form acceptable to the Trustee (acting reasonably) prior to undertaking the audit; and
 - (iv) if the information to be provided to the Auditor requires the Trustee to provide the Auditor with any Price Sensitive Information, the

Auditor must enter into a confidentiality agreement in favour of Aurizon Network requiring the Auditor to keep the Price Sensitive Information confidential (including from any Preference Unit Holder).

- (g) The Trustee is not obliged to permit an Auditor to conduct an audit more than once in each half yearly period ending June and December unless a Preference Unit Holder demonstrates to the Trustee's satisfaction (acting reasonably) that:
 - (i) the audit is necessary for that Preference Unit Holder's compliance with any law or the rules of any securities exchange; and
 - (ii) the most recent Auditor's report did not contain sufficient information for that Preference Unit Holder's compliance with any law or the rules of any securities exchange.
- (h) Subject to **clause 16.3(i)**, the Trustee and each Preference Unit Holder are entitled to a copy of the Auditor's report.
- (i) The Auditor is entitled to disclose to the Preference Unit Holders all information (other than Price Sensitive Information) provided by the Trustee to the Auditor under **clause 16.3(f)**.

16.4 Monthly reporting

Within 18 Business Days after the end of each Month, the Trustee must give to each Unit Holder a report in respect of the matters set out in **schedule 12**.

17 Trust administration

17.1 Authorised Cash Investments

- (a) Where the Trustee determines not to invest any cash amounts which are not immediately required for payment of Trust Costs in accordance with **clause 17.1(b)**, then the Trustee must hold those cash amounts in a bank account at the Trustee's cash management bank.
- (b) Subject to **clauses 17.1(c) and 17.1(d)**, where the Trustee determines to invest any cash amounts not immediately required for payment of Trust Costs, those amounts must be invested in any one of the following instruments:
 - (i) a deposit with;
 - (ii) a bank bill accepted by; or
 - (iii) a negotiable certificate of deposit issued by,
any deposit-taking facility made available by authorised deposit-taking institution under the *Banking Act 1959* (Cth) (**Authorised Counterparties**), provided that:
 - (iv) the maximum maturity of any such investment is 35 days; and

- (v) at the time of making that investment, it, when aggregated with all other current investments made under **clause 17.1(b)**, satisfies the following limits in relation to the Trustee's exposure to any one Authorised Counterparty across all instrument types:

Standard & Poor's Rating Services long-term credit rating (or equivalent)	Maximum counterparty credit limit (A\$M)
AAA	100
AA+, AA, AA-	50
A+, A	25

- (c) If:
- (i) the Trustee does not hold, or is not an authorised representative of an entity which holds, an "Australian financial services licence" (as defined in the Corporations Act) or does not otherwise have the benefit of an exemption from the requirement for an "Australian financial services licence" in accordance with the Corporations Act; and
 - (ii) the investment by the Trustee in a particular product specified in **clause 17.1(b)** would require the Trustee to hold, or obtain an exemption from the requirement for, an "Australian financial services licence",
- then the Trustee will not, and cannot be required by the Unit Holders to, invest in that particular product.
- (d) The Trustee may modify any of the requirements in **clause 17.1(b)** if the modification is first submitted to and approved by the Ordinary Unit Holder and by a Special Majority of the Preference Unit Holders.

17.2 Tax Policy

- (a) Subject to **clause 17.2(b)**, the Trustee must, acting reasonably, administer the Trust in accordance with the Tax Policy.
- (b) The Trustee is not required to administer the Trust in accordance with the Tax Policy to the extent that to do so would breach or contravene or result in a breach of contravention of the Law.
- (c) The Trustee may modify the Tax Policy by notice to the Unit Holders:
 - (i) to the extent the Trustee determines is necessary to adequately address any change to Tax Law or change in administrative practice of any Governmental Agency (including the manner in

which the Tax Law is interpreted or administered by any Governmental Agency), including any change to Tax Law or change in administrative practice which takes effect retrospectively; or

- (ii) in respect of any non-material matters.
- (d) The Trustee may modify the Tax Policy otherwise than as provided in **clause 17.2(c)** if the modification is first submitted to and approved by the Ordinary Unit Holder and a Special Majority of the Preference Unit Holders.

17.3 Appointment of a Tax Reviewer

- (a) A Preference Unit Holder may notify the Trustee that it considers that the Trustee has not administered the Trust as required by **clause 17.2(a) (Tax Policy Notice)** provide that the Tax Policy Notice is accompanied by evidence reasonably satisfactory to the Trustee that a copy of that Tax Policy Notice has been provided to each Preference Unit Holder and that Preference Unit Holders holding not less than 50% of the total number of Preference Units on issue have agreed to issue the Tax Policy Notice.
- (b) On receipt of a Tax Policy Notice, the Trustee and the Preference Unit Holders that have agreed to issue the Tax Policy Notice (**Relevant Unit Holders**) must engage in good faith discussions to reach agreement in respect of the appointment of a Tax Reviewer to review whether the Trustee has administered the Trust as required by **clause 17.2(a)**. If the Trustee and the Relevant Unit Holders cannot, within 10 Business Days after the day on which the Tax Policy Notice was issued to the Trustee under **clause 17.3(a)**, agree on the appointment of the Tax Reviewer, the appointment of the Tax Reviewer is to be determined by the President (or his or her delegate) of the Tax Institute (or its successor).
- (c) The Tax Reviewer must be instructed to review whether the Trustee has administered the Trust as required by **clause 17.2(a)** and in so acting must:
 - (i) invite and consider any submissions made by Preference Unit Holders and the Trustee in writing; and
 - (ii) consider any advice obtained by the Trustee from external taxation advisers;
 - (iii) determine whether, in his or her view, the Trustee has administered the Trust as required by **clause 17.2(a)** and notify the Trustee and the Preference Unit Holders of that determination and reasonable particulars.
- (d) If the Tax Reviewer makes a determination under **clause 17.3(c)(iii)** that the Trustee has not administered the Trust as required by **clause 17.2(a)**, the Trustee must administer the Trust in such a manner so as to

comply with **clause 17.2(a)** taking into account the determination of the Tax Reviewer.

- (e) Prior to the Tax Reviewer undertaking a review, the Preference Unit Holders must ensure that the Tax Reviewer provides the Trustee with a signed confidentiality undertaking from the Tax Reviewer in favour of the Trustee in a form acceptable to the Trustee (acting reasonably).
- (f) For the avoidance of doubt, the costs and expenses of a Tax Reviewer will be a Trust Administration Cost.

17.4 Trustee's appointment of Aurizon Network

- (a) The Preference Unit Holders acknowledge that the Trustee:
 - (i) will appoint Aurizon Network as the Trustee's agent in accordance with the terms of the Project Management Agreement and the Rail Corridor Agreement; and
 - (ii) may appoint Aurizon Network to provide administration, management and trustee support services to the Trustee, under a Management Services Agreement.
- (b) The Trustee must:
 - (i) ensure that the terms of any Management Services Agreement are consistent with the principles set out in **schedule 10**; and
 - (ii) give each Preference Unit Holder a copy of any Management Services Agreement as soon as practicable after execution.
- (c) The Preference Unit Holders acknowledge that, except as otherwise provided under another Transaction Document, Aurizon Network will give invoices to the Trustee for all costs and expenses of Aurizon Network under the Management Services Agreement.
- (d) The Trustee must give each Preference Unit Holder a copy of each invoice received from Aurizon Network under any Management Services Agreement. During the Construction Period, each Call Statement must be accompanied by a copy of any invoices received from Aurizon Network under any Management Services Agreement which have not already been provided to the Preference Unit Holders under this **clause 17.4(d)**. After the Construction Period, copies of invoices received from Aurizon Network under any Management Services Agreement must be sent to each Preference Unit Holder promptly after receipt of that invoice by the Trustee.
- (e) The Preference Unit Holders consent to and ratify the Trustee's appointments of Aurizon Network under **clause 17.4(a)**.
- (f) The Trustee must not appoint any party other than Aurizon Network as an agent, delegate or other service provider to provide administration, management and trustee support services to the Trustee, unless the appointment is first submitted to and approved by a Special Majority of the Preference Unit Holders.

- (g) The Trustee must not appoint, or permit the appointment of, Aurizon Network as an agent, delegate or other service provider to provide administration, management and trustee support services to the Trustee, or otherwise in respect of the Trust, except as provided under the Management Services Agreement, the Project Management Agreement and the Rail Corridor Agreement, unless the appointment is first submitted to and approved by a Special Majority of the Preference Unit Holders.

17.5 Obligations of Trustee to provide information and appointment of the PUH Engineer

- (a) The Trustee must promptly give each Preference Unit Holder a copy of all notices, reports and written information provided by the Trustee to, or received by the Trustee from:
 - (i) the Project Manager under the Project Management Agreement (or the Replacement Project Manager if one has been appointed under the Project Management Agreement);
 - (ii) Aurizon under the Extension Infrastructure Lease;
 - (iii) the Landholder under the Rail Corridor Agreement;
 - (iv) a party to the Extension Infrastructure Agreement under the Extension Infrastructure Agreement; or
 - (v) a party to the Integrated Network Deed under the Integrated Network Deed.
- (b) The Preference Unit Holders (other than an Aurizon Preference Unit Holder) may, by Special Majority, appoint an engineer as the PUH Engineer, and must promptly notify the Trustee of that appointment, including particulars for notices to the PUH Engineer.
- (c) Prior to the provision of any information to the PUH Engineer in connection with this Deed or any other Transaction Document, a Works Contract, the Extension or the Works for the Extension, the Preference Unit Holders must procure the PUH Engineer to enter into a confidentiality agreement in favour of:
 - (i) the Project Manager under which the PUH Engineer undertakes to the Project Manager to keep confidential any such information provided to the PUH Engineer (including by the Project Manager, the Trustee, a Preference Unit Holder or the Independent Engineer), or of which the PUH Engineer otherwise becomes aware, on terms satisfactory to the Project Manager (acting reasonably); and
 - (ii) the Trustee under which the PUH Engineer undertakes to the Trustee to keep confidential any such information provided to the PUH Engineer (including by the Project Manager, the Trustee, a Preference Unit Holder or the Independent Engineer), or of which

the PUH Engineer otherwise becomes aware, on terms satisfactory to the Trustee (acting reasonably).

- (d) The Parties acknowledge that the confidentiality undertakings referred to in **clause 17.5(c)** must not prevent:
 - (i) the PUH Engineer from disclosing the information received by it to a Preference Unit Holder; and
 - (ii) a Preference Unit Holder from providing information in accordance with **clause 22**.
- (e) Subject to the PUH Engineer executing each of the relevant confidentiality agreements contemplated under **clause 17.5(c)**, the Trustee must, upon request by any Preference Unit Holder:
 - (i) give the PUH Engineer (or procure that the PUH Engineer is given) access to all documents and information (other than Price Sensitive Information) to which the Trustee has access under the Project Management Agreement, Extension Infrastructure Lease and Rail Corridor Agreement;
 - (ii) give the PUH Engineer reasonable notice of all meetings which are to be attended by the Trustee under the Project Management Agreement, Extension Infrastructure Lease and Rail Corridor Agreement; and
 - (iii) permit the PUH Engineer to attend all meetings (as an observer) which the Trustee is entitled to attend under the Project Management Agreement, Extension Infrastructure Lease and Rail Corridor Agreement.
- (f) The costs and expenses of the PUH Engineer must be borne solely by the Preference Unit Holders (other than any Aurizon Preference Unit Holder).
- (g) The Trustee must promptly give each Unit Holder written notice if the Trustee becomes aware of a breach of the Project Management Agreement, Extension Infrastructure Lease or Rail Corridor Agreement. Such notice must include (to the extent reasonably possible) reasonable details of the breach.

17.6 Preference Unit Holder obligations to notify Trustee

- (a) Each Preference Unit Holder must notify the Trustee of the Estimated Terminal Available Date promptly after:
 - (i) the Commencement Date; and
 - (ii) any change to the Estimated Terminal Available Date.
- (b) A Preference Unit Holder must notify the Trustee of the Terminal Available Date promptly after that Preference Unit Holder becomes aware of the Terminal Available Date.

- (c) If the Project Manager gives the Trustee a dispute notice under the Project Management Agreement, which disputes the Estimated Terminal Available Date or Terminal Available Date (as applicable), and the dispute is referred to an expert under the Project Management Agreement, each Preference Unit Holder must promptly provide any relevant additional information which the Trustee requests in order to provide the information to the expert for the purpose of his or her determination.

17.7 Variations to Scope of Works

The Trustee:

- (a) may vary the description of the Extension in **item 1.1 of schedule 1** if, and to the extent, required as a consequence of a variation to the Scope of Works under the Project Management Agreement; and
- (b) must promptly notify the Unit Holders of any variation made to that description of the Extension under **clause 17.7(a)**.

18 Reserve Decisions and Reserve Powers

18.1 Reserve Decisions

- (a) The Trustee must not implement a decision to exercise any power or discretion of the Trustee in relation to the management of the Trust that is listed in **schedule 4 (Reserve Decision)**, unless the Reserve Decision is first submitted to and approved by:
 - (i) the Prescribed Majority of:
 - (A) if **schedule 4** specifies that:
 - (1) an Aurizon Preference Unit Holder can participate in respect of the Reserve Decision; and
 - (2) the Prescribed Majority is the Prescribed Majority of Affected Users in respect of that Reserve Decision, those Affected Users (including each Aurizon Preference Unit Holder which is an Affected User); and
 - (B) if **schedule 4** specifies that an Aurizon Preference Unit Holder can participate in respect of the Reserve Decision but **clause 18.1(a)(i)(A)** does not apply, all Preference Unit Holders (including each Aurizon Preference Unit Holder); and
 - (C) in all other circumstances, all Preference Unit Holders excluding each Aurizon Preference Unit Holder; and
 - (ii) if **schedule 4** specifies that the approval of the Ordinary Unit Holder is required in respect of the Reserve Decision, the Ordinary Unit Holder.

- (b) Where the Trustee is required to exercise any Reserve Power as directed under **clause 18.2**, the exercise of such Reserve Power in accordance with the direction will not constitute a Reserve Decision for the purpose of this **clause 18.1** and **schedule 4**.

18.2 Reserve Powers

- (a) The Preference Unit Holders may, subject to **clauses 18.2(b)** and **18.2(c)**, direct the Trustee how to exercise any right, power or discretion of the Trustee under the Extension Infrastructure Lease, Project Management Agreement or Rail Corridor Agreement (**Reserve Power**), and the Trustee must comply with any such direction given by the Preference Unit Holders.

- (b) For the purpose of **clause 18.2(a)**:

- (i) subject to **clause 18.2(b)(ii)**, if a Reserve Power is not listed in **schedule 5**, a direction to exercise that Reserve Power must be approved and given by a Special Majority of all Preference Unit Holders excluding each Aurizon Preference Unit Holder;

- (ii) if:

- (A) a Reserve Power is not listed in **schedule 5** and arises under the Project Management Agreement; and
- (B) a Replacement Project Manager (which is not a Related Body Corporate of Aurizon Network) has been appointed under the relevant provisions of the Project Management Agreement,

then a direction to exercise that Reserve Power must be approved and given by a Special Majority of:

- (C) all Preference Unit Holders excluding the Aurizon Preference Unit Holders in circumstances where the exercise of the Reserve Power relates to acts or omissions of Aurizon Network (or a Related Body Corporate of Aurizon Network) as Project Manager under the Project Management Agreement prior to the engagement of a Replacement Project Manager (which is not a Related Body Corporate of Aurizon Network); and
 - (D) in all other circumstances, all Preference Unit Holders including the Aurizon Preference Unit Holders; and
- (iii) if a Reserve Power is listed in **schedule 5**, a direction to exercise that Reserve Power must be approved and given by the Prescribed Majority of:
 - (A) if **schedule 5** specifies that:
 - (1) an Aurizon Preference Unit Holder can participate in respect of the Reserve Power; and

- (2) the Prescribed Majority is the Prescribed Majority of Affected Users in respect of that Reserve Power, those Affected Users (including each Aurizon Preference Unit Holder which is an Affected User); and
 - (B) if **schedule 5** specifies that an Aurizon Preference Unit Holder can participate in respect of the Reserve Power but **clause 18.2(b)(iii)(A)** does not apply, all Preference Unit Holders (including each Aurizon Preference Unit Holder).
- (c) A direction under **clause 18.2(a)**:
 - (i) must be given to the Trustee, each Preference Unit Holder and the Ordinary Unit Holder;
 - (ii) must be signed by each relevant Preference Unit Holder which supports the issuing of that direction under **clause 18.2(a)**;
 - (iii) must be given by fax in accordance with the requirements of **clause 23** or by such other means as the Trustee may otherwise agree;
 - (iv) must be specific to the exercise of a particular right, power or discretion in a particular instance;
 - (v) may include a direction to exercise, or not to exercise, the relevant Reserve Power; and
 - (vi) where the direction is to exercise a Reserve Power, must specify the manner in which the Trustee is required to exercise the Reserve Power, including sufficient details for the Trustee to comply with the requirements under the applicable Transaction Document for exercise of that Reserve Power.
- (d) Any written direction given to the Trustee under **clause 18.2(c)** is evidence that the direction has been duly passed by the Prescribed Majority for that Reserve Power and the Trustee is entitled to rely on that notice without further inquiry or investigation.
- (e) In order to give Preference Unit Holders an opportunity, should the relevant majority wish to do so, to give a direction under **clause 18.2(a)** in relation to the exercise of a Reserve Power (including a direction not to exercise the Reserve Power), where there is a prescribed date by which a Reserve Power must be exercised, the Trustee must not exercise that Reserve Power more than two Business Days prior to that prescribed time.
- (f) If the Trustee has complied with this **clause 18.2** and has exercised a specific right, power or discretion under the Extension Infrastructure Lease, Project Management Agreement or Rail Corridor Agreement in a particular instance and immediately before exercising that specific right, power or discretion in that particular instance has not received a direction from the Preference Unit Holders in respect of that specific right, power

or discretion in accordance with this **clause 18.2**, then any notice subsequently given by the Preference Unit Holders under this **clause 18.2** in respect of the exercise of that specific right, power or discretion in that particular instance is of no force and effect and for the avoidance of doubt the Trustee is not, as a result of that notice, taken to have failed to comply with this **clause 18.2**.

18.3 Aurizon Preference Unit Holder entitled to information

- (a) Subject to **clause 18.3(b)**, an Aurizon Preference Unit Holder is entitled to receive notices and information provided to the Preference Unit Holders in respect of any Reserve Decision or Reserve Power, even where that Aurizon Preference Unit Holder is not entitled to vote on the matter.
- (b) An Aurizon Preference Unit Holder is not entitled to receive notices and information provided to the Preference Unit Holders in respect of any Reserve Decision or Reserve Power in circumstances where the Preference Unit Holders are considering whether the Trustee will take action against Aurizon Network or a Related Body Corporate of it.

18.4 Affected Users

- (a) For the purposes of the exercise of a specific Reserve Power or a Reserve Decision in a particular instance arising in respect of clause **[9.8(a)]** or clause **[10.2(c)]** of the Project Management Agreement or **item (l) of schedule 4** (as applicable), any Preference Unit Holder may, by notice to each other Party and the Independent Engineer, request the determination of the Affected Users for the relevant matter for the purposes of this **clause 18 (Affected User Notice)**.
- (b) Within ten Business Days after receipt of an Affected User Notice, the Independent Engineer must determine, in respect of the exercise of that specific Reserve Power or Reserve Decision in that particular instance as specified in that Affected User Notice, the Affected Users in relation to that Reserve Power or Reserve Decision.
- (c) For the purposes of the exercise of a specific Reserve Power or Reserve Decision in a particular instance arising in respect of clause **[9.6(a)]** or clause **[10.6(a)]** of the Project Management Agreement or **items (k) and (m) of schedule 4** (as applicable), the Independent Engineer must specify in the report prepared and provided by the Independent Engineer under clause **[9.4]** or clause **[10.4]** of the Project Management Agreement, as applicable, the Preference Unit Holders who the Independent Engineer determines are the Affected Users for the relevant Reserve Decision or Reserve Power.
- (d) Any determination by the Independent Engineer of the Affected Users under **clauses 18.4(b) and 18.4(c)** is, in the absence of manifest error, final and binding on the Parties and the Trustee may, in complying with **clauses 18.1 and 18.2**, rely on that determination.

- (e) Subject to **clause 18.4(f)**, where the Prescribed Majority of the Preference Unit Holders in respect of any Reserve Decision or Reserve Power requires the approval of the Affected Users for that Reserve Decision or Reserve Power, then each such Affected User will be entitled to such percentage of voting rights in respect of such Reserve Decision or Reserve Power that is equal to the amount of such Affected User's Unit Holder's Proportion calculated in accordance with **item 5 of schedule 7**.
- (f) Despite **clause 18.4(e)**, if in respect of any Reserve Decision or Reserve Power the approval of Affected Users is required for that Reserve Decision or Reserve Power and the only Affected User is an Aurizon Preference Unit Holder, then the Prescribed Majority of all Preference Unit Holders (other than each Aurizon Preference Unit Holder) will be required in respect of that Reserve Decision or Reserve Power.

19 Default by Preference Unit Holder

19.1 Events of Default

An event of default occurs in relation to a Preference Unit Holder (**Event of Default**) if:

- (a) that Preference Unit Holder breaches any provision of this Deed, other than an obligation to pay a Call Amount or an obligation to provide a Bank Guarantee (including an additional or replacement Bank Guarantee), and:
 - (i) does not remedy that breach within 20 Business Days after receiving a notice of that breach from another Party requesting the breach to be remedied; or
 - (ii) if the breach is incapable of being remedied, does not:
 - (A) pay reasonable compensation to the Trustee in respect of the breach; and
 - (B) take reasonable steps to prevent the breach from recurring, within 20 Business Days after receiving a notice of that breach from another Party; or
- (b) that Preference Unit Holder has:
 - (i) a petition presented against it (that is not discharged or withdrawn within ten Business Days of its presentation), an order made, a resolution passed or a meeting summoned or convened to consider a resolution for its winding up;
 - (ii) a receiver appointed over its assets or undertaking or any part of them;
 - (iii) any execution or other process of any court or authority issued against or levied upon any of its assets in any amount in excess of

10% of its shareholders' funds, or, if the Unit Holder is a trustee, 10% of the value of the assets of the trust in respect of which the Units are held, and that execution or process is not discharged or withdrawn within 60 Business Days of the date of issue;

- (iv) ceased to pay its debts or suspended payment generally or would cease or threaten to cease to carry on its business or become insolvent or become or be unable to pay its debts as and when they become due and payable;
- (v) an official manager, trustee, voluntary administrator, liquidator or provisional liquidator appointed for all or any part of its assets or undertaking; or
- (vi) entered into or resolved to enter into an arrangement, composition or compromise with, or assignment for the benefit of, its creditors generally or any class of creditors, or proceedings are commenced to sanction such an arrangement, composition or compromise other than for the purposes of a bona fide scheme of solvent reconstruction or amalgamation.

19.2 Consequence of default

- (a) If an Event of Default occurs in relation to a Preference Unit Holder, the Trustee may declare by notice to that Preference Unit Holder that the rights (but not the obligations) attaching to the Preference Units are suspended as set out in **clause 19.2(b)**, and the suspension of those rights will continue until the earlier of:
 - (i) the date the Event of Default is remedied;
 - (ii) the date this Deed terminates in respect of that Preference Unit Holder; and
 - (iii) the date the Trust terminates.
- (b) For the purposes of **clause 19.2(a)**, while the rights attaching to a Preference Unit Holder's Preference Units are suspended:
 - (i) the Trustee must withhold all distributions of the Trust attributable to that Preference Unit Holder and accumulate such distributions while the suspension of those rights continues;
 - (ii) that Preference Unit Holder is not entitled to receive notices or other information under this Deed or any other Transaction Document; and
 - (iii) that Preference Unit Holder is not entitled to vote under this Deed or the Trust Deed.
- (c) If an event specified in **clause 19.1(b)** occurs in respect of a Preference Unit Holder, then, whether or not that Preference Unit Holder has failed to pay a Loan Call as contemplated in **clauses 8.3(a) and 8.3(b)**, **clause 8.3(c)** will apply and:

- (i) each other Preference Unit Holder is entitled to exercise its option under and in accordance with **clause 8.6**; and
- (ii) the Trustee is entitled to exercise its rights under and in accordance with **clauses 8.5, 8.6 and 8.7**,

as if that Preference Unit Holder were a 'Defaulting Unit Holder'.

19.3 Under-utilisation of access rights

- (a) For the purposes of this **clause 19.3**:
 - (i) if a Preference Unit Holder's applicable Umbrella Agreement was entered into between the Preference Unit Holder, Aurizon Network and the initial trustee of the Trust in accordance with **clause 5** of this Deed, the "Linked Preference Units" for that Umbrella Agreement are:
 - (A) the number of Preference Units that were issued to that Preference Unit Holder under **clause 5**; **less**
 - (B) the number of any Preference Units referred to in **clause 19.3(i)(A)** (if any) that have been, or are, transferred by that Preference Unit Holder, or sold by the Trustee, to another entity under this Deed; and
 - (ii) if the Preference Unit Holder's applicable Umbrella Agreement was entered into as a condition of the Preference Unit Holder acquiring any Preference Units from another entity under this Deed, the "Linked Preference Units" for that Umbrella Agreement are:
 - (A) the number of Preference Units that were acquired by the Preference Unit Holder as part of that transaction with that other entity; **less**
 - (B) the number of any Preference Units referred to in **clause 19.3(ii)(A)** (if any) that have been, or are, transferred by that Preference Unit Holder, or sold by the Trustee, to another entity under this Deed.
- (b) For the purposes of this **clause 19.3**, the "Relevant Proportion" of the "Linked Preference Units" for a Preference Unit Holder's Umbrella Agreement is the proportion calculated in accordance with the following formula:

$$RP = \frac{NAR - MUAR}{NAR}$$

where

- RP = the Relevant Proportion
- NAR = the highest of the "Nominated Access Rights" for any "Under-utilised Access Period" (each as defined under the

Umbrella Agreement)

MUAR = the “Maximum Utilised Nominated Access Rights” (as defined under the Umbrella Agreement)

(c) If Aurizon Network gives a notice to a Preference Unit Holder under clause [4.3] or [4.6] of the Preference Unit Holder’s Umbrella Agreement, with the effect that:

- (i) clause [3] of that Umbrella Agreement ceases to apply and be of any further force or effect; and/or
- (ii) any access agreement entered into under clause [3] of that Umbrella Agreement is terminated,

then the Preference Unit Holder’s entitlement to vote in respect of all of the “Linked Preference Units” for that Umbrella Agreement will be suspended with effect from the date that the Preference Unit Holder is given that notice until the end of the Construction Period.

(d) If Aurizon Network gives a notice to a Preference Unit Holder under clause [4.7] of the Preference Unit Holder’s Umbrella Agreement, with the effect that:

- (i) the “Nominated Access Rights” (as defined in that Umbrella Agreement) under that Umbrella Agreement are varied; or
- (ii) the “Access Rights” (as defined under that Umbrella Agreement) granted under any access agreement entered into under clause [3] of that Umbrella Agreement are varied,

then the Preference Unit Holder’s entitlement to vote in respect of the Relevant Proportion of the “Linked Preference Units” for that Umbrella Agreement will be suspended with effect from the date that the Preference Unit Holder is given that notice until the end of the Construction Period.

20 Warranties and acknowledgements

20.1 Warranties by all Parties

Each Party warrants that:

- (a) it is a corporation validly existing under the laws applicable to it;
- (b) it is able to pay its debts as and when they fall due;
- (c) it has the power to enter into this Deed and perform its obligations under this Deed, and has obtained all necessary consents to enable it to do so;
- (d) its obligations under this Deed are enforceable in accordance with their terms;

- (e) no litigation, arbitration or administrative proceeding has been commenced before, and no judgment or award has been given or made by, any court, arbitrator, other tribunal or governmental agency against it which would have a material adverse effect on its ability to observe its obligations under this Deed; and
- (f) it is not in breach or default under any agreement to which it is a party to an extent or in a manner which would have a material adverse effect on its ability to perform its obligations under this Deed.

20.2 Trustee warranties

The Trustee warrants to the other Parties that:

- (a) the Trust, once constituted, will be a unit trust duly formed, validly existing and in good standing under the laws of Australia;
- (b) the Trust Deed has been duly executed by the Trustee and is a valid and legally binding obligation of the Trustee, enforceable by the other Parties against the Trustee in accordance with the terms of the Trust Deed; and
- (c) the Trustee has full power and authority to enter into this Deed and to perform the Trustee's obligations under this Deed and the Trust Deed.

20.3 Subscriber warranties

Each Subscriber separately warrants to the Trustee, each as a material term of this Deed and to induce the Trustee to accept the Subscriber's application, that:

- (a) the Subscriber has sufficient financial resources to fulfil the Subscriber's obligations under this Deed and as a Unit Holder under the Trust Deed;
- (b) the Subscriber has full power and authority to enter into this Deed and to perform the Subscriber's obligations under this Deed and as a Unit Holder under the Trust Deed;
- (c) all authorisations and approvals necessary for the valid and proper acquisition of Units by the Subscriber have been duly obtained and no required consents or approvals are outstanding;
- (d) the Subscriber has the experience necessary to evaluate and understands the financial, investment and other risks involved in an investment in the Trust;
- (e) the Subscriber is fully aware that the Trustee or any associate (as that term is defined in the Corporations Act) of the Trustee does not guarantee the repayment of capital or the performance of the Trust or make any representation concerning any of these matters;
- (f) the Subscriber has sought advice from the Subscriber's advisers as to the legal, tax, financial and other implications of subscribing for Units and entering into this Deed and has relied solely on such advice and investigations made by the Subscriber and the Subscriber's advisers in

satisfying itself that subscribing for Units and entering into this Deed are suitable, appropriate and desirable transactions for the Subscriber;

- (g) the Subscriber was (for the purposes of section 925A(4) of the Corporations Act) informed by the Trustee within a reasonable period prior to the execution of this Deed that the Trustee does not hold, and is not a Related Body Corporate of, or the authorised representative of an entity which holds, an “Australian financial services licence” (as defined in the Corporations Act);
- (h) at the date of this Deed and at all times while the Subscriber is a Unit Holder:
 - (i) the Subscriber is not a “Retail Client” (as defined in the Corporations Act), and accordingly the Subscriber acknowledges that any offer or issue of Partly Paid Units does not need disclosure to the Subscriber under the Corporations Act or any other law;
 - (ii) the Subscriber is an Eligible Investor; and
 - (iii) the Subscriber understands that the Trust will not be registered as a “managed investment scheme” (as defined in the Corporations Act) under the Corporations Act and will not be registered under any securities or other laws of any jurisdiction; and
- (i) at the date of this Deed and at all times while the Subscriber is a Unit Holder, the Subscriber is a Qualified Investor.

20.4 Obligation to notify and update

Each Subscriber agrees to notify the Trustee as soon as practicable if any representation or warranty under this Deed becomes untrue, inaccurate, misleading or deceptive in a material respect at any time.

20.5 Subscribers’ acknowledgement in relation to secondary market

Each Subscriber acknowledges and agrees, as a material term of this Deed and to induce the Trustee to accept the Subscriber’s application, that there is no established or official secondary market for the Units and the Trustee is under no obligation to acquire, transfer or make a market for Units.

20.6 Subscribers bound by Trust Deed

The Trustee and each Subscriber agrees that on and from the date on which it is issued Units:

- (a) the Subscriber is bound by the Trust Deed;
- (b) the Trustee may enforce the provisions of the Trust Deed against and in respect of the Subscriber as if the Subscriber were a party to the Trust Deed when originally made;
- (c) the Subscriber may enforce the provisions of the Trust Deed against and in respect of the Trustee as if the Subscriber were a party to the Trust Deed when originally made; and

- (d) subject to **clause 1.3**, the Trustee and the Subscriber will act in accordance with the Trust Deed and not engage in conduct which is inconsistent with any provision of the Trust Deed.

20.7 Trustee's limitation of liability

Each Subscriber:

- (a) acknowledges that the Trustee enters into this Deed in its capacity as trustee of the Trust and not in any other capacity; and
- (b) agrees that the liability of the Trustee to the Subscriber under, or arising out of, this Deed is limited to the amount that the Trustee is properly entitled to receive in the exercise of its rights of indemnity from the Trust,

except where:

- (c) this Deed or the Trust Deed expressly provides that an obligation or liability is an obligation or liability of the Trustee personally; or
- (d) this Deed or the Trust Deed expressly provides that the Trustee is not entitled to an indemnity or reimbursement out of the Assets in respect of that obligation or liability.

20.8 Information about identity of Subscriber

- (a) Each Subscriber acknowledges that the Trustee is subject to certain anti-money laundering and counter-terrorist financing laws in Australia and other jurisdictions.
- (b) In order to assist the Trustee in fulfilling the Trustee's obligations under those laws, the Subscriber agrees to provide information relating to the identity of the Subscriber as may be requested by the Trustee for the purposes of complying with those laws, including (for example):
 - (i) certified copies of the Subscriber's constituent documents; and
 - (ii) such information as may be reasonably required by the Trustee in relation to the directors of the Subscriber.
- (c) The Subscriber consents to the disclosure by the Trustee, on a strictly need-to-know and confidential basis, of any information provided by the Subscriber pursuant to **clause 20.8(b)**.

21 Disputes and Dispute Resolution Process

21.1 Notification of Disputes

- (a) If any claim, dispute or question (**Dispute**) arises under this Deed between the Trustee and any one or more Preference Unit Holders, any Party to the Dispute may give a notice (**Dispute Notice**) to all Parties specifying the Dispute and referring it for resolution in accordance with this **clause 21**.
- (b) Unless otherwise expressly provided to the contrary in this Deed, a Dispute must be resolved in accordance with this **clause 21**.

- (c) The Trustee, the Ordinary Unit Holder, Aurizon Network and each Preference Unit Holder will be bound by the outcome of the resolution of the Dispute irrespective of whether or not the Trustee, the Ordinary Unit Holder, Aurizon Network or the Preference Unit Holder (as applicable) choose to actively participate in the Dispute Resolution Process.

21.2 Chief executive resolution

- (a) Within ten Business Days after the giving of a Dispute Notice, any Dispute must be referred in the first instance to:
 - (i) the chief executive officer of the Trustee (or his or her nominee);
 - (ii) the chief executive officers of each of the Preference Unit Holders (or a nominee of any chief executive officer); and
 - (iii) the chief executive officer of the Ordinary Unit Holder (or his or her nominee),

for the purposes of this **clause 21.2** for resolution.

- (b) If the Dispute is not resolved within ten Business Days after the referral under **clause 21.2(a)**, or in the event that any chief executive officer appoints a nominee that is unacceptable to another Party, then the relevant Dispute:
 - (i) must, where this Deed expressly requires referral to an expert; and
 - (ii) may, by agreement of the Parties in any other case,be referred for resolution by an expert (**Expert**) in accordance with **clause 21.3**.

21.3 Expert determination

Where any matter is referred to an Expert pursuant to **clause 21.2** or otherwise in accordance with the terms of this Deed then the following provisions of this **clause 21.3** will apply:

- (a) an Expert must be appointed by agreement between the Parties, or in default of such appointment within ten Business Days of the requirement or right (as applicable) to refer the matter to an Expert, then the Expert is to be nominated at any Party's request by:
 - (i) where the Parties agree the Dispute is purely of a technical nature, the President (for the time being) of Engineers Australia – Queensland Division;
 - (ii) where the Parties agree the Dispute is purely of a financial or accounting nature, the President (for the time being) of The Institute of Chartered Accountants in Australia – Queensland Branch; and
 - (iii) in any other case, the President (for the time being) of the Queensland Law Society, Inc;

- (b) if the Expert is to be nominated by a person referred to in **clause 21.3(a)** and that person declines to nominate a person as the Expert but instead provides a list of people that could be appointed as the Expert:
 - (i) the first person specified in that list will be taken to be nominated as the Expert;
 - (ii) if the first person specified in that list does not accept the appointment as the Expert, the next person specified in that list will be taken to be the first person specified in that list and will be nominated as the Expert; and
 - (iii) the process specified in **clause 21.3(b)(ii)** will apply to the next and each subsequent person specified in that list until a person that is taken to be nominated as the Expert accepts the appointment as the Expert;
- (c) subject to **clause 21.3(b)**, if the Expert is to be nominated by a person referred to in **clause 21.3(a)** and the person nominated as the Expert does not accept the appointment as the Expert, then an alternative person is to be nominated as the Expert at any Party's request by the same person referred to in **clause 21.3(a)**;
- (d) if the Expert is to be nominated by a person referred to in **clause 21.3(a)** the Parties must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of that person (including providing relevant indemnities and paying any charges or fees, which charges or fees will be borne equally by the Parties) that must be satisfied or complied with as a condition of that person agreeing to nominate an Expert;
- (e) the Expert must:
 - (i) have appropriate qualifications and practical experience having regard to the nature of the Dispute;
 - (ii) have no interest or duty which conflicts or may conflict with his or her function as Expert, he or she being required to fully disclose any such interest or duty by written notice to the Parties before his or her appointment;
 - (iii) not be, or have been in the last five years, an employee of the Trustee, the Project Manager, the Ordinary Unit Holder or a Preference Unit Holder, or of a Related Body Corporate of any of them;
 - (iv) not be permitted to act until he or she has given written notice to the Parties that he or she is willing and able to accept the appointment;
 - (v) have regard to the provisions of this Deed and consider all submissions (including oral submissions by any Party, provided that such oral submissions are made in the presence of the other

- Parties), supporting documentation, information and data with respect to the matter submitted by the Parties to the Dispute;
- (vi) provide all Parties with a copy of his or her determination in the form of a report setting out reasonable details of the reasons for the Expert's determination within a reasonable time after his or her appointment;
 - (vii) be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties (including, if required by a Party, by entering into a confidentiality agreement in favour of the Parties); and
 - (viii) be deemed to be and act as an expert and not an arbitrator, and the law relating to arbitration (including, without limitation, the *Commercial Arbitration Act 1990 (Qld)*), will not apply to him or her or the determination or the procedures by which he or she may reach a determination; and
- (f) if the determination of a matter referred to the Expert would require the Expert to be provided with any Price Sensitive Information, the Expert must enter into a confidentiality agreement in favour of Aurizon Network requiring the Expert to keep the Price Sensitive Information confidential.

21.4 Parties to assist Expert

The Parties must do everything reasonably requested by the Expert to assist the Expert in determining the Dispute, including producing information and materials requested by the Expert and attending any hearing convened by the Expert.

21.5 Decision of Expert

In the absence of manifest error, the decision of the Expert is final and binding upon all Parties.

21.6 Costs of Expert

- (a) The fees and reimbursements charged by the Expert, and any advisers engaged by the Expert, will be borne by the Parties as determined by, and in the proportions determined by, the Expert.
- (b) Each Party will bear its own legal costs, and the costs of any advisers to that Party, in respect of the Dispute Resolution Process under this **clause 21**.
- (c) Any costs borne by the Trustee under this **clause 21** will be deemed to be Trust Costs, unless the Expert determines that the position the Trustee took in relation to the Dispute was unreasonable in which case such costs will be deemed not to be Trust Costs.

21.7 Determination by court

- (a) If any Dispute is not otherwise resolved in accordance with this **clause 21**, then the Dispute may be referred to one of the courts of the State having jurisdiction, and sitting in Brisbane.
- (b) Each Party irrevocably and unconditionally:
 - (i) agrees that the courts of the State, and any courts which have jurisdiction to hear appeals from any of those courts, are to have exclusive jurisdiction to settle disputes which may arise out of, or in connection with, this Deed, and that accordingly any suit, action or proceeding (**Proceedings**) arising out of, or in connection with, this Deed may be brought in, and only in, such courts;
 - (ii) waives:
 - (A) any objection which it may have now or hereafter to the laying of the venue of any Proceedings in such courts; and
 - (B) any claim that any such Proceedings have been brought in an inconvenient forum; and
 - (iii) agrees that a final judgment in any Proceedings brought in such courts will be final and binding upon such Party and may be enforced in the courts of any other jurisdiction.

21.8 Injunctive relief

Nothing in this Deed will prevent a Party from seeking urgent injunctive relief from a court.

21.9 Disputes involving Unit Holders

If:

- (a) a "Dispute" (as defined in the Project Management Agreement or the Extension Infrastructure Lease) which arises under the Project Management Agreement or the Extension Infrastructure Lease, or the outcome or consequences of that "Dispute", may be relevant to the Trustee and/or one or more Preference Unit Holders; or
- (b) a Dispute, or the outcome or consequences of that Dispute, may be relevant to the Trustee and/or Aurizon Network under the Project Management Agreement or the Extension Infrastructure Lease,

then:

- (c) as applicable:
 - (i) Aurizon Network and/or the Trustee may join all (for the avoidance of doubt, not only some) of the Preference Unit Holders to the dispute resolution process under the Project Management Agreement or Extension Infrastructure Lease; or
 - (ii) each of the Trustee and Aurizon Network, in their capacities as parties to the Project Management Agreement or Extension

Infrastructure Lease (as applicable), may join the other to the dispute resolution process under this Deed; and

- (d) Aurizon Network, the Trustee and each Preference Unit Holder will be bound by the outcome of the resolution of the Dispute irrespective of whether or not Aurizon Network, the Trustee and the Preference Unit Holder (as applicable) choose to actively participate in the dispute resolution process.

21.10 Time bar

- (a) A Preference Unit Holder which becomes aware of the occurrence of an event or circumstance giving rise to a Dispute must give notice to each other Preference Unit Holder (or, for so long as the Trustee is a Related Body Corporate of Aurizon Network, each Preference Unit Holder other than an Aurizon Preference Unit Holder) as soon as reasonably practicable after becoming so aware.
- (b) Subject to **clause 21.10(d)**, if a Dispute Notice is not given by a Preference Unit Holder in accordance with **clause 21.1(a)** in respect of a Dispute within 12 Months after any Preference Unit Holder first becomes aware, or ought reasonably to have become aware, of the occurrence of the event or circumstance giving rise to the Dispute, then:
 - (i) no Preference Unit Holder may give a Dispute Notice in respect of the Dispute;
 - (ii) any such Dispute Notice which is given by a Preference Unit Holder will be of no effect; and
 - (iii) no Preference Unit Holder will have, and no Preference Unit Holder may make, any Claim against any other Party in respect of the Dispute.
- (c) Subject to **clause 21.10(d)**, if a Dispute Notice is not given by the Trustee in accordance with **clause 21.1(a)** in respect of a Dispute within 12 Months after the Trustee first becomes aware, or ought reasonably to have become aware, of the occurrence of the event or circumstance giving rise to the Dispute, then:
 - (i) the Trustee must not give a Dispute Notice in respect of the Dispute;
 - (ii) any such Dispute Notice which is given by the Trustee will be of no effect; and
 - (iii) the Trustee will not have, and may not make, any Claim against any other Party in respect of the Dispute,

unless the Trustee considers that the giving of a Dispute Notice is in the best interests of the Preference Unit Holders, in which case there is no time limit (other than that at law) on the Trustee giving a Dispute Notice.

- (d) If a Party makes a Claim in respect of a Dispute, then despite **clauses 21.10(b) or 21.10(c)**, another Party is entitled to make a counter-claim or claim for set-off in respect of that Claim.

22 Confidentiality

22.1 Confidentiality obligations

A Party (**Recipient**):

- (a) may use Confidential Information of another Party (**Disclosing Party**) only for the purposes of this Deed or another Transaction Document; and
- (b) must keep confidential all Confidential Information of a Disclosing Party except for disclosures permitted under **clause 22.2**.

22.2 Disclosure of Confidential Information

A Recipient may disclose Confidential Information of a Disclosing Party:

- (a) to any person, where the Disclosing Party has consented to such disclosure (such consent not to be unreasonably withheld, and may be given subject to reasonable conditions, such as the signing of an appropriate confidentiality undertaking);
- (b) to the extent necessary to progress negotiations with any other person relevant to matters contemplated in this Deed who executes a confidentiality undertaking in favour of the Disclosing Party on terms reasonably acceptable to it;
- (c) to the extent necessary to effect the administration or enforcement of this Deed, or further negotiations pursuant to this Deed, by employees, professional advisers (including legal advisers) and consultants of the Recipient;
- (d) to any Related Body Corporate of the Recipient to the extent necessary for reporting purposes within a relevant group of companies, governance and oversight of the relevant group of companies and obtaining any approval or consent (whether or not directly from that Related Body Corporate) in relation to the Recipient entering into, or performing its obligations or exercising its rights under, this Deed;
- (e) to potential purchasers, assignees or transferees of the shares in the Recipient or a Related Body Corporate of it or of the rights or obligations of the Recipient under this Deed and the other Transaction Documents who execute a confidentiality undertaking in favour of the Disclosing Party on terms consistent with this **clause 22**;
- (f) to any Governmental Agency to the extent required by law, or where such disclosure is determined by the Trustee to be reasonably required for the administration of the Trust;
- (g) to a bank, other financial institution or other lender (and its professional advisers and any security trustee or agent for it) in connection with, and

- for the purpose of, any loan or other financial accommodation sought to be arranged by, or provided to, the Recipient or a Related Body Corporate of it;
- (h) to legal, accounting and financial or other advisers or consultants to the Recipient or a Related Body Corporate of it:
 - (i) whose duties in relation to the Recipient or the Related Body Corporate require the disclosure;
 - (ii) who are under a duty of confidentiality to the Recipient; and
 - (iii) who have been advised of the confidential nature of the Confidential Information;
 - (i) to any officers or employees of the Recipient or a Related Body Corporate of the Recipient who:
 - (i) have a need to know for the purposes of this Deed or another Transaction Document (and only to the extent that each has a need to know); and
 - (ii) before disclosure, have been directed by the Recipient to keep confidential all Confidential Information of the Disclosing Party;
 - (j) if, and to the extent, the Recipient is required to do so by law (other than by section 275 of the *Personal Property Securities Act 2009* (Cth)), any taxation authority or by any rules or regulations of a recognised stock exchange (including where the disclosure is to a Related Body Corporate of the Recipient that is responsible for making such disclosures for the relevant group of companies and for the purpose of such a Related Body Corporate determining whether, and the extent to which, such a disclosure is required to be made);
 - (k) if disclosure is lawfully required by the Access Regulator, or in accordance with the Access Undertaking; or
 - (l) to an Auditor or Expert under this Deed where:
 - (i) expressly provided in this Deed; or
 - (ii) reasonably required for the purposes of the Trust Deed or another Transaction Document.

22.3 Conditions of disclosure

If a Recipient discloses Confidential Information of a Disclosing Party to a person under **clause 22.2 (Disclosee)**, the Recipient must:

- (a) ensure that the Disclosee is aware that the Confidential Information is confidential information of the Disclosing Party; and
- (b) use reasonable endeavours to ensure that the Disclosee does not improperly disclose or improperly use the Confidential Information.

23 Notices

23.1 General

A notice, demand, certification, process or other communication (**Notice**) relating to this Deed must be in writing in English and signed by a person duly authorised by the sender and may be given by an agent of the sender.

23.2 How to give a Notice

In addition to any other lawful means, a Notice may be given by being:

- (a) personally delivered;
- (b) left at the Party's current business address for Notices;
- (c) sent to the Party's current postal address for Notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail;
- (d) sent by email to a Party's email address in (and only in) the circumstances described in **clause 23.6**; or
- (e) sent by fax to the Party's current fax number for Notices.

23.3 Particulars for delivery of Notices

- (a) Each Party's particulars for the giving of Notices are initially the particulars set out in **schedule 1**.
- (b) Each Party may change its particulars for the giving of Notices by Notice to each other Party.
- (c) A notice given to a Party which is signed is evidence that the Notice has been signed by a person duly authorised by the sender and that Party is entitled to rely on that Notice without further inquiry or investigation.

23.4 Notices by post

Subject to **clause 23.7**, a Notice is duly given if posted:

- (a) within Australia to an Australian postal address, three Business Days after posting; or
- (b) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, ten Business Days after posting.

23.5 Notices by fax

Subject to **clause 23.7**, a Notice is duly given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

23.6 Notices by email

- (a) The Trustee may give a Notice under **clause 17.5** by email.
- (b) Subject to **clause 23.7**, a Notice is duly given if sent by email, when a delivery confirmation is received by the sender which records the time that the email was delivered to the addressee's email address (unless

the sender receives a delivery failure notification indicated that the email has not been delivered to the addressee).

- (c) For the avoidance of doubt, no other Notice other than a Notice given by the Trustee under **clause 17.5** may be given by email.

23.7 After hours Notices

If a Notice is given:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or public holiday in the place of receipt,

it is taken as having been duly given at 9.00 am on the next day which is not a Saturday, Sunday or public holiday in that place.

23.8 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this Deed may be served by any method contemplated by this **clause 23** (other than **clause 23.2(d)**) or in accordance with any applicable law.

23.9 Notice to joint holders

A Notice may be given by the Trustee to the persons jointly registered as a Unit Holder by giving the notice to the person first named in the Register in respect of the Unit.

23.10 Signature to notice

The signature to any Notice to be given by the Trustee may be written or printed or stamped and the signature may be that of any authorised officer of the Trustee.

24 General

24.1 Survival

This **clause 24**, **clause 2.5**, **clause 5.3**, **clause 5.9**, **clause 5.13**, **clause 5.14**, **clause 22**, **clause [#]** and **clause [#]** survive the termination of this Deed.

[Drafting note: The clauses to survive termination are to be considered on a transaction-by-transaction basis.]

24.2 Trustee consent to transfer of Unit Holder Loans

Where a Preference Unit Holder transfers, or the Trustee sells, Preference Units to a transferee pursuant to and in accordance with this Deed and that Preference Unit Holder has a Loan Balance, then on that transferee being registered in the Register as the holder of those Preference Units:

- (a) the Trustee is deemed to consent to that transfer of the Loan Balance to that transferee, to the extent attributable to the Preference Units transferred to the transferee; and

- (b) the Trustee acknowledges and agrees that the transferee is the person entitled to repayment in accordance with this Deed and the Trust Deed of the amount of the Loan Balance attributable to the Preference Units transferred to the transferee.

24.3 GST

- (a) In this **clause 24.3**:
 - (i) words and expressions which are not defined in this Deed but which have a defined meaning in GST Law have the same meaning as in the GST Law; and
 - (ii) references to GST payable and input tax credit entitlement include GST payable by, and the input tax credit entitlement of, the representative member for a GST group of which the entity is a member.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Deed are exclusive of GST.
- (c) If GST is payable on any supply made by a party (or any entity through which that party acts) (**Supplier**) under or in connection with this Deed, the recipient will pay to the Supplier an amount equal to the GST payable on the supply.
- (d) The recipient will pay the amount referred to in **clause 24.3(c)** in addition to, and at the same time that, the consideration for the supply is to be provided under this Deed.
- (e) The Supplier must deliver a tax invoice or an adjustment note to the recipient before the Supplier is entitled to payment of an amount under **clause 24.3(c)**, and the recipient can withhold payment of the amount until the Supplier provides a tax invoice or an adjustment note, as appropriate.
- (f) If an adjustment event arises in respect of a taxable supply made by a Supplier under this Deed, the amount payable by the recipient under **clause 24.3(c)** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier, or by the Supplier to the recipient, as the case requires.
- (g) Where a Party is required under this Deed to pay or reimburse an expense or outgoing of another Party, the amount to be paid or reimbursed by the first Party will be the sum of:
 - (i) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and
 - (ii) if the payment or reimbursement is subject to GST, an amount equal to that GST.

24.4 Applicable law

This Deed will be governed by and construed in accordance with the laws applicable in the State.

24.5 Waiver

- (a) Waiver of any right arising from a breach of this Deed or any right arising from a default under this Deed must be in writing and signed by the Party granting the waiver.
- (b) A single or partial exercise or waiver by a Party of a right relating to this Deed does not prevent any other exercise of that right or the exercise of any other right.
- (c) A failure or delay in exercise, or partial exercise, of a right arising from a breach of this Deed does not result in a waiver of that right.

24.6 Duty

- (a) Subject to clause **24.6(b)**, as between the Parties, each Preference Unit Holder is liable for, and must pay, its Unit Holder's Proportion of all duty (including any interest, fine or penalty except where it arises from default by the Trustee or Ordinary Unit Holder):
 - (i) on or relating to this Deed, any document executed under it, or any dutiable transaction evidenced or effected by it;
 - (ii) otherwise assessed to the Trustee or Ordinary Unit Holder; or
 - (iii) that the Trustee is liable to pay under a deed or agreement to which the Trustee is a party in respect of the Trust.
- (b) Each Preference Unit Holder that is a party to a "trust acquisition" or "trust surrender" (as those terms are defined in the *Duties Act 2001* (Qld)) of that Preference Unit Holder's Preference Units is liable for and must pay all duty (including any interest, fine or penalty) assessed in respect of that "trust acquisition" or "trust surrender" except where **clause 9.3(t)** applies.
- (c) If the Trustee or Ordinary Unit Holder pays any duty (including any fine or penalty) on, arising out of or relating to the matters set out in **clauses 24.6(a) or 24.6(b)**, each Preference Unit Holder must pay to the Trustee or Ordinary Unit Holder (as applicable), on demand as reimbursement, its Unit Holder's Proportion of that duty payment.

24.7 Legal costs

- (a) Except as expressly stated otherwise in this Deed, each Party must pay its own legal costs and expenses of the drafting, negotiating and execution of this Deed.
- (b) The Parties acknowledge that any legal costs borne by the Trustee under this **clause 24.7** will be deemed to be Trust Costs.

24.8 Amendments to be in writing

Except where this Deed expressly provides a process for amendment or variation of a particular provision or term, an amendment or variation of this Deed will only be effective if the amendment or variation is in writing and executed by all Parties to this Deed.

24.9 Rights cumulative

Except as expressly stated otherwise in this Deed, the rights of a Party under this Deed are cumulative and are in addition to any other rights of that Party.

24.10 Consents

Except as expressly stated otherwise in this Deed, a Party may conditionally or unconditionally give or withhold any consent to be given under this Deed and is not obliged to give its reasons for doing so.

24.11 Further assistance

Each Party must promptly sign, execute and complete all additional documents which may be necessary and do whatever else is reasonably required to effect, perfect, or complete the provisions of this Deed and to perform its obligations under it.

24.12 Counterparts

This Deed may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

24.13 Effect of execution

This Deed is not binding on any party unless it or a counterpart has been duly executed by each person named as a party to this Deed.

24.14 Entire understanding

- (b) This Deed and the other Transaction Documents together contain the entire understanding between the Parties as to the subject matter of this Deed.
- (a) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Deed are merged in and superseded by this Deed, the other Transaction Documents and the Security Documentation and are of no effect. No Party is liable to any other Party in respect of those matters.
- (b) No oral explanation or information provided by any Party to another:
 - (i) affects the meaning or interpretation of this Deed; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the Parties.

24.15 Relationship of Parties

This Deed is not intended to create a partnership, joint venture or agency relationship between the Parties.

24.16 Severability

- (a) Subject to **clause 24.16(b)**, if a provision of this Deed is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this Deed.
- (b) **Clause 24.16(a)** does not apply if severing the provision:
 - (i) materially alters the:
 - (A) scope and nature of this Deed; or
 - (B) relative commercial or financial positions of the Parties; or
 - (ii) would be contrary to public policy.

24.17 Survival of representations and warranties

All representations and warranties in this Deed will survive the execution and delivery of this Deed and the completion of the transactions contemplated by it.

24.18 Enurement

The provisions of this Deed will, subject as otherwise provided in this Deed, enure for the benefit of and be binding on the Parties and their respective successors and permitted novatees and assigns.

24.19 Merger

The obligations contained in this Deed will continue until satisfied in full.

24.20 Powers of attorney

An attorney by executing this Deed declares that he or she has received no notice of revocation of the power of attorney pursuant to which he or she executes this Deed.

24.21 Indemnity

It is not necessary for a Party to incur expense or make a payment before enforcing any indemnity conferred by this Deed.

25 Unincorporated joint ventures

25.1 Warranty and undertaking

Each Preference Subscriber warrants that its Preference Units, and the rights granted to it under the Umbrella Agreement, do not comprise assets of any unincorporated joint venture, other than to the extent specified in respect of that Preference Subscriber in **schedule 1**.

25.2 Joint Venture Participants' liability

- (a) If **schedule 1** specifies that this **clause 25.2** applies in respect of that Preference Subscriber, then this **clause 25.2** applies in respect of that Preference Subscriber and each Joint Venture Participant in respect of that Preference Subscriber.

- (b) Each Joint Venture Participant in respect of a Preference Subscriber must hold the Preference Units of that Preference Subscriber as tenants in common in proportions equivalent to the Participating Interest of each Joint Venture Participant in respect of that Preference Subscriber.
- (c) The Preference Subscriber executes this Deed or any Transaction Document as agent for Joint Venture Participants in the Joint Venture in respect of that Preference Subscriber, and warrants that it enters this Deed and any Transaction Document as agent for those Joint Venture Participants in their respective Participating Interests from time to time.
- (d) The liability of each Joint Venture Participant in a Joint Venture under this Deed and the Trust Deed is:
 - (i) subject to **clause 25.2(e)**, several in respect of any Financial Obligations in proportion to their Participating Interest for that Joint Venture; and
 - (ii) joint and several in respect of the performance of any obligations of that Joint Venture under this Deed or the Trust Deed which are not Financial Obligations.
- (e) If a Joint Venture Participant in a Joint Venture is in default of a Financial Obligation, and the Preference Subscriber has not given notice to the Trustee identifying the relevant defaulting Joint Venture Participant within two Business Days after the Trustee gives a notice to the Preference Subscriber identifying the default, then all Joint Venture Participants in that Joint Venture will be jointly and severally liable for the performance of that Financial Obligation.
- (f) For the purposes of this Deed, any notice given under **clause 25.2(e)** is conclusive evidence that the Joint Venture Participant named in that notice is in default and that notice binds all Joint Venture Participants in that Joint Venture.
- (g) Any notice given to the Preference Subscriber is deemed to be notice to each Joint Venture Participant in the Joint Venture for that Preference Subscriber.

Schedule 1

Agreement details

1 Extension and Segments

1.1 Extension

[insert]

[Drafting note: Insert a high level output oriented description of the Extension. For example: "The enhancement to the rail infrastructure on the Alpha and Beta Systems in order to facilitate the transportation of coal to the approximately 25 Mtpa proposed coal terminal at Zenith." A description or diagram clearly identifying each Segment comprising the Extension and referred to below should be included on a transaction-by-transaction basis.]

1.2 Segment #1 – [Name of Segment]

Name of Segment [insert]

Description of Segment [insert]

Preference [insert]

Subscribers applicable to the Segment [insert]

1.3 Segment #2 – [Name of Segment]

Name of Segment [insert]

Description of Segment [insert]

Preference [insert]

Subscribers applicable to the Segment [insert]

2 Trustee

2.1 Particulars for notices

Business address Level 5
192 Ann Street

BRISBANE QLD 4000
Postal address GPO Box 456
BRISBANE QLD 4001
Facsimile No. [insert]
Attention: [insert]

3 Aurizon Network

3.1 Particulars for notices

Business address Level 5
192 Ann Street
BRISBANE QLD 4000
Postal address GPO Box 456
BRISBANE QLD 4001
Facsimile No. 07 3235 3930
Attention: Vice President, Commercial Development

4 Preference Subscriber details

Item	General description	Preference Subscriber 1	Preference Subscriber #	Preference Subscriber #
4.1	Details	<p>Name [insert]</p> <p>ABN [insert]</p> <p>Address [insert]</p> <p>Australian resident for tax purposes [Yes / No (as applicable)]</p>		
4.2	Preference Subscriber's subscription details	<p>Number of Preference Units at [\$1.00] per Preference Unit [insert] [Drafting note: The amount to be inserted here is calculated as follows Target Trust Capital Cost (as at execution of this Deed) multiplied by the Unit Holders' Proportion multiplied by 1.3 and divided by the Application Price]</p> <p>Unit Holder's Proportion [insert] [Drafting note: A percent is to be inserted here. This percentage will have been calculated in accordance with the UHP Calculation Methodology set out in schedule 7.]</p> <p>Initial Subscription Amount [insert] [Drafting note: A dollar amount, which will be of nominal size, will be inserted here. For example that amount could be \$1 X 10⁶/Unit.]</p> <p>Initial Loan Contribution [insert] [Drafting note: A dollar amount is to be inserted here. That amount will equal the Unit Holder's Proportion of 10% of the Target Trust Capital Cost.]</p>		

Item	General description	Preference Subscriber 1	Preference Subscriber #	Preference Subscriber #						
		<p>Initial Bank Guarantee Amount [insert]</p> <p>[Drafting note: Whether or not a Bank Guarantee is required to be provided by the Preference Subscriber to the Trustee will be determined by the application of the Credit Policy set out in schedule 6 to the Preference Subscriber's circumstances at the time of execution.]</p>								
4.3	Application of clause 25	<p>Does clause 25 apply? [yes/no]</p> <p>Joint Venture name [insert]</p> <table border="1" data-bbox="772 751 1099 954"> <thead> <tr> <th data-bbox="772 751 987 807">Joint Venture Participants</th> <th data-bbox="987 751 1099 807">Name</th> <th data-bbox="1099 751 1339 807">Percentage interest</th> </tr> </thead> <tbody> <tr> <td data-bbox="772 807 987 954"></td> <td data-bbox="987 807 1099 954">[insert]</td> <td data-bbox="1099 807 1339 954">[insert]</td> </tr> </tbody> </table>	Joint Venture Participants	Name	Percentage interest		[insert]	[insert]		
Joint Venture Participants	Name	Percentage interest								
	[insert]	[insert]								
4.4	Particulars for notice	<p>Business address [insert]</p> <p>Postal address [insert]</p> <p>Facsimile No. [insert]</p> <p>Email address [insert]</p> <p>Attention [insert]</p>								

[Drafting note: Complete the details for each Preference Subscriber as set out for Preference Subscriber 1.]

Schedule 2

Allocation Principles (Clause 1.1 and clause 9.1)

(a) Where:

- (i) costs, expenses and/or recovered amounts relate to two or more Segments;
and
- (ii) components of those costs, expenses and/or recovered amounts may be allocated by the Independent Engineer (acting reasonably) between each of those Segments on the basis of each Segment's share of the Works that gave rise to those costs, expenses and/or recovered amounts regardless of whether those Works are within or outside the area of that Segment,

the Independent Engineer must ensure that those components of costs, expenses and/or recovered amounts are allocated to each of the Segments to which they relate.

(b) Where:

- (i) costs, expenses and/or recovered amounts relate to two or more Segments;
and
- (ii) **item (a)(ii)** of this **schedule 2** does not apply,

then the Independent Engineer must ensure that those costs, expenses and/or recovered amounts are allocated to each of those Segments on a pro-rata basis, based on the proportion that the Target Cost for each such Segment bears to the total of the Target Costs for all such Segments.

Schedule 3

Call Statements (Clause 6.7)

Call Statement for Months during Construction Period

1.1 Information for all Months

The Call Statement sent to each Preference Unit Holder for a Month during the Construction Period (other than the Initial Call Statement) must include:

- (a) the date the Call Statement is issued;
- (b) the due date for payment of the Unit Holder's Loan Contribution;
- (c) the amount of the Unit Holder's Loan Contribution;
- (d) the total amount of Loan Contributions Called from all Unit Holders;
- (e) the amount that the aggregate Capital Loan Balances of the Unit Holders will be when the Loan Contributions Called in the Call Statement are received; and
- (f) details of the calculation of the total amount of Loan Contributions Called, including:
 - (i) the Liquidity Requirement;
 - (ii) the Liquidity Target;
 - (iii) the Rolling Three Month Net Cash Outgoing;
 - (iv) the net cash holding;
 - (v) the Estimated Trust Administration Costs; and
 - (vi) the Net Cash Outgoings,for the Month.

1.2 Information for Months where Unit Call made

The Call Statement sent to each Preference Unit Holder for a Month in which a Unit Call is made must include (in addition to the information in **item 1.1** of this **schedule 3**):

- (a) the Preference Unit Holder's:
 - (i) Loan Balance;

- (ii) Capital Loan Balance; and
 - (iii) Operating Loan Balance;
- (b) the amount of the Unit Call;
- (c) if the amount of the Unit Call is less than the Capital Loan Balance:
 - (i) an explanation of the reason for the difference; and
 - (ii) details of the method of calculation of the amount of the Unit Call (in accordance with **clause 6.4(a)**);
- (d) the Paid Up Amounts of each Preference Unit Holder, and the aggregate of the Paid Up Amounts, on the Trustee paying up the Unit Calls; and
- (e) the Paid Up Amounts of each Preference Unit Holder, and the aggregate of the Paid Up Amounts, prior to the Trustee paying up the Unit Calls.

2 Call Statements after Construction Period

2.1 Notice of Final Certificate

In the Month in which the Trustee receives the Final Certificate from the Project Manager, the Trustee must include notice that the Final Certificate is received.

2.2 Information for Loan Calls

The Call Statement sent to each Preference Unit Holder for a Loan Call after the Construction Period must include:

- (a) the date the Call Statement is issued;
- (b) the due date for payment of the Unit Holder's Loan Contribution;
- (c) the amount of the Unit Holder's Loan Contribution;
- (d) the total amount of Loan Contributions Called from all Unit Holders;
- (e) the aggregate Capital Loan Balances of the Unit Holders;
- (f) the amount that the aggregate Capital Loan Balances of the Unit Holders will be when the Loan Contributions Called in the Call Statement are received; and
- (g) details of the calculation of the total amount of Loan Contributions Called, including:
 - (i) the Projected Liquidity Requirement;
 - (ii) the Projected Cash Holdings;
 - (iii) the Estimated Net Operating Expenses; and
 - (iv) any Trust Capital Costs,
 for the period.

2.3 Information for Unit Calls

The Call Statement sent to each Preference Unit Holder for a Unit Call after the Construction Period must include (in addition to the information in **item 2.2** of this **schedule 3**):

- (a) the Unit Holder's:
 - (i) Loan Balance;
 - (ii) Capital Loan Balance; and
 - (iii) Operating Loan Balance;
- (b) the amount of the Unit Call;
- (c) the Paid Up Amounts of each Preference Unit Holder, and the aggregate of the Paid Up Amounts, on the Trustee paying up the Unit Calls; and
- (d) the Paid Up Amounts of each Preference Unit Holder, and the aggregate of the Paid Up Amounts, prior to the Trustee paying up the Unit Calls.

Schedule 4

Reserve Decisions (Clauses 1.1 and 18.1)

The following powers and discretions of the Trustee are **Reserve Decisions** for the purposes of **clause 18.1**:

Item	Summary description	Prescribed Majority*	Approval of Ordinary Unit Holder required? Yes / No	Aurizon Preference Unit Holder participation? Yes / No
(a)	any issue of Ordinary Units other than to the Ordinary Unit Holder, Aurizon Network or a Related Body Corporate of Aurizon Network	Special Majority	Yes	(h) Subject to (b), No (b) Yes after a replacement Trustee that is not a Related Body Corporate of an Aurizon Preference Unit Holder has been appointed under the Trust Deed
(b)	any cancellation or issue of Units except for any issue or cancellation of Units which is expressly provided for under the Trust Deed or Unit Holders Deed	Unanimous Agreement	Yes	(a) Subject to (b), No (b) Yes after a replacement Trustee that is not a Related Body Corporate of an Aurizon Preference Unit Holder has been appointed under the Trust Deed

Item	Summary description	Prescribed Majority*	Approval of Ordinary Unit Holder required? Yes / No	Aurizon Preference Unit Holder participation? Yes / No
(c)	any material amendment or modification of the Unit Holders Deed except for any material amendment or modification which is expressly provided for under the Unit Holders Deed	Unanimous Agreement	Yes	(a) Subject to (b), No (b) Yes after a replacement Trustee that is not a Related Body Corporate of an Aurizon Preference Unit Holder has been appointed under the Trust Deed
(d)	any material amendment or modification of a Transaction Document (other than the Unit Holders Deed) except for any material amendment or modification which is expressly provided for under the relevant Transaction Document (for example, a variation to the "Scope of Works", "Target Cost" and "Target Available Date" (each as defined in the Project Management Agreement) as expressly provided for under clauses [9] or [10] of the Project Management Agreement)	Unanimous Agreement	Yes	(a) Subject to (b) and (c), No (b) Yes, in respect of the Project Management Agreement, after a Replacement Project Manager that is not a Related Body Corporate of an Aurizon Preference Unit Holder has been engaged under the relevant provisions of the Project Management Agreement (c) Yes after a replacement Trustee that is not a Related Body Corporate of an Aurizon Preference Unit Holder has been appointed under the Trust Deed

Item	Summary description	Prescribed Majority*	Approval of Ordinary Unit Holder required? Yes / No	Aurizon Preference Unit Holder participation? Yes / No
(e)	any waiving of a material right of the Trustee under the Unit Holders Deed. To avoid doubt, this does not include acceptance of payments after the due date, or waiving a requirement for the provision of a Bank Guarantee following the review under clause 10.5 of this Deed.	Special Majority	Yes	(a) Subject to (b), No (b) Yes after a replacement Trustee that is not a Related Body Corporate of an Aurizon Preference Unit Holder has been appointed under the Trust Deed
(f)	any waiving of a material right of the Trustee under a Transaction Document (to avoid doubt, this does not include acceptance of payments after the due date, or waiving provision of a Bank Guarantee)	Special Majority	No	(a) Subject to (b) and (c), No (b) Yes, in respect of the Project Management Agreement, after a Replacement Project Manager that is not a Related Body Corporate of an Aurizon Preference Unit Holder has been engaged under the relevant provisions of the Project Management Agreement (c) Yes, in respect of the Unit Holder's Deed, after a replacement Trustee that is not a Related Body Corporate of an Aurizon Preference Unit Holder has been appointed under the Trust Deed
(g)	assignment or novation of any rights or obligations of the Trustee under a Transaction Document	Unanimous Agreement	Yes	(a) Subject to (b), No (b) Yes after a replacement Trustee that is not a Related Body Corporate of an Aurizon Preference Unit Holder has been appointed under the Trust Deed

Item	Summary description	Prescribed Majority*	Approval of Ordinary Unit Holder required? Yes / No	Aurizon Preference Unit Holder participation? Yes / No
(h)	transfer of all or any part of the Trustee's title to the "Leased Extension Infrastructure" (as defined in the Extension Infrastructure Lease) except for any transfers expressly permitted or required under the Extension Infrastructure Lease	Unanimous Agreement	Yes	No
(i)	instituting any suit, action or proceeding against Aurizon Network or a Related Body Corporate of Aurizon Network arising out of or in connection with any Transaction Document (subject to the dispute resolution provisions contained in such Transaction Document) and for the avoidance of doubt does not include a "Works Contract Dispute" (as defined in the Project Management Agreement)	Special Majority	No	No

Item	Summary description	Prescribed Majority*	Approval of Ordinary Unit Holder required? Yes / No	Aurizon Preference Unit Holder participation? Yes / No
(j)	instituting any suit, action or proceeding against a person (other than Aurizon Network or a Related Body Corporate of Aurizon Network) arising out of or in connection with any Transaction Document (subject to the dispute resolution provisions contained in such Transaction Document) and for the avoidance of doubt does not include a "Works Contract Dispute" (as defined in the Project Management Agreement)	Special Majority	No	Yes
(k)	consenting to a variation proposed in a "Variation Notice" (as defined in the Project Management Agreement) under the Project Management Agreement	Special Majority of Affected Users	No	Yes
(l)	proposing an "Acceleration" (as defined in the Project Management Agreement) under the Project Management Agreement	Special Majority of Affected Users	No	Yes

Item	Summary description	Prescribed Majority*	Approval of Ordinary Unit Holder required? Yes / No	Aurizon Preference Unit Holder participation? Yes / No
(m)	consenting to the variation(s) proposed in an "Acceleration Variation Notice" (as defined in the Project Management Agreement) under the Project Management Agreement	Special Majority of Affected Users	No	Yes
(o)	executing any Works Contract that specifies that information in that Works Contract is Price Sensitive Information	Special Majority	No	(a) Subject to (b) and (c), No (b) Yes, in respect of the Project Management Agreement, after a Replacement Project Manager that is not a Related Body Corporate of an Aurizon Preference Unit Holder has been engaged under the relevant provisions of the Project Management Agreement (c) Yes after a replacement Trustee that is not a Related Body Corporate of an Aurizon Preference Unit Holder has been appointed under the Trust Deed
(p)	Trustee electing to form a Consolidated Group	Unanimous Agreement	Yes	Yes

* subject to the last column of the table in this **schedule 4** in respect of the participation of an Aurizon Preference Unit Holder

Schedule 5

Reserve Powers (Clauses 1.1 and 18.2)

1 Participation in Reserve Powers under Project Management Agreement

PMA clause refers to the clause of the Project Management Agreement.

PMA clause	Summary description	Prescribed Majority*	Aurizon Preference Unit Holder participation (to the extent they qualify as an Affected User): Yes / No
[9.6(a)]	Preference Unit Holders may require the Trustee either to grant or to withhold consent to a variation to the Scope of Works for a Segment proposed in a "Variation Notice" (as defined in the Project Management Agreement).	Special Majority of Affected Users	Yes
[9.8(a)]	Preference Unit Holders may require the Trustee to request a variation to the "Scope of Works for a Segment" (as defined in the Project Management Agreement).	Special Majority of Affected Users	Yes

PMA clause	Summary description	Prescribed Majority*	Aurizon Preference Unit Holder participation (to the extent they qualify as an Affected User): Yes / No
[10.2(c)]	Preference Unit Holders may require the Trustee to propose an "Acceleration" (as defined in the Project Management Agreement) for a Segment.	Special Majority of Affected Users	Yes
[10.6(a)]	Preference Unit Holders may require the Trustee either to grant or to withhold consent to a variation(s) proposed in an "Acceleration Variation Notice" (as defined in the Project Management Agreement).	Special Majority of Affected Users	Yes

* subject to the last column of the table in this **schedule 5** in respect of the participation of an Aurizon Preference Unit Holder

2 Participation in Reserve Powers under the Rail Corridor Agreement

RCA clause refers to the clause of the Rail Corridor Agreement.

RCA clause	Summary description	Prescribed Majority*	Aurizon Preference Unit Holder participation (to the extent they qualify as an Affected User): Yes / No
[3.4(a)]	Preference Unit Holders may require the Trustee to propose a "Proposed Variation" (as defined in the Rail Corridor Agreement) (and, if so, will provide the Trustee with the text of that "Proposed Variation").	Special Majority of all Preference Unit Holders	Yes

* subject to the last column of the table in this **schedule 5** in respect of the participation of an Aurizon Preference Unit Holder

Schedule 6

Credit Policy

(Clauses 1.1, 8.7(d)(iv), 10.7 and 12.1)

1 Definitions

In this **schedule 6**:

Acceptable Credit Company means a company that currently holds:

- (a) a long-term credit rating of at least A- or better from Standard & Poor's Rating Services; or
- (b) a long-term credit rating of at least A3 or better from Moody's.

2 Credit Policy

2.1 Acceptable Credit Company

During the Construction Period, a Preference Unit Holder is required to provide a Bank Guarantee under this Credit Policy unless that Preference Unit Holder is:

- (a) an Acceptable Credit Company; or
- (b) guaranteed (in a form of guarantee acceptable to the Trustee) by an Acceptable Credit Company.

2.2 Requirement to provide Bank Guarantee due to default

Despite **item 2.1** of this **schedule 6**, a Preference Unit Holder will be taken to be required to provide a Bank Guarantee during the Construction Period under this Credit Policy for the purposes of **clause 10.7** if, at any time during the Construction Period, the Preference Unit Holder has been required to provide a Bank Guarantee (including an additional or replacement Bank Guarantee) under **clause 8.2(c)**.

Schedule 7

UHP Calculation Methodology and Revised UHP Calculation Methodology

(Clauses 1.1, 5.5 and 9.1(e))

1 Definitions

1.1 Definitions for items 2, 3 and 4

In this **schedule 7** for **items 2, 3 and 4**:

Segment Unit Holder for a Segment means a Unit Holder for that Segment in **item 2** of this **schedule 7**.

Unit Holder's Capacity for a Segment Unit Holder for a Segment means that Unit Holder's capacity for that Segment specified in **item 2** of this **schedule 7**.

Unit Holder's Segment Share for a Segment Unit Holder for a Segment means:

- (a) for the purpose of calculating that Unit Holder's Total Share for the purpose of the UHP Calculation Methodology, the amount which is the Unit Holder's Segment Proportion for that Segment of the Target Cost for that Segment; and
- (b) for the purpose of calculating that Unit Holder's Total Share for the purpose of the Revised UHP Calculation Methodology, the amount which is the Unit Holder's Segment Proportion for that Segment of the Estimated Final Trust Costs for that Segment.

Unit Holder's Segment Proportion for a Segment Unit Holder for a Segment means the proportion that that Unit Holder's Capacity for that Segment bears to the Total Capacity for that Segment.

Unit Holder's Total Share for a Unit Holder means the amount which is the sum of that Unit Holder's Segment Share for each Segment for which that Unit Holder is a Segment Unit Holder.

Total Capacity for a Segment means the sum of the Unit Holder's Capacity for all Segment Unit Holders for that Segment.

1.2 Definitions for item 5

In this **schedule 7** for **item 5**:

Affected User's Capacity for an Affected User for an Affected Segment, means that Affected User's capacity for that Segment as specified in **item 2** of this **schedule 7**.

Affected User’s Segment Share for an Affected User for an Affected Segment, means the product of the Affected User’s Segment Percentage and the Target Cost for that Affected Segment.

Affected User’s Segment Percentage for an Affected User for an Affected Segment, means that Affected User’s Capacity for that Affected Segment as a percentage of the Total Capacity for that Affected Segment.

Affected User’s Total Share for an Affected User means the amount which is the sum of the Affected User’s Segment Share(s) for each of the Affected Segments for which it is an Affected User.

Total Capacity for an Affected Segment means the sum of the Affected User’s Capacities for each of the Affected Users for that Affected Segment.

2 Segments details

2.1 Segment #1 – [Name of Segment]

Segment Unit Holders for Segment	Unit Holder’s Capacity
[insert]	[insert]
[insert]	[insert]

2.2 Segment #2 – [Name of Segment]

Segment Unit Holders for Segment	Unit Holder’s Capacity
[insert]	[insert]
[insert]	[insert]

[Drafting note: This item 2 of this schedule 7 is to be determined on a transaction-by-transaction basis. If the parties are unable to agree the methodology for determining a Unit Holder’s capacity then capacity will be determined on the basis of train paths, other than in circumstances where this is manifestly inappropriate.]

2.3 Revision of Segment Unit Holders and Unit Holder’s Capacity

If any or all of a Preference Unit Holder’s (**Transferor PUH**) Preference Units (**Transferred PUs**) are transferred by the Preference Unit Holder, or sold by the Trustee, under this Deed to a new or existing Preference Unit Holder (**Transferee PUH**), then, with effect on the date that the Transferee PUH becomes the registered holder of the Transferred PUs, the table in this **item 2** of this **schedule 7** for each Segment for which that Transferor PUH is a Segment Unit Holder (**Relevant Segment**) will be varied as follows:

- (a) if the Transferor PUH transferred all of its Preference Units to the Transferee PUH, then the Transferee PUH will be specified as the “Segment Unit Holder for Segment” in each table in this **item 2** of this

schedule 7 for each Relevant Segment in place of the Transferor PUH (but, for the avoidance of doubt, the “Unit Holder’s Capacity” specified for the Transferor PUH in each such table will not be varied);

- (b) if the Transferor PUH transferred some (but not all) of its Preference Units to the Transferee PUH, then:
- (i) the amount calculated in accordance with the following formula for each Relevant Segment will be specified as the Transferor PUH’s “Unit Holders Capacity” in the table for the Relevant Segment in this **item 2** of this **schedule 7**;

$$RUHC = OUHC \times \frac{FPU}{OPU}$$

where:

RUHC = The amount of the Transferor PUH’s “Unit Holder’s Capacity” to be specified in the table for the Relevant Segment in this **item 2** of **schedule 7**

OUHC = The amount of the Transferor PUH’s “Unit Holder’s Capacity” specified in the table for the Relevant Segment in this **item 2** of this **schedule 7** immediately prior to the variation under this **item 2.3** of this **schedule 7** taking effect

FPU = The number of Preference Units held by the Transferor PUH immediately after the Transferee PUH becomes the registered holder of the Transferred PUs

OPU = The number of Preference Units held by the Transferor PUH immediately prior to the Transferee PUH becoming the registered holder of the Transferred PUs

- (ii) if the Transferee PUH is not a Segment Unit Holder for a Relevant Segment immediately prior to the Transferee PUH becoming the registered holder of the Transferred PUs, then:
- (A) the Transferee PUH will be specified as a “Segment Unit Holder for Segment” in the table for each Relevant Segment in this **item 2** of this **schedule 7**; and
- (B) the amount calculated in accordance with the following formula for each Relevant Segment will be specified as the Transferee PUH’s “Unit Holders Capacity” in the table for the Relevant Segment in this **item 2** of this **schedule 7**:

$$UHC = OUHC \times \frac{OPU - FPU}{OPU}$$

where:

UHC = The amount of the Transferee PUH's "Unit Holder's Capacity" to be specified in the table for the Relevant Segment in this **item 2** of **schedule 7**

OUHC = The amount of the Transferor PUH's "Unit Holder's Capacity" specified in the table for the Relevant Segment in this **item 2** of this **schedule 7** immediately prior to the variation under this **item 2.3** of this **schedule 7** taking effect

FPU = The number of Preference Units held by the Transferor PUH immediately after the Transferee PUH becomes the registered holder of the Transferred PUs

OPU = The number of Preference Units held by the Transferor PUH immediately prior to the Transferee PUH becoming the registered holder of the Transferred PUs

- (iii) if the Transferee PUH is already a Segment Unit Holder for a Relevant Segment immediately prior to the Transferee PUH becoming the registered holder of the Transferred PUs, then the amount to be specified as the Transferee PUH's "Unit Holder's Capacity" for that Relevant Segment will be the amount of the Transferee PUH's "Unit Holder's Capacity" for the relevant Segment immediately prior to Transferee PUH becoming the registered holder of the Transferred PUs plus the amount calculated in accordance with the formula specified in **item 2.3(b)(ii)(B)** of this **schedule 7**.

3 UHP Calculation Methodology

- (a) For the purpose of UHP Calculation Methodology, a reference to "Unit Holder" in this **schedule 7** is taken to be a reference to "Preference Subscriber".
- (b) For the purpose of **clause 5.5**, the Unit Holder's Proportion for each Unit Holder is to be recalculated in accordance with the following formula:

$$\text{UHP} = \frac{\text{UHTS}}{\text{TCE}}$$

where

UHP = The recalculated Unit Holder's Proportion for the relevant Unit Holder

- UHTS = The Unit Holder's Total Share for the relevant Unit Holder as at the time that the Trustee is required to recalculate the relevant Unit Holder's Proportion under **clause 5.5** (for the avoidance of doubt, excluding, for the purpose of determining the Unit Holder's Total Share, any Segment which has ceased to be a Segment under to **clause 5.4**)
- TCE = The Target Cost for the Extension as at the time that the Trustee is required to recalculate the relevant Unit Holder's Proportion under **clause 5.5** (for the avoidance of doubt, excluding, for the purpose of determining the Target Cost for the Extension, any Segment which has ceased to be a Segment under to **clause 5.4**)

4 Revised UHP Calculation Methodology

For the purpose of **clause 9.2**, the Revised Unit Holder's Proportion for each Preference Unit Holder is to be calculated in accordance with the following formula:

$$\text{RUHP} = \frac{\text{UHTS}}{\text{TEFPCE}}$$

where

- RUHP = The Revised Unit Holder's Proportion for the relevant Preference Unit Holder
- UHTS = The Unit Holder's Total Share for the relevant Preference Unit Holder
- TEFPCE = The Total Estimated Final Trust Costs for the Extension

5 Affected User Calculation Methodology

For the purpose of **clause 18.4**, the Affected User's Unit Holder's Proportion for each Affected User is to be recalculated in accordance with the following formula:

$$\text{AUUHP} = \frac{\text{AUTS}}{\text{SAUTS}}$$

where

- AUUHP = The Affected User's Unit Holder's Proportion for the relevant Affected User

- AUTS = The Affected User's Total Share for the relevant Affected User as at the time that the Trustee is required to exercise the Reserve Decision or Reserve Power
- SAUTS = The sum of the Affected User's Total Shares for each of the Affected Users

Schedule 8

Tax Policy (Clauses 1.1 and 17.2)

[General note: In the event that favourable private binding tax rulings have not been obtained from the Commissioner in respect of Aurizon Network, the Trustee and the Preference Unit Holders before execution of the Deed, this Tax Policy will be updated to describe the process for obtaining such rulings.]

1 Definitions

In this **schedule 8** each capitalised term has the meaning given to that capitalised term below. Capitalised terms not set out below that are defined in the body of the Deed have the same meaning when used in this schedule.

Capitalised term	Meaning
ATO	Australian Taxation Office
Capital Works	Assets that satisfy section 43-20 of ITAA97
Commissioner	The Commissioner of Taxation of the Commonwealth of Australia
Depreciating Asset	An asset that satisfies section 40-30 of ITAA97
Effective Life Taxation Ruling	The most recent public ruling issued by the Commissioner setting out the Commissioner's determination of the effective life of depreciating assets which, as at the date of this document, is <i>Taxation Ruling TR 2012/2</i>
Extension Structure Tax Cost	The same meaning given in the Umbrella Agreement
Tax Law	The same meaning given in the Trust Deed and, in addition, includes: (a) case law where the principal subject matter is Tax; and (b) any private binding rulings or other legally or administratively binding advice issued by a Governmental Agency imposing or administering a Tax to the Trustee (in its capacity as trustee of the Trust), that is applicable to the relevant income year or Tax period

ITAA36	<i>Income Tax Assessment Act 1936 (Cth)</i>
ITAA97	<i>Income Tax Assessment Act 1997 (Cth)</i>
Material Tax Adjustment	An adjustment in relation to Tax that would, or is reasonably likely to, result in the Net Income of the Trust for a Financial Year, or the aggregate of the Net Income if the circumstances relate to multiple Financial Years, being increased by at least 5% of the Target Cost [Drafting note: Net Income is a gross number. 5% of target cost equates to 1.5% in cash tax terms (assuming a 30% corporate tax rate).]
Material Tax Dispute	A dispute between a Governmental Agency imposing or administering a Tax and the Trustee that, if resolved in accordance with the Governmental Agency's position in that dispute, would result in a Material Tax Adjustment
Material Tax Matter	An act, event or circumstance which will or is reasonably likely to give rise to a Material Tax Adjustment or material non-compliance with a Tax Law
Net Income	Means "net income" in relation to a trust estate under section 95 of ITAA36
Tax Return	The same meaning given in the Trust Deed

2 Purpose

2.1 Background

In order to comply with Tax Law and good tax management practice, the Trustee may need to undertake, or procure the undertaking of, some or all of the following Tax compliance and compliance-related actions (collectively '**Tax Compliance**') in respect of the Trust:

- (a) lodgement of Tax Returns;
- (b) lodgement of notices, elections, forms and similar documents relating to Tax with Governmental Agencies;
- (c) submission of requests to Governmental Agencies that they exercise certain discretion(s) relating to Tax;
- (d) lodgement and provision of investor-related Tax information, including distribution statements;
- (e) payment to the ATO of any Tax assessed to the Trustee in respect of the Net Income of the Trust or required to be withheld and remitted to the ATO;
- (f) issue of correspondence to, and review of correspondence from, Governmental Agencies imposing or administering Tax;

- (g) provision of Tax-related information to Government Agencies where required by a Tax Law;
- (h) application to the Commissioner for private binding rulings or other legally or administratively binding advice;
- (i) lodgement of requests for amended assessments, objecting to assessments or other decisions by a Governmental Agency in relation to the application of a Tax Law and prosecuting any dispute arising therefrom; and
- (j) consultation with appropriately qualified external tax advisers, as required.

2.2 Objective

The objective of this Tax Policy is to specify how the Trustee will conduct Tax Compliance in respect of the Trust.

3 Conduct of Tax Compliance

3.1 General

The Trustee shall conduct all Tax Compliance in respect of the Trust in accordance with the requirements of **clauses 3.2 to 3.8** inclusive of this **schedule 8**.

3.2 Tax Risk Strategy

The Tax risk management strategy for the Trust is to:

- (a) conduct Tax Compliance in a timely manner;
- (b) insofar as reasonably practicable or considered appropriate by the Trustee, co-operate with Governmental Agencies imposing or administering Tax;
- (c) operate in good faith and transparently in dealings with Governmental Agencies imposing or administering Tax;
- (d) comply with the Tax Law;
- (e) adopt positions on Tax matters that are at a minimum reasonably arguable. A position will be reasonably arguable if the Trustee forms the view, acting reasonably and after taking into account the advice of appropriately qualified external tax advisers where considered necessary, that the position would more likely than not prevail if adjudicated by a court;
- (f) assess the acceptability of Tax risk having regard to the avoidance of any detrimental impacts on the goodwill and reputation of the Preference Unit Holders, the Ordinary Unit Holder and the Trustee;
- (g) where considered appropriate, defend any position adopted by the Trustee, including lodging requests for amended assessments, objecting to assessments or decisions by a Governmental Agency in relation to the

application of a Tax Law and prosecuting any dispute arising therefrom;
and

- (h) engage appropriately qualified external Tax advisers, where appropriate, subject to such action being consistent with the Trustee's fiduciary obligations.

3.3 Compliance with Tax Law

The Trustee must comply with the Tax Law. In doing so, the Trustee must act reasonably in all circumstances, including having regard to:

- (a) the effect of Tax Compliance on the future Tax position of the Preference Unit Holders, the Ordinary Unit Holder and the Trustee; and
- (b) the views of Governmental Agencies imposing or administering Tax as expressed in public rulings, determinations and interpretative decisions that are applicable to the relevant income year or Tax period (as appropriate).

3.4 Treatment of Fixed Assets in Tax Compliance

For each class of assets that the Trustee owns or has a right to use or possess, the Trustee must carry out, or procure the carrying out of, the following Tax Compliance matters in accordance with the income Tax Law:

- (a) determine whether the class of asset is comprised of Depreciating Assets, Capital Works or another class of asset in accordance with the income Tax Law;
- (b) in respect of each class of asset that is Capital Works, determine whether the Trustee can deduct the cost of those assets and, if so, determine the amount of the deduction for the purposes of Division 43 of ITAA97;
- (c) in respect of each class of asset that is a Depreciating Asset, determine whether the Trustee is the holder of those assets and, if so, determine the cost of those assets for the purposes of Division 40 of ITAA97;
- (d) in respect of each asset that is a Depreciating Asset, determine whether the asset will be treated as either a separate Depreciating Asset or a component of an existing Depreciating Asset, having regard to the facts and degree to which the asset is capable of functioning by itself, its location in the railway network of which it forms part and other factors identified from the income Tax Law;
- (e) in respect of each asset that is a Depreciating Asset, determine when the asset is installed and ready for use on the basis of information provided to the Trustee by the Project Manager under the Project Management Agreement;
- (f) in respect of each asset that is a Depreciating Asset, determine the useful life of the asset. Where the Trustee considers that the effective life for that asset as determined by the Commissioner, as set out in an Effective Life Taxation Ruling ("**Safeharbour Effective Life**"), accurately

reflects the useful life of the asset, the Trustee shall adopt the useful life specified in the Effective Life Taxation Ruling. Where the Trustee considers otherwise, the Trustee may self-assess the effective life of the asset provided this life is not longer than the Safeharbour Effective Life;

- (g) in respect of each asset that is a Depreciating Asset, apply the 'diminishing value method' set out in section 40-72 of ITAA97 to determine the decline in value of that asset (or class of assets) of the Trust to the extent allowed under the income Tax Law;
- (h) maintain a register that supports any deductions claimed by the Trust under Division 40 and Division 43 of ITAA97; and
- (i) in respect of each class of asset that comprises Depreciating Assets, review and, as necessary, adjust the useful life applied to those assets to reflect any reassessment of its useful life due to:
 - (i) changed circumstances relating to the nature of the use of the asset under subsection 40-110(1) of ITAA97, or
 - (ii) where otherwise permitted by section 40-110 of ITAA97.

3.5 Taxation of Financial Arrangements Elections

- (a) If, on the Commencement Date, Division 230 of the ITAA97 does not apply to the financial arrangements of the Trust, the Trustee will make any election available to it for Division 230 of the ITAA97 to apply to its financial arrangements.
- (b) The Trustee will not, without the prior written approval of the Preference Unit Holders and the Ordinary Unit Holder, make a 'tax-timing method election' under any of the following sections of ITAA97:
 - (i) section 230-210 (Fair value election);
 - (ii) section 230-255 (Foreign exchange retranslation election);
 - (iii) section 230-315 (Hedging financial arrangement election); or
 - (iv) section 230-395 (Election to rely on financial reports).

3.6 Overs and Unders

Where permitted by the income Tax Law or the administrative practices of the Commissioner, if there is a difference between the Net Income of the Trust included in the Trust's income Tax Return and the total of Net Income amounts notified to Preference Unit Holders for an income year, the Trustee may adjust a subsequent year's Net Income and the total of all taxable components advised as being distributed to unit holders for that subsequent year by the 'over or under' distribution. Any such adjustment will be made in the Tax year in which the difference has been identified regardless of the Tax year in which the difference occurred.

3.7 Management of a Material Tax Dispute

- (a) If the Trustee becomes aware of a Material Tax Dispute, the Trustee will, in relation to the Material Tax Dispute:

- (i) notify the Preference Unit Holders and the Ordinary Unit Holder and provide reasonable particulars;
 - (ii) brief external Tax advisers and consider their advice when determining any action proposed or not proposed to be taken;
 - (iii) consult with the Preference Unit Holders and the Ordinary Unit Holder as to any action proposed or not proposed to be taken, including any proposal to accept, compromise, pay, agree to arbitrate, settle or admit liability in relation to the Material Tax Dispute; and
 - (iv) provide Preference Unit Holders with an opportunity to submit comments to the Trustee in relation to the Material Tax Dispute within a period set by the Trustee and notified to the Preference Unit Holders having regard to the circumstances of the Material Tax Dispute.
- (b) If one or more Preference Unit Holders submit comments to the Trustee in relation to the Material Tax Dispute within the period contemplated by **clause 3.7(a)(iv)** of this **schedule 8**, the Trustee will consider such comments when determining any action proposed or not proposed to be taken referred to in **clause 3.7(a)(iii)** of this **schedule 8**.

3.8 Record Management

The Trustee must, for the period required under Tax Law retain and preserve:

- (a) all business records (including any advice provided by external Tax advisers) used to:
 - (i) prepare Tax Returns, accounts and other financial statements; or
 - (ii) comply with, and otherwise discharge its obligations pursuant to, Tax Law; and
- (b) records of every act, transaction, event or circumstance that could reasonably be expected to be relevant to determining whether the Trust has made a 'capital gain' or 'capital loss' from a 'CGT event', as those terms are defined in the ITAA97.

3.9 Availability of records

- (a) Subject to **clause 3.9(b)** of this **schedule 8**, a Preference Unit Holder may request in writing that the Trustee provide copies of the records contemplated by **clause 3.8** of this **schedule 8 (Tax Records Notice)** and the Trustee must provide copies of those records in a reasonable time, except where the Trustee believes (acting reasonably) such records are the subject of client legal privilege or similar administrative concession and the granting of access may waive that privilege or concession.
- (b) The Preference Unit Holder may only issue a Tax Records Notice if:

- (i) the Preference Unit Holder does not hold or has not previously been provided with the record;
 - (ii) it is accompanied by evidence reasonably satisfactory to the Trustee that 50% (by number) of the Preference Unit Holders (excluding Preference Unit Holders comprising Aurizon Network or a Related Body Corporate of Aurizon Network) have agreed to issue the Tax Record Notice; and
 - (iii) less than two Tax Records Notices have been given to the Trustee in the relevant Financial Year.
- (c) If the Trustee is required to provide records to a Preference Unit Holder under **clause 3.9(a)** of this **schedule 8**, the Trustee must also provide copies of those records to all other Preference Unit Holders.
- (d) **Clause 3.9(b)(ii)** and **3.9(b)(iii)** of this **schedule 8** do not apply to a Tax Records Notice provided to the Trustee by a Preference Unit Holder if:
- (i) the Tax Records Notice is accompanied by evidence reasonably satisfactory to the Trustee that the records are relevant to a review, audit or dispute initiated by a Governmental Agency imposing or administering Tax in relation to the Preference Unit Holder; or
 - (ii) the records that are the subject of the Tax Records Notice have been previously provided to all other Preference Unit Holders. For the avoidance of doubt, **clause 3.9(b)(i)** of this **schedule 8** still applies to such Tax Records Notices.

3.10 Material Tax Matters and Changes in Tax Law

- (a) If:
- (i) a Material Tax Matter arises; or
 - (ii) a change in Tax Law is announced or there is a change in the interpretation of a Tax Law by a Court or Governmental Agency that may have a material impact on the Tax status of the Trust,
- a Preference Unit Holder may give notice of that fact to the Trustee, in which case the Trustee must:
- (iii) within a reasonable time, give the Preference Unit Holders notice of that fact and provide reasonable particulars, including any advice in relation to the Material Tax Matter or change in Tax Law or its interpretation obtained by the Trustee from external taxation advisers, except where the Trustee believes (acting reasonably) such advice is the subject of client legal privilege or similar administrative concession and the granting of access to that advice may waive that privilege or concession; and
 - (iv) as soon as practicable after the notice referred to in **clause 3.10(a)(iii)** of this **schedule 8**, call a meeting of the Preference Unit Holders to discuss the Material Tax Matter or the change in

Tax Law or its interpretation and its potential impact on the Tax status of the Trust.

- (b) In determining the impact of a Material Tax Matter on the Preference Unit Holders or the change in Tax Law or its interpretation on the Tax status of the Trust and any action proposed or not proposed to be taken in relation to the administration of the Tax Policy, the Trustee will take into account any advice obtained by the Trustee from external taxation advisers and submissions made by Preference Unit Holders in writing or at the meeting referred to in **clause 3.10(a)(iv)** of this **schedule 8**.
- (c) This **clause 3.10** of this **schedule 8** does not apply to any election by the Trustee referred to in **clause 3.5** of this **schedule 8** to have Division 230 of the ITAA97 to apply to its financial arrangements

3.11 Breach of the Tax Policy

- (a) If, in the opinion of the Trustee (acting reasonably), there has been non-compliance with this Tax Policy and that non-compliance has resulted in or is reasonably likely to result in a Material Tax Adjustment, the Trustee must:
 - (i) promptly notify the Preference Unit Holders of that fact in writing and provide reasonable particulars; and
 - (ii) within a reasonable time, provide Preference Unit Holders with a proposal to mitigate the impact or potential impact of the non-compliance with the Tax Policy.
- (b) If, after notice has been given in accordance with **clause 3.11(a)(i)** of this **schedule 8**, a Preference Unit Holder requests that the Trustee call a meeting of the Preference Unit Holders to discuss the non-compliance with the Tax Policy or the proposal referred to in **clause 3.11(a)(ii)** of this **schedule 8**, the Trustee must promptly call such a meeting.
- (c) In determining the impact of the non-compliance with the Tax Policy and any action proposed or not proposed to be taken in relation to the administration of the Tax Policy, the Trustee will take into account any advice obtained by the Trustee from external taxation advisers and submissions made by Preference Unit Holders in writing or at the meeting referred to in **clause 3.11(b)** of this **schedule 8**.

Schedule 9

Security Documentation

[Drafting note: The Security Documentation is required to be entered into in order to:

- (a) ensure that the Trustee has an unimpeded right to sell the Sale Assets;**
- (b) address any (1) insolvency risk and (2) administration risk as regards that Preference Unit Holder; and**
- (c) regulate priority vis-a-vis any competing securities held by that Preference Unit Holder's financiers over any or all of the Sale Assets.**

The form of the Security Documentation to be executed by a Preference Unit Holder will be agreed by the parties prior to the execution of this Deed and must comply with the principles set out in this schedule 9.]

4 General

- (a) Where appropriate, defined terms in the Security Documents should mirror those in this Deed.
- (b) Any representations, warranties or undertakings which are required to be included in any Security Document shall reflect (to the extent to which the subject matter of such representation, warranty and undertaking is the same as the corresponding representation, warranty and undertaking in this Deed) the commercial arrangements set out in this Deed (save to the extent that it is referred to below or is necessary to include any further provisions (or deviate from those commercial arrangements contained in this Deed) in order to protect or preserve the security granted to the Trustee).

5 Equitable Mortgage of Units (EMU)

An EMU granted by each Preference Subscriber in favour of the Trustee in respect of all present and future Units in the Trust held by the Preference Subscriber on the basis that:

- (a) the security is given to secure the performance of the obligations of the Preference Subscriber under the Transaction Documents, consistent with **clause 5.1(a)** of this Deed;
- (b) the charged property will be limited to secured property (**Secured Property**) comprising:
 - (i) all present and future Units held in the Trust held by the Preference Subscriber (**mortgaged Units**); and

- (ii) any present or future right of a Preference Subscriber arising from a mortgaged Unit to acquire (by purchase or otherwise) any property from the Trustee including any additional marketable securities, whether units, shares (bonus or otherwise), warrants, options, notes, convertible securities or otherwise and however that right arises.
- (c) the Trustee will be required to discharge the security upon full and final satisfaction of all secured obligations;
- (d) the following representations and warranties in relation to the Units will be incorporated:
 - (i) confirmation as to the legal and beneficial ownership of the Units and all other Secured Property and no trusts other than as disclosed in writing to the Trustee;
 - (ii) confirmation that there are any no other encumbrances over the Secured Property other than encumbrances which are subject to the Priority Deed;
 - (iii) confirmation that there are no agreements in force which otherwise restrict the transfer of any Units or any of the other Secured Property on enforcement;
- (e) exercise of rights with respect to the Units, such as entitlement to dividends, distributions, voting rights, appointment of proxies and authorised representatives, will be for the Preference Subscriber unless the security has become enforceable;
- (f) the following further undertakings will be incorporated:
 - (i) title documents to be provided to the Trustee (in order to perfect the security);
 - (ii) the Preference Subscriber to perform its obligations under the Transaction Documents;
 - (iii) no other security to be given over the Units or any other Secured Property, other than security which is subject to the Priority Deed;
 - (iv) within a reasonable time following request by the Trustee, the Preference Subscriber to provide full details of the Secured Property;
 - (v) within a reasonable time following request by the Trustee, the Preference Subscriber to provide any other information in the possession or under the control of the Preference Subscriber which in the Trustee's reasonable opinion is relevant to the Secured Property;
 - (vi) on being notified of it, the Preference Subscriber to provide full details of any compensation event in respect of any of the Secured

Property; **[Drafting note: This provision is intended to deal with compulsory acquisition.]**

- (i) the Preference Subscriber to promptly pay all taxes (other than contested taxes) in respect of the Secured Property;
 - (ii) the Preference Subscriber to duly comply with its obligations in relation to the Secured Property, including under any encumbrance over the Secured Property, any law applicable to the Secured Property and any lawful direction from any Governmental Agency; and
 - (iii) the Preference Subscriber to institute or defend any legal proceedings which the Trustee may reasonably require to protect the Secured Property.
- (g) the EMU will be enforceable only while specified trigger events are subsisting (such as in the event of insolvency or other default as specified in **clause 8.3** of this Deed);
 - (h) such other customary provisions are incorporated relating to the appointment of receivers upon enforcement, the powers of any receivers, a power of attorney in favour of the Trustee (exercisable only when the EMU is enforceable), perfection of the security and further assurances, application of enforcement proceeds, costs and expenses and assignment.

6 Specific Security Agreement (SSA)

- (a) An SSA granted by each Preference Subscriber in favour of the Trustee, such security to be in respect of, and attach to:
 - (i) all of the Preference Subscriber's present and future rights under the Umbrella Agreement; and
 - (ii) the Preference Subscriber's present and future right to in respect of its Unit Holder Loans (where such Unit Holder Loans have not yet been converted into Units).
- (b) The SSA will be prepared on the basis that:
 - (i) the security is given to secure the performance of the obligations of the Preference Subscriber under the Transaction Documents, consistent with **clause 5.1(a)** of this Deed;
 - (ii) the secured property will be limited to the Umbrella Agreement and the Unit Holder Loans;
 - (iii) the Trustee will be required to discharge the security upon full and final satisfaction of all secured obligations;
 - (iv) the following representations and warranties in relation to the Unit Holder Loans and the Umbrella Agreement are incorporated:

- (C) confirmation as to the legal and beneficial ownership of the Unit Holder Loans and the Umbrella Agreement and no trusts other than as disclosed in writing to the Trustee;
 - (D) confirmation that there are no other encumbrances over the Unit Holder Loans and the Umbrella Agreement other than encumbrances which are subject to the Priority Deed;
 - (E) confirmation that there are no agreements in force which otherwise restrict the transfer of any Unit Holder Loans and the Umbrella Agreement on enforcement;
 - (F) confirmation as to the legality, validity and enforceability of the Umbrella Agreement and Unit Holder Loans against its counterparties;
 - (G) confirmation that there is no breach or default or any asserted or threatened assertion of any right of termination or repudiation or any claim made under or in connection with the Unit Holder Loans or Umbrella Agreement other than as disclosed in writing to, and accepted by, the Trustee;
- (v) exercise of rights with respect to the Unit Holder Loans or Umbrella Agreement, such as rights to amend, vary, grant waivers etc under the Trust Deed, Unit Holders Deed or Umbrella Agreement (as applicable), will be for the Preference Subscriber unless the security has become enforceable;
 - (vi) an undertaking will be incorporated that no other security to be given over the Unit Holder Loans or Umbrella Agreement, other than security which is subject to the Priority Deed.
 - (vii) the SSA will be enforceable only while specified trigger events are subsisting (such as in the event of insolvency or other default as specified in **clause 8.3** of this Deed);
 - (viii) such other customary provisions are incorporated relating to the appointment of receivers upon enforcement, the powers of any receivers, a power of attorney in favour of the Trustee (exercisable only when the SSA is enforceable), perfection of the security and further assurances, application of enforcement proceeds, costs and expenses and assignment.

7 Featherweight general security agreement

A featherweight general security agreement granted by the Preference Subscriber in favour of the Trustee over all the Preference Subscriber's assets (exercisable only upon the appointment of an administrator to the Preference Subscriber). The purpose of this security is solely to ensure that the Trustee is not prevented from enforcing the EMU and SSA due to the moratorium on enforcement of security following the appointment of an administrator. The

security is to be prepared in a manner consistent with this overriding principle, so this security would (among other things):

- (a) be expressed to rank behind any other security, including the EMU and the SSA and any security in favour of a third party financier;
- (b) not prohibit any dealings in the secured property (other than the secured property subject to the EMU and the SSA);
- (c) not contain any substantive representations or undertakings; and
- (d) secure only a fixed nominal amount, to preclude the Trustee or a receiver appointed by the Trustee from obtaining unintended benefit from this security.

8 Priority deed

- (a) A priority deed between the Preference Subscriber, the Trustee and any financier of the Preference Subscriber (the **Unitholder Financier**) whose security attaches to the assets the subject of the EMU and SSA (the **Secured Assets**) and which:
 - (i) restricts the rights of the Unitholder Financier to enforce its security over the Secured Assets without the consent of the Trustee (including customary non-compete provisions); and
 - (ii) gives the Trustee priority as regards the Sale Proceeds.
- (b) The Trustee will not be required to obtain the consent of the Unitholder Financier in relation to any proposed assignment of the Secured Assets by the Trustee pursuant to enforcement of the EMU and/or the SSA.
- (c) This priority deed will be prepared on the basis of the priority outlined above and that:
 - (i) the Trustee and the Unitholder Financier each consent to the creation of each security by the Preference Subscriber;
 - (ii) general representation and warranties by the Trustee and the Unitholder Financier will be included as to:
 - (A) ownership of its interest under the securities free from any encumbrance; and
 - (B) whether it has received any notice of default under its securities;
 - (iii) general undertakings by the Trustee and the Unitholder Financier will be included as to:
 - (A) the possession of any title documents (which are to be held by the Trustee unless the Unitholder Financier is enforcing its security with the consent of the Trustee); and
 - (B) payment of any proceeds with respect to enforcement in accordance with the priority outlined above;

- (iv) the Trustee and the Unitholder Financier will be free to determine the timing and manner of enforcement (subject to consent requirements described above); and
 - (v) the Unitholder Financier will undertake to advise of any event of default under its finance documents; and
- (d) other customary provisions relating to costs and expenses and a restriction on assignment of the securities unless the relevant assignee also agrees to be bound by the priority arrangements.

[Drafting note: *The parties may consider on a transaction-by-transaction basis whether the priority deed should include an additional provision which permits a Unit Holder Financier to step-in and cure Unit Holder Default under a Transaction Document and as a result of that step-in to transfer all (and not part) the Preference Units of the Defaulting Unit Holder in accordance with clause 12 of this Deed.*]

Schedule 10

Principles for Management Services Agreement

1 Administrative Services

Aurizon Network must provide the Trustee with administrative services including back office support, corporate support services, managing corporate records, office space, information technology systems (**Administrative Services**).

2 Standard of performance

Aurizon Network must perform the Administrative Services:

- (a) with due care and skill;
- (b) in a punctual and diligent manner; and
- (c) in the manner and within the timeframes the Trustee reasonably requires from time to time.

3 Costs and expenses

The Trustee must reimburse Aurizon Network for its costs and expenses for the provision of Administrative Services in accordance with the following principles:

- (a) For each Aurizon Network function, such as accounting or taxation, that provides part of the Administrative Services Aurizon Network will charge the Trustee on the basis of hours spent by each employee designated as a billable employee and a defined hourly unit cost charge for each class of billable employee.
- (b) The hourly unit cost charges shall be determined for each function so that they fully recover (but do not over-recover) all direct costs (for example remuneration and long service leave) and indirect costs (for example office space, utilities and IT) of employment of all employees (including but not limited to billable employees) in that function, after taking into account the time available for utilisation (that is nominal paid hours for a period less deductions such as leave and training time) in that function.
- (c) Aurizon Network shall recover additional costs (for example project specific travel) for billable employees from the Trustee on a cost reimbursement basis.

- (d) Aurizon Network's holding costs, which arise from cost recovery following Aurizon Network's settlement of costs, and overhead costs, which reflect Aurizon Network's management costs not reflected in the hourly unit cost charges determination, will be charged on a 'payment in lieu' basis. The payment in lieu amount will be set as a percentage of the aggregate of the charges under item (a) and (c). That percentage will be determined for each Management Services Agreement so as to reflect each SUFA project's circumstances and to recover (but do not over-recover) Aurizon Network's overhead and holding costs.

4 No delegation or subcontracting

- (a) Nothing in the Management Services Agreement amounts to the appointment of Aurizon Network as the Trustee's agent, delegate or nominee to perform any of the Trustee's duties, rights, powers or discretions under the Transaction Documents.
- (b) Aurizon Network must not subcontract the performance of the Administrative Services to any party other than a Related Body Corporate of it and provided that such subcontracting is on terms which are consistent with this **schedule 10**.

5 Intellectual property

- (a) Any intellectual property rights in materials created, written, developed or otherwise brought into existence by Aurizon Network in the course of the provision of the Administrative Services will be immediately assigned to, and vest in, the Trustee as those rights are created.
- (b) The Trustee grants to Aurizon Network a worldwide, irrevocable, royalty free, license (including the right to sublicense) to utilise any intellectual property rights referred to in **item 5(a)** of this **schedule 10**.

6 Confidential information

Aurizon Network must not disclose confidential information of the Trustee obtained by it only in the course of providing the Administrative Services directly or indirectly to any third party except as required by law.

7 Term

The Management Services Agreement continues until terminated on 30 days' written notice by either party to the other party to the Management Services Agreement.

8 Amendment

The parties to the Management Services Agreement agree not to amend any term of the Agreement so that it is inconsistent with the principles set out in this **schedule 10**.

9 Representations, warranties and liability

- (a) To the extent permitted by law, Aurizon Network and the Trustee exclude all terms, conditions, representations and warranties in respect of the Administrative Services.
- (b) To the extent permitted by law, Aurizon Network and the Trustee are not liable to each other for Consequential Loss in connection with the provision of the Administrative Services.
- (c) The maximum liability of Aurizon Network to the Trustee under the Management Services Agreement or in connection with the provision of the Administrative Services is \$1.00.

Schedule 11

Terms of issue of Preference Units

1 Introduction

This document summarises the terms of issue of Preference Units in the **[Name of Trust] (Trust)** constituted under the Trust Deed entitled “*User Funding – Trust Deed of [Name of Trust]*”, as amended from time to time.

“*User Funding – [Name of Trust] Subscription and Unit Holders Deed*” (**Unit Holders Deed**).

Terms defined in the “*User Funding – [Name of Trust] Subscription and Unit Holders Deed*” (**Unit Holders Deed**) have the same meaning in these terms of issue.

It is intended as a summary only and the terms of the Preference Units are as set out in the Trust Deed and this Deed.

[Drafting Note: This schedule 11 is to be completed on a transaction-by-transaction basis and to include details of the terms of issue of Preference Units including the Application Price and terms relating to Calls, Distributions, voting and redemption.]

Schedule 12

Monthly reports (clause 16.4)

- (1) Until the Monthly Report in respect of the Month after the Month in which the Final Certificate is received, each Monthly Report must contain the following information as at the end of the relevant Month:
 - (i) the forecast amounts of:
 - (A) Trust Costs;
 - (B) Trust Administration Costs other than Trust Capital Costs;
 - (C) Trust Capital Recoveries; and
 - (D) the total, being (A) less (B) less (C),by Segment and for all Segments as a total; and
 - (ii) the actual amounts of:
 - (A) Trust Costs;
 - (B) Trust Administration Costs other than Trust Capital Costs;
 - (C) Trust Capital Recoveries; and
 - (D) the total, being (A) less (B) less (C),by month from inception to date, and by Segment and for all Segments as a total.
- (2) Each Monthly Report must contain the following information as at the end of the relevant Month:
 - (i) the forecast amount of Trust Administration Costs other than Trust Capital Costs for the current financial year; and
 - (ii) the actual amounts of Trust Administration Costs other than Trust Capital Costs for the current financial year by month from the first month of that financial year to date.

Executed as a deed.

Executed by **[NewCo Pty Ltd]** in)
accordance with section 127 of the)
Corporations Act 2001 (Cth):

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Date: / /

Executed by **Aurizon Network Pty Ltd**)
in accordance with section 127 of the)
Corporations Act 2001 (Cth):

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Date: / /

Executed by **[Preference Subscriber**)
#1] in accordance with section 127 of)
the *Corporations Act 2001* (Cth):

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Date: / /

Annexure A

Extension Infrastructure Lease

Annexure B

Project Management Agreement

Annexure C

Rail Corridor Agreement

Annexure D

Umbrella Agreements

[Drafting note: A separate form of Umbrella Agreement for each Preference Subscriber will be included in this annexure.]

Annexure E

Extension Infrastructure Agreement

[Drafting note: The Extension Infrastructure Agreement in the form executed by the relevant State parties will be included in this annexure. Where part of the Extension is on the North Coast Line, a Queensland Rail equivalent of this document will be provided as an annexure.]

Annexure F

Integrated Network Deed

[Drafting note: The Integrated Deed in the form executed by the relevant State parties will be included in this annexure. Where part of the Extension is on the North Coast Line, a Queensland Rail equivalent of this document will be provided as an annexure.]

QCA submission draft
18 December 2012

[NewCo Pty Ltd] as trustee for the [Name of Trust]

Aurizon Network Pty Ltd

User Funding – Project Management Agreement

*[insert Extension
name]*

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Date

Parties

[NewCo Pty Ltd] **[ACN]** as trustee for the **[Name of Trust]** of Level 14, Railcentre 1, 305 Edward Street, Brisbane, Queensland (**Trustee**)

Aurizon Network Pty Ltd ABN 78 132 181 116 of Level 14, Railcentre 1, 305 Edward Street, Brisbane, Queensland (**Project Manager**)

Background

- A The Trustee wishes to procure the design, supply, procurement, construction, commissioning and completion of the Extension.
 - B The Project Manager has expertise in the design, supply, procurement, construction, testing and commissioning of railway infrastructure.
 - C The Project Manager agrees to project manage the design, supply, procurement, construction, testing commissioning and completion of the Extension for the Trustee in accordance with the terms of this Agreement.
-

Agreed terms

1 Interpretation

1.1 Definitions

In this Agreement:

Acceleration has the meaning given in **clause 10.2(a)**.

Acceleration Variation Notice has the meaning given in **clause 10.2(a)**.

Access Regulator has the meaning given in the Unit Holders Deed.

Access Undertaking has the meaning given in the Unit Holders Deed.

Additional Costs has the meaning given in **schedule 10**.

Additional Statement has the meaning given in **clause 13.3**.

Adjustment Event means, in respect of a Segment:

- (a) the occurrence of any event, circumstance or change:
 - (i) which is beyond the reasonable control of the Project Manager, including:

- (A) the occurrence of a Force Majeure Event which prevents or hinders the Project Manager from fully or partly performing its obligations under this Agreement in respect of that Segment;
 - (B) damage to, or destruction of, that Segment caused, or contributed to, by the occurrence of a Force Majeure Event;
 - (C) a Latent Condition encountered while carrying out the Works for that Segment; or
 - (D) the existence of a Dispute which delays the carrying out of the Works for that Segment; and
- (ii) the effects of which could not, by the exercise of reasonable diligence by the Project Manager, have been avoided;
- (b) a change to the Project Manager's or a Works Contractor's usual operating practices which the Project Manager or Works Contractor (as applicable) considers is reasonably required to achieve consistency with Good Operating Practice due to a change in Good Operating Practice;
 - (c) the exercise of any rights by a Works Contractor in respect of a Payment Claim made by that Works Contractor to the extent that any certification given by the Independent Engineer under **clause 6.6(a)** in respect of that Payment Claim is incorrect; or
 - (d) a direction to the Project Manager by the Trustee to suspend, permanently cease and/or recommence all or any part of the Works for the Extension under **clause 19**,

which will, or will likely, result in:

- (e) the Project Costs for that Segment being greater than they otherwise would have been if the event, circumstance or change had not occurred; and/or
- (f) the time required to carry out the Works for that Segment being greater than it otherwise would have been if the event, circumstance or change had not occurred.

[Drafting note: The definition of "Adjustment Event" will be considered on a transaction-by-transaction basis having regard to, amongst other matters, the Extension, market conditions and the nature and scope of the Works for the Extension.]

Agreement means this document, including the **schedules**.

Allocation Principles means the principles specified in **schedule 11**.

Amended Tender Panel for a proposed Major Works Contract means an amended list of entities which are recommended to be invited to submit tenders for that proposed Major Works Contract in the Amended Tender Panel Recommendation Report for that proposed Major Works Contract.

Amended Tender Panel Recommendation Report for a proposed Major Works Contract means a report which:

- (a) specifies an entity in the Tender Panel for that proposed Major Works Contract which:
 - (i) notified the Project Manager that it did not propose to tender for that proposed Major Works Contract; or
 - (ii) the Project Manager considers should no longer be invited to tender for that proposed Major Works Contract in accordance with **clause 7.3(a)**, together with details as to why that entity should no longer be invited to tender;
- (b) contains an evaluation of any new entities proposed by the Project Manager who were not previously included in the Tender Panel for that proposed Major Works Contract, to be invited to submit tenders for that proposed Major Works Contract; and
- (c) based on the evaluation under **paragraph (b)** of this definition and the evaluation undertaken in respect of the Tender Panel for the proposed Major Works Contract under **paragraph (a)** of the definition of Tender Panel Recommendation Report, specifies the new list of entities which are recommended to be invited to submit tenders for that proposed Major Works Contract.

Approved Designs and Specifications means, in respect of any Construction Works, the designs and specifications, and any variations to them, in respect of those Construction Works approved by, or deemed to be approved by, the Landholder under clause **7.1** of the Rail Corridor Agreement.

Auditor has the meaning given in **clause 15.4(a)**.

Audits has the meaning given in **clause 15.4(a)**.

Authority means any government or any governmental, semi-governmental, regulatory, statutory or similar entity or authority that exercises jurisdiction or control in relation to the Extension.

Authority Approval means a consent, licence, permit, authorisation, lodgement, filing, agreement, certificate, permission, direction, declaration, authority, accreditation, approval or exemption issued by an Authority.

Available means, in respect of a Segment, that the Segment has been materially completed in accordance with the Scope of Works for the Segment and, as a result, the Segment is capable of being lawfully used as a railway to allow the operation of train services.

Available Date means, in respect of a Segment:

- (a) the date which the Project Manager specifies in a notice given under **clause 4.4(b)** as the date on which the Segment became Available; or
- (b) if the Trustee gives the Project Manager a Dispute Notice referred to in **clause 4.4(d)** in respect of the Segment, the date on which the Segment is agreed or determined to have become Available under the Dispute Resolution Process.

Aurizon Network Land Acquisition Costs means costs incurred by the Project Manager, in its own capacity, in acquiring land or an interest in land for the purposes of the Extension (whether before or after the date of this Agreement).

Aurizon Works Contractor has the meaning given in **clause 4.5(b)**.

BCIP Act means the *Building and Construction Industry Payments Act 2004* (Qld).

BCIP Payment Claim means a Payment Claim made under a “construction contract” (as defined under the BCIP Act).

Breach Claim means any Claim by the Trustee that the Project Manager has breached any obligation imposed on the Project Manager under this Agreement, other than a Wilful Default Claim.

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in Brisbane, Queensland.

Change in Law means the occurrence of any of the following after the Commencement Date:

- (a) the introduction or commencement of, repeal of, or a change in, applicable Legislation or a change in the common law or law of equity;
- (b) a change in the terms and conditions imposed under an Authority Approval after it has been given or the imposition of any new terms or conditions under that Authority Approval, in each case, other than if caused by the default of a party under that Authority Approval;
- (c) the revocation or cancellation of an Authority Approval, other than if caused by the default of a party under that Authority Approval; or
- (d) the non-renewal or failure of an Authority to re-issue an Authority Approval or its renewal or re-issue on new terms that are materially different from the terms of that Authority Approval as at the Commencement Date, in each case, other than if caused by the default of a party under that Authority Approval.

Charge has the meaning given in **clause 25.4**.

Chargee has the meaning given in **clause 25.4**.

Claim includes any claim, demand, liability, cost, expense, damage, loss, proceeding, suit, litigation, investigation, audit, action or cause of action, whether judicial, administrative, investigative or otherwise and whether arising in contract, tort (including negligence), under statute or otherwise, of whatever nature, known or unknown, liquidated or unliquidated.

Commencement Date means the date of this Agreement.

Confidential Information of a Disclosing Party means:

- (a) the terms of this Agreement;
- (b) Price Sensitive Information; and

- (c) information disclosed by, or on behalf of, the Disclosing Party to the Recipient under or in connection with this Agreement which:
 - (i) is by its nature confidential or commercially sensitive;
 - (ii) is identified by the Disclosing Party as confidential or commercially sensitive;
 - (iii) the Recipient knows, or ought to know, is confidential or commercially sensitive; or
 - (iv) relates to the business, operations or financial affairs of the Disclosing Party or a Related Body Corporate of it (and where the Disclosing Party is the Trustee, any Unit Holder or a Related Body Corporate of a Unit Holder),

but does not include those terms of this Agreement, or any other information, which:

- (d) are or become public knowledge other than by:
 - (i) breach of this Agreement or by a breach of confidentiality by the Recipient or any third party to whom the Recipient has disclosed the information; or
 - (ii) breach of confidentiality by a Preference Unit Holder, the Independent Engineer, the PUH Engineer or an "Auditor" or "Expert" (as defined in each Transaction Document);
- (e) are in the possession of the Recipient or a Related Body Corporate of it without restriction in relation to disclosure before the date of receipt; or
- (f) have been independently developed or acquired by the Recipient or a Related Body Corporate of it.

Consequential Loss means, subject to **paragraphs (e), (f) or (g)** of this definition:

- (a) any special, indirect or consequential loss;
- (b) any economic loss in respect of any Claim in tort (including negligence);
- (c) any loss of profits, loss of production, loss of revenue, loss of use, loss of contract, loss of opportunity, loss of reputation, loss of goodwill or wasted overheads whatsoever; and
- (d) any loss arising out of any Claim by a third party,

but does not include:

- (e) a loss (including a loss arising out of a Claim by a third party) in respect of:
 - (i) the cost of repairing, replacing or reinstating any real or personal property of any person (including a Party) that has been lost, damaged or destroyed; or
 - (ii) personal injury to or death of any person; or

- (f) in respect of any personal injury Claim, special loss or economic loss as those terms are used in the context of personal injury Claims; or
- (g) in respect of the Trustee, any loss suffered or incurred by the Trustee arising out of any Claim against the Trustee by a Works Contractor under or in connection with a Works Contract which is caused, or contributed to (to the extent of the contribution), by any:
 - (i) breach by the Project Manager of any of its obligations under this Agreement; or
 - (ii) negligence or fraud committed by the Project Manager in connection with this Agreement.

Construction Period means the period commencing on the Commencement Date and ending on the last day of the Month during which the Available Date for the last of the Segments to become Available occurs.

Construction Works means any construction, commissioning, defects rectification and ancillary physical works and services associated with the construction and completion of the Extension.

Consultation Meeting means a meeting referred to in **clauses 7.2(b), 7.3(c), 7.4(b), 7.5(c) or 7.6(b)**.

Contract Price means:

- (a) for a proposed Major Works Contract, an estimate of the aggregate of the amounts which, if executed, the Trustee would reasonably be expected to be required to pay to the Works Contractor under that proposed Major Works Contract; and
- (b) for an executed Major Works Contract, an estimate of the aggregate of the amounts which, at the time of execution of that Major Works Contract, the Trustee would reasonably be expected to be required to pay to the Works Contractor under that Major Works Contract.

Defect means any:

- (a) defect, shrinkage, movement, error, omission, deficiency or other imperfection in the Extension Infrastructure in respect of, or arising from, any cause including design, materials or workmanship;
- (b) aspect of the Works for the Extension which is not in accordance with any Works Contract;
- (c) physical damage to the Extension Infrastructure resulting from any of the matters referred to in **paragraphs (a) and (b)** of this definition; or
- (d) impact on the physical condition of, or ability to safely and efficiently use, the Railway Network (other than the Extension Infrastructure) resulting from any of the matters referred to in **paragraphs (a), (b) and (c)** of this definition.

Defects Rectification Period means the period commencing on the Commencement Date and ending on the day which is 13 months after the end of the Construction Period.

Defects Register has the meaning given in **clause 4.6(a)**.

Disclosee has the meaning given in **clause 23.3**.

Disclosing Party has the meaning given in **clause 23.1(a)**.

Dispute has the meaning given in **clause 21.1(a)** and includes:

- (a) a matter referred to an Expert for determination under this Agreement; and
- (b) a “Dispute” (as defined in the Unit Holders Deed) if the Trustee joins the Project Manager to the dispute resolution process under the Unit Holders Deed in accordance with **clause 21.10**.

Dispute Notice has the meaning given in **clause 21.1(a)**.

Dispute Resolution Process means:

- (a) the dispute resolution process under **clause 21**; and
- (b) if the Trustee joins the Project Manager to the dispute resolution process under the Unit Holders Deed in accordance with **clause 21.10**, the dispute resolution process under the Unit Holders Deed.

Early Termination Project Management Fee for a Segment means the amount calculated in accordance with **item 3** of **schedule 6** for the Segment.

Early Termination Statement has the meaning given in **clause 20.4(b)**.

Estimated Available Date for a Segment means:

- (a) the date which the Project Manager reasonably estimates to be the date on which that Segment will become Available, as reported by the Project Manager to the Trustee from time to time under **clause 12.2**; or
- (b) if the Trustee gives the Project Manager a Dispute Notice referred to in **clause 12.2(c)** in respect of the Segment, the date which is agreed or determined under the Dispute Resolution Process to be a reasonable estimate of the date on which that Segment will become Available.

Estimated Project Costs for a Segment means:

- (a) the amount which the Project Manager reasonably estimates will be the total Project Costs to be Incurred by the Trustee for that Segment, as reported by the Project Manager to the Trustee from time to time under **clause 12.2**; or
- (b) if the Trustee gives the Project Manager a Dispute Notice referred to in **clause 12.2(c)** in respect of a Segment, the amount which is agreed or determined under the Dispute Resolution Process to be a reasonable estimate of the total Project Costs to be Incurred by the Trustee for that Segment.

Estimated Terminal Available Date means:

- (a) the date which the developer of the Terminal reasonably estimates will be the date on which the Terminal will be complete (except for minor defects) and will be capable of Handling coal (up to its full design

- capacity) if it were transported by rail to the Terminal, as reported by the Trustee to the Project Manager from time to time under **clause 12.3**; or
- (b) if the Project Manager gives the Trustee a Dispute Notice referred to in **clause 12.3(e)**, the amount which is agreed or determined under the Dispute Resolution Process to be a reasonable estimate of the date on which the Terminal will be complete (except for minor defects) and will be capable of Handling coal (up to its full design capacity) if it were transported by rail to the Terminal.

[Drafting note: This Agreement has been drafted on the assumption that a 'single stage' port development or upgrade will be required in parallel with the Extension. If no port development or upgrade is required, then it will be necessary to amend this Agreement. Amendment to the Agreement will also be required if there is a staged port development and one or more port stages correspond to different parts of the Extension. In this situation the Scope of Works and Target Available Date for each part of the Extension would correspond to a separate 'Estimated Terminal Available Date' for the relevant port stage.]

Expert has the meaning given in **clause 21.2(b)**.

Extension has the meaning given in the Unit Holders Deed.

Extension Committee has the meaning given in **clause 12.1(a)**.

Extension Infrastructure means the "Total Extension Infrastructure" (as defined under the Extension Infrastructure Lease).

Extension Infrastructure Agreement has the meaning given in the Unit Holders Deed.

Extension Infrastructure Lease has the meaning given in the Unit Holders Deed.

Extension Investigation Reports means the reports described in **item 2 of schedule 1**.

Extension Land means any land or site required to design, supply, procure, construct, test and/or commission the Extension.

Extension Target Available Date means the later of:

- (a) the Latest Target Available Date; and
- (b) the Terminal Available Date.

Final Certificate means a notice given under **clause 4.7(a)**.

Final PMF Percentage for a Segment means the percentage calculated in accordance with **item 2.2 of schedule 6** for that Segment.

Final Project Management Fee for a Segment means the amount calculated in accordance with **item 2.1 of schedule 6** for that Segment.

Final Reconciliation Statement has the meaning given in **clause 13.4**.

Final Reconciliation Statement Date means the later of:

- (a) 20 Business Days after the date the Project Manager gives the Final Certificate to the Trustee;

- (b) the RAB Decision Date; and
- (c) the date that any Dispute which is (or includes) a Claim that the Project Manager has breached this Agreement or committed negligence or fraud in connection with this Agreement is resolved in accordance with the Dispute Resolution Process.

Force Majeure Event in respect of the Project Manager means any event or circumstance:

- (a) which is beyond the reasonable control of the Project Manager; and
- (b) the effects of which could not, by the exercise of reasonable diligence by the Project Manager, have been avoided;

and (to the extent it meets the above criteria) includes any of the following:

- (c) act of God;
- (d) law, rule, regulation or order of any government or governmental authority;
- (e) executive or administrative orders or acts of either general or particular application of any Authority or of any official acting under the authority of such Authority;
- (f) act of war (declared or undeclared);
- (g) public disorder;
- (h) riot, insurrection, rebellion, sabotage or act of terrorists;
- (i) fire, earthquake, tidal wave or other natural calamity;
- (j) drought, flood, storm, hail, lightning, inclement weather or other severe weather conditions;
- (k) explosion, breakdown or injury to or expropriation, confiscation or requisitioning of production, manufacturing, selling, transportation or delivery facilities;
- (l) quarantine or customs restrictions;
- (m) strike, boycott, lockout or other labour disturbance (whether national, state-wide or otherwise);
- (n) act (including a delay in performing an act) or omission of any Authority;
- (o) failure to obtain, or delay in obtaining, any environmental or other Authority Approval relating to, or necessary for, the design, supply, procurement, construction, testing and/or commissioning of the Extension;
- (p) failure to obtain, or delay in obtaining, access to, use of, or tenure to any Extension Land;
- (q) all or part of any Extension Land, or any object or evidence of occupation on, under or within the vicinity of any Extension Land, being,

- appearing to be, or being alleged to be, Aboriginal Cultural Heritage (as defined in the *Aboriginal Cultural Heritage Act 2003* (Qld));
- (r) all or part of any Extension Land being, appearing to be, or being alleged to be, land which may be subject to native title or land which is the subject of a native title Claim, determination or agreement;
 - (s) compliance with an obligation contained in any relevant cultural heritage management plan, indigenous land use agreement, right to negotiate agreement or other agreement with indigenous parties;
 - (t) all or part of any Extension Land being affected by any Latent Condition or other adverse physical characteristic;
 - (u) permanent or temporary shortage or unavailability of, or inability to procure:
 - (i) appropriately qualified and experienced labour acceptable to the Project Manager, acting reasonably;
 - (ii) materials;
 - (iii) water, fuel, electricity or other essential goods or services; or
 - (iv) any other necessary goods or services;
 - (v) a Change in Law;
 - (w) act or omission of the Trustee or any of the Trustee's officers, employees, agents (other than the Project Manager acting as disclosed agent of the Trustee under this Agreement) or contractors;
 - (x) any of the above events (or any other event which constitutes an excusal from performance of a supplier's or contractor's obligations under its arrangements with the Project Manager or the Trustee) delaying a supplier or contractor to the Project Manager or Trustee (including a Works Contractor) in performing its obligations; and
 - (y) failure by a third party (including a Works Contractor) to perform its obligations, or a delay by a third party (including a Works Contractor) in performing its obligations.

Fraud Claim means any Claim by the Trustee that the Project Manager has committed fraud in connection with this Agreement.

Good Industry Practice 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 brownfields rail infrastructure in Australia under comparable conditions.

Good Operating Practice means the exercise of the standard of skill, diligence, prudence, foresight, safety and operating practice that would reasonably and ordinarily be expected from a skilled operator engaged in the same type of undertaking as that of the relevant person under the same or similar circumstances.

Governmental Agency means any government, whether Federal, State or Territory, municipal or local, and any agency, authority, commission, department, instrumentality, regulator or tribunal thereof, including the Commissioner of Taxation and Australian Taxation Office.

Gross Negligence Claim means any Claim by the Trustee that the Project Manager has committed negligence in connection with this Agreement involving such wanton and reckless conduct as constitutes an utter disregard for the harmful, foreseeable and avoidable consequences which result from such conduct.

GST has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Handle in relation to coal at the Terminal means the receiving by rail, unloading, stockpiling, storing and reclaiming of coal and loading of vessels with coal at the Terminal (and, for the avoidance of doubt, does not include any of those things undertaken for the purposes of commissioning and completing the Terminal following construction).

Incurred:

- (a) in respect of Reimbursable Expenses, has the meaning given in **clause 15.1**; and
- (b) in respect of Project Costs, has the meaning given in the Unit Holders Deed.

Independent Engineer means the independent engineer jointly appointed by the Parties in accordance with the Independent Engineer Appointment Deed.

Independent Engineer Appointment Deed means a deed to be entered into by the Parties and an independent engineer under which an independent engineer is jointly appointed for the purpose of performing the responsibilities and functions of the Independent Engineer under this Agreement and in accordance with **clause 5.1**.

Insurance Policy means a Project Insurance Policy or the Professional Indemnity Insurance Policy.

Intellectual Property Rights includes both in Australia and throughout the world and for the duration of the rights:

- (a) any patents, utility models, copyrights, eligible layout rights, designs and other like rights;
- (b) any invention, discovery, trade secret, know-how, computer software and confidential information; and
- (c) any business, scientific, technical and product information, including proprietary information relating to the development of new products,

whether registered, registrable or unregistered.

Interest Rate means, for any day in a Month, the annual interest rate that is the sum of:

- (a) 2%; and
- (b) the Commonwealth Bank of Australia's "Corporate Overdraft Reference Rate" (monthly charging cycle) quoted by the Commonwealth Bank of Australia on its public website for the last trading day of the previous Month (or in the event that such a rate is not so quoted at or in respect of any relevant date, such other similar rate as is quoted by a major commercial bank as agreed by the Parties or, failing agreement, as determined by an Expert under **clause 21.3**).

Internal Costs has the meaning given in **schedule 10**.

Landholder means the party that is the 'Landholder' under the Rail Corridor Agreement.

Latent Conditions means physical conditions on the Extension Land and its near surrounds (including artificial things but excluding weather conditions) which differ materially from the physical conditions which could have been reasonably anticipated by the Project Manager as at the date of this Agreement based on the information set out in the Extension Investigation Reports.

Latest Target Available Date means the latest of the Target Available Dates for the Segments.

Legislation means statutes, ordinances, regulations, by-laws, proclamations and subordinate legislation of the Commonwealth, the State or an Authority.

Loss has the meaning given in the Unit Holders Deed.

Major Works Contract means a proposed or executed Works Contract for which the Project Manager (acting reasonably) determines the Contract Price exceeds the greater of:

- (a) 2% of the Target Costs for the Extension as at the Commencement Date; and
- (b) \$20 million.

Major Works Contract Dispute means a Type 1 Major Works Contract Dispute and a Type 2 Major Works Contract Dispute.

Major Works Contract Notice has the meaning given in **clauses 7.2(a)(i), 7.3(b)(i), 7.4(a)(i), 7.5(b)(i) and 7.6(a)(i)**.

Major Works Contract Response Notice has the meaning given in **clause 7.7(a)**.

Material Addendum for a Major Works Contract means a material modification to the Tender Documentation for the Major Works Contract at any time after the Tender Documentation has been provided to tenderers but before a Major Works Contract for that tender is executed.

Material Variation for a Major Works Contract means any variation arising from a Variation Direction under that Major Works Contract:

- (a) which would materially reduce the MWC Scope of that Major Works Contract;
- (b) where the Variation Direction Cost for the Variation Direction is reasonably expected to be 2.5% or more of the Contract Price for that Major Works Contract;
- (c) where the Variation Direction Cost for the Variation Direction, together with the aggregate of the Variation Direction Costs for all previous Variation Directions for that Major Works Contract which:
 - (i) have not individually satisfied **paragraph (b)** of this definition; and
 - (ii) the Trustee has not consented to (or been deemed to have consented to) as part of a previous Proposed Action under **clause 7**,

is reasonably expected to be 5% or more of the Contract Price for that Major Works Contract;
- (d) which would, of itself, reasonably be expected to result in the date for completion of the works under that Major Works Contract being delayed by a period of four weeks or more; or
- (e) which would, of itself, reasonably be expected to result in any Segment not becoming Available by the Estimated Available Date for that Segment,

but excludes variations arising from a any Variation Direction under that Major Works Contract which the Project Manager, acting reasonably, considers is:

- (f) required to prevent, minimise or mitigate any threat or danger to any person, property or the environment;
- (g) required to ensure compliance with applicable Legislation and Authority Approvals; and/or
- (h) urgently required in response to an event or circumstance which is beyond the reasonable control of the Project Manager.

Month means a calendar month, except that:

- (a) the first Month starts on the Commencement Date and ends on the last day of the calendar month in which the Commencement Date occurs; and
- (b) the last Month ends on:
 - (i) the last day of the term of this Agreement; or
 - (ii) if this Agreement is earlier terminated in accordance with its terms, the date of termination.

Monthly Report has the meaning given in **clause 12.2(a)**.

Monthly Statement has the meaning given in **clause 13.1**.

Moral Rights means the moral rights granted under the *Copyright Act 1968* (Cth), and any similar rights existing under foreign laws.

Moral Rights Consent means a waiver of Moral Rights to the extent permitted by law and an unconditional consent to any act or omission in relation to any works by or on behalf of the Project Manager, any person authorised by the Project Manager or any licensee of copyright in the works.

MWC Scope for a Major Works Contract means the scope of the works which is specified for that Major Works Contract.

Negligence Claim means any Claim by the Trustee that the Project Manager has committed negligence in connection with this Agreement, other than a Gross Negligence Claim.

Nominated Type 1 Major Works Contract Dispute means a Type 1 Major Works Contract Dispute notified by the Trustee to the Project Manager in accordance with **clause 8.1(b)**.

Nominated Type 2 Major Works Contract Dispute means a Type 2 Major Works Contract Dispute notified by the Trustee to the Project Manager in accordance with **clause 8.2(b)**.

Notice has the meaning given in **clause 26.1**.

Optimisation Date for a Segment means the date which is ten Business Days after the date that the Access Regulator makes a decision having the effect that part or all of the Project Costs for that Segment are not accepted into the Regulatory Asset Base.

Optimisation Event for a Segment has the meaning given in **clause 14.1**.

Optimisation Fee for a Segment means the amount calculated in accordance with **item 1.2 of schedule 7** for that Segment.

Parties means collectively the Project Manager and the Trustee, and **Party** means one of them.

Payee has the meaning given in **clause 13.8(c)**.

Payment Claim means a claim for payment made by a Works Contractor under a Works Contract.

Payor has the meaning given in **clause 13.8(c)**.

Payment Schedule has the meaning given in the BCIP Act.

Preference Unit Holder has the meaning given in the Unit Holders Deed.

Price Sensitive Information means any information in relation to:

- (a) the calculation of Internal Costs; or
- (b) a Works Contract (including any terms of a Works Contract) which is:
 - (i) specified in, or determined under, the Procurement Methodology to be 'Price Sensitive Information' for the purpose of this definition; or
 - (ii) specified in the Works Contract to be 'Price Sensitive Information' for the purpose of this definition but only where the specification of

that information as 'Price Sensitive Information' has been approved by the Trustee under **clause 6.2(c)**.

Proceedings has the meaning given in **clause 21.8(b)**.

Procurement Methodology means the procurement methodology set out in **schedule 4**.

Professional Indemnity Insurance Policy means the professional indemnity insurance policy referred to in **clause 16.2**.

Project Contract Works Insurance Policy means the 'Contract Works Material Damage' insurance referred to in **clause 16.1(b)(i)**.

Project Costs means:

(a) for the Extension:

(i) each of the following:

- (A) any Reimbursable Expenses for the Extension;
- (B) any costs, expenses and liabilities Incurred by the Trustee under, or in connection with, a Works Contract or the Independent Engineer Appointment Deed (including in respect of any dispute under, or in connection with, a Works Contract or the Independent Engineer Appointment Deed); and
- (C) any premiums payable by the Trustee under a Project Insurance Policy and any costs, expenses and liabilities Incurred by the Trustee in respect of any dispute under a Project Insurance Policy; and
- (D) any amounts payable by the Trustee to Aurizon Network Pty Ltd (as 'Landholder') under the Rail Corridor Agreement;
- (E) any costs and expenses Incurred by the Trustee in connection with any Authority Approvals required in relation to the Works for the Extension or the Extension,

but does not include the GST component of any costs, expenses or liabilities Incurred by the Trustee which would otherwise be Project Costs for the Extension under this **paragraph (a)(i)** of this definition to the extent that the Trustee (or the representative member of the GST group of which the Trustee is part) is entitled to claim an input tax credit in respect of such costs, expenses or liabilities;

less:

(ii) each of the following:

- (F) any amounts recovered under, or in connection with, a Works Contract or the Independent Engineer Appointment Deed (including in respect of any dispute under, or in

connection with, a Works Contract or the Independent Engineer Appointment Deed); and

- (G) any amounts recovered by the Trustee or any other insured from an insurer under the Project Contract Works Insurance Policy;
- (b) for a Segment, Project Costs for the Extension (as defined in **paragraph (a)** of this definition) that are:
 - (i) directly attributable to that Segment; or
 - (ii) otherwise, allocated to that Segment by the Project Manager applying the Allocation Principles.

Project Insurance Policy means the 'Contract Works Material Damage' insurance and 'Broadform Public and Products Liability' insurance referred to in **clause 16.1**.

Proposed Action means, for a proposed Major Works Contract or an executed Major Works Contract, as applicable:

- (a) identifying the Tender Panel for that proposed Major Works Contract specified in a Major Works Contract Notice given under **clause 7.2(a)**;
- (b) inviting tenders for that proposed Major Works Contract from the Tender Panel or the Amended Tender Panel (if any), and in the form of the Tender Documentation, each as specified in a Major Works Contract Notice given under **clause 7.2(a)** and **clause 7.3(b)** (as applicable) in respect of that proposed Major Works Contract;
- (c) issuing a Material Addendum to the Tender Documentation for that proposed Major Works Contract in the form specified in a Major Works Contract Notice given under **clause 7.4(a)** in respect of that proposed Major Works Contract;
- (d) entering into (or otherwise reaching an agreement, understanding or arrangement to award or enter into) that Major Works Contract with the preferred tenderer, and in the form of that proposed Major Works Contract, specified in a Major Works Contract Notice given under **clause 7.5(b)** in respect of that proposed Major Works Contract; or
- (e) giving a Variation Direction under that Major Works Contract which would give rise to a Material Variation as specified in a Major Works Contract Notice given under **clause 7.6(a)** in respect of that Major Works Contract.

Provisional Damages has the meaning given in **clause 21.4(b)(i)**.

Provisional PMF Percentage for a Segment means the percentage calculated in accordance with **item 1.2** of **schedule 6** for the Segment.

Provisional Project Management Fee for a Segment means the amount calculated in accordance with **item 1.1** of **schedule 6** for the Segment.

Provisional Reconciliation Statement has the meaning given in **clause 13.2**.

PUH Engineer means an engineer (if any) appointed by the applicable Preference Unit Holders as contemplated under the Unit Holders Deed and notified to the Project Manager by the Trustee under **clause 3.7(b)**.

Quantum of Dispute for a Works Contract Dispute means the amount which the Works Contractor alleges, in the Works Contract Dispute, is payable to it under, or in connection with, the Works Contract which is the subject of that Works Contract Dispute.

RAB Decision Date means the date on which the Access Regulator makes a decision as to whether or not to accept all of the Project Costs for the Extension into the Regulatory Asset Base:

- (a) in the case of one decision by the Access Regulator in relation to all of the Project Costs for the Extension, on the date of that decision; and
- (b) in the case of a series of separate decisions by the Access Regulator in relation to separate parts of the Project Costs for the Extension, the date on which the last decision is made.

Rail Corridor Agreement has the meaning given in the Unit Holders Deed.

Railway Network has the meaning given in the Unit Holders Deed.

RCTI has the meaning given in **clause 24.4(a)(i)**.

Recipient has the meaning given in **clause 23.1**.

Record means any document (in hard copy or electronic form) in the possession or control of the Project Manager.

Reference Program means the program in respect of the Works for the Extension set out in **item 4** of **schedule 3**, as revised by the Project Manager under **clause 10.8(b)**.

Referral Date in relation to a Works Contract Dispute arising under a Major Works Contract means the date on which:

- (a) the Works Contract Dispute is validly referred, in whole or in part, to binding expert determination or arbitration; or
- (b) a party to the Major Works Contract validly commences proceedings in a court or tribunal in relation to the whole or part of the subject matter of the Works Contract Dispute.

Regulatory Asset Base has the meaning given under the Access Undertaking.

Reimbursable Expenses means:

- (a) for the Extension:
 - (i) Internal Costs; and
 - (ii) Additional Costs; and
- (b) for a Segment, Reimbursable Expenses for the Extension (as defined in **paragraph (a)** of this definition) that are:

- (i) directly attributable to that Segment; or
- (ii) otherwise, allocated to that Segment by the Project Manager applying the Allocation Principles.

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth).

Relevant Information has the meaning given in **clause 12.4(a)**.

Replacement Breach means the Project Manager:

- (a) fails to provide any information to the Trustee which it is required to provide to the Trustee under this Agreement; or
- (b) fails to comply with its obligations under **clauses 6.5** and **15.4(d)**.

Replacement Breach Notice has the meaning given in **clause 22.1(a)**.

Replacement Date has the meaning given in **clause 22.5(b)**.

Replacement Election Notice has the meaning given in **clause 22.4**.

Replacement Event means:

- (a) the occurrence of an Unnecessary Delay;
- (b) the Project Manager abandons or substantially abandons the performance of the Services; or
- (c) the Project Manager commits a Replacement Breach and does not remedy the Replacement Breach within 20 Business Days after:
 - (i) the Trustee gives the Project Manager a Replacement Breach Notice in respect of the Replacement Breach; or
 - (ii) if the Project Manager gives a Dispute Notice referred to in **clause 22.1(b)(i)** in respect of the Replacement Breach, it is agreed or determined through the Dispute Resolution Process that the Project Manager committed the Replacement Breach.

Replacement Event Notice has the meaning given in **clause 22.3(a)**.

Replacement Period has the meaning given in **clause 22.5(b)**.

Replacement Project Manager has the meaning given in **clause 22.5(b)**.

Replacement Services means the project management of the completion of the Works for the Extension which are not yet complete as at the Replacement Date, including the control, coordination, administration and direction of all activities necessary for the completion of the implementation, planning, detailing, design, documentation, supply, procurement, construction, testing, commissioning, completion, Defects rectification and delivery of the Works for the Extension in accordance with **clause 22.5**.

Scheduled Amount has the meaning given in the BCIP Act.

Scope Change Event means each of the following:

- (a) a Change in Law; and

(b) a Latent Condition encountered while carrying out the Works.

Scope of Works means:

- (a) for the Extension, the scope of works for all Segments comprising the Extension (as defined in **paragraph (b)** of this definition); and
- (b) for a Segment, the scope of works set out in **item 1 of schedule 2** to the extent that it relates to that Segment, as varied in accordance with this Agreement.

Segment has the meaning given in the Unit Holders Deed.

Services means:

- (a) if a Replacement Project Manager has not been appointed, the project management of the delivery of the Works for the Extension, including the control, coordination, administration and direction of all activities necessary for the implementation, planning, detailing, design, documentation, supply, procurement, construction, commissioning, testing, completion, Defects rectification and delivery of the Works for the Extension; or
- (b) if a Replacement Project Manager is appointed, anything required to be undertaken by the Project Manager under **clause 22**.

Standing Expert means an Expert appointed by the Project Manager and the Trustee under **clause 7.10(c)**.

State means the State of Queensland.

Supplier has the meaning given in **clause 24.3**.

Target Available Date for a Segment means the date specified for that Segment in **item 2 of schedule 3**, as varied in accordance with this Agreement.

Target Available Date Adjustment Trigger has the meaning given in **clause 11**.

Target Cost means:

- (a) for a Segment, the amount specified for that Segment in **item 1 of schedule 3**, as varied in accordance with this Agreement; and
- (b) for the Extension, the sum of the Target Costs (as defined in **paragraph (a)** of this definition) for all Segments comprising the Extension.

Tender Documentation for a proposed Major Works Contract means the documentation (including all technical and commercial documentation) to be provided to tenderers as part of the invitation to tender for that proposed Major Works Contract.

Tender Evaluation Documentation for a proposed Major Works Contract means the methodology (including the evaluation criteria) for:

- (a) evaluating tenders submitted in response to an invitation to tender for that proposed Major Works Contract; and

- (b) selecting the preferred tenderer for that proposed Major Works Contract.

Tender Panel for a proposed Major Works Contract means the entities which are recommended to be invited to submit tenders for that proposed Major Works Contract in the Tender Panel Recommendation Report for that proposed Major Works Contract.

Tender Panel Recommendation Report for a proposed Major Works Contract means a report which:

- (a) contains an evaluation of the entities proposed by the Project Manager to be invited to submit tenders for that proposed Major Works Contract; and
- (b) based on such evaluation, specifies the entities which are recommended to be invited to submit tenders for that proposed Major Works Contract.

Terminal means [insert].

[Drafting note: The definition of "Terminal" to be completed on a transaction-by-transaction basis. If necessary, the definition of "Terminal" will reflect the stage of the development of the Terminal. In cases where an Extension is to an unloading facility other than a coal terminal, "Terminal" will be replaced with an appropriate definition.]

Terminal Available Date means:

- (a) the date on which the Terminal is complete (except for minor defects) and is capable of Handling coal (up to its full design capacity), as reported by the Trustee to the Project Manager under **clause 12.3**; or
- (b) if the Project Manager gives the Trustee a Dispute Notice referred to in **clause 12.3(e)**, the date which is agreed or determined under the Dispute Resolution Process to be date on which the Terminal is complete (except for minor defects) and is capable of Handling coal (up to its full design capacity).

Transaction Documents has the meaning given in the Unit Holders Deed.

Transition Services has the meaning given in **clause 22.6(b)**.

Trust has the meaning given in the Trust Deed.

Trust Costs has the meaning given in the Unit Holders Deed.

Trust Deed means the trust deed made by the Trustee entitled "User Funding – Trust Deed of [Name of Trust]".

Trustee Acceleration Proposal Notice has the meaning given in **clause 10.2(c)**.

Trustee Supplies has the meaning given in **clause 24.4(a)(i)**.

Type 1 Major Works Contract Dispute means a Works Contract Dispute arising under a Major Works Contract:

- (a) where the Quantum of Dispute for that Works Contract Dispute is 2.5% or more of the Contract Price for that Major Works Contract;

- (b) which would, of itself, reasonably be expected to result in the date for completion of the Works under that Major Works Contract being delayed by a period of four weeks or more; or
- (c) which would, of itself, reasonably be expected to result in a Segment not becoming Available by the Estimated Available Date for that Segment.

Type 2 Major Works Contract Dispute means a Works Contract Dispute arising under a Major Works Contract which is not a Type 1 Major Works Contract Dispute.

Unit Holder has the meaning given in the Trust Deed.

Unit Holders Deed has the meaning given in the Trust Deed.

Unnecessary Delay means, at a point in time, the Estimated Available Date for any Segment is:

- (a) subject to **clause 22.2**, more than six months later than the Latest Target Available Date at that time; and
- (b) later than the Estimated Terminal Available Date at that time.

Variation Direction for a Works Contract means a variation direction which the Works Contractor would be obliged to comply with under the Works Contract.

Variation Direction Cost for a Variation Direction under a Major Works Contract means the additional amounts which would reasonably be expected to be required to be paid by the Trustee to the Works Contractor under that Major Works Contract as a consequence of that Variation Direction.

Variation Notice has the meaning given in **clauses 9.1(a)** and **9.2(a)**.

Weather Adjustment Event means an Adjustment Event arising out of a Force Majeure Event referred to in **paragraph (j)** of the definition of Force Majeure Event.

Weather Delay Period for a Segment means the period specified in **item 3 of schedule 3** for the Segment.

Wilful Default Claim means any Claim by the Trustee that the Project Manager has intentionally breached any obligation imposed on the Project Manager under this Agreement.

Works means:

- (a) for the Extension, all design, supply, procurement, construction, testing, commissioning, Defects rectification and ancillary works and services associated with the construction and completion of the Extension; and
- (b) for a Segment, all design, supply, procurement, construction, testing, commissioning, Defects rectification and ancillary works and services associated with the construction and completion of the part of the Extension on, under or over that Segment,

but excluding the Services.

Works Contract means a contract between the Trustee (entered into by the Project Manager or a Replacement Project Manager (if any) as disclosed agent for the Trustee) and a third party:

- (a) under which the third party is engaged to carry out all or any part of the Works for the Extension; or
- (b) relating to the delivery of all or any part of the Works for the Extension or the Extension.

Works Contract Dispute means any dispute, question or Claim between the parties to a Works Contract arising under, or in connection with, that Works Contract.

Works Contractor means a contractor engaged under a Works Contract.

1.2 Interpretation

Unless expressed to the contrary, in this Agreement:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) where the day on or by which any thing is to be done is not a Business Day, it must be done on or by the preceding Business Day;
- (c) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded;
- (d) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (e) "includes" means includes without limitation;
- (f) no rule of construction will apply to the disadvantage of one Party on the basis that that Party put forward the documents comprising this Agreement;
- (g) if the documents comprising this Agreement contain any ambiguity, discrepancy or inconsistency, then the following order of precedence will apply to resolve that ambiguity, discrepancy or inconsistency:
 - (i) this Agreement excluding the schedules; and
 - (ii) the schedules;
- (h) words in the singular include the plural and vice versa;
- (i) words importing one gender will include every gender;
- (j) references to clauses and schedules are references to clauses of, and schedules to, this Agreement;
- (k) a requirement for a Party to obtain the consent or approval of the other Party requires the first Party to obtain the consent or approval in writing; and
- (l) a reference to:

- (i) a person includes any company, partnership, joint venture, unincorporated association, corporation or other body corporate and a government or statutory body or authority;
- (ii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified, consolidated, re-enacted or replaced;
- (iii) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
- (iv) a right includes a benefit, remedy, discretion and power;
- (v) time is to local time in Brisbane, Queensland;
- (vi) \$ or dollars is a reference to Australian currency;
- (vii) this Agreement or any other document includes this Agreement or the document as novated, varied or replaced and despite any change in the identity of the parties;
- (viii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmission; and
- (ix) a Party includes that Party's successors according to law and permitted assigns and any person to whom it novates its rights and obligations.

2 Term

This Agreement commences on the Commencement Date and, unless earlier terminated in accordance with this Agreement, continues until the date that the Project Manager gives the Final Reconciliation Statement to the Trustee.

3 Appointment

3.1 Appointment

The Trustee appoints the Project Manager to perform the Services in accordance with the terms of this Agreement.

3.2 Project Manager as agent

- (a) During the term of this Agreement, the Trustee appoints the Project Manager as the disclosed agent of the Trustee for the purpose of performing the Services in accordance with the terms of this Agreement.
- (b) Without limiting the generality of **clause 3.2(a)**, the Trustee appoints the Project Manager as the disclosed agent of the Trustee for the purpose of:
 - (i) procuring, negotiating, entering into, varying and administering Works Contracts;

- (ii) liaising with Authorities in relation to the Works for the Extension or the Extension; and
- (iii) applying for and obtaining any Authority Approvals or variation to any Authority Approvals, and administering any Authority Approvals, required in relation to the Works for the Extension or the Extension (and procuring third parties to do any of those things),

subject to and in accordance with the terms of this Agreement.

3.3 Rail Corridor Agreement

- (a) During the term of this Agreement, the Trustee appoints the Project Manager as the disclosed agent of the Trustee for the purpose of performing the Trustee's obligations, and exercising the Trustee's rights (other than the Trustee's rights under clauses [3.1 and 3.2] of the Rail Corridor Agreement and its rights in respect of "Disputes" (as defined in the Rail Corridor Agreement) under clause [19] of the Rail Corridor Agreement), under the Rail Corridor Agreement, other than to the extent such obligations and rights must, by operation of law, be personally performed or exercised by the Trustee.
- (b) The Project Manager must, when requested by the Trustee, provide the Trustee with any information of which the Project Manager is aware in connection with the Extension or the Works for the Extension which the Trustee reasonably requires for the purpose of complying with its obligations under the Rail Corridor Agreement.

3.4 Trustee not to act itself

During the term of this Agreement, the Trustee must not, other than through the Project Manager acting as the Trustee's disclosed agent under this Agreement, do anything for which the Project Manager is appointed, and which is the responsibility of the Project Manager, under this Agreement, including:

- (a) procuring, negotiating, entering into, varying and administering Works Contracts;
- (b) liaising with Authorities in relation to the Works for the Extension or the Extension;
- (c) applying for or obtaining, applying for or obtaining a variation to, or administering any Authority Approvals in relation to the Works for the Extension or the Extension (or procuring third parties to do any of those things); and
- (d) performing the Trustee's obligations, and exercising the Trustee's rights (other than the Trustee's rights under clauses [3.1 and 3.2] of the Rail Corridor Agreement and its rights in respect of "Disputes" (as defined in the Rail Corridor Agreement) under clause [19] of the Rail Corridor Agreement), under the Rail Corridor Agreement,

unless:

- (e) such things must, by operation of law, be personally performed or exercised by the Trustee;
- (f) requested to do so in writing by the Project Manager; or
- (g) expressly required or permitted to do so under this Agreement.

3.5 No breach of Trust Deed and Unit Holders Deed

When acting as the disclosed agent for the Trustee under this Agreement, the Project Manager must not do or omit to do anything which would cause the Trustee to breach the Trust Deed or Unit Holders Deed.

3.6 Acting for benefit of Aurizon Network Pty Ltd

- (a) Despite any fiduciary obligations which would, but for the operation of this Agreement, arise as a consequence of the Project Manager acting as disclosed agent for the Trustee under this Agreement and the Rail Corridor Agreement, the Trustee:
 - (i) irrevocably consents to the Project Manager, when acting as disclosed agent for the Trustee under this Agreement and the Rail Corridor Agreement, doing acts and making omissions which may:
 - (A) be in the interest of, or advantage, the Project Manager or any Related Body Corporate of it; and
 - (B) not be in the interest of, or disadvantage, the Trustee; and
 - (ii) agrees the Project Manager will have no obligation to fully disclose to it the interest, advantage or disadvantage prior to the relevant act or omission,

provided that:

- (iii) the Project Manager is not expressly prohibited from doing the relevant act or making the relevant omission under this Agreement; or
- (iv) the relevant act is done or relevant omission is made by the Project Manager acting in good faith having regard to the Project Manager's (or any Related Body Corporate of its):
 - (A) legitimate interests as:
 - (1) 'Project Manager' under this Agreement;
 - (2) 'Aurizon' under the Extension Infrastructure Lease;
 - (3) 'Sublessee' under the Extension Infrastructure Agreement;
 - (4) 'Landholder' under the Rail Corridor Agreement;
 - (5) lessee or sublessee under a land or infrastructure lease or sublease in respect of the Railway Network (or any part of it);
 - (6) operator and manager of the Railway Network;

- (7) access provider under access agreements in respect of the Railway Network; and
 - (8) the accredited rail infrastructure manager of the Railway Network; and
 - (B) rights and obligations under Legislation (including the *Transport (Rail Safety) Act 2010* (Qld) and *Work Health and Safety Act 2011* (Qld)).
- (b) For the avoidance of doubt, **clause 3.6(a)** permits the Project Manager, acting as the disclosed agent for the Trustee under this Agreement, to enter into a Works Contract with a Works Contractor which contains terms which are:
- (i) in the interest of, or advantage, the Project Manager or any Related Body Corporate of it; and/or
 - (ii) not in the interest of, or disadvantage, the Trustee (for example, by increasing the amount payable by the Trustee under the relevant Works Contract),
- provided that the requirements under **clause 3.6(a)** are satisfied.

3.7 Details of Preference Unit Holders and PUH Engineer

- (a) Promptly after:
- (i) the Commencement Date;
 - (ii) any change to the identity of the Preference Unit Holders previously notified to the Project Manager under this **clause 3.7(a)**; and
 - (iii) any change to the particulars for notices for a Preference Unit Holder previously notified to the Project Manager under this **clause 3.7(a)**,
- the Trustee must notify the Project Manager of the identify of each Preference Unit Holder and each Preference Unit Holder's then current particulars for notices (including the business address, postal address, facsimile and relevant contact party for each Preference Unit Holder).
- (b) Promptly after:
- (i) the Commencement Date;
 - (ii) the appointment of a PUH Engineer;
 - (iii) any change to the identity of the PUH Engineer previously notified to the Project Manager under this **clause 3.7(b)**; and
 - (iv) any change to the particulars for notices for the PUH Engineer previously notified to the Project Manager under this **clause 3.7(b)**,
- the Trustee must notify the Project Manager of the identify of the PUH Engineer and its then current particulars for notices (including the

business address, postal address, facsimile and relevant contact party for the PUH Engineer).

- (c) The Project Manager:
 - (i) is permitted to rely upon the information notified to the Project Manager under this **clause 3.7** for the purposes of giving any notice or other information that it is required to give to a Preference Unit Holder or the PUH Engineer under this Agreement; and
 - (ii) will not be in breach of any such obligation to the extent that the Trustee has not complied with this **clause 3.7** or any information notified to the Project Manager under this **clause 3.7** is incorrect.

4 Execution of the Works

4.1 Scope of Works

The Project Manager must, acting as the disclosed agent of the Trustee under this Agreement, procure through Works Contractors the carrying out of the Works for the Extension in accordance with the Scope of Works for the Extension.

4.2 Procurement

- (a) The Project Manager must, to the extent applicable, comply with the Procurement Methodology in procuring any Works Contract.
- (b) Except as expressly provided in the Procurement Methodology, the Project Manager must not, acting as disclosed agent for the Trustee under this Agreement, engage itself or any Related Body Corporate of it as a Works Contractor under a Works Contract to carry out any Works for the Extension unless the Project Manager has obtained the prior consent of the Trustee to such engagement.

4.3 Cost

The Project Manager must use its reasonable endeavours to ensure that the Project Costs for each Segment do not exceed the Target Cost for the Segment.

4.4 Availability

- (a) The Project Manager must use its reasonable endeavours to ensure that each Segment becomes Available by the Target Available Date for the Segment.
- (b) Within three Business Days after the date that the Project Manager considers that a Segment becomes Available, the Project Manager must give the Trustee, the Independent Engineer and the PUH Engineer a notice specifying the date on which that Segment became Available.
- (c) Promptly after the Project Manager gives the Independent Engineer a notice under **clause 4.4(b)**, the Independent Engineer must give the

Parties and the PUH Engineer a written report specifying whether or not, in its reasonable opinion, the relevant Segment has become Available and, if so, the date on which, in its reasonable opinion, the relevant Segment became Available.

- (d) If the report given by the Independent Engineer under **clause 4.4(c)** specifies that, in the Independent Engineer's reasonable opinion, the relevant Segment:
 - (i) has not become Available; or
 - (ii) became Available on a date which is later than the date specified in the notice given by the Project Manager under **clause 4.4(b)**,then:
 - (iii) the Trustee may, within 20 Business Days after the Independent Engineer gives the Trustee the report under **clause 4.4(c)**, give the Project Manager a Dispute Notice under **clause 21.1(a)** which Disputes the date specified in the notice given by the Project Manager under **clause 4.4(b)**; and
 - (iv) if the Dispute referred to in **clause 4.4(d)(iii)** is not resolved in accordance with **clause 21.2**, the Dispute must be referred to an Expert to determine whether or not the relevant Segment has become Available and, if so, the date on which the relevant Segment became Available.
- (e) If:
 - (i) the report given by the Independent Engineer under **clause 4.4(c)** specifies that, in the Independent Engineer's reasonable opinion, the relevant Segment became Available on a date which is the same or earlier than the date specified in the notice given by Project Manager under **clause 4.4(b)**; or
 - (ii) **clause 4.4(d)** applies and the Trustee does not give the Project Manager a Dispute Notice referred to in **clause 4.4(d)(iii)** within the time referred to in **clause 4.4(d)(iii)**,then:
 - (iii) the Trustee must not give the Project Manager a Dispute Notice under **clause 21.1(a)** Disputing the date specified in the notice given by the Project Manager under **clause 4.4(b)**; and
 - (iv) any such Dispute Notice which is given by the Trustee will be taken to be of no effect.

4.5 Legislation and Authority Approvals

- (a) The Project Manager must (in its own capacity and when acting as disclosed agent for the Trustee under this Agreement, as applicable) comply (and use reasonable endeavours to procure the compliance of a third party) with all:
 - (i) Legislation;

- (ii) Authority Approvals; and
 - (iii) directions of any Authorities,
- relating to the Works for the Extension.
- (b) If the Project Manager or a Related Body Corporate of the Project Manager is appointed as a Works Contractor under, and in accordance with, this Agreement (**Aurizon Works Contractor**), **clause 4.5(a)** will not relieve the Aurizon Works Contractor from complying with any obligation imposed on the Aurizon Works Contractor under the applicable Works Contract to comply with any Legislation, Authority Approvals and directions of any Authorities.

4.6 Rectification of Defects

- (a) The Project Manager must prepare and maintain a written register (**Defects Register**) which records:
- (i) each Defect which the Project Manager becomes aware of during the Defects Rectification Period; and
 - (ii) in respect of each Defect referred to in **clause 4.6(a)(i)**:
 - (A) the date on which the Project Manager became aware of the Defect;
 - (B) reasonable details of all steps taken by the Project Manager to procure the rectification of the Defect in accordance with the Project Manager's obligation under **clause 4.6(c)**; and
 - (C) if applicable, the date on which the Defect was rectified.
- (b) Within 15 Business Days after the end of:
- (i) each Month during the Defects Rectification Period; and
 - (ii) the Defects Rectification Period,
- the Project Manager must give a copy of the Defects Register (current as at the end of the relevant Month or the Defects Rectification Period, as applicable) to the Trustee, the Independent Engineer and the PUH Engineer.
- (c) The Project Manager must, as disclosed agent for the Trustee, procure through the relevant Works Contractors the rectification of each Defect which the Trustee is required to procure the rectification of under **clause 6.1** of the Extension Infrastructure Lease.
- (d) Despite any other provision of this Agreement, the Project Manager's obligations under this Agreement in respect of the rectification of Defects are limited to its obligations under **clause 4.6(c)**.
- (e) For the avoidance of doubt, any costs and expenses Incurred by the Project Manager in procuring the rectification of Defects under **clause 4.6(c)** will be Reimbursable Expenses.

4.7 Final Certificate

(a) Within ten Business Days after the date on which the Project Manager forms the opinion, acting reasonably, that:

- (i) no further Project Costs will be Incurred or recovered by the Trustee, other than Reimbursable Expenses;
- (ii) all Works for the Extension have been completed in accordance with the Scope of Works for the Extension; and
- (iii) the Project Manager has fully discharged its obligations under **clause 4.6(c)**,

the Project Manager must give the Trustee a notice (**Final Certificate**) which states that it is the Final Certificate given under this **clause 4.7(a)**.

(b) If the Project Manager gives the Trustee a Final Certificate under **clause 4.7(a)**:

(i) the Trustee may, within ten Business Days after the Project Manager gives the Final Certificate to the Trustee, give the Project Manager a Dispute Notice under **clause 21.1(a)** which Disputes that the Project Manager was entitled to give the Final Certificate under **clause 4.7(a)**;

(ii) if the Dispute referred to in **clause 4.7(b)(i)** is not resolved in accordance with **clause 21.2**, the Trustee may refer the Dispute to an Expert to determine whether or not:

(A) any further Project Costs will be Incurred or recovered by the Trustee, other than the Reimbursable Expenses required to implement the winding up of this Agreement;

(B) all Works for the Extension have been completed in accordance with the Scope of Works for the Extension; and/
or

(C) the Project Manager has fully discharged its obligations under **clause 4.6(c)**; and

(iii) if the Dispute is referred to an Expert and the Expert determines that:

(A) some further Project Costs will be Incurred or recovered by the Trustee, other than the Reimbursable Expenses required to implement the winding up of this Agreement;

(B) some of the Works for the Extension have not been completed in accordance with the Scope of Works for the Extension; and/or

(C) the Project Manager has not fully discharged its obligations under **clause 4.6(c)**,

then the Final Certificate given under **clause 4.7(a)** will be taken to have not been given under **clause 4.7(a)** and will be of no effect.

- (c) If the Project Manager gives the Trustee a Final Certificate under **clause 4.7(a)** and the Trustee does not give the Project Manager a Dispute Notice referred to in **clause 4.7(b)(i)** within the time referred to in **clause 4.7(b)(i)**, then:
 - (i) the Trustee must not give the Project Manager a Dispute Notice under **clause 21.1(a)** which Disputes that the Project Manager was entitled to give the Final Certificate under **clause 4.7(a)**; and
 - (ii) any such Dispute Notice which is given by the Trustee will be taken to be of no effect.

5 Independent Engineer and PUH Engineer

5.1 Independent Engineer

- (a) The Parties agree to jointly appoint the Independent Engineer by signing the Independent Engineer Appointment Deed.
- (b) Where this Agreement or the Unit Holders Deed places an obligation on the Independent Engineer, the Parties must ensure that the Independent Engineer Appointment Deed requires the Independent Engineer to comply with that obligation in the manner and within the timeframe contemplated by this Agreement or the Unit Holders Deed (as applicable).
- (c) The Parties must negotiate the terms and conditions of the Independent Engineer Appointment Deed consistent with the following principles:
 - (i) the Independent Engineer is required to discharge the functions and obligations of an Independent Engineer specified in this Agreement, the Unit Holders Deed and the Independent Engineer Appointment Deed;
 - (ii) the Independent Engineer is required to act independently of the Parties and with the requisite degree of professional care, knowledge, skill, expertise, experience and diligence;
 - (iii) at the time of appointment, the Independent Engineer must not have an interest or duty which conflicts or may conflict with its role as Independent Engineer;
 - (iv) if during the term of its appointment, the Independent Engineer wishes to accept an engagement with a person which may result in it having an interest or duty which conflicts or may conflict with its role as Independent Engineer, prior to accepting that engagement, the Independent Engineer must fully disclose any such interest or duty and the nature of the conflict to the Parties and obtain the consent of each Party to such engagement;
 - (v) the Independent Engineer acknowledges that it is jointly appointed by the Project Manager and the Trustee and that it owes equal duties to each of them;

- (vi) the Independent Engineer agrees to perform its services in a timely manner and, where a time limit is prescribed in this Agreement, the Unit Holders Deed or the Independent Engineer Appointment Deed, within that time limit;
 - (vii) the Trustee appoints the Independent Engineer as the Trustee's disclosed agent for the purpose of the Independent Engineer giving Payment Schedules to a Works Contractor under **clause 6.6(a)(ii)**;
 - (viii) the Independent Engineer agrees to keep confidential any confidential information which is provided to the Independent Engineer, or of which the Independent Engineer otherwise becomes aware, in connection with the services provided by the Independent Engineer under the Independent Engineer Appointment Deed, on terms satisfactory to the Trustee and the Project Manager (each acting reasonably); and
 - (ix) the Independent Engineer agrees to keep confidential, and not disclose to any person (including the Trustee, a Preference Unit Holder or the PUH Engineer), any Price Sensitive Information which is provided to the Independent Engineer by the Project Manager, or of which the Independent Engineer otherwise becomes aware, in connection with the services provided by the Independent Engineer under the Independent Engineer Appointment Deed, on terms satisfactory to the Project Manager.
- (d) Subject to **clause 5.1(e)**, each Party must provide all relevant documents, information and other written material (including any Works Contracts and information arising out of any Works Contracts or received from any Works Contractors) under the control of that Party to enable the Independent Engineer to perform its role under this Agreement and the Independent Engineer Appointment Deed.
 - (e) Neither the Project Manager nor the Trustee is required to provide the Independent Engineer with any Confidential Information unless the Independent Engineer Appointment Deed includes a provision contemplated under **clause 5.1(c)(viii)** and **5.1(c)(ix)**.
 - (f) The Parties agree that the Independent Engineer will have no authority to act for or on behalf of the Parties except to the extent expressly provided for in the Independent Engineer Appointment Deed.
 - (g) The Parties agree that the Trustee must pay to the Independent Engineer all fees, charges and other amounts payable to the Independent Engineer under the Independent Engineer Appointment Deed in accordance with the Independent Engineer Appointment Deed.
 - (h) If:
 - (i) the Trustee fails to comply with **clause 5.1(g)**; and

- (ii) the Project Manager pays to the Independent Engineer any amount which is due for payment to the Independent Engineer under the Independent Engineer Appointment Deed,

that amount will be taken to be a Reimbursable Expense.

5.2 PUH Engineer

- (a) For the avoidance of doubt, the costs and expenses of the PUH Engineer will be borne by the applicable Preference Unit Holders as contemplated under the Unit Holders Deed.
- (b) Prior to the provision of any information to the PUH Engineer in connection with this Agreement or another Transaction Document, a Works Contract, the Extension or the Works for the Extension, the Trustee must procure the PUH Engineer to enter into a confidentiality agreement in favour of the Project Manager in accordance with the Unit Holders Deed.
- (c) For the avoidance of doubt, the PUH Engineer is permitted to disclose to the Trustee and the Preference Unit Holders any information which is disclosed to the PUH Engineer by the Project Manager under this Agreement.

5.3 Attendance at meetings and access to sites

- (a) Subject to the Independent Engineer and PUH Engineer complying with **clause 5.3(b)**, the Project Manager must permit the Independent Engineer and the PUH Engineer (as observers) to attend any meetings between a Works Contractor and the Project Manager (acting as the Trustee's disclosed agent) which the Works Contractor and Project Manager (acting as the Trustee's disclosed agent) are required to attend under the Works Contract.
- (b) The Independent Engineer and PUH Engineer must comply with all site access protocols, safety induction and other safety requirements of the Project Manager and any applicable Works Contractor (in relation to a site controlled by a Works Contractor) in relation to the Independent Engineer or PUH Engineer's attendance at a meeting referred to in **clause 5.3(a)**.

6 Works Contracts

6.1 Project Manager is Trustee's representative

Without limiting **clause 3.2**, the Trustee appoints the Project Manager as the disclosed agent of the Trustee for the purpose of:

- (a) entering into Works Contracts;
- (b) acting as the Trustee's representative under the Works Contracts;
- (c) supervising and managing the performance of the Works Contractors under the Works Contracts;

- (d) giving any directions which may be given by the Trustee under the Works Contracts;
- (e) giving any notices which may be given by the Trustee under the Works Contracts;
- (f) giving any consents or approvals which may be given by the Trustee under the Works Contracts;
- (g) enforcing or waiving any rights which may be enforced or waived by the Trustee under the Works Contracts;
- (h) varying the terms of the Works Contracts;
- (i) conducting, settling or compromising any Works Contract Disputes; and
- (j) terminating the Works Contracts,

in each case, subject to and in accordance with the terms of this Agreement.

6.2 Terms of Works Contracts

- (a) Except with the Trustee's prior written consent, the Project Manager must ensure that each Works Contract entered into by the Project Manager as disclosed agent for the Trustee contains the provisions specified in **item 1 of schedule 9**.
- (b) The Trustee agrees that a Works Contract entered into by the Project Manager as disclosed agent for the Trustee may contain any of the provisions specified in **item 2 of schedule 9**.
- (c) The Project Manager must not include a provision in a Works Contract that provides that any information in relation to the Works Contract is 'Price Sensitive Information' for the purpose of the definition of Price Sensitive Information in **clause 1.1** unless:
 - (i) the Project Manager gives a notice to the Trustee requesting the Trustee's consent to the inclusion of that provision in the Works Contract; and
 - (ii) the Trustee notifies the Project Manager in writing that it consents to the inclusion of that provision in the Works Contract.

6.3 Copy of Works Contracts

- (a) Within ten Business Days after the Project Manager, as disclosed agent for the Trustee, enters into a Works Contract, or any agreement varying the terms of a Works Contract, the Project Manager must provide a copy of the Works Contract or variation agreement (as applicable) to the Trustee, the Independent Engineer and the PUH Engineer.
- (b) If a Works Contract or variation agreement referred to in **clause 6.3(a)** contains Price Sensitive Information, the Project Manager must redact the Price Sensitive Information from the copy of the document which the Project Manager is required to provide to the Trustee and PUH Engineer under **clause 6.3(a)**.

6.4 Compliance with Works Contracts

Subject to **clause 6.6**, the Project Manager must, acting as disclosed agent for the Trustee, act in a manner so as to enable the Trustee to comply with its obligations under the Works Contracts.

6.5 Payment Claims – Project Manager

After a Payment Claim is served on the Project Manager:

- (a) the Project Manager must promptly analyse and evaluate that Payment Claim to determine whether the amount claimed under the Payment Claim is due for payment under the applicable Works Contract;
- (b) the Project Manager must, within seven Business Days after the Payment Claim is served on the Project Manager, give each of the Trustee, the Independent Engineer and the PUH Engineer:
 - (i) a notice specifying:
 - (A) the date on which the Payment Claim is served on the Project Manager;
 - (B) the amount (if any) claimed under that Payment Claim which the Project Manager considers, acting reasonably, is due for payment under the applicable Works Contract;
 - (C) the amount (if any) claimed under that Payment Claim which the Project Manager considers, acting reasonably, is not due for payment under the applicable Works Contract (and reasonable details of the Project Manager's reasons as to why that amount is not due for payment); and
 - (D) the due date for payment of the amount which is due for payment under the applicable Works Contract; and
 - (ii) if the Payment Claim is a BCIP Payment Claim, a draft form of Payment Schedule in accordance with the requirements of the BCIP Act which:
 - (A) identifies the Payment Claim to which it relates; and
 - (B) states the Scheduled Amount for the Payment Claim (being the amount referred to in **clause 6.5(b)(i)(B)**).

6.6 Payment Claims – Independent Engineer

- (a) If the Project Manager gives the Independent Engineer a notice under **clause 6.5** in respect of a Payment Claim, then on or before the date which is ten Business Days after the Payment Claim is served on the Project Manager, the Independent Engineer must:
 - (i) give a certificate to the Trustee which:
 - (A) certifies to the Trustee:
 - (1) the amount (if any) claimed under the Payment Claim which the Independent Engineer considers, acting

- reasonably, is due for payment under the applicable Works Contract;
- (2) the amount (if any) claimed under the Payment Claim which the Independent Engineer considers, acting reasonably, is not due for payment under the applicable Works Contract (and reasonable details of the Independent Engineer's reasons as to why that amount is not due for payment); and
- (3) the due date for payment of that amount under the applicable Works Contract; and
- (B) is accompanied by a copy of the applicable Payment Claim; and
- (ii) if the Payment Claim is a BCIP Payment Claim – serve a Payment Schedule on the Works Contractor (as disclosed agent for the Trustee) in accordance with the requirements of the BCIP Act which:
 - (A) identifies the Payment Claim to which it relates; and
 - (B) states the Scheduled Amount for the Payment Claim (being the amount referred to in **clause 6.6(a)(i)(A)(1)**).
- (b) The Independent Engineer must give a copy of:
 - (i) the certificate referred to in **clause 6.6(a)** to the Project Manager and PUH Engineer on the same day it gives it to the Trustee; and
 - (ii) the Payment Schedule referred to in **clause 6.6(a)** to the Trustee, Project Manager and PUH Engineer on the same day it serves it on the Works Contractor.

6.7 Responsibility for payment

- (a) The Trustee (and not the Project Manager in its own capacity or as agent for the Trustee) is responsible for:
 - (i) paying any money that is due and payable to any Works Contractor under any Works Contract; and
 - (ii) paying any damages arising out of a breach or another claim whether arising out of tort (including negligence), common law, equity, under statute or otherwise, by the Trustee of any obligations (financial or otherwise) under any Works Contract.
- (b) Upon receipt of a certificate from the Independent Engineer under **clause 6.6**, the Trustee must pay to the applicable Works Contractor the amount which the Independent Engineer certifies is due for payment under the applicable Works Contract by the date which the Independent Engineer certifies is the due date for the payment of that amount.
- (c) If the Independent Engineer does not give the Trustee a certificate under **clause 6.6** in respect of a Payment Claim by the due date for payment specified in the Payment Claim, the Trustee must pay to the applicable

Works Contractor the amount claimed in the Payment Claim on or before the date which is ten Business Days after the Payment Claim is served on the Project Manager.

7 Major Works Contracts

7.1 Competitive tender process

Except as otherwise:

- (a) provided in the Procurement Methodology; or
- (b) agreed between the Project Manager and the Trustee,

the Project Manager must procure all Major Works Contracts through a competitive tender process.

7.2 Tender Panels for Major Works Contracts

- (a) If the Project Manager proposes to invite tenders for a proposed Major Works Contract, the Project Manager must give the Trustee, the Preference Unit Holders (as notified by the Trustee to the Project Manager), the Independent Engineer and the PUH Engineer:
 - (i) a notice of the proposed Tender Panel for such Major Works Contracts (**Major Works Contract Notice**); and
 - (ii) a copy of the Tender Panel Recommendation Report for that proposed Major Works Contract.
- (b) A Major Works Contract Notice given under **clause 7.2(a)** must invite the Trustee, all Preference Unit Holders (as notified by the Trustee to the Project Manager), the Independent Engineer and the PUH Engineer to attend a meeting (**Consultation Meeting**) with the Project Manager to:
 - (i) be held:
 - (A) at a time and on a date specified in such Major Works Contract Notice (which date must, at the Project Manager's election, be either the fifth or sixth Business Day after the date on which the Project Manager gives such Major Works Contract Notice);
 - (B) at a place in Brisbane or by telephone conference (as determined by the Project Manager, acting reasonably) on a Business Day; and
 - (C) whether or not the Independent Engineer has provided a report under **clause 7.2(c)**; and
 - (ii) discuss:
 - (A) the information provided in such Major Works Contract Notice; and

- (B) the report (if any) to be given by the Independent Engineer under **clause 7.2(c)** in respect of such Major Works Contract Notice.
- (c) At least two Business Days prior to the date of a Consultation Meeting, the Independent Engineer must prepare, and give to the Trustee, the Preference Unit Holders (as notified by the Trustee to the Project Manager), the Project Manager and the PUH Engineer, a report:
 - (i) specifying whether or not in the Independent Engineer's opinion (acting reasonably) the proposed Tender Panel for that proposed Major Works Contract is consistent with Good Industry Practice; and
 - (ii) providing reasonable details of the reasons for the Independent Engineer's opinion in relation to that matter.
- (d) The Project Manager:
 - (i) may only invite tenders for a proposed Major Works Contract if the Project Manager has first complied with this **clause 7.2** in respect of such proposed Major Works Contract; and
 - (ii) subject to **clause 7.3(a)**, must only invite tenders for such proposed Major Works Contract from entities listed on such Tender Panel for that proposed Major Works Contract consented to, or deemed to be consented to, in accordance with **clause 7.7**.

7.3 Calling for tenders for Major Works Contracts

- (a) If:
 - (i) between the date the Tender Panel for a proposed Major Works Contract is consented to, or is deemed to be consented to, in accordance with **clause 7.7**; and
 - (ii) ten Business Days prior to the date on which the Project Manager intends to issue a Major Works Contract Notice under **clause 7.3(b)**,

an entity included in the Tender Panel has notified the Project Manager that it does not propose to tender for that proposed Major Works Contract or the Project Manager considers (acting reasonably) that an entity included in that Tender Panel should no longer be invited to tender for that proposed Major Works Contract, then the Project Manager must prepare:

- (iii) an Amended Tender Panel for that proposed Major Works Contract; and
- (iv) prepare an Amended Tender Panel Recommendation Report for that Amended Tender Panel.
- (b) At least ten Business Days prior to the date on which the Project Manager proposes to invite tenders for a proposed Major Works Contract, the Project Manager must give the Trustee, the Preference

Unit Holders (as notified by the Trustee to the Project Manager), the Independent Engineer and the PUH Engineer:

- (i) a notice of the proposed invitation to tender (also a **Major Works Contract Notice**); and
- (ii) copies of:
 - (A) the Amended Tender Panel Recommendation Report (if any);
 - (B) the proposed Tender Documentation; and
 - (C) the proposed Tender Evaluation Documentation,for that proposed Major Works Contract.
- (c) A Major Works Contract Notice given under **clause 7.3(b)** must invite the Trustee, all Preference Unit Holders (as notified by the Trustee to the Project Manager), the Independent Engineer and the PUH Engineer to attend a meeting (also a **Consultation Meeting**) with the Project Manager to:
 - (i) be held:
 - (A) at a time and on a date specified in such Major Works Contract Notice (which date must, at the Project Manager's election, be either the fifth or sixth Business Day after the date on which the Project Manager gives such Major Works Contract Notice);
 - (B) at a place in Brisbane or by telephone conference (as determined by the Project Manager, acting reasonably) on a Business Day;
 - (C) whether or not the Independent Engineer has provided a report under **clause 7.3(d)**; and
 - (ii) discuss:
 - (A) the information provided in such Major Works Contract Notice; and
 - (B) the report (if any) to be given by the Independent Engineer under **clause 7.3(d)** in respect of such Major Works Contract Notice.
- (d) At least two Business Days prior to the date of a Consultation Meeting, the Independent Engineer must prepare, and give to the Trustee, the Preference Unit Holders (as notified by the Trustee to the Project Manager), the Project Manager and the PUH Engineer, a report:
 - (i) specifying whether or not in the Independent Engineer's opinion (acting reasonably) the proposed Amended Tender Panel (if any), Tender Documentation and Tender Evaluation Documentation for that proposed Major Works Contract are consistent with Good Industry Practice; and

- (ii) providing reasonable details of the reasons for the Independent Engineer's opinion in relation to those matters.
- (e) The Project Manager:
 - (i) may only invite tenders for a proposed Major Works Contract, if the Project Manager has first complied with this **clause 7.3** in respect of such proposed Major Works Contract;
 - (ii) must only invite tenders for such proposed Major Works Contract from entities listed on the Tender Panel or Amended Tender Panel (as the case may be) consented to, or deemed to be consented to, in accordance with **clause 7.7**; and
 - (iii) must only issue such entities the Tender Documentation consented to, or deemed to be consented to, in accordance with **clause 7.7**.

7.4 Material Addenda

- (a) At least ten Business Days prior to the date on which the Project Manager proposes to issue a Material Addendum for the Tender Documentation for a proposed Major Works Contract, the Project Manager must give the Trustee, the Preference Unit Holders (as notified by the Trustee to the Project Manager), the Independent Engineer and the PUH Engineer:
 - (i) a notice (also a **Major Works Contract Notice**) in respect of the proposed issue of a Material Addendum; and
 - (ii) a copy of the proposed Material Addendum.
- (b) A Major Works Contract Notice given under **clause 7.4(a)** must invite the Trustee, all Preference Unit Holders (as notified by the Trustee to the Project Manager), the Independent Engineer and the PUH Engineer to attend a meeting (also a **Consultation Meeting**) with the Project Manager to:
 - (i) be held:
 - (A) at a time and on a date specified in such Major Works Contract Notice (which date must, at the Project Manager's election, be either the fifth or sixth Business Day after the date on which the Project Manager gives such Major Works Contract Notice);
 - (B) at a place in Brisbane or by telephone conference (as determined by the Project Manager, acting reasonably) on a Business Day;
 - (C) whether or not the Independent Engineer has provided a report under **clause 7.4(c)**; and
 - (ii) discuss:
 - (A) the information provided in such Major Works Contract Notice; and

- (B) the report (if any) to be given by the Independent Engineer under **clause 7.4(c)** in respect of such Major Works Contract Notice.
- (c) At least two Business Days prior to the date of a Consultation Meeting, the Independent Engineer must prepare, and give to the Trustee, the Preference Unit Holders (as notified by the Trustee to the Project Manager), the Project Manager and the PUH Engineer, a report:
 - (i) specifying whether or not in the Independent Engineer's opinion (acting reasonably) the proposed Material Addendum is consistent with Good Industry Practice; and
 - (ii) providing reasonable details of the reasons for the Independent Engineer's opinion in relation to that matter.
- (d) The Project Manager:
 - (i) may only issue a Material Addendum for the Tender Documentation for a proposed Major Works Contract if the Project Manager has first complied with this **clause 7.4** in respect of such Material Addendum; and
 - (ii) must issue the Material Addendum in the form consented to, or deemed to be consented to, under **clause 7.7**.

7.5 Evaluating tenders for Major Works Contracts

- (a) The Project Manager must:
 - (i) evaluate all tenders received (including as varied by the tenderers during pre-selection negotiations) in response to an invitation to tender for a proposed Major Works Contract in accordance with the Tender Evaluation Documentation; and
 - (ii) prepare a tender assessment report which:
 - (A) contains an evaluation of such tenders (including negotiations over qualifications or other changes to the Tender Documentation proposed by the tenderers) in accordance with the Tender Evaluation Documentation; and
 - (B) recommends a preferred tenderer on the basis of such evaluation.
- (b) At least ten Business Days prior to the date that the Project Manager proposes to enter into a proposed Major Works Contract, the Project Manager must give the Trustee, the Preference Unit Holders (as notified by the Trustee to the Project Manager), the Independent Engineer and the PUH Engineer:
 - (i) a notice (also a **Major Works Contract Notice**) of the evaluation of the proposed tender; and
 - (ii) a copy of:
 - (A) the tender assessment report; and

- (B) the form of the proposed Major Works Contract (including all commercial and technical documentation forming part of the proposed Major Works Contract) which is proposed to be executed with the preferred tenderer.
- (c) A Major Works Contract Notice given under **clause 7.5(b)** must invite the Trustee, all Preference Unit Holders (as notified by the Trustee to the Project Manager), the Independent Engineer and the PUH Engineer to attend a meeting (also a **Consultation Meeting**) with the Project Manager to:
 - (i) be held:
 - (A) at a time and on a date specified in such Major Works Contract Notice (which date must, at the Project Manager's election, be either the fifth or sixth Business Day after the date on which the Project Manager gives such Major Works Contract Notice);
 - (B) at a place in Brisbane or by telephone conference (as determined by the Project Manager, acting reasonably) on a Business Day; and
 - (C) whether or not the Independent Engineer has provided a report under **clause 7.5(d)**; and
 - (ii) discuss:
 - (A) the information provided in such Major Works Contract Notice; and
 - (B) the report (if any) to be given by the Independent Engineer under **clause 7.5(d)** in respect of such Major Works Contract Notice.
- (d) At least two Business Days prior to the date of a Consultation Meeting, the Independent Engineer must prepare, and give to the Trustee, the Preference Unit Holders (as notified by the Trustee to the Project Manager), the Project Manager and the PUH Engineer, a report:
 - (i) specifying whether or not in the Independent Engineer's opinion (acting reasonably):
 - (A) the selection of the preferred tenderer; and
 - (B) the form of the proposed Major Works Contract (including the technical specifications) to be executed with the preferred tenderer,

are consistent with Good Industry Practice; and
 - (ii) providing reasonable details of the reasons for the Independent Engineer's opinion in relation to those matters.
- (e) The Project Manager:

- (i) may only enter into (or otherwise reach an agreement, understanding or arrangement to award or enter into) a Major Works Contract with a person if the Project Manager has first complied with this **clause 7.5** in respect of such Major Works Contract; and
- (ii) must only execute a proposed Major Works Contract:
 - (A) with the preferred tenderer consented to, or deemed to be consented to, in accordance with **clause 7.7**;
 - (B) in the form of the proposed Major Works Contract consented to, or deemed to be consented to, in accordance with **clause 7.7**; and
 - (C) as disclosed agent of the Trustee.

7.6 Material Variations of Major Works Contract

- (a) At least ten Business Days prior to the date on which the Project Manager proposes to issue a Variation Direction under a Major Works Contract which would give rise to a Material Variation, the Project Manager must give the Trustee, the Preference Unit Holders (as notified by the Trustee to the Project Manager), the Independent Engineer and the PUH Engineer:
 - (i) a notice (also a **Major Works Contract Notice**) specifying the proposed Variation Direction; and
 - (ii) reasonable details of the proposed Variation Direction.
- (b) A Major Works Contract Notice given under **clause 7.6(a)** must invite the Trustee, all Preference Unit Holders (as notified by the Trustee to the Project Manager), the Independent Engineer and the PUH Engineer to attend a meeting (also a **Consultation Meeting**) with the Project Manager to:
 - (i) be held:
 - (A) at a time and on a date specified in such Major Works Contract Notice (which date must, at the Project Manager's election, be either the fifth or sixth Business Day after the date on which the Project Manager gives such Major Works Contract Notice);
 - (B) at a place in Brisbane or by telephone conference (as determined by the Project Manager, acting reasonably); and
 - (C) whether or not the Independent Engineer has provided a report under **clause 7.6(c)**; and
 - (ii) discuss:
 - (A) the information provided in such Major Works Contract Notice; and

- (B) the report (if any) to be given by the Independent Engineer under **clause 7.6(c)** in respect of such Major Works Contract Notice.
- (c) At least two Business Days prior to the date of a Consultation Meeting, the Independent Engineer must prepare, and give to the Trustee, the Preference Unit Holders (as notified by the Trustee to the Project Manager), the Project Manager and the PUH Engineer, a report:
 - (i) specifying whether or not in the Independent Engineer's opinion (acting reasonably) the proposed Variation Direction is consistent with Good Industry Practice; and
 - (ii) providing reasonable details of the reasons for the Independent Engineer's opinion in relation to that matter.
- (d) The Project Manager:
 - (i) may only issue a Variation Direction under a Major Works Contract which would give rise to a Material Variation if the Project Manager has first complied with this **clause 7.6** in respect of such Variation Direction; and
 - (ii) must only issue a Variation Direction in the form of the direction consented to, deemed to be consented to, in accordance with **clause 7.7**.

7.7 Major Works Contract Response Notice

- (a) Within ten Business Days after the Project Manager gives the Trustee a Major Works Contract Notice, the Trustee must give the Project Manager a notice (**Major Works Contract Response Notice**) specifying whether, in accordance with this **clause 7**, the Trustee:
 - (i) consents to the Proposed Action; or
 - (ii) does not consent to the Proposed Action,
 specified in the Major Works Contract Notice.
- (b) If the Trustee specifies in a Major Works Contract Response Notice that it does not consent to a Proposed Action specified in a Major Works Contract Notice, the Trustee must provide the Project Manager with:
 - (i) reasonable details as to why the Trustee considers it is permitted to refuse its consent to such Proposed Action under **clause 7.9**; and
 - (ii) particulars of the changes that, if adopted by the Project Manager, would address the Trustee's reasons for refusing its consent to such Proposed Action, and reasonable details for the Trustee's reasons for those changes.
- (c) If the Trustee does not provide the Project Manager with a Major Works Contract Response Notice within the period specified in **clause 7.7(a)**, the Trustee will be deemed to have consented to the Proposed Action specified in the Major Works Contract Notice.

7.8 Invalid grounds for not consenting to Proposed Action

- (a) The Trustee must not refuse to consent to a Proposed Action specified in a Major Contract Works Notice given under **clause 7.2(a), 7.3(b), 7.4(a) or 7.5(b)** for the reason that:
 - (i) the proposed MWC Scope for the proposed Major Works Contract does not contain scope which is not specifically required to be carried out in accordance with the Scope of Works for the Extension; or
 - (ii) the proposed MWC Scope for the proposed Major Works Contract includes scope that is specifically required to be carried out in accordance with the Scope of Works for the Extension.
- (b) The Trustee must not refuse to consent to a Proposed Action specified in a Major Contract Works Notice given under **clause 7.6(a)** for the reason that:
 - (i) the Variation Direction would result in the MWC Scope for the Major Works Contract being omitted which is not specifically required to be carried out in accordance with the Scope of Works for the Extension; or
 - (ii) the Variation Direction would result in the MWC Scope for the Major Works Contract including scope which is specifically required to be carried out in accordance with the Scope of Works for the Extension.
- (c) The Trustee must not refuse its consent to a Proposed Action specified in a Major Contract Works Notice to the extent that the Proposed Action is specifically required to comply with the Procurement Methodology.
- (d) The Trustee must not refuse its consent to a Proposed Action specified in a Major Works Contract Notice to the extent that the Proposed Action is consistent with a previous Proposed Action which:
 - (i) the Trustee has consented to under **clause 7.7(a)(i)** (or was deemed to have consented to in accordance with **clause 7.7(c)**); or
 - (ii) an Expert determined the Trustee invalidly refused its consent to in accordance with **clause 7.10**.
- (e) For the avoidance of doubt, the Trustee must not refuse its consent to a Proposed Action in respect of an Amended Tender Panel for a Major Works Contract to the extent entities included in that Amended Tender Panel were the subject of a Tender Panel for that Major Works Contract which the Trustee has previously consented to under **clause 7.7(a)(i)** (or was deemed to have consented to in accordance with **clause 7.7(c)**).

7.9 Valid grounds for not consenting to Proposed Action

Without limiting **clause 7.8**, the Trustee may refuse to consent to a Proposed Action if (and only if) the Proposed Action specified in a Major Contract Works Notice would be inconsistent with:

- (a) Good Industry Practice;
- (b) the Scope of Works for the Extension; and/or
- (c) the Procurement Methodology.

7.10 Dispute of a Major Works Contract Response Notice

- (a) If the Trustee specifies in a Major Works Contract Response Notice that it does not consent to a Proposed Action specified in a Major Works Contract Notice, the Project Manager may, within ten Business Days after the Trustee gives the Project Manager the Major Works Contract Response Notice, give the Trustee a Dispute Notice under **clause 21.1(a)** which Disputes the validity of the Trustee refusing its consent to the Proposed Action.
- (b) If the Project Manager does not give the Trustee a Dispute Notice referred to in **clause 7.10(a)** within the time required in **clause 7.10(a)**, the Project Manager must not give the Trustee a Dispute Notice in respect of such Dispute.
- (c) The Parties may appoint a Standing Expert to act as the Expert for all Disputes referred to in this **clause 7.10**.
- (d) The Dispute referred to in **clause 7.10(a)** must be referred to an Expert (which, if a Standing Expert has been appointed, will be the Standing Expert) for the purposes of **clause 21.3** to determine whether or not the Trustee validly refused its consent to the Proposed Action in accordance with this **clause 7.10**.
- (e) If:
 - (i) the Expert determines that the Trustee invalidly refused its consent to the Proposed Action in accordance with this **clause 7.10**; and
 - (ii) the Trustee's invalid refusal of its consent to a Proposed Action has resulted, or may result, in:
 - (A) the Project Costs for carrying out the Works for one or more Segments being greater than they would otherwise have been; and/or
 - (B) the time required to carry out any Works for one or more Segments being greater than it would otherwise have been,then the Expert must also determine a variation to the Target Cost and/or Target Available Date for those Segments which is or are reasonable having regard to the additional Project Costs and/or delay for such Segments.

- (f) If the Expert determines to vary the Target Cost and/or Target Available Date for a Segment under **clause 7.10(e)**, then the Target Cost and/or Target Available Date for the Segment will be taken to be varied as determined by the Expert on the date the Expert notifies the Parties of his or her determination.

7.11 Giving effect to Proposed Actions

- (a) The Project Manager must not implement a Proposed Action specified in a Major Works Contract Notice if the Trustee has given the Project Manager a Major Works Contract Response Notice specifying that it does not consent to such Proposed Action (unless an Expert determines that the Trustee invalidly refused its consent to such Proposed Action).
- (b) The Project Manager may implement a Proposed Action specified in a Major Works Contract Notice if:
 - (i) the Trustee has given the Project Manager a Major Works Contract Response Notice specifying that it consents to such Proposed Action;
 - (ii) the Trustee is deemed to have consented to such Proposed Action in accordance with **clause 7.7(c)**; or
 - (iii) the Trustee has given the Project Manager a Major Works Contract Response Notice specifying that it does not consent to such Proposed Action but an Expert determines that the Trustee invalidly refused its consent to such Proposed Action.

8 Major Works Contracts Disputes

8.1 Type 1 Major Works Contract Dispute

- (a) Without limiting **clause 6** and subject to **clause 8.1(b)**, the Trustee appoints the Project Manager as the disclosed agent of the Trustee for the purpose of conducting, settling and/or compromising any and all Type 1 Major Works Contract Disputes.
- (b) If the Trustee gives the Project Manager a notice specifying that it elects to assume responsibility for the conduct of a Type 1 Major Works Contract Dispute nominated in that notice (**Nominated Type 1 Major Works Contract Dispute**), then on and from the date of that notice:
 - (i) the Project Manager will cease being the Trustee's disclosed agent for the purpose of conducting, settling and/or compromising the Nominated Type 1 Major Works Contract Dispute; and
 - (ii) the Trustee assumes, at its cost and risk, full responsibility for conducting, settling and/or compromising the Nominated Type 1 Major Works Contract Dispute.

8.2 Type 2 Major Works Contract Dispute

- (a) Without limiting **clause 6** and subject to **clause 8.2(b)**, the Trustee appoints the Project Manager as the disclosed agent of the Trustee for the purpose of conducting, settling and/or compromising any and all Type 2 Major Works Contract Disputes.
- (b) On or after the Referral Date for a Type 2 Major Works Contract Dispute, if the Trustee gives the Project Manager a notice specifying that it elects to assume responsibility for the conduct of that Type 2 Major Works Contract Dispute (**Nominated Type 2 Major Works Contract Dispute**), then on and from the date of that notice:
 - (i) the Project Manager will cease being the Trustee's disclosed agent for the purpose of conducting, settling and/or compromising the Nominated Type 2 Major Works Contract Dispute; and
 - (ii) the Trustee assumes, at its cost and risk, full responsibility for conducting, settling and/or compromising the Nominated Type 2 Major Works Contract Dispute.

8.3 Conduct of Major Works Contract Dispute by Project Manager

- (a) Subject to **clause 8.3(b)**, during the period the Project Manager is appointed as the disclosed agent of the Trustee for the purpose of conducting, settling and/or compromising a Major Works Contract Dispute, the Project Manager must:
 - (i) provide the Trustee with information or documentation which is material to that Major Works Contract Dispute and which has not otherwise been provided to the Trustee by the Project Manager in the Monthly Report in relation to that Major Works Contract Dispute;
 - (ii) consult with the Trustee in relation to the conduct, and/or any proposed settlement or compromise (in whole or in part), of a Major Works Contract Dispute, where the conduct and/or proposed settlement or compromise is a material matter in relation to that Major Works Contract Dispute; and
 - (iii) have regard to the Trustee's opinion in relation to the manner of the conduct, and/or any proposed settlement or compromise (in whole or in part) of a Major Works Contract Dispute, where that conduct or proposed settlement or compromise is material to that Major Works Contract Dispute.
- (b) In determining whether a matter is material in relation to a Major Works Contract Dispute for the purposes of **clause 8.3(a)**, the Project Manager may have regard to:
 - (i) the Quantum of Dispute of that Major Works Contract Dispute;
 - (ii) the potential adverse effect on the Estimated Project Costs for the Segments affected by that Major Works Contract Dispute;

- (iii) the potential delay to the completion date for the works under the Major Works Contract which is the subject of that Major Works Contract Dispute; and/or
- (iv) the extent to which there may be a delay to the Available Date of any Segment as a result of a potential delay under **clause 8.3(b)(iii)**.

8.4 Conduct of Major Works Contract Dispute by Trustee

If the Trustee elects to assume responsibility for conducting, settling and/or compromising a Major Works Contract Dispute, then the Trustee must:

- (a) regularly (and, in any event, promptly following a request by the Project Manager) provide the Project Manager with any information or documentation (including notices and correspondence) in relation to the conduct, and/or any proposed settlement or compromise (in whole or in part) of that Major Works Contract Dispute;
- (b) regularly (and, in any event, promptly following a request by the Project Manager) liaise, cooperate and consult with the Project Manager in relation to the conduct, and/or any proposed settlement or compromise (in whole or in part), of that Major Works Contract Dispute;
- (c) without limiting **clause 8.4(a)** and **8.4(b)**, provide the Project Manager with full details of any proposed settlement or compromise (in whole or in part) of that Major Works Contract Dispute;
- (d) have regard to the Project Manager's opinion in relation to the manner of the conduct, and/or any proposed settlement or compromise (in whole or in part), of that Major Works Contract Dispute;
- (e) consult with the Project Manager in relation to the conduct of, and/or proposed settlement or compromise (in whole or in part), of that Major Works Contract Dispute, to the extent that the conduct or proposed settlement or compromise may be reasonably expected to:
 - (i) damage the Project Manager's business reputation; or
 - (ii) threaten or endanger persons, property or the environment; or
 - (iii) have an adverse impact on the operational characteristics (including, functionality, quality, performance, reliability and maintainability) of the works once completed under the Major Works Contract;
- (f) not conduct, or settle and/or compromise (in whole or in part), that Major Works Contract Dispute in a manner which, in the Project Manager's absolute discretion and which the Project Manager notifies to the Trustee, may reasonably be expected to threaten or endanger persons, property or the environment; and
- (g) not conduct, or settle and/or compromise (in whole or in part), that Major Works Contract Dispute in a manner which, in the Project Manager's opinion (acting reasonably) and which the Project Manager notifies the

Trustee, may reasonably be expected to have an adverse impact on the operational characteristics (including, functionality, quality, performance, reliability and maintainability) of the works once completed under the relevant Major Works Contract.

9 Variations to Scope of Works

9.1 Variation to Scope of Works initiated by Project Manager

If the Project Manager proposes to vary the Scope of Works for a Segment, then the Project Manager:

- (a) may, by notice to the Trustee, the Independent Engineer and the PUH Engineer (**Variation Notice**), request the consent of the Trustee to vary the Scope of Works for the Segment as proposed in the Variation Notice; and
- (b) must, if the Project Manager gives a Variation Notice under **clause 9.1(a)**, provide in that Variation Notice reasonable details of the proposed variations to the Scope of Works for the Segment.

9.2 Variation to Scope of Works due to Scope Change Event

If the Project Manager considers, acting reasonably, that it is necessary to vary the Scope of Works for a Segment as a result of a Scope Change Event, then the Project Manager:

- (a) may, by notice to the Trustee, the Independent Engineer and the PUH Engineer (also a **Variation Notice**), request the consent of the Trustee to vary the Scope of Works for the Segment as a result of the Scope Change Event as proposed in the Variation Notice; and
- (b) must, if the Project Manager gives a Variation Notice under **clause 9.2(a)**, provide in that Variation Notice reasonable details of:
 - (i) the Scope Change Event and the effect of the Scope Change Event on the Scope of Works for the Segment; and
 - (ii) why the Project Manager considers the proposed variation of the Scope of Works for the Segment is the preferred manner of addressing the Scope Change Event.

9.3 Consequential variations to Target Available Date and Target Cost

If the Project Manager considers that a proposed variation to the Scope of Works for a Segment under **clauses 9.1** or **9.2** requires a consequential variation to the Target Available Date and/or the Target Cost for the Segment, the Variation Notice may also request the consent of the Trustee to vary the Target Available Date and/or the Target Cost (as applicable) for that Segment as proposed in the Variation Notice.

9.4 Independent Engineer to provide report

If the Project Manager gives a Variation Notice, the Independent Engineer must promptly (and, in any event, at least one Business Day prior to the date on which the meeting referred to in **clause 9.5(a)** is to be held) give the Parties and the PUH Engineer a written report specifying:

- (a) if the Variation Notice is given under **clause 9.2**, whether or not, in the Independent Engineer's reasonable opinion:
 - (i) the Scope Change Event specified in the Variation Notice has occurred; and
 - (ii) the proposed variation to the Scope of Works for the Segment is reasonable as a result of the Scope Change Event and whether any alternatives to the variation have been considered and the reasonableness or otherwise of those alternatives,including reasonable details of the reasons for the Independent Engineer's opinion in relation to those matters;
- (b) if the Project Manager requests the consent of the Trustee to vary the Target Cost and/or Target Available Date for the Segment under a Variation Notice given under **clause 9.1** or **9.2**:
 - (i) whether or not, in the Independent Engineer's reasonable opinion, the variation to the Target Cost and/or Target Available Date (as applicable) for the Segment proposed in the Variation Notice is or are reasonable as a result of the variation to the Scope of Works for the Segment proposed in the Variation Notice; and/or
 - (ii) if not, the variation(s) to the Target Cost and/or Target Available Date (as applicable) for the Segment which, in the Independent Engineer's reasonable opinion, is or are reasonable as a result of the variation to the Scope of Works for the Segment proposed in the Variation Notice,including reasonable details of the reasons for the Independent Engineer's opinion in relation to those matters;
- (c) a recommendation by the Independent Engineer as to whether the variation(s) proposed in the Variation Notice should be accepted, rejected or accepted with amendment, including reasonable details of the reasons for the Independent Engineer's recommendation; and
- (d) any other matter the Independent Engineer considers relevant in respect of the variation(s) proposed in the Variation Notice.

9.5 Consultation

- (a) If the Project Manager gives a Variation Notice, the Project Manager must, on the same day that the Project Manager gives the Variation Notice, invite the Trustee, all Preference Unit Holders (as notified by the Trustee to the Project Manager), the Independent Engineer and the PUH Engineer to attend a meeting with the Project Manager to discuss:

- (i) the variation(s) proposed in the Variation Notice; and
 - (ii) the report (if any) given by the Independent Engineer under **clause 9.4**.
- (b) A meeting referred to in **clause 9.5(a)** must be held:
- (i) not less than five Business Days, and not more than ten Business Days, after the date that the Project Manager gives the Variation Notice;
 - (ii) at a place in Brisbane or by telephone conference (as determined by the Project Manager, acting reasonably) on a Business Day; and
 - (iii) whether or not the Independent Engineer has provided a report under **clause 9.4**.

9.6 Consent of Trustee

- (a) Within five Business Days after the date of the meeting referred to in **clause 9.5**, the Trustee must notify the Project Manager whether or not it consents to the variation(s) proposed in the Variation Notice.
- (b) If the Trustee does not notify the Project Manager under, and within the time required by, **clause 9.6(a)**, and the report (if any) given by the Independent Engineer under **clause 9.4**:
 - (i) recommends a variation proposed in the Variation Notice, the Trustee will be deemed to have consented to the relevant variation proposed in the Variation Notice; or
 - (ii) does not recommend or conditionally recommends a variation proposed in the Variation Notice or contains no recommendation in respect of the variation, the Trustee will be deemed not to have consented to the relevant variation proposed in the Variation Notice.
- (c) If the Trustee consents (or is deemed to have consented) to a variation to the Scope of Works for a Segment proposed in a Variation Notice, the Scope of Works for the Segment will be taken to be varied as proposed in that Variation Notice on the date on which such consent is obtained or deemed to be obtained.
- (d) If **clause 9.6(c)** applies and the Trustee also consents (or is deemed to have consented) to a variation to the Target Available Date and/or Target Cost (as applicable) for the Segment proposed in the Variation Notice, the Target Available Date and/or Target Cost (as applicable) for the Segment will be taken to be varied as proposed in the Variation Notice on the date on which such consent is obtained or deemed to be obtained.
- (e) If the Trustee does not consent (or is deemed to have not consented) to a variation to the Scope of Works for a Segment proposed in a Variation

Notice given under **clause 9.1**, the Scope of Works, Target Cost and Target Available Date for the Segment will not be varied.

9.7 Expert determination

- (a) If the Trustee does not consent (or is deemed to have not consented) under **clause 9.6** to a variation to the Scope of Works for a Segment proposed in a Variation Notice given under **clause 9.2**:
 - (i) the Project Manager may, within 20 Business Days after the Trustee did not consent (or is deemed to have not consented) to a variation to the Scope of Works for the Segment, refer the matter to an Expert to determine whether:
 - (A) the Scope Change Event specified in the Variation Notice has occurred; and
 - (B) the Project Manager's proposed variation to the Scope of Works for the Segment is reasonable as a result of the Scope Change Event;
 - (ii) if the Expert determines that the Scope Change Event specified in the Variation Notice has not occurred:
 - (A) the Scope of Works for the Segment will not be varied; and
 - (B) the Expert's determination must specify the reasons why the Expert considers that the Scope Change Event has not occurred; and
 - (iii) if the Expert determines that the Scope Change Event specified in the Variation Notice has occurred and that the variation to the Scope of Works for the Segment:
 - (A) is reasonable as a result of the Scope Change Event:
 - (1) the Scope of Works for the Segment will be taken to be varied as proposed in the Variation Notice on the date the Expert notifies the Parties of his or her determination; and
 - (2) the Expert's determination must specify the reasons why the Expert considers that the proposed variation is reasonable as a result of the Scope Change Event; or
 - (B) is not reasonable as a result of the Scope Change Event:
 - (1) the Scope of Works for the Segment will not be varied; and
 - (2) the Expert's determination must specify the reasons why the Expert considers that the proposed variation is not reasonable as a result of the Scope Change Event.

- (b) If the Scope of Works for a Segment is varied under **clauses 9.6(c)** or **9.7(a)(iii)(A)** but the Trustee does not consent (or is deemed to have not consented) under **clause 9.6** to a variation to the Target Available Date and/or Target Cost (as applicable) for a Segment proposed in the Variation Notice:
 - (i) the Project Manager may, within 20 Business Days after the Trustee does not consent (or is deemed to have not consented) to a variation to the Target Available Date and/or Target Cost (as applicable) for the Segment, refer the matter to an Expert to determine whether the Project Manager's proposed variation to the Target Available Date and/or Target Cost (as applicable) for the Segment proposed in the Variation Notice is reasonable as a result of the variation to the Scope of Works for the Segment; and
 - (ii) if the Expert determines that the variation to the Target Available Date and/or Target Cost (as applicable) for a Segment proposed in the Variation Notice:
 - (A) is reasonable as a result of the variation to the Scope of Works for the Segment, the Target Available Date and/or Target Cost (as applicable) for the Segment will be taken to be varied as proposed in the Variation Notice on the date the Expert notifies the Parties of his or her determination; or
 - (B) is not reasonable as a result of the variation to the Scope of Works for the Segment:
 - (1) the Expert must determine the variation to the Target Available Date and/or Target Cost (as applicable) for the Segment which is reasonable as a result of the variation to the Scope of Works for the Segment; and
 - (2) the Target Available Date and/or Target Cost (as applicable) for the Segment will be taken to be varied as determined by the Expert on the date the Expert notifies the Parties of his or her determination.

9.8 Variations to Scope of Works requested by Trustee

- (a) The Trustee may, by notice to the Project Manager, request the Project Manager to propose variations to the Scope of Works for a Segment under **clause 9.1**.
- (b) The Project Manager must consult with the Trustee in respect of such a request and must act reasonably in considering whether or not the Project Manager should propose to vary the Scope of Works for the Segment under **clause 9.1** as requested.
- (c) For the purposes of **clause 9.8(b)**, it will be reasonable for the Project Manager to consider, amongst other matters, the impact of the proposed variation on the Project Manager's other existing or proposed customers and its own commercial interests.

10 Variations to Target Available Date and Target Cost

10.1 Variation to Target Available Date and Target Cost initiated by Project Manager

Subject to **clause 7**, **clause 9** and this **clause 10**, the Project Manager cannot vary the Target Available Date or Target Cost for a Segment without the consent of the Trustee.

10.2 Variation to Target Available Date for Acceleration

- (a) If the Project Manager proposes to accelerate the progress of the carrying out of the Works for a Segment (**Acceleration**), the Project Manager may, by notice to the Trustee, the Independent Engineer and the PUH Engineer (**Acceleration Variation Notice**), request the consent of the Trustee to vary (bring forward) the Target Available Date for the Segment as proposed in the Acceleration Variation Notice.
- (b) An Acceleration Variation Notice given under **clause 10.2(a)** must specify reasonable details of:
 - (i) the Project Manager's reasons for the proposed Acceleration for the Segment; and
 - (ii) the actions which are proposed to be undertaken to give effect to the proposed Acceleration for the Segment.
- (c) The Trustee may, by notice to the Project Manager, request that the Project Manager propose an Acceleration for a Segment (**Trustee Acceleration Proposal Notice**).
- (d) The Project Manager must consult with the Trustee in respect of the Trustee Acceleration Proposal Notice and act reasonably in considering whether or not to propose to vary the Target Available Date for a Segment under **clause 10.2(a)** to give effect to the Trustee Acceleration Proposal Notice (including by considering the impact of the proposed variation on the Project Manager's other existing or proposed customers and its own commercial interests).

10.3 Consequential variations to Target Cost for Acceleration

If the Project Manager considers that a proposed variation to the Target Available Date for a Segment as a result of a proposed Acceleration under **clause 10.2** requires a consequential increase to the Target Cost for the Segment to carry out the Works for that Segment by the proposed varied Target Available Date, the Acceleration Variation Notice may also request the consent of the Trustee to vary the Target Cost for the Segment by increasing it as proposed in the Acceleration Variation Notice.

10.4 Independent Engineer to provide report

If the Project Manager gives an Acceleration Variation Notice, the Independent Engineer must promptly (and, in any event, at least one Business Day prior to the date on which the meeting referred to in **clause 10.5(a)** is to be held) give the Parties and the PUH Engineer a written report specifying:

- (a) whether or not, in the Independent Engineer's reasonable opinion, the actions which are proposed to be undertaken to give effect to the proposed Acceleration by the proposed varied Target Available Date are reasonable;
- (b) if the Acceleration Variation Notice requests the consent of the Trustee to vary the Target Cost for the Segment as proposed in the Acceleration Variation Notice, whether or not, in the Independent Engineer's reasonable opinion, the proposed variation to the Target Cost for the Segment is reasonable as a result of the additional Project Costs reasonably likely to be Incurred to carry out the Works for the Segment by the proposed varied Target Available Date;
- (c) a recommendation by the Independent Engineer as to whether the variation(s) proposed in the Acceleration Variation Notice should be accepted, rejected or accepted with amendment; and
- (d) any other matter the Independent Engineer considers relevant in respect of the variation(s) proposed in the Acceleration Variation Notice.

10.5 Consultation

- (a) If the Project Manager gives an Acceleration Variation Notice under **clause 10.2**, the Project Manager must, on the same day that the Project Manager gives the Acceleration Variation Notice, invite the Trustee, all Preference Unit Holders (as notified by the Trustee to the Project Manager), the Independent Engineer and the PUH Engineer to attend a meeting with the Project Manager to discuss:
 - (i) the variation(s) proposed in the Acceleration Variation Notice; and
 - (ii) the report (if any) given by the Independent Engineer under **clause 10.4**.
- (b) A meeting referred to in **clause 10.5(a)** must be held:
 - (i) not less than five Business Days, and not more than ten Business Days, after the date that the Project Manager gives the Acceleration Variation Notice;
 - (ii) at a place in Brisbane or by telephone conference (as determined by the Project Manager, acting reasonably) on a Business Day; and
 - (iii) whether or not the Independent Engineer has provided a report under **clause 10.4**.

10.6 Consent of Trustee

- (a) Within five Business Days after the date of the meeting referred to in **clause 10.5(a)**, the Trustee must notify the Project Manager whether or not it consents to the variation(s) proposed in the Acceleration Variation Notice.

- (b) If the Trustee does not notify the Project Manager under, and within the time required by, **clause 10.6(a)**, and the report (if any) given by the Independent Engineer under **clause 10.4**:
 - (i) recommends a variation proposed in the Acceleration Variation Notice, the Trustee will be deemed to have consented to the relevant variation proposed in the Acceleration Variation Notice; or
 - (ii) does not recommend or conditionally recommends a variation proposed in the Acceleration Variation Notice or contains no recommendation in respect of the variation, the Trustee will be deemed not to have consented to the relevant variation proposed in the Acceleration Variation Notice.
- (c) If the Trustee consents (or is deemed to have consented) to a variation to the Target Available Date and, if applicable, the Target Cost for a Segment proposed in an Acceleration Variation Notice given under **clause 10.2**, the Target Available Date and, if applicable, the Target Cost for the Segment will be taken to be varied as proposed in the Acceleration Variation Notice on the date on which such consent is obtained or deemed to be obtained.
- (d) If the Trustee does not consent (or is deemed to have not consented) to a variation to the Target Available Date and, if applicable, the Target Cost for the Segment proposed in the Acceleration Variation Notice given under **clause 10.2**, the Target Available Date and, if applicable, the Target Cost for the Segment will not be varied and the Project Manager will not give effect to the proposed Acceleration.

10.7 Variations resulting from Adjustment Events

- (a) If an Adjustment Event occurs in respect of a Segment, then the Project Manager:
 - (i) must notify the Trustee, the Independent Engineer and the PUH Engineer of the Adjustment Event as soon as reasonably practicable after the Project Manager becomes aware of the occurrence of the Adjustment Event, such notice to include details of the Adjustment Event as are known by the Project Manager at the time of the notice; and
 - (ii) may, by notice to the Trustee, the Independent Engineer and the PUH Engineer given as soon as reasonably practicable after the full effects of the Adjustment Event have been determined by the Project Manager, acting reasonably:
 - (A) vary the Target Cost for the Segment by increasing it by the amount that the Project Manager considers is reasonable as a result of the Adjustment Event; and/or
 - (B) subject to **clause 10.7(b)(ii)**, vary the Target Available Date for the Segment by extending it by the period that the Project Manager considers is reasonable as a result of the Adjustment Event,

such notice to include reasonable details of:

- (C) the Adjustment Event; and
 - (D) why the Project Manager considers that the proposed variation(s) is or are (as applicable) reasonable as a result of the Adjustment Event.
- (b) If an Adjustment Event is a Weather Adjustment Event:
- (i) as soon as reasonably practicable after the full effects of the Weather Adjustment Event have been determined by the Project Manager, acting reasonably, the Project Manager must notify the Trustee, the Independent Engineer and the PUH Engineer of the period of the delay to the carrying out of the Works for the Segment as a result of the Weather Adjustment Event; and
 - (ii) the Project Manager may only vary the Target Available Date for a Segment under **clause 10.7(a)(ii)(B)** if, and to the extent that, the total period of the delay in carrying out the Works for the Segment as a result of the Weather Adjustment Event and all previous Weather Adjustment Events in respect of the Segment exceeds the Weather Delay Period for that Segment.
- (c) If the Project Manager gives a notice under **clause 10.7(a)(ii)**, the Independent Engineer must promptly give the Parties and the PUH Engineer a written report specifying:
- (i) whether or not, in the Independent Engineer's reasonable opinion, the relevant Adjustment Event has occurred, including reasonable details of the reasons for the Independent Engineer's opinion;
 - (ii) whether or not, in the Independent Engineer's reasonable opinion, the variation(s) to the Target Cost and/or the Target Available Date (as applicable) for the Segment is or are reasonable as a result of the Adjustment Event, including reasonable details of the reasons for the Independent Engineer's opinion in relation to those matters;
 - (iii) if, in the Independent Engineer's reasonable opinion, the variation(s) to the Target Cost and/or the Target Available Date (as applicable) for the Segment is or are not reasonable as a result of the Adjustment Event, the variation(s) to the Target Cost and/or Target Available Date (as applicable) for the Segment which, in the Independent Engineer's reasonable opinion, is or are reasonable as a result of the Adjustment Event, including reasonable details of the reasons for the Independent Engineer's opinion in relation to those matters; and
 - (iv) any other matter the Independent Engineer considers relevant in respect of the Adjustment Event and the variation(s) to the Target Cost and/or the Target Available Date (as applicable) for the Segment as a result of the Adjustment Event.

- (d) If the Project Manager gives a notice under **clause 10.7(a)(ii)**, the Trustee may, within 20 Business Days after the Independent Engineer gives the Trustee the report under **clause 10.7(c)**, give the Project Manager a Dispute Notice which Disputes a variation to the Target Cost and/or Target Available Date (as applicable) for a Segment specified in the notice given by the Project Manager under **clause 10.7(a)(ii)**.
- (e) If a Dispute referred to in **clause 10.7(d)** is not resolved in accordance with **clause 21.2**:
 - (i) the Trustee may refer the Dispute to an Expert to determine whether the variation to the Target Cost and/or Target Available Date (as applicable) for the Segment is reasonable as a result of the Adjustment Event; and
 - (ii) if the Dispute is referred to an Expert and the Expert determines that the variation to the Target Cost and/or Target Available Date (as applicable) for the Segment:
 - (A) is reasonable as a result of the Adjustment Event, then the Target Cost and/or Target Available Date (as applicable) for the Segment will be taken to be varied as specified in the notice given under **clause 10.7(a)(ii)** on the date the notice is given; or
 - (B) is not reasonable as a result of the Adjustment Event then:
 - (1) the Expert must determine the variation (extension) to the Target Available Date and/or variation (increase) to the Target Cost (as applicable) which is reasonable as a result of the Adjustment Event; and
 - (2) the Target Available Date and/or Target Cost (as applicable) will be taken to be varied as determined by the Expert on the date that the Expert notified the Parties of his or her determination.
- (f) If the Trustee does not give the Project Manager a Dispute Notice referred to in **clause 10.7(d)** within the time referred to in **clause 10.7(d)**, then:
 - (i) the Trustee must not give the Project Manager a Dispute Notice Disputing the variation to the Target Cost and/or Target Available Date for a Segment specified in the notice given by the Project Manager under **clause 10.7(a)(ii)**; and
 - (ii) any such Dispute Notice which is given by the Trustee will be taken to be of no effect.

10.8 Reference Program

- (a) The Trustee acknowledges that:

- (i) the Reference Program will be used for reporting purposes to monitor the progress of the carrying out of the Works for the Extension; and
 - (ii) the Reference Program does not bind the Project Manager and meeting any timeframes or milestones specified in the Reference Program is not (in itself) an obligation under this Agreement.
- (b) Within ten Business Days after the date of a variation to the Scope of Works and/or the Target Available Date for a Segment under **clause 7**, **clause 9** or this **clause 10**, the Project Manager must:
- (i) revise the Reference Program to the extent necessary as a result of the variation to the Scope of Works and/or the Target Available Date (as applicable) for the Segment; and
 - (ii) provide the revised Reference Program to the Trustee, the Independent Engineer and the PUH Engineer.
- (c) If the Project Manager revises the Reference Program under **clause 10.8(b)**, the revised Reference Program will take effect on the date it is provided to the Trustee.

11 Time event

For the avoidance of doubt, where under this Agreement:

- (a) the Project Manager is permitted or required to propose;
 - (b) the Independent Engineer is required to form an opinion in relation to; and/or
 - (c) an Expert is required to determine,
- a variation to the Target Available Date for a Segment (in the case of the Independent Engineer which is a variation proposed by the Project Manager) which is reasonable as a result of an event or circumstance (**Target Available Date Adjustment Trigger**), for the purpose of such proposal, opinion or determination (as applicable), the Project Manager, Independent Engineer or Expert (as applicable) must have regard to:
- (d) the period of the delay to the carrying out of the relevant Works for that Segment as a result of that Target Available Date Adjustment Trigger; and
 - (e) any previous occurrence of a Target Available Date Adjustment Trigger which has not previously resulted in a variation to the Target Available Date for that Segment.

12 Consultation and reporting

12.1 Extension Committee

- (a) The Project Manager and the Trustee must establish a committee (**Extension Committee**) which will provide a forum for:
 - (i) the Project Manager and the Independent Engineer to report to the Trustee, the Preference Unit Holders and the PUH Engineer about matters relating to the Extension and the carrying out of the Works for the Extension; and
 - (ii) consultation between the Project Manager, the Trustee, the Preference Unit Holders, the Independent Engineer and the PUH Engineer about matters relating to the Extension and the carrying out of the Works for the Extension.
- (b) The Project Manager and the Trustee may each appoint one senior representative to attend meetings of the Extension Committee and may replace their respective representatives from time to time.
- (c) The Project Manager must invite each Preference Unit Holder to appoint one senior representative to attend meetings of the Extension Committee.
- (d) The Independent Engineer will attend all meetings of the Extension Committee.
- (e) The PUH Engineer may attend any meetings of the Extension Committee.
- (f) The Project Manager may invite Works Contractors and officers, employees, agents and contractors of the Project Manager to attend meetings of the Extension Committee as it considers reasonably necessary.
- (g) Meetings of the Extension Committee will be held in Brisbane at least once every calendar quarter.
- (h) The Project Manager must give the Trustee, each Preference Unit Holder, the Independent Engineer and the PUH Engineer at least ten Business Days' notice of each meeting of the Extension Committee.
- (i) A representative appointed by the Project Manager will chair Extension Committee meetings.
- (j) The Project Manager must:
 - (i) at the time it gives the Trustee, each Preference Unit Holder, the Independent Engineer and the PUH Engineer notice of a meeting of the Extension Committee, give each of them a copy of a proposed agenda for the meeting;
 - (ii) arrange for minutes of each Extension Committee meeting to be taken; and

- (iii) give a copy of the minutes of each Extension Committee meeting to the Trustee, each Preference Unit Holder, the Independent Engineer and the PUH Engineer as soon as practicable, but no later than ten Business Days, after the meeting.
- (k) The Trustee, each Preference Unit Holder and the PUH Engineer will bear the travel and other expenses of their respective representatives attending Extension Committee meetings.
- (l) For the avoidance of doubt, the Project Manager's travel and other expenses of its representatives attending Extension Committee meetings will be a Reimbursable Expense.

12.2 Reporting

- (a) Within 15 Business Days after the end of each Month during the Construction Period, the Project Manager must give to the Trustee, the Independent Engineer and the PUH Engineer a report for that Month (**Monthly Report**) in respect of the matters set out in **schedule 5**.
- (b) After the end of the Construction Period until the Project Manager gives the Trustee the Final Certificate, the Project Manager must give the Trustee, the Independent Engineer and the PUH Engineer reports in respect of material matters (other than Defects which are required to be included in the Defects Register under **clause 4.6(a)**) relevant to this Agreement at intervals of not more than three Months.
- (c) The Trustee may, within 30 Business Days after the Project Manager gives the Trustee a Monthly Report under this **clause 12.2**, give the Project Manager a Dispute Notice under **clause 21.1(a)** which Disputes the Estimated Available Date and/or Estimated Project Costs (as applicable) for a Segment notified by the Project Manager to the Trustee in the Monthly Report.
- (d) If a Dispute referred to in **clause 12.2(c)** is not resolved in accordance with **clause 21.2**, the Dispute must be referred to an Expert to determine a reasonable estimate (as at the date of the relevant report) of (as applicable):
 - (i) the date on which the Segment will become Available; or
 - (ii) the amount of the total Project Costs to be Incurred by the Trustee for the Segment.
- (e) If the Trustee does not give the Project Manager a Dispute Notice referred to in **clause 12.2(c)** within the time referred to in **clause 12.2(c)**, then:
 - (i) the Trustee must not give the Project Manager a Dispute Notice under **clause 21.1(a)** which Disputes the Estimated Available Date and/or Estimated Project Costs (as applicable) for a Segment notified by the Project Manager to the Trustee in the relevant Monthly Report; and

- (ii) any such Dispute Notice which is given by the Trustee will be taken to be of no effect.
- (f) The Project Manager must give the Trustee the information (including its reasonable estimate of Project Costs) the Trustee reasonably requires to enable the Trustee to assess whether under clause [11.1] of the Unit Holders Deed the total Trust Costs are likely to exceed the aggregate "Application Price" of all "Preference Units" then on issue (each as defined in the Unit Holders Deed).
- (g) If the Trustee forms the opinion that total Trust Costs are likely to exceed the aggregate "Application Price" of all "Preference Units" then on issue (each as defined in the Unit Holders Deed) under clause [11.1] of the Unit Holders Deed, the Trustee must give the Project Manager a notice of this and the Project Manager must, promptly on receipt of the notice from the Trustee:
 - (i) issue a notice to the parties as contemplated under **clause 12.1**, convening a meeting of the Extension Committee on a date which is at least ten Business Days following the issue of that notice; and
 - (ii) give the Trustee any information reasonably required by the Trustee about estimated future Project Costs within five Business Days following the date on which the notice for the meeting is given under **clause 12.2(g)(i)**.

12.3 Estimated Terminal Available Date and Terminal Available Date

- (a) The Trustee must notify the Project Manager, the Independent Engineer and the PUH Engineer of the Estimated Terminal Available Date (and, in the case of a change to the Estimated Terminal Available Date, reasonable details relating to the reasons for the change) promptly after:
 - (i) the Commencement Date; and
 - (ii) the Trustee becomes aware of any change to the Estimated Terminal Available Date since it was previously notified to the Project Manager under this **clause 12.3(a)** (such notice to include reasonable details of the reasons for the change in the Estimated Terminal Available Date).
- (b) The Trustee must ensure that the Preference Unit Holders notify the Trustee of the Estimated Terminal Available Date (and, in the case of a change to the Estimated Terminal Available Date, reasonable details relating to the reasons for the change) promptly after:
 - (i) the Commencement Date; and
 - (ii) any change to the Estimated Terminal Available Date.
- (c) The Trustee must notify the Project Manager and the Independent Engineer of the Terminal Available Date promptly after the Trustee becomes aware of the Terminal Available Date.

- (d) The Trustee must ensure that the Preference Unit Holders notify the Trustee of the Terminal Available Date promptly after the Preference Unit Holders become aware of the Terminal Available Date.
- (e) The Project Manager may, within 60 Business Days after the Trustee gives the Project Manager a notice under **clause 12.3(a)** or **12.3(c)**, give the Trustee a Dispute Notice under **clause 21.1(a)** which Disputes the Estimated Terminal Available Date or Terminal Available Date (as applicable) notified by the Trustee to the Project Manager in the notice.
- (f) If a Dispute referred to in **clause 12.3(e)** is not resolved in accordance with **clause 21.2**, the Dispute must be referred to an Expert for the purposes of **clause 21.2(b)(i)** to determine the Estimated Terminal Available Date (as at the time the notice under **clause 12.3(a)** was given to the Project Manager) or the Terminal Available Date (as applicable) based on the information (if any) which accompanied the notice under **clause 12.3(a)** or **12.3(c)** (as applicable) and any relevant additional information which the Project Manager or the Trustee provides to the Expert for the purpose of his or her determination.
- (g) If the Project Manager refers a Dispute referred to in **clause 12.3(e)** to an Expert, the Trustee must:
 - (i) use its reasonable endeavours to obtain from each Preference Unit Holder and the Terminal developer all information and documentation relevant to the determination of the Dispute by the Expert; and
 - (ii) provide any information and documentation which it obtains to the Expert and the Project Manager.
- (h) If the Trustee does not give the Project Manager a Dispute Notice referred to in **clause 12.3(e)** within the time referred to in **clause 12.3(e)**, then the Trustee must not give the Project Manager a Dispute Notice under **clause 21.1(a)** which Disputes the Estimated Terminal Available Date or the Terminal Available Date (as applicable) notified by the Trustee to the Project Manager under **clause 12.3(a)** or **12.3(c)**.

12.4 Provision of Relevant Information

- (a) Subject to **clauses 12.4(b)** and **12.4(c)**, the Project Manager must, within a reasonable period after any request from the Trustee, provide the Trustee with a copy of any Record, in existence at the time of the request, containing information which relates to the Extension or the Works for the Extension and which is reasonably required by the Trustee for the purpose of the performance of an obligation, or the exercise of a right, by the Trustee under this Agreement or another Transaction Document (**Relevant Information**).
- (b) **Clause 12.4(a)** does not apply to a Record referred to in **clause 12.4(a)** if the disclosure of the copy of the Record to the Trustee would (despite the deletion of information as contemplated in **clause 12.4(c)**) give rise to a breach of an obligation or duty of confidence by the Project Manager

or require the disclosure of a Record that would be privileged from production in a legal proceeding on the ground of legal professional privilege.

- (c) The Project Manager may delete from the copy of any Record which the Project Manager is required to provide to the Trustee under **clause 12.4(a)** any information contained in the Record which:
 - (i) is not Relevant Information;
 - (ii) is Price Sensitive Information;
 - (iii) would be privileged from production in a legal proceeding on the ground of legal professional privilege;
 - (iv) if disclosed to the Trustee, would give rise to a breach of an obligation or duty of confidence by the Project Manager;
 - (v) relates to the planning and development of subsequent actual or potential projects for the development of new rail infrastructure or modifications of, or additions to, existing rail infrastructure; or
 - (vi) which relates to the assessment of the Project Manager's commercial position in relation to any matter.

13 Reimbursable Expenses

13.1 Monthly Statements

Within 15 Business Days after the last day of each Month during the Construction Period, the Project Manager must give to the Trustee a statement for that Month (**Monthly Statement**) setting out:

- (a) the Reimbursable Expenses for each Segment Incurred by the Project Manager on or after the Commencement Date up to and including the last day of that Month and which have not been included in a previous Monthly Statement;
- (b) the amount which is [insert] percent of the amount of the Project Costs Incurred by the Trustee for that Month; and

[Drafting notice: This represents a provisional payment in respect of the project management fee.]

- (c) the total statement amount being the sum of the amounts referred to **clauses 13.1(a)** and **clause 13.1(b)**.

13.2 Provisional Reconciliation Statement

Within 15 Business Days after the last day of the Month following the Month in which the Construction Period ends, the Project Manager must give to the Trustee a statement (**Provisional Reconciliation Statement**) setting out:

- (a) the sum of all Reimbursable Expenses for each Segment Incurred by the Project Manager prior to the end of the Construction Period;
- (b) the sum of the Provisional Project Management Fees for each Segment;

- (c) the sum of the amounts of all RCTIs previously given by the Project Manager under **clause 13.6(b)** in respect of Monthly Statements (or, if the amount specified in a Monthly Statement is Disputed, the total statement amount for that Monthly Statement as agreed or determined under the Dispute Resolution Process);
- (d) the sum of all amounts previously invoiced by the Project Manager under **clause 13.6(a)** in respect of Monthly Statements (or, if the amount specified in a Monthly Statement is Disputed, the total statement amount for that Monthly Statement as agreed or determined under the Dispute Resolution Process); and
- (e) the total statement amount (which may be a positive or negative amount) being the sum of the amounts referred to in **clauses 13.2(a), 13.2(b) and 13.2(c)** less the amount referred to in **clause 13.2(d)**.

13.3 After Construction Period

After the end of the Construction Period, the Project Manager may from time to time (but not more than once per Month) give to the Trustee a statement (**Additional Statement**) in respect of Reimbursable Expenses Incurred by the Project Manager which have not previously been included in a Monthly Statement, the Provisional Reconciliation Statement, the Final Reconciliation Statement or any earlier Additional Statement.

13.4 Final Reconciliation Statement

Promptly after the Final Reconciliation Statement Date, the Project Manager must give to the Trustee a statement (**Final Reconciliation Statement**) setting out:

- (a) the sum of the Reimbursable Expenses for each Segment Incurred by the Project Manager prior to the date that the Project Manager gives the Final Certificate to the Trustee;
- (b) in respect of each Dispute that has been referred to an Expert for determination in accordance with **clause 21.3** which is (or includes) a Claim that the Project Manager has breached this Agreement or committed negligence or fraud in connection with this Agreement:
 - (i) in respect of each such Claim which is a Breach Claim or a Negligence Claim:
 - (A) for each Segment, the amount of the Provisional Damages in respect of such Claim which the Expert determined to be allocated to that Segment under **clause 21.4(b)(ii)**;
 - (B) for each Segment, the amount which the Expert determined under **clause 21.4(b)(iii)** to be the amount by which the Project Costs for the Segment are greater than they would have been had such Claim not occurred;
 - (C) for each Segment, the portion of the amount referred to in **clause 13.4(b)(i)(B)** which the Access Regulator has accepted into the Regulator Asset Base; and

- (D) for each Segment, the amount which is the amount referred to in **clause 13.4(b)(i)(A)** less the amount referred to in **clause 13.4(b)(i)(C)** (provided that if such amount is a negative number, it will be taken to be zero); and
- (ii) in respect of each such Claim which is a Wilful Default Claim, Gross Negligence Claim or Fraud Claim:
 - (A) for each Segment, the amount of the Provisional Damages in respect of such Claim which the Expert determined to be allocated to that Segment under **clause 21.4(b)(ii)**;
 - (B) for each Segment, the amount which the Expert determined under **clause 21.4(b)(iii)** to be the amount by which the Project Costs for the Segment are greater than they would have been had such Claim not occurred;
 - (C) for each Segment, the portion of the amount referred to in **clause 13.4(b)(ii)(B)** which the Access Regulator has accepted into the Regulator Asset Base; and
 - (D) for each Segment, the amount which is the amount referred to in **clause 13.4(b)(ii)(A)** less the amount referred to in **clause 13.4(b)(ii)(C)** (provided that if such amount is a negative number, it will be taken to be zero);
- (iii) for each Segment, the sum of the amounts calculated in accordance with **clause 13.4(b)(i)(D)** for the Segment in respect of all such Claims which are a Breach Claim or Negligence Claim; and
- (iv) in respect of each Segment, the sum of the amounts calculated in accordance with **clause 13.4(b)(ii)(D)** in respect of all such Claims which are a Wilful Default Claim, Gross Negligence Claim or Fraud Claim;
- (c) the sum of the amounts calculated in accordance with **clause 13.4(b)(iii)** for each Segment (provided that if that amount is greater than the amount referred to in **clause 13.4(e)**, that amount will be taken to be equal to the amount referred to in **clause 13.4(e)**);
- (d) the sum of the amounts calculated in accordance with **clause 13.4(b)(iv)** for each Segment;
- (e) the sum of the Final Project Management Fees for each Segment;
- (f) the sum of the amounts of all RCTIs previously given by the Project Manager under **clause 13.6(b)** in respect of Monthly Statements, the Provisional Reconciliation Statement or Additional Statements (or, if the amount specified in any such statement is Disputed, the total statement amount for that statement as agreed or determined under the Dispute Resolution Process);
- (g) the sum of all amounts previously invoiced by the Project Manager under **clause 13.6(a)** in respect of Monthly Statements, the Provisional

Reconciliation Statement and Additional Statements (or, if the amount specified in any such statement is Disputed, the total statement amount for that statement as agreed or determined under the Dispute Resolution Process); and

- (h) the total statement amount (which may be a positive or negative amount) being the sum of the amounts referred to in **clauses 13.4(a), 13.4(e) and 13.4(f)** less the amounts referred to in **clauses 13.4(c), 13.4(d) and 13.4(g)**.

13.5 Supporting information

Each statement given by the Project Manager to the Trustee under this **clause 13** must be accompanied by reasonable details of the calculation of the amounts specified in the statement.

13.6 Issue of invoices

- (a) At the time of giving the Trustee a statement under **clauses 13.1 or 13.3** (or a statement under **clauses 13.2 or 13.4** if the total statement amount is a positive number), the Project Manager must also give the Trustee a tax invoice for the total statement amount of the statement.
- (b) If the total statement amount specified in a statement given by the Project Manager under **clauses 13.2 or 13.4** is a negative amount, at the time of giving the Trustee the statement, the Project Manager must also give the Trustee a RCTI for the total statement amount of the statement (disregarding the negative sign).

13.7 Payment of invoices

- (a) Subject to **clause 13.8**, the Trustee must pay the amount of each tax invoice given by the Project Manager under **clause 13.6(a)** within five Business Days after the tax invoice is given to the Trustee.
- (b) The Project Manager must pay the amount of each RCTI given by the Project Manager under **clause 13.6(b)** within five Business Days after the RCTI is given to the Trustee.

13.8 Disputes

- (a) If the Trustee Disputes any amount specified in a statement given by the Project Manager under this **clause 13**:
 - (i) the Trustee may give the Project Manager a Dispute Notice under **clause 21.1(a)**; and
 - (ii) if the Dispute is not resolved in accordance with **clause 21.2**, either Party may refer the Dispute to an Expert.
- (b) Notwithstanding **clause 13.8(a)**, if an amount specified in a statement given by the Project Manager under this **clause 13** is Disputed:
 - (i) the Project Manager must give the Trustee a tax invoice or RCTI (as applicable) for the total statement amount under **clause 13.6**;

- (ii) if the Project Manager gives the Trustee a tax invoice under **clause 13.6(a)**, the Trustee must pay the portion of the tax invoice that is not in Dispute, plus 50% of the portion of the tax invoice that is in Dispute, within the time specified in **clause 13.7**; and
 - (iii) if the Project Manager gives the Trustee a RCTI under **clause 13.6(b)**, the Project Manager must pay the amount of the RCTI within the time specified in **clause 13.7**.
- (c) Upon resolution of any Dispute about the amount specified in a statement given by the Project Manager under this **clause 13**, if the total statement amount for the relevant statement as agreed or determined under the Dispute Resolution Process is:
 - (i) more than the amount that was paid by the Party (**Payor**) under the tax invoice or RCTI (as applicable), then the amount of the difference, together with interest on that amount calculated in accordance with **clause 13.9** (provided that, for the purpose of calculating that interest, the due date for payment is deemed to be the date when the amount in Dispute would have been due and payable but for the Dispute), must be paid by the Payor to the other Party (**Payee**) within five Business Days after the Project Manager gives the Trustee an adjustment note, further tax invoice or further RCTI (as applicable) under **clause 13.8(d)**; or
 - (ii) less than the amount that was paid by the Payor, then the amount of the difference, together with interest on that amount calculated in accordance with **clause 13.9** (provided that, for the purpose of calculating that interest, the due date for payment is deemed to be the date when the amount was paid by the Payor), must be paid by the Payee to the Payor within five Business Days after the Project Manager gives the Trustee an adjustment note, further tax invoice or further RCTI (as applicable) under **clause 13.8(d)**.
- (d) If, upon resolution of any Dispute about the amount claimed in a statement given by the Project Manager under this **clause 13**, the total statement amount for the relevant statement as agreed or determined under the Dispute Resolution Process differs from the amount of the tax invoice or RCTI (as applicable), the Project Manager must, within five Business Days after resolution of the Dispute, give the Trustee an adjustment note, further tax invoice or further RCTI (as applicable) in respect of the difference.
- (e) The Trustee is barred from Disputing an amount specified in a tax invoice or RCTI given under **clause 13.6** unless, and then only to the extent that, the amount of the tax invoice or RCTI (as applicable) differs from the final statement amount for the statement (including, if applicable, as agreed or determined under the Dispute Resolution Process) to which the tax invoice or RCTI (as applicable) relates.
- (f) For the purpose of **clauses 13.1(a)** and **13.3**, if an amount included in a Monthly Statement or an Additional Statement is Disputed and it is

agreed or determined under the Dispute Resolution Process that the amount should not have been included in the relevant statement or a different amount should have been included in the relevant statement, then the amount will be taken to have not been included in the statement or the different amount will be taken to have been included in the statement (respectively).

- (g) If the Trustee does not give a Dispute Notice in respect of a Dispute about an amount specified in the Final Reconciliation Statement within 25 Business Days after the date on which the Project Manager gives the Final Reconciliation Statement to the Trustee:
 - (i) the Trustee must not give the Project Manager such a Dispute Notice;
 - (ii) any such Dispute Notice which is given by the Trustee will be taken to be of no effect; and
 - (iii) the Trustee will not have, and must not make, any Claim against the Project Manager in respect of that Dispute.

13.9 Interest on overdue payments

- (a) If, for any reason, a Party does not pay an amount payable under or in connection with this Agreement on or before the due date for payment, it must pay interest to the other Party (who is entitled to receive the payment).
- (b) Interest will accrue on the outstanding amount from the due date for payment until that amount, together with the interest thereon, has been paid.
- (c) Interest will be calculated at the Interest Rate, and any interest accrued but unpaid at the end of each Month will be capitalised and will thereafter itself bear interest.

13.10 Project Manager's right of set off

The Project Manager may deduct from any amounts which are due and payable by the Project Manager to the Trustee under this Agreement any amounts which are due and payable by the Trustee to the Project Manager under this Agreement.

13.11 Method of payment

All payments to be made under or in connection with this Agreement must be paid in Australian currency, without set-off or deduction (subject to **clause 13.10**), by:

- (a) electronic payment to an account nominated by the Party entitled to receive the payment; or
- (b) such other method as the Party entitled to receive the payment may reasonably require from time to time.

13.12 Obligation to pay Reimbursable Expenses

For the avoidance of doubt, the Trustee is required to pay the Reimbursable Expenses to the Project Manager under this Agreement whether or not:

- (a) the Project Costs for a Segment exceed the Target Cost for the Segment; and/or
- (b) the Available Date for a Segment is later than the Target Available Date for the Segment.

14 Optimisation Fee

14.1 Optimisation Fee

If the Access Regulator makes a decision not to accept part or all of the Project Costs for a Segment into the Regulatory Asset Base (**Optimisation Event**), the Project Manager must, within ten Business Days after the Optimisation Date:

- (a) give to the Trustee a written notice setting out reasonable details and evidence of the Optimisation Event;
- (b) give to the Trustee a RCTI for the Optimisation Fee (if any) for the Segment, including details of how the Optimisation Fee (if any) for the Segment was calculated; and
- (c) pay the Optimisation Fee (if any) for the Segment to the Trustee.

14.2 Multiple Optimisation Events

For the avoidance of doubt, if the Project Manager seeks to include separate parts of a Segment into the Regulatory Asset Base at different times, it will be possible for more than one Optimisation Event to occur, and therefore more than one Optimisation Fee to become payable under **clause 14.1**, in respect of a single Segment.

15 Allocation, Records and auditing

15.1 When costs and expenses Incurred

- (a) A cost or expense will be taken to be **Incurred** by the Project Manager:
 - (i) in the case of a cost or expense payable by the Project Manager to a third party (other than a Related Body Corporate of the Project Manager), when the cost or expense is paid by the Project Manager; and
 - (ii) in any other case, when the Project Manager becomes liable to pay the relevant cost or expense.
- (b) A Trust Cost (including a Project Cost) will be taken to be **Incurred** by the Trustee when it is taken to have been Incurred by the Trustee under the Unit Holders Deed.

15.2 Responsibility for payment of Project Costs

Subject to **clause 6.7**, the Trustee (and not the Project Manager in its own capacity or as agent for the Trustee):

- (a) is responsible for paying any Project Costs which are Incurred by the Trustee, and due and payable to a third party, as a consequence of the Project Manager acting as agent for the Trustee under this Agreement (for example, fees payable to an Authority in respect of an Authority Approval); and
- (b) must pay those Project Costs to those third parties on or before the date that the Project Manager notifies the Trustee is the date that the Project Costs are due and payable to the third party.

15.3 Keeping of Records

- (a) The Project Manager must maintain complete Records of and relating to the Project Costs and the Reimbursable Expenses.
- (b) The Project Manager must preserve and maintain the Records referred to in **clause 15.3(a)** for a period of not less than five years following the date that the Project Manager gives the Final Certificate to the Trustee.

15.4 Audit

- (a) The Trustee may appoint an independent auditor nominated by it and approved by the Project Manager (such approval not to be unreasonably withheld or delayed) (**Auditor**) to carry out audits in order to verify the Reimbursable Expenses specified in statements given by the Project Manager to the Trustee under **clause 13 (Audits)**.
- (b) The costs and expenses of an Auditor must be borne solely by the Trustee.
- (c) Prior to the Auditor undertaking its first Audit, the Trustee must ensure that the Auditor provides the Project Manager with a signed confidentiality undertaking from the Auditor in favour of the Project Manager in the form shown in **schedule 8** or in a form otherwise acceptable to the Project Manager (acting reasonably).
- (d) Upon at least ten Business Days prior written request given by the Trustee (not more than once each year of this Agreement), the Project Manager must:
 - (i) give the Auditor reasonable access during normal business hours to the books, accounts and Records of the Project Manager relevant to an Audit; and
 - (ii) otherwise provide reasonable assistance and co-operation to the Auditor in relation to the conduct of the Audit.
- (e) The Parties acknowledge and agree that, except to the extent otherwise provided in the confidentiality undertaking referred to in **clause 15.4(c)**, the Auditor will only be entitled to disclose to the Trustee:

- (i) whether or not the Auditor verified the Reimbursable Expenses specified in statements given to the Trustee under **clause 13**; and
 - (ii) if the Auditor was unable to verify the Reimbursable Expenses specified in statements given to the Trustee under **clause 13**, any information obtained by the Auditor in carrying out the Audit to the extent that the Trustee requires access to that information for the purpose of resolving a Dispute in respect of the amount specified in the statement under the Dispute Resolution Process.
- (f) The Parties acknowledges that the confidentiality undertaking referred to in **clause 15.4(c)** will:
- (i) not prevent the Auditor from disclosing the information (other than Price Sensitive Information) to the Trustee, any Preference Unit Holder or the PUH Engineer; and
 - (ii) require the Auditor to keep any Price Sensitive Information confidential (including from the Trustee, any Preference Unit Holder and the PUH Engineer).

15.5 Asset register

Within 120 days after the Available Date for the last of the Segments to become Available, the Project Manager must provide the Trustee with an asset register that sets out all items of the Extension Infrastructure and other assets provided as part of the Works for the Extension.

16 Insurance

16.1 Project Insurance Policies

- (a) During the term of this Agreement, the Trustee appoints the Project Manager as the disclosed agent of the Trustee for the purpose of procuring, negotiating, entering into, varying and administering Project Insurance Policies.
- (b) The Project Manager (as disclosed agent for the Trustee) must, as soon as reasonably practicable (and, in any event, within 20 Business Days) after the Commencement Date, procure and maintain:
 - (i) 'Contract Works Material Damage' insurance for the Works for the Extension and the Extension (excluding any constructional plant and equipment) in the joint names of the Trustee, Aurizon Network Pty Ltd, all Works Contractors, all subcontractors of Works Contractors and any Replacement Project Manager, for the full reinstatement and replacement value of the insured property;
 - (ii) 'Broadform Public and Products Liability' insurance in the joint names of the Trustee, Aurizon Network Pty Ltd, all Works Contractors, all subcontractors of Works Contractors and any Replacement Project Manager, that is written on an occurrence basis with a limit of indemnity of:

- (A) not less than \$[insert - amount to be set on a project specific basis – as at mid 2012 this amount would be ~\$250m] for each and every occurrence, and
- (B) in the case of ‘Product Liability’, not less than \$[insert - amount to be set on a project specific basis – as at mid 2012 this amount would be ~\$250m] in the aggregate during any one 12 month period of insurance,

which covers liability arising out of or in relation to the Works for the Extension, the Extension and Services, in respect of:

- (C) loss of, damage to, or loss of use of, any real or personal property; and
- (D) the bodily injury, disease or illness (including mental illness) or death of any person.

16.2 Professional Indemnity Insurance Policy

The Project Manager (in its own capacity) must, as soon as reasonably practicable (and, in any event, within 20 Business Days) after the Commencement Date, procure and maintain professional indemnity insurance of not less than \$[insert - a \$ amount is to be set on a project specific basis following a risk assessment for the applicable project – typically it is expected to be at least \$10m] for each claim and in the aggregate for all claims arising in the same insurance period, covering the liability of the Project Manager or its consultants arising from a breach of professional duty by reason of any act, error or omission of the Project Manager or its consultants.

16.3 Replacement Project Manager – professional indemnity insurance

In the event that the Trustee appoints a Replacement Project Manager, the Trustee must ensure that, on and from the Replacement Date, the Replacement Project Manager procures and maintains professional indemnity insurance which complies with the requirements of this **clause 16** in relation to the Professional Indemnity Insurance Policy as if the Replacement Project Manager was the Project Manager.

16.4 General

The Project Manager must ensure (as disclosed agent for the Trustee in relation to the Project Insurance Policies and in its own capacity in relation to the Professional Indemnity Insurance Policy) that:

- (a) the Project Insurance Policies are maintained until the end of the Defects Rectification Period;
- (b) the Professional Indemnity Insurance Policy is maintained for at least seven years after the later of:
 - (i) the date the Final Certificate is given under **clause 4.7**; and
 - (ii) the date of termination of this Agreement;

- (c) each of the Insurance Policies is effected with reputable insurers with a long term credit rating of A- or better from Standard & Poors or the equivalent long term credit rating from another recognised credit rating agency as at the date of being effected;
- (d) the Project Insurance Policies include a cross-liability clause under which the insurer agrees that the policy applies as if a separate policy was issued to each named insured (with the exception of limits of liability) and must provide that:
 - (i) failure by an insured to observe and fulfil the terms of the policy or to comply with any duty of disclosure does not prejudice the insurance of any other insured; and
 - (ii) the insurer waives all rights, remedies or relief to which it might become entitled against named insureds;
- (e) the Project Insurance Policies are on commercially reasonable terms commensurate with Good Industry Practice, having regard to the state of the insurance market at the time of placement or renewal as applicable, and the risk profile of Aurizon Network Pty Ltd as both the railway manager for the Railway Network and a developer of major rail infrastructure projects on the Railway Network;
- (f) the Project Contract Works Insurance Policy, subject to its availability on reasonable commercial terms in the insurance market at the time of placement or renewal as applicable, contains existing structures cover in relation to the Railway Network (excluding the Extension);
- (g) the Professional Indemnity Insurance Policy is on commercially reasonable terms commensurate with the professional indemnity insurance that a prudent, efficient and experienced provider of project management services for the development of a major brownfields rail infrastructure project in Australia would be expected to take out, having regard to the state of the insurance market at the time of placement or renewal as applicable, and the risk profile of the Project Manager as a provider of professional services to external parties on a commercial basis; and
- (h) it:
 - (i) does not do or omit to do or, insofar as possible, permit or suffer to be done, any act or omission whereby any of the Insurance Policies may be prejudiced, vitiated, rendered void or voidable;
 - (ii) if necessary, reinstates an Insurance Policy if it lapses;
 - (iii) does not cancel an Insurance Policy unless it has already put in place a replacement insurance policy that meets the requirement of this **clause 16**;
 - (iv) does not vary an Insurance Policy in a manner materially adverse to its obligations under this Agreement;

- (v) does not allow an Insurance Policy to lapse without replacement unless it has the prior written consent of the Trustee;
- (vi) immediately notifies the Trustee of any event which may result in an Insurance Policy lapsing or being cancelled; and
- (vii) gives full, true and particular information to the insurer of all matters and things known to the Project Manager the non-disclosure of which might in any way prejudice or affect any Insurance Policy or the payment of all or any benefits under the Insurance Policy.

16.5 Payment of premiums

- (a) The Trustee is responsible for, and must pay, from time to time, on or before the date that the Project Manager notifies the Trustee is the due date for payment, all premiums, charges and other expenses necessary for effecting and maintaining in force the Project Insurance Policies.
- (b) The Project Manager (in its own capacity) is responsible for and must pay, from time to time, all premiums, charges and other expenses necessary for effecting and maintaining in force the Professional Indemnity Insurance Policy and any such premiums, charges and other expenses paid by the Project Manager will be a Reimbursable Expense.

[Drafting note: The insurance requirements to be imposed upon Works Contractors and their sub-contractors are to be addressed on a transaction-by-transaction basis as part of the Procurement Methodology.]

17 Force majeure

- (a) If the Project Manager is prevented or hindered by a Force Majeure Event from fully or partly performing an obligation (except for the payment of money) under this Agreement, then the Project Manager will be excused from performing that obligation for the period that the Project Manager is so prevented or hindered.
- (b) On the occurrence of, and during the subsistence of, any Force Majeure Event which prevents or hinders the Project Manager from fully or partly performing any obligation under this Agreement, the Project Manager must:
 - (i) give written notice of the event to the Trustee as soon as reasonably practicable (and in any event within five Business Days) providing reasonable details of the Force Majeure Event and the impact the Force Majeure Event will have on its ability to perform the obligations affected by the Force Majeure Event;
 - (ii) continue to perform all of its other obligations under this Agreement which are not affected by the Force Majeure Event;

- (iii) use all reasonable endeavours to mitigate the effect of the Force Majeure Event upon the performance of its obligations under this Agreement;
- (iv) keep the Trustee informed (in each case, not less than weekly) of the steps being taken to mitigate the effect of the Force Majeure Event upon the performance of its obligations under this Agreement and an estimate of the continued duration of the effect; and
- (v) resume full performance of its obligations under this Agreement as soon as reasonably practicable, and notify the Trustee when it does so.

18 Limitation of liability

18.1 Project Manager's liability for Breach Claims and Negligence Claims

- (a) The Project Manager's liability to the Trustee in respect of any Breach Claim or Negligence Claim is limited, in aggregate for all Breach Claims and Negligence Claims, to:
 - (i) if this Agreement is terminated prior to the Final Reconciliation Statement Date:
 - (A) if this Agreement is terminated after the Project Manager has given the Trustee the Provisional Reconciliation Statement – the sum of the Provision Project Management Fees for all Segments; or
 - (B) if this Agreement is terminated before the Project Manager has given the Trustee the Provisional Reconciliation Statement – an amount equal to the sum of the Early Termination Project Management Fees for all Segments; or
 - (ii) otherwise - an amount equal to the sum of the Final Project Management Fee for all Segments.
- (b) For the avoidance of doubt, **clauses 18.4 and 18.5** (and **clause 18.6** in respect of Breach Claims and Negligence Claims) apply to any Claims referred to in **clause 18.1(a)**.

18.2 Project Manager's liability for Wilful Default Claims, Gross Negligence Claims and Fraud Claims

- (a) The Project Manager's liability to the Trustee in respect of any Wilful Default Claim, Gross Negligence Claim or Fraud Claim is not limited, individually or in aggregate for all such Claims, to a specified dollar amount.
- (b) For the avoidance of doubt, **clauses 18.4 and 18.5** (and **clause 18.6** in respect of Gross Negligence Claims and Wilful Default Claims) apply to any Claims referred to in **clause 18.2(a)**.

- (c) In this **clause 18.2**, a reference to:
- (i) a Wilful Default Claim is limited to a Wilful Default Claim in respect of which, and to the extent to which, it has been agreed or determined under the Dispute Resolution Process that the Project Manager intentionally breached any obligation imposed on the Project Manager under this Agreement;
 - (ii) a Gross Negligence Claim is limited to a Gross Negligence Claim in respect of which, and to the extent to which, it has been agreed or determined under the Dispute Resolution Process that the Project Manager committed negligence in connection with this Agreement involving such wanton and reckless conduct as constitutes an utter disregard for the harmful, foreseeable and avoidable consequences which result from such conduct; and
 - (iii) a Fraud Claim is limited to a Fraud Claim in respect of which, and to the extent to which, it has been agreed or determined under the Dispute Resolution Process that the Project Manager committed fraud in connection with this Agreement.

18.3 Project Manager's liability for other Claims

Except:

- (a) as provided in **clause 18.1** and **18.2**; and
- (b) to the extent prohibited by law,

the Project Manager's liability to the Trustee in respect of Claims arising out of, or in any way related to, this Agreement (excluding a Claim in respect of the non-payment by the Project Manager of an amount that it is expressly required to pay under the terms of this Agreement) is limited to, and will in no event exceed, the total amount of \$1.00.

18.4 Limitation of liability in respect of increased Project Costs

If:

- (a) the Project Manager breaches any obligation under this Agreement or commits negligence or fraud in connection with this Agreement; and
- (b) such breach, negligence or fraud results in the Project Costs for a Segment being greater than they otherwise would have been if the breach, negligence or fraud had not occurred,

the Project Manager is not liable to the Trustee in respect of that breach, negligence or fraud to the extent that those increased Project Costs for that Segment are accepted by the Access Regulator into the Regulatory Asset Base.

18.5 Exclusion of Consequential Loss

Except as provided under **clause 18.7** but otherwise despite any other provision of this Agreement, neither Party will be liable to the other for, nor will

any indemnity by either Party under this Agreement extend to, any Consequential Loss suffered by or Claimed against that other Party.

18.6 Claims against Project Manager

The Trustee will not have, and must not make, any Breach Claim, Wilful Default Claim, Negligence Claim or Gross Negligence Claim against the Project Manager, or give a Dispute Notice to the Project Manager in respect of such a Claim under **clause 21.1**, unless the Trustee first provides the Project Manager with a notice in respect of the purported breach and allows the Project Manager a reasonable period to rectify the relevant breach and the Project Manager fails to rectify that breach within that reasonable period.

18.7 Project Manager's liability as agent

The Trustee indemnifies the Project Manager from and against any Loss (including Consequential Loss), suffered or incurred by the Project Manager, or for which the Project Manager becomes liable, arising from any Claim against the Project Manager by any third party arising out of, or in connection with, any act or omission of the Project Manager when acting as the agent of the Trustee under this Agreement.

18.8 Trustee's limitation of liability

- (a) The Project Manager acknowledges that the Trustee enters into this Agreement only as trustee of the Trust, and in no other capacity (other than in respect of the warranties in relation to trustee capacity in **clause 27.2** which are given by the Trustee in its personal capacity).
- (b) A liability of the Trustee arising under, or in connection with, this Agreement is limited to and can be enforced against the Trustee only to the extent to which the Trustee is entitled to be indemnified out of the Trust for the liability and the liability can be satisfied out of property of the Trust.
- (c) The limitation of liability in this **clause 18.8** will not apply to any liability of the Trustee to the extent that the liability is not satisfied out of the property of the Trust because there is a reduction in the Trustee's right of indemnity as a result of the Trustee committing fraud, "Gross Negligence" or "Wilful Default" (each as defined in the Trust Deed).

18.9 Scope of Claim or Loss

For the avoidance of doubt, references in this **clause 18** to a Claim or Loss include:

- (a) a Claim for, or Loss arising from, breach of contract, tort (including negligence), breach of equitable duty, breach of statutory duty, breach of the *Competition and Consumer Act 2010* (Cth) or otherwise; and
- (b) a Claim or Loss arising out of the performance or non-performance of any obligation under this Agreement, or arising out of a termination of this Agreement for any reason (including breach, repudiation or otherwise).

19 Suspension or cessation of Works for Extension

19.1 Directions

The Trustee may direct the Project Manager to:

- (a) suspend or permanently cease carrying out all or any part of the Works for the Extension; or
- (b) recommence carrying out all or any part of the Works for the Extension following a suspension referred to in **clause 19.1(a)**,

in circumstances contemplated under the Unit Holders Deed.

19.2 Direction to suspend or cease carrying out Works

If the Trustee directs the Project Manager to suspend or permanently cease carrying out all or any part of the Works for the Extension in accordance with **clause 19.1**, then:

- (a) promptly after being directed to do so by the Trustee, the Project Manager must, acting as disclosed agent for the Trustee, project manage such suspension or permanent cessation of the relevant Works for the Extension (including directing relevant Works Contractors to give effect to that suspension or permanent cessation);
- (b) the Trustee agrees that the Project Manager may take all steps and actions the Project Manager considers reasonably necessary to effect the suspension or permanent cessation of the relevant Works for the Extension as directed by the Trustee and that any such steps and action will not constitute a breach of this Agreement; and
- (c) the Trustee agrees that:
 - (i) giving effect to the suspension or permanent cessation may cause the Project Manager (acting as disclosed agent for the Trustee) to breach a Works Contract; and
 - (ii) the Trustee has no Claim against the Project Manager arising from such a breach.

19.3 Direction to commencement of suspended Works

If the Trustee directs the Project Manager to recommence the carrying out of all or any part of those Works for the Extension in accordance with **clause 19.1**, the Project Manager must, acting as disclosed agent for the Trustee, project manage such commencement of the relevant Works for the Extension (including entering into Works Contracts to give effect to such commencement).

20 Termination

20.1 Termination by Project Manager

- (a) The Project Manager may terminate this Agreement by notice to the Trustee if:
 - (i) the Trustee does not pay any money which is due for payment to the Project Manager under this Agreement by the due date for payment and the Trustee does not pay that money within a further period of ten Business Days after the Project Manager gives a notice to the Trustee requesting payment of that amount;
 - (ii) the Trustee does not comply with **clause 6.7(b)** and does not rectify that non-compliance within ten Business Days after the Project Manager gives a notice to the Trustee requesting it to do so; or
 - (iii) the Trustee does not pay by the due date for payment any premium in respect of any policy of insurance effected by the Project Manager as disclosed agent for the Trustee under **clause 16** and does not pay such premium within ten Business Days after the Project Manager gives a notice to the Trustee requesting it to do so.
- (b) If the Trustee directs the Project Manager to permanently cease carrying out all of the Works for the Extension in the circumstances contemplated under the Unit Holders Deed, then this Agreement will terminate on the date that the Project Manager notifies the Trustee that it has given effect to such direction under **clause 19**.
- (c) If the Project Manager gives a notice of termination to the Trustee under **clause 20.1(a)**, then:
 - (i) on the date of such notice, the Project Manager will be taken to have been given a direction by the Trustee to permanently cease carrying out all of the Works for the Extension; and
 - (ii) this Agreement will terminate on the date that the Project Manager notifies the Trustee that it has given effect to such direction under **clause 19**.

20.2 Termination due to termination of Rail Corridor Agreement

This Agreement will automatically terminate, without the need for either Party to give notice to the other Party, if the Rail Corridor Agreement terminates for any reason.

20.3 No other rights of termination

- (a) Despite any rule of law or equity to the contrary, neither Party may terminate, rescind or treat as repudiated, or obtain any order with the effect of terminating or rescinding, this Agreement other than as expressly provided for in this Agreement.

- (b) Subject to **clause 18**, nothing in this **clause 20.3** prejudices in any way a Party's right to Claim and recover damages for any breach of this Agreement by the other Party.

20.4 Effect of termination

- (a) If this Agreement is terminated, without prejudicing in any way the Project Manager's right to claim and recover damages for any breach of this Agreement by the Trustee, the Trustee must pay to the Project Manager an amount equal to the sum of:
 - (i) any Reimbursable Expenses Incurred by the Project Manager prior to the date of termination which have not been included in a statement already given by the Project Manager to the Trustee under **clause 13**;
 - (ii) unless the Project Manager has given the Trustee the Provisional Reconciliation Statement at the time of termination, the sum of the Early Termination Project Management Fees for each Segment; and
 - (iii) any amounts due and payable to the Project Manager under this Agreement as at the date of termination,

within ten Business Days after the Project Manager gives the Trustee a tax invoice in respect of such amount.

- (b) If this Agreement is terminated, promptly after the later of:
 - (i) the RAB Decision Date; and
 - (ii) the date that any Dispute which is (or includes) a Claim that the Project Manager has breached this Agreement or committed negligence or fraud in connection with this Agreement is resolved in accordance with the Dispute Resolution Process,

the Project Manager must give to the Trustee a statement (**Early Termination Statement**) setting out in respect of each Dispute that has been referred to the Expert for determination in accordance with **clause 21.3** which is (or includes) a Wilful Default Claim, Gross Negligence Claim or Fraud Claim:

- (iii) for each Segment, the amount of the Provisional Damages in respect of such Claim which the Expert determined to be allocated to that Segment under **clause 21.4(b)(ii)**;
- (iv) for each Segment, the amount which the Expert determined under **clause 21.4(b)(iii)** to be the amount by which the Project Costs for the Segment are greater than they would have been had such Claim not occurred;
- (v) for each Segment, the portion of the amount referred to in **clause 20.4(b)(iv)** which the Access Regulator has accepted into the Regulator Asset Base;

- (vi) for each Segment, the amount which is the amount referred to in **clause 20.4(b)(iii)** less the amount referred to in **clause 20.4(b)(v)** (provided that if such amount is a negative number, it will be taken to be zero);
 - (vii) for each Segment, the sum of the amounts calculated in accordance with **clause 20.4(b)(vi)** in respect of all such Claims; and
 - (viii) the sum of the amounts calculated in accordance with **clause 20.4(b)(vii)** for each Segment.
- (c) Within ten Business Days after the Project Manager gives the Trustee an Early Termination Statement, the Project Manager must pay to the Trustee the amount referred to in **clause 20.4(b)(viii)**, provided that amount is no greater than:
- (i) if this Agreement is terminated after the Project Manager has given the Trustee the Provisional Reconciliation Statement – the sum of the Provision Project Management Fees for all Segments; or
 - (ii) if this Agreement is terminated before the Project Manager has given the Trustee the Provisional Reconciliation Statement – an amount equal to the sum of the Early Termination Project Management Fees for all Segments.

21 Disputes

21.1 Notification of Disputes

- (a) If any Claim, dispute or question (**Dispute**) arises between the Parties under this Agreement, any Party may give to the other Party a notice in writing (**Dispute Notice**) specifying reasonable details of the Dispute and referring it for resolution in accordance with this **clause 21**.
- (b) Unless otherwise expressly provided to the contrary in this Agreement, a Dispute must be resolved in accordance with this **clause 21**.

21.2 Chief executive officer resolution

- (a) Within ten Business Days after the giving of a Dispute Notice, any Dispute must be referred in the first instance to the chief executive officer of the Project Manager (or his or her nominee) and the chief executive officer of the Trustee (or his or her nominee) for the purposes of this **clause 21.2** for resolution.
- (b) If the Dispute is not resolved within ten Business Days after the referral under **clause 21.2(a)**, or in the event that either chief executive officer appoints a nominee that is unacceptable to the other Party, then the relevant Dispute:
 - (i) must where:

- (A) the Dispute is (or includes) a Claim by the Trustee that the Project Manager has breached this Agreement or committed negligence or fraud in connection with this Agreement; or
 - (B) this Agreement otherwise expressly requires referral to an expert; and
- (ii) may, by agreement of the Parties in any other case,
be referred for resolution by an expert (**Expert**) in accordance with **clause 21.3**.

21.3 Expert determination

Where any matter is referred to an Expert under **clause 21.2** or otherwise in accordance with the terms of this Agreement then the following provisions of this **clause 21.3** will apply:

- (a) an Expert must be appointed by agreement between the Parties, or in default of such appointment within ten Business Days of the requirement or right (as applicable) to refer the matter to an Expert, then that person is to be nominated at either Party's request by:
 - (i) where the Parties agree the Dispute is purely of a technical nature, the President (for the time being) of Engineers Australia – Queensland Division;
 - (ii) where the Parties agree the Dispute is purely of a financial or accounting nature, the President (for the time being) of The Institute of Chartered Accountants in Australia – Queensland Branch; and
 - (iii) in any other case, the President (for the time being) of the Queensland Law Society, Inc;
- (b) if the Expert is to be nominated by a person referred to in **clause 21.3(a)** and that person declines to nominate a person as the Expert but provides a list of people that could be appointed as the Expert:
 - (i) the first person specified in that list will be taken to be nominated as the Expert;
 - (ii) if the first person specified in that list does not accept the appointment as the Expert, the next person specified in that list will be taken to be the first person specified in that list and will be nominated as the Expert; and
 - (iii) the process specified in **clause 21.3(b)(ii)** will apply to the next and each subsequent person specified in that list until a person that is taken to be nominated as the Expert accepts the appointment as the Expert;
- (c) subject to **clause 21.3(b)**, if the Expert is to be nominated by a person referred to in **clause 21.3(a)** and the person nominated as the Expert does not accept the appointment as the Expert, then an alternative

person is to be nominated as the Expert at either Party's request by the same person referred to in **clause 21.3(a)**;

- (d) if the Expert is to be nominated by a person referred to in **clause 21.3(a)** the Parties must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of that person (including providing relevant indemnities and paying any charges or fees (which charges or fees will be borne equally by the Parties)) that must be satisfied or complied with as a condition of that person agreeing to nominate an Expert;
- (e) the Parties must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of an agreed or nominated Expert (including providing relevant indemnities and paying any charges or fees (which charges or fees will be borne equally by the Parties)) that must be satisfied or complied with as a condition of that person accepting the appointment as an Expert;
- (f) the Expert must:
 - (i) have appropriate qualifications and practical experience having regard to the nature of the Dispute;
 - (ii) have no interest or duty which conflicts or may conflict with his or her function as Expert, he or she being required to fully disclose any such interest or duty by notice to the Parties before his or her appointment;
 - (iii) not be, or have been in the last five years, an employee of the Trustee, the Project Manager or a Preference Unit Holder or a Related Body Corporate of the Trustee, the Project Manager or a Preference Unit Holder;
 - (iv) not be permitted to act until he or she has given notice to the Parties that he or she is willing and able to accept the appointment;
 - (v) have regard to the provisions of this Agreement and consider all submissions (including oral submissions by either Party provided that such oral submissions are made in the presence of the other Party), supporting documentation, information and data with respect to the matter submitted by the Parties;
 - (vi) provide both Parties with a copy of his or her determination in the form of a report setting out reasonable details of the reasons for the Expert's determination within a reasonable time after his or her appointment;
 - (vii) be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties (including, if required by a Party, by entering into a confidentiality agreement in favour of the Parties); and

- (viii) be deemed to be and act as an expert and not an arbitrator and the law relating to arbitration (including, without limitation, the *Commercial Arbitration Act 1990* (Qld)), will not apply to him or her or the determination or the procedures by which he or she may reach a determination; and
- (g) if the determination of a matter referred to the Expert would require the Expert to be provided with any Price Sensitive Information by the Project Manager, the Expert must enter into a confidentiality agreement in favour of the Project Manager requiring the Expert to keep the Price Sensitive Information confidential (including from the Trustee and any Preference Unit Holder).

21.4 Claims involving breach, negligence or fraud

- (a) This **clause 21.4** applies if (and only if):
 - (i) a Dispute referred to the Expert for determination in accordance with **clause 21.3** is (or includes) a Claim that the Project Manager has breached this Agreement or committed negligence or fraud in connection with this Agreement; and
 - (ii) the Expert determines that the Project Manager did breach this Agreement or commit negligence or fraud in connection with this Agreement.
- (b) In respect of a Dispute to which this **clause 21.4** applies, in determining the Dispute in accordance with **clause 21.3**, the Expert must:
 - (i) determine the quantum of any damages which are payable by the Project Manager to the Trustee in respect of the breach, negligence or fraud the subject of the Claim (**Provisional Damages**) applying the principles that would be applied by the Supreme Court of Queensland in determining the quantum of such Provisional Damages (including, for the avoidance of doubt, any applicable limitations and exclusions on the Project Manager's liability under **clause 18** but disregarding the limitations and exclusions on the Project Manager's liability under **clauses 18.1** and **18.4**);
 - (ii) after making the determination in **clause 21.4(b)(i)**, determine:
 - (A) whether or not the Provisional Damages (or a portion of them) solely relate to a Segment and, if so, allocate to that Segment the amount of the Provisional Damages which solely relate to that Segment;
 - (B) after making the determination in accordance with **clause 21.4(b)(ii)(A)**, whether or not the Provisional Damages (or a portion of them), excluding any amount of the Provisional Damages which the Expert has already allocated to a Segment in accordance with **clause 21.4(b)(ii)(A)**, relate to two or more Segments and, if so, allocate to those Segments the amount of such Provisional Damages that

relate to those Segments on a pro-rata basis, based on the proportion that the Target Cost for each of those Segments (as at the time of such determination) bears to the total of the Target Costs for all of those Segments (as at the time of such determination); and

- (C) after making the determination in accordance with **clause 21.4(b)(ii)(B)**, allocate any amount of the Provisional Damages which has not been allocated to a Segment in accordance with **21.4(b)(ii)(A)** or **21.4(b)(ii)(B)** to all Segments on a pro-rata basis, based on the proportion that the Target Cost for each Segment (as at the time of such determination) bears to the total of the Target Costs for all Segments (as at the time of such determination),

so that, following such allocations, the amount of the Provisional Damages has been allocated to one Segment or between two or more Segments;

- (iii) determine whether or not the breach, negligence or fraud resulted in:
 - (A) the Project Costs for a Segment being greater than they otherwise would have been if the breach, negligence or fraud had not occurred; and/or
 - (B) the time required to carry out the Works for a Segment being greater than it otherwise would have been if the breach, negligence or fraud had not occurred,

and if so, the amount by which the Project Costs or time required to carry out the Works (expressed as a number of calendar days) for the Segment is greater than it would have been had the breach, negligence or fraud not occurred.

- (c) In respect of a Dispute to which this **clause 21.4** applies, the Parties agree that:
 - (i) the Expert's determination of Provisional Damages under **clause 21.4(b)(i)** is provisional only;
 - (ii) the Project Manager will not be required to pay to the Trustee the amount of any Provisional Damages determined by the Expert under **clause 21.4(b)(i)**; and
 - (iii) any amount payable by the Project Manager to the Trustee in respect of the Dispute to which this **clause 21.4** applies will be calculated as a component of the calculation under **clause 13.4** or **20.4(b)** (as applicable).

21.5 Parties to assist Expert

The Parties must do everything reasonably requested by the Expert to assist the Expert in determining the Dispute, including producing information and

materials requested by the Expert and attending any hearing convened by the Expert.

21.6 Decision of Expert

In the absence of manifest error, the decision of the Expert is final and binding upon the Parties.

21.7 Costs

- (a) The costs of the Expert and any advisers engaged by the Expert will be borne equally by the Parties to the Dispute.
- (b) Each Party to the Dispute will bear its own legal costs and the costs of any advisers to it in respect of the Dispute Resolution Process.
- (c) Any costs borne by the Project Manager under this **clause 21** will be deemed to be Reimbursable Costs, unless the Expert determines that the position which the Project Manager had taken in relation to the Dispute was unreasonable, in which case such costs will be deemed not to be Reimbursable Costs.

21.8 Determination by court

- (a) If any Dispute is not otherwise resolved in accordance with this **clause 21**, then the Dispute may be referred to one of the courts of the State having jurisdiction, and sitting in Brisbane.
- (b) Each Party irrevocably and unconditionally:
 - (i) agrees that the courts of the State, and any courts which have jurisdiction to hear appeals from any of those courts, are to have exclusive jurisdiction to settle disputes which may arise out of or in connection with this Agreement and that accordingly any suit, action or proceeding (**Proceedings**) arising out of or in connection with this Agreement may be brought in, and only in, such courts;
 - (ii) waives any objection which it may have now or hereafter to the laying of the venue of any Proceedings in such courts and any Claim that any such Proceedings have been brought in an inconvenient forum; and
 - (iii) agrees that a final judgment in any Proceedings brought in such courts will be final and binding upon such Party and may be enforced in the courts of any other jurisdiction.

21.9 Injunctive relief

Nothing in this Agreement will prevent a Party from seeking urgent injunctive relief from a court.

21.10 Disputes involving Unit Holders

If:

- (a) a Dispute which arises under this Agreement, or the outcome or consequences of that Dispute, may be relevant to the Trustee and/or one or more Unit Holders under the Unit Holders Deed; or
- (b) a “Dispute” (as defined under the Unit Holders Deed) which arises under the Unit Holders Deed, or the outcome or consequences of that dispute, may be relevant to the Trustee and/or the Project Manager under this Agreement,

then:

- (c) as applicable:
 - (i) the Project Manager and/or the Trustee may join all (for the avoidance of doubt, not only some) of the Unit Holders to the dispute resolution process under this Agreement; or
 - (ii) the Trustee may join the Project Manager to the dispute resolution process under the Unit Holders Deed; and
- (d) the Project Manager, the Trustee and each Unit Holder joined to participate in the dispute resolution process under this Agreement or the Unit Holders Deed (as applicable) will be bound by the outcome of the resolution of the Dispute irrespective of whether or not the Project Manager, the Trustee and the Unit Holder (as applicable) choose to actively participate in the dispute resolution process.

21.11 Time bar

- (a) If a Party does not give a Dispute Notice under **clause 21.1(a)** in respect of a Dispute within 12 Months after the date the Party became aware, or ought reasonably to have become aware, of the occurrence of the event or circumstance giving rise to the Dispute:
 - (i) the Party must not give the other Party such a Dispute Notice;
 - (ii) any such Dispute Notice which is given by the Party will be taken to be of no effect; and
 - (iii) the Party will not have, and must not make, any Claim against the other Party in respect of the Dispute.
- (b) Without limiting **clause 21.11(a)**, if the Trustee does not give a Dispute Notice under **clause 21.1(a)** in respect of a Dispute that is (or includes) a Claim by the Trustee that the Project Manager has breached this Agreement or committed negligence or fraud in connection with this Agreement by the date which is 20 Business Days after:
 - (i) if this Agreement terminates prior to the Final Certificate Date, the date of termination of this Agreement;
 - (ii) otherwise, the Final Certificate Date,then:
 - (iii) the Trustee must not give the Project Manager such a Dispute Notice;

- (iv) any such Dispute Notice which is given by the Trustee will be taken to be of no effect; and
- (v) the Trustee will not have, and must not make, any Claim against the Project Manager in respect of the Dispute.

22 Replacement Project Manager

22.1 Replacement Breach

- (a) If the Trustee considers that the Project Manager has committed a Replacement Breach, the Trustee may give the Project Manager a notice (**Replacement Breach Notice**):
 - (i) specifying reasonable details of the Replacement Breach; and
 - (ii) requiring the Project Manager to remedy the Replacement Breach within 20 Business Days after the date on which the Replacement Breach Notice is given to the Project Manager.
- (b) If the Trustee gives the Project Manager a Replacement Breach Notice under **clause 22.1(a)**:
 - (i) the Project Manager may, within ten Business Days after the Trustee gives the Replacement Breach Notice to the Project Manager, give the Trustee a Dispute Notice under **clause 21.1(a)** which Disputes that the Project Manager committed the Replacement Breach specified in the Replacement Breach Notice;
 - (ii) if the Dispute referred to in **clause 22.1(b)(i)** is not resolved in accordance with **clause 21.2**, the Project Manager may refer the Dispute to an Expert to determine whether or not the Project Manager committed the Replacement Breach specified in the Replacement Breach Notice; and
 - (iii) if the Dispute is referred to an Expert and the Expert determines that the Project Manager did not commit the Replacement Breach specified in the Replacement Breach Notice then the Replacement Breach Notice will be taken to have not been given under **clause 22.1(a)** and will be of no effect.
- (c) If the Trustee gives the Project Manager a Replacement Breach Notice under **clause 22.1(a)** and the Project Manager does not give the Trustee a Dispute Notice referred to in **clause 22.1(b)(i)** within the time referred to in **clause 22.1(b)(i)** then:
 - (i) the Project Manager must not give the Trustee a Dispute Notice under **clause 21.1(a)** which Disputes that the Project Manager has committed the Replacement Breach specified in the Replacement Breach Notice; and
 - (ii) any such Dispute Notice which is given by the Project Manager will be taken to be of no effect.

22.2 Unnecessary Delay

If, at a point in time, the Estimated Available Date for a Segment is more than six months later than the Latest Target Available Date at that time, **paragraph (a)** of the definition of Unnecessary Delay will not be taken to be satisfied in respect of that Segment if:

- (a) at that time, the Project Manager has given a Variation Notice which requests the Trustee's consent under **clause 9.3** to vary the Target Available Date for that Segment;
- (b) the Estimated Available Date for that Segment would not be more than six months later than the Latest Target Available Date if, at that time, the Target Available Date for the that Segment was varied as proposed in the relevant Variation Notice; and
- (c) there remains a possibility, at that time, that the Target Available Date for that Segment may be varied as proposed in the relevant Variation Notice by operation of **clause 9**.

22.3 Replacement Event Notice

- (a) If a Replacement Event occurs, the Trustee may give the Project Manager a notice stating that the Replacement Event has occurred (**Replacement Event Notice**).
- (b) If the Project Manager Disputes that a Replacement Event has occurred as stated in a Replacement Event Notice:
 - (i) the Project Manager may, within five Business Days after the Trustee gives the Project Manager the Replacement Event Notice, give the Trustee a Dispute Notice;
 - (ii) if the Dispute is not resolved in accordance with **clause 21.2**, the Project Manager may refer the Dispute to an Expert to determine whether or not the Replacement Event has occurred; and
 - (iii) if the Dispute is referred to an Expert and the Expert determines that the Replacement Event has not occurred, then the notice given under **clause 22.3(a)** will be taken to have not been given and will be of no effect.

22.4 Election to engage Replacement Project Manager

If:

- (a) the Trustee gives the Project Manager a Replacement Event Notice; and
- (b) either:
 - (i) the Project Manager does not give the Trustee a Dispute Notice referred to in **clause 22.3(b)(i)** within the time specified in **clause 22.3(b)(i)**; or
 - (ii) the Project Manager gives the Trustee a Dispute Notice referred to in **clause 22.3(b)(i)** within the time specified in **clause 22.3(b)(i)**

and it is agreed or determined through the Dispute Resolution Process that a Replacement Event has occurred,

then the Trustee may, within 15 Business Days after the applicable condition in this **clause 22.4(b)** applies (but not later), give the Project Manager a notice (**Replacement Election Notice**) specifying that it has elected to engage a Replacement Project Manager in accordance with **clause 22.5** to provide the Replacement Services.

22.5 Engagement of Replacement Project Management

- (a) This **clause 22.5** applies if (and only if) the Trustee gives the Project Manager a Replacement Election Notice.
- (b) The Trustee may engage a suitably skilled and experienced project manager, nominated by the Trustee and approved by the Project Manager (such approval not to be unreasonably delayed) (**Replacement Project Manager**), to provide the Replacement Services on and from the date of engagement of the Replacement Project Manager (**Replacement Date**) until the date on which the Project Manager gives the Trustee the Final Certificate under **clause 4.7 (Replacement Period)**.
- (c) The Project Manager may only withhold its approval to the engagement of a project manager nominated by the Trustee under **clause 22.5(b)** if the Project Manager considers, acting reasonably, that the nominated project manager does not have suitable skills and experience to provide the Replacement Services.
- (d) The Trustee must:
 - (i) appoint the Replacement Project Manager as the disclosed agent of the Trustee for the purpose of performing the Replacement Services (including for the same purposes for which the Project Manager was initially appointed by the Trustee under **clauses 3.2(b) and 6**); and
 - (ii) not itself, other than through the Replacement Project Manager acting as the Trustee's disclosed agent, do anything within the scope of the Replacement Services, except as expressly required to do so under this Agreement.
- (e) The Trustee must ensure that, in performing the Replacement Services during the Replacement Period, the Replacement Project Manager (acting as disclosed agent for the Trustee):
 - (i) procures through the Works Contractors the completion of the carrying out of the Works for the Extension in accordance with the Scope of Works for the Extension;
 - (ii) ensures that the Construction Works are carried out in accordance with the Approved Designs and Specifications for the Construction Works;
 - (iii) complies with the Procurement Methodology;

- (iv) ensures that each Segment becomes Available as soon as reasonably practicable after the Replacement Date;
- (v) complies with:
 - (A) all Legislation;
 - (B) Authority Approvals; and
 - (C) directions from Authorities,relating to the Works for the Extension and the carrying out of the Works for the Extension;
- (vi) includes in the Defects Register any Defect which is notified by the Project Manager to the Replacement Project Manager;
- (vii) procures through the Works Contractors the rectification of each Defect which the Trustee is required to procure the rectification of under clause [6.1] of the Extension Infrastructure Lease;
- (viii) exercises the Trustee's rights, and performs the Trustee's obligations, under the Rail Corridor Agreement (other than the Trustee's rights under clauses [3.1 and 3.2] of the Rail Corridor Agreement and its rights and obligations in respect of "Disputes" (as defined in the Rail Corridor Agreement) under clause [19] of the Rail Corridor Agreement) acting as disclosed agent for the Trustee;
- (ix) does not do or omit to do anything that would cause the Trustee to breach the Rail Corridor Agreement or the Extension Infrastructure Lease;
- (x) does not do or omit to do anything that would cause the Trustee or the "Sublessee" (as defined in the Extension Infrastructure Agreement) to breach the Extension Infrastructure Agreement
- (xi) ensures that the Trustee complies with its obligations under Works Contracts;
- (xii) within 15 Business Days after the end of each Month during the Construction Period, gives to the Project Manager and the Independent Engineer a report for that Month in respect of the matters set out in **schedule 5**;
- (xiii) within a reasonable time after requested by the Project Manager, provides the Project Manager any information or documentation relating to the Extension and the Works for the Extension reasonably required by the Project Manager;
- (xiv) complies with the matters set out in **clause 22.8**;
- (xv) maintains complete records of and relating to the Extension and the Works for the Extension for a period of not less than five years following the date on which the Project Manager gives the Final Certificate to the Trustee; and

- (xvi) within 120 days after the Available Date for the last of the Segments to become Available, provides “Aurizon” (as defined in the Extension Infrastructure Lease) with an asset register that sets out all items of the Extension Infrastructure.
- (f) The Trustee must promptly do all things which are necessary or reasonably required to be done by it to enable the Replacement Project Manager to perform the Replacement Services.
- (g) Despite the engagement of a Replacement Project Manager, any acts and omissions of the Replacement Project Manager (including defaults and negligence) will be taken to be acts or omissions of the Trustee.

22.6 Transition Services

- (a) This **clause 22.6** applies if (and only if) the Trustee engages a Replacement Project Manager under **clause 22.5**.
- (b) On request by the Replacement Project Manager (acting as the Trustee’s disclosed agent), the Project Manager must, subject to **clause 22.6(c)**, provide the Replacement Project Manager with any cooperation, assistance, explanations, information and documentation reasonably required to facilitate the efficient continuity of the carrying out of the Works for the Extension by the Replacement Project Manager (**Transition Services**).
- (c) Subject to **clause 22.6(d)**, the Project Manager is not required to provide any information or documentation to the Replacement Project Manager under **clause 22.6(b)** if the Project Manager would not have been required to provide the information or documentation to the Trustee under **clause 12.4**.
- (d) The Project Manager must provide Price Sensitive Information referred to in **paragraph (b)** of the definition of Price Sensitive Information in **clause 1.1** to the Replacement Project Manager if (and only if) the Replacement Project Manager agrees to keep confidential, and not disclose to any person (including the Trustee, a Preference Unit Holder or the PUH Engineer) the Price Sensitive Information on terms satisfactory to the Project Manager.
- (e) Without limiting **clause 22.6(b)**, promptly after the Replacement Date, the Project Manager must provide the Replacement Project Manager with copies of:
 - (i) all Works Contracts;
 - (ii) an asset register that sets out all items of the Extension Infrastructure which have been completed and commissioned prior to the Replacement Date;
 - (iii) all Approved Designs and Specifications;
 - (iv) reports given by the Project Manager under **clause 12.2**; and

- (v) Records required to be kept and maintained by the Project Manager under **clause 15.2**.
- (f) The Trustee must, upon invoice from the Project Manager, pay the Project Manager's reasonable costs and expenses of providing the Transition Services.

22.7 Variations to Agreement

- (a) This **clause 22.7** applies if (and only if) the Trustee engages a Replacement Project Manager under **clause 22.5**.
- (b) With effect on the Replacement Date:
 - (i) **clauses 3, 4** (other than **clauses 4.4(b), 4.4(c), 4.4(d)** and **4.7**), **6, 7, 8, 9, 10, 12** (other than **clause 12.1**) and **19** will cease to be of any further force or effect as between the Project Manager and the Trustee and the Project Manager will cease to have any further obligations to the Trustee under, or in respect of, those provisions (but will not be relieved of any accrued liabilities under those provisions);
 - (ii) the references to the "Project Manager" and "**clause 4.6(c)**" in **clauses 4.7(a)(iii), 4.7(b)(ii)(C)** and **4.7(b)(iii)(C)** will be taken to be references to the "Replacement Project Manager" and "**clause 22.5(e)(vi)**" respectively;
 - (iii) the references to the "Project Manager" in **clauses 4.6(a), 4.6(b), 12.1** and **19** will be taken to be references to the "Replacement Project Manager"; and
 - (iv) the references to "Trustee" in **clauses 4.6(b)** and **12.1** will be taken to be references to "Trustee and Project Manager".

22.8 Information and attendance at meetings

- (a) The Replacement Project Manager and the Trustee must each, upon request by the Project Manager, give to the Project Manager a copy of any notices, reports and other information in their possession or under their control relating to the Works for the Extension, the Extension or the performance of the Replacement Services, including:
 - (i) a copy of all notices, reports and other written information given by a Works Contractor to the Replacement Project Manager or Trustee, or vice versa, in connection with a Works Contract;
 - (ii) a copy of all notices, reports and written information given by the Replacement Project Manager to the Trustee, or vice versa, in connection with the Works for the Extension, the Extension or the Replacement Services.
- (b) The Replacement Project Manager must give the Project Manager reasonable notice of, and ensure that the Project Manager is permitted to attend (as an observer), all meetings which the Replacement Project

Manager attends in relation to the Works for the Extension, the Extension or the Replacement Services.

23 Confidentiality

23.1 Confidentiality obligations

A Party (**Recipient**):

- (a) may use Confidential Information of the other Party (**Disclosing Party**) only for the purposes of this Agreement or another Transaction Document; and
- (b) must keep confidential all Confidential Information of a Disclosing Party except for disclosures permitted under **clause 23.2**.

23.2 Disclosure of Confidential Information

A Recipient may disclose Confidential Information of a Disclosing Party:

- (a) to any person, where the Disclosing Party has consented in writing to such disclosure (such consent not to be unreasonably withheld or delayed, and may be given subject to reasonable conditions, such as the signing of an appropriate confidentiality undertaking);
- (b) to the extent necessary to progress negotiations with any other person relevant to matters contemplated in this Agreement (for example, another intended user of the Extension Land) who executes a confidentiality undertaking in favour of the Disclosing Party on terms reasonably acceptable to it;
- (c) to the extent necessary to effect the administration or enforcement of this Agreement, or further negotiations pursuant to this Agreement, by employees, professional advisers (including legal advisers) and consultants of the Recipient;
- (d) to any Related Body Corporate of the Recipient to the extent necessary for reporting purposes within a relevant group of companies, governance and oversight of the relevant group of companies and obtaining any approval or consent (whether or not directly from that Related Body Corporate) in relation to the Recipient entering into this Agreement;
- (e) to potential purchasers, assignees or transferees of the shares in the Recipient or a Related Body Corporate of it or of the rights or obligations of the Recipient under this Agreement and the other Transaction Documents who execute a confidentiality undertaking in favour of the Disclosing Party on terms reasonably acceptable to it;
- (f) to a bank or other financial institution (and its professional advisers and any security trustee or agent for it) in connection with and for the purpose of any loan or other financial accommodation sought to be arranged by, or provided to, the Recipient or a Related Body Corporate of it;

- (g) to legal, accounting and financial or other advisers or consultants to the Recipient or a Related Body Corporate of it:
 - (i) whose duties in relation to the Recipient or the Related Body Corporate require the disclosure;
 - (ii) who are under a duty of confidentiality to the Recipient; and
 - (iii) who have been advised of the confidential nature of the Confidential Information;
- (h) to any officers or employees of the Recipient or a Related Body Corporate of the Recipient who:
 - (i) have a need to know for the purposes of this Agreement or another Transaction Document (and only to the extent that each has a need to know); and
 - (ii) before disclosure, have been directed by the Recipient to keep confidential all Confidential Information of the Disclosing Party;
- (i) to any person who owns or operates, or will own or operate, the Terminal, provided that the disclosure is expressly made on a confidential basis;
- (j) if, and to the extent that, the Recipient is required to do so by law (other than by section 275 of the *Personal Property Securities Act 2009* (Cth)), any taxation authority or by any rules or regulations of a recognised stock exchange (including where the disclosure is to a Related Body Corporate of the Recipient that is responsible for making such disclosures for the relevant group of companies and for the purpose of such a Related Body Corporate determining whether, and the extent to which, such a disclosure is required to be made);
- (k) to any Governmental Agency to the extent required by law or where such disclosure is determined by the Trustee to be reasonably required for the administration of the Trust;
- (l) if disclosure is lawfully required by the Access Regulator, or in accordance with the Access Undertaking;
- (m) to an Auditor, Expert or the Independent Engineer under this Agreement or an "Auditor" or "Expert" (as defined in the Unit Holders Deed) under the Unit Holders Deed;
- (n) where the Project Manager is the Recipient, to Unit Holders to the extent:
 - (i) expressly provided in this Agreement; or
 - (ii) reasonably required for the purposes of this Agreement or another Transaction Document, including in connection with:
 - (A) the resolution of Disputes under this Agreement or "Disputes" (as defined under the Unit Holders Deed) under the Unit Holders Deed; or

- (B) the provision of information to Unit Holders under **clauses 7, 10 or 12**; and
- (o) where the Trustee is the Recipient, to Unit Holders to the extent:
 - (i) expressly provided in this Agreement, the Trust Deed or Unit Holders Deed; or
 - (ii) reasonably required for the purposes of this Agreement or another Transaction Document, including in connection with:
 - (A) the resolution of Disputes under this Agreement or “Disputes” (as defined under the Unit Holders Deed) under the Unit Holders Deed; or
 - (B) the provision of information to Unit Holders under **clauses 7, 10 or 12**.

23.3 Conditions of disclosure

If a Recipient discloses Confidential Information of a Disclosing Party to a person under **clause 23.2 (Disclosee)**, the Recipient must:

- (a) ensure that the Disclosee is aware that the Confidential Information is confidential information of the Disclosing Party; and
- (b) use reasonable endeavours to ensure that the Disclosee does not improperly disclose or improperly use the Confidential Information.

24 GST

24.1 Construction

In this **clause 24**:

- (a) words and expressions which are not defined in this Agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law;
- (b) **GST Law** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
- (c) references to GST payable and input tax credit entitlement include GST payable by, and the input tax credit entitlement of, the representative member for a GST group of which the entity is a member.

24.2 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

24.3 Payment of GST

If GST is payable on any supply made by a Party (or any entity through which that Party acts) (**Supplier**) under or in connection with this Agreement, unless the consideration is expressly stated to be inclusive of GST, the recipient will pay to the Supplier an additional amount equal to the GST payable on the

supply. Subject to **clause 24.4**, the recipient will pay the amount referred to in this **clause 24.3** in addition to, and at the same time that, the consideration for the supply is to be provided under this Agreement.

24.4 Tax invoices

- (a) **(Supplies by the Trustee)** The Parties agree that:
- (i) the Project Manager will issue a recipient created tax invoice (**RCTI**) in respect of any taxable supply which the Trustee makes to the Project Manager under or in connection with this Agreement (**Trustee Supplies**);
 - (ii) the Trustee will not issue tax invoices in respect of the Trustee Supplies;
 - (iii) the Trustee is registered for GST as at the date of this Agreement and must notify the Project Manager if it ceases to be registered;
 - (iv) the Project Manager is registered for GST as at the date of this Agreement and must notify the Trustee if it ceases to be registered;
 - (v) the Project Manager will issue an adjustment note to the Trustee for any adjustment events that arise in relation to a supply for which a RCTI has been issued;
 - (vi) each RCTI to be issued in accordance with this Agreement is a tax invoice belonging to the class of invoices that the Commissioner of Taxation has determined in writing may be issued by the recipient of a taxable supply; and
 - (vii) the agreement in this **clause 24.4(a)** will terminate immediately if the Project Manager or the Trustee cease to satisfy any of the requirements under the GST Law for issuing a RCTI.
- (b) **(Supplies by the Project Manager)** The Project Manager must deliver a tax invoice or an adjustment note to the Trustee before the Project Manager is entitled to payment of an amount on account of GST under **clause 24.3** in respect of the supplies it makes to the Trustee. The Trustee can withhold payment of the amount on account of GST until the Project Manager provides a tax invoice or an adjustment note, as appropriate.

24.5 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Agreement, the amount payable by the recipient under **clause 24.3** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier, or by the Supplier to the recipient, as the case requires.

24.6 Reimbursements

Where a Party is required under this Agreement to pay or reimburse an expense or outgoing of the other Party, the amount to be paid or reimbursed by the first Party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other Party is entitled; and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

25 Assignment

25.1 Assignment

Subject to **clauses 25.2, 25.3 and 25.4**, a Party must not assign, transfer, mortgage, charge, make the subject of a trust or otherwise deal with or encumber all or any of its rights or liabilities under this Agreement (or procure or permit any of those things) without the prior consent of the other Party.

25.2 Assignment by Project Manager

- (a) If an entity will acquire all of the Project Manager's interest in the parts of the Railway Network which include the Segments, the Project Manager must transfer all of its rights and liabilities under this Agreement to that entity at the time that the entity acquires the Project Manager's interest in the relevant parts of the Railway Network.
- (b) The Trustee must, promptly upon demand by the Project Manager, execute a deed of assignment or novation in a form acceptable to the Project Manager (acting reasonably) to give effect to the transfer of any rights or liabilities of the Project Manager required under this **clause 25.2**.

25.3 Assignment by Trustee

- (a) If the Trustee is replaced by a new trustee of the Trust, the Trustee must, with effect upon the appointment of the new trustee of the Trust, assign its rights and liabilities under this Agreement to the new trustee of the Trust.
- (b) The Trustee must not otherwise assign its rights and liabilities under this Agreement.

25.4 Charging

The Project Manager may mortgage, charge or encumber (**Charge**) all or any of its rights and obligations under this Agreement in whole or in part, in favour of any financier, mortgagee or chargee (**Chargee**), provided that the Project Manager, the Chargee and the Trustee execute any reasonable form of covenant, including terms to the effect that the Trustee acknowledges the existence of the Charge, and that the Chargee must comply with the provisions

of this Agreement, including this **clause 25**, in the exercise of its rights under the Charge.

26 Notices

26.1 General

A notice, demand, certification, process or other communication (**Notice**) relating to this Agreement must be in writing in English and may be given by an agent of the sender.

26.2 How to give a Notice

In addition to any other lawful means, a Notice may be given by being:

- (a) personally delivered;
- (b) left at the Party's current business address for Notices;
- (c) sent to the Party's current postal address for Notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
- (d) sent by fax to the Party's current fax number for Notices.

26.3 Particulars for giving of Notices

- (a) Each Party's particulars for the giving of Notices are initially the particulars set out in **item 1 of schedule 1**.
- (b) Each Party may change its particulars for the giving of Notices by notice to the other Party.
- (c) A Notice given to a Party which is signed is evidence that the Notice has been signed by a person duly authorised by the sender and that Party is entitled to rely on that Notice without further inquiry or investigation.

26.4 Notices by post

Subject to **clause 26.6**, a Notice is given if posted:

- (a) within Australia to an Australian postal address, three Business Days after posting; or
- (b) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, ten Business Days after posting.

26.5 Notices by fax

Subject to **clause 26.6**, a Notice is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

26.6 After hours Notices

If a Notice is given:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or public holiday in that place.

26.7 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this Agreement may be served by any method contemplated by this **clause 26** or in accordance with any applicable law.

27 Warranties

27.1 Warranties

Each Party warrants that:

- (a) it is a corporation validly existing under the laws applicable to it;
- (b) it is able to pay its debts as and when they fall due;
- (c) it has the power to enter into and perform this Agreement and has obtained all necessary consents to enable it to do so;
- (d) its obligations under this Agreement are enforceable in accordance with their terms;
- (e) no litigation, arbitration or administrative proceeding has been commenced before, and no judgment or award has been given or made by, any court, arbitrator, other tribunal or governmental agency against it which would have a material adverse effect on its ability to observe its obligations under this Agreement; and
- (f) it is not in breach or default under any agreement to which it is a party to an extent or in a manner which would have a material adverse effect on its ability to perform its obligations under this Agreement.

27.2 Trustee warranties

The Trustee warrants that:

- (a) it has full power and authority to enter into this Agreement and to perform the Trustee's obligations under this Agreement and the Trust Deed;
- (b) it is the sole trustee of the Trust and no action has been taken to remove or replace the Trustee; and
- (c) it has the right to be fully indemnified out of the assets of the Trust in respect of all its obligations under this Agreement, and the Trustee has not done or omitted to do anything that would result in its right of indemnity being restricted or limited in any way.

27.3 Reliance

- (a) Each Party acknowledges that the other Party has entered (or will enter) into this Agreement in reliance upon the warranties contained in **clause 27.1**.
- (b) The Trustee acknowledges that the Project Manager has entered (or will enter) into this Agreement in reliance upon the warranties contained in **clause 27.2**.

28 General

28.1 Survival

This **clause 28** and **clauses [#]** and **[#]** survive the termination of this Agreement.

[Drafting note: The clause references are to be completed on a transaction by transaction basis and may for example include clause 13.8(g).]

28.2 Applicable law

This Agreement will be governed by and construed in accordance with the laws applicable in the State.

28.3 Subcontracting

- (a) For the avoidance of doubt, the Project Manager may delegate or subcontract the performance of all or any of its obligations under this Agreement to a third party (including a Related Body Corporate of it).
- (b) The subcontracting or delegation of an obligation, as applicable, under **clause 28.3(a)** does not relieve the Project Manager of any liability or obligation under this Agreement in respect of in respect of the obligation which has been subcontracted or delegated (as applicable) and the Project Manager will be liable to the Trustee for the acts and omissions of the subcontractor or delegate, as applicable, their employees and agents involved in undertaking those obligations as if they were the acts or omissions of the Project Manager.

28.4 Waiver

- (a) Waiver of any right arising from a breach of this Agreement or any right arising from a default under this Agreement must be in writing and signed by the Party granting the waiver.
- (b) A single or partial exercise or waiver by a Party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (c) A failure or delay in exercise, or partial exercise, of a right arising from a breach of this Agreement does not result in a waiver of that right.

28.5 Duty

- (a) As between the Parties, the Trustee is liable for and must pay all duty (including any fine or penalty except where it arises from default by the Project Manager) on or relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it.
- (b) If the Project Manager pays any duty (including any fine or penalty) which the Trustee is liable to pay under **clause 28.5(a)**, the Trustee must pay that amount to the Project Manager on demand.

28.6 Legal costs

Except as expressly stated otherwise in this Agreement, each Party must pay its own legal costs and expenses of the drafting, negotiating and execution of this Agreement.

28.7 Amendments to be in writing

Except where this Agreement expressly provides a process for amendment or variation, an amendment or variation of this Agreement will only be effective if it is in writing and executed by both Parties to this Agreement.

28.8 Rights cumulative

Except as expressly stated otherwise in this Agreement, the rights of a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

28.9 Consents

Except as expressly stated otherwise in this Agreement, a Party may conditionally or unconditionally give or withhold any consent to be given under this Agreement and is not obliged to give its reasons for doing so.

28.10 Further assistance

Each Party must promptly sign, execute and complete all additional documents which may be necessary and do whatever else is reasonably required to effect, perfect, or complete the provisions of this Agreement and to perform its obligations under it.

28.11 Counterparts

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

28.12 Entire understanding

- (a) This Agreement and the other Transaction Documents together contain the entire understanding between the Parties as to the subject matter of this Agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement are merged in and superseded by this Agreement and the

other Transaction Documents and are of no effect. Neither Party is liable to the other Party in respect of those matters.

- (c) No oral explanation or information provided by a Party to the other Party:
 - (i) affects the meaning or interpretation of this Agreement; or
 - (ii) constitutes any collateral agreement, warranty or understanding between the Parties.

28.13 Relationship of Parties

Except to the extent expressly provided in this Agreement, this Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.

28.14 Severability

- (a) Subject to **clause 28.14(b)**, if a provision of this Agreement is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this Agreement.
- (b) **Clause 28.14(a)** does not apply if severing the provision:
 - (i) materially alters the:
 - (A) scope and nature of this Agreement; or
 - (B) relative commercial or financial positions of the Parties; or
 - (ii) would be contrary to public policy.

28.15 Survival of representations and warranties

All representations and warranties in this Agreement will survive the execution and delivery of this Agreement and the completion of the transactions contemplated by it.

28.16 Enurement

The provisions of this Agreement will, subject as otherwise provided in this Agreement, enure for the benefit of and be binding on the Parties and their respective successors and permitted novatees and assigns.

28.17 Merger

The obligations contained in this Agreement will continue until satisfied in full.

28.18 Powers of attorney

An attorney by executing this Agreement declares that he or she has received no notice of revocation of the power of attorney pursuant to which he or she executes this Agreement.

28.19 Indemnity

It is not necessary for a Party to incur expense or make a payment before enforcing any indemnity conferred by this Agreement.

Executed as an agreement.

Executed by **[NewCo Pty Ltd]** as)
trustee for the **[Name of Trust]** in)
accordance with section 127 of the
Corporations Act 2001 (Cth):

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Date: / /

Executed by **Aurizon Network Pty**)
Ltd in accordance with section 127 of)
the *Corporations Act 2001* (Cth):

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Date: / /

Schedule 1

Agreement details

1 Particulars for Notices

1.1 Trustee

Business address Level 5
192 Ann Street
BRISBANE QLD 4000

Postal address GPO Box 456
BRISBANE QLD 4001

Facsimile No. [insert]

Attention: [insert]

1.2 Project Manager

Business address Level 5
192 Ann Street
BRISBANE QLD 4000

Postal address GPO Box 456
BRISBANE QLD 4001

Facsimile No. 07 3235 3930

Attention: Vice President, Commercial Development

2 Extension Investigation Reports

[Insert details of the reports of the project investigation studies.]

Schedule 2

Scope of Works

(Clauses 1.1, 4.1 and 7)

1 Scope of Works

1.1 Segment #1 – [insert]

[insert]

[Drafting note: Where Works are required for multiple Segments (for example, an upgrade in the train control centre) this should be noted for each relevant Segment.]

1.2 Segment #2 – [insert]

[insert]

[Drafting note: Where Works are required for multiple Segments (for example, an upgrade in the train control centre) this should be noted for each relevant Segment.]

Schedule 3

Target Cost, Target Available Dates and Reference Program

(Clauses 1.1, 4.3, 4.4, 7 and 10)

1 Target Costs

Segment		Target Cost (\$m)
Segment #	Name of Segment	
[insert]	[insert]	\$(insert)
[insert]	[insert]	\$(insert)
Total for all Segments		\$(insert)

2 Target Available Dates

Segment		Target Available Date
Segment #	Name of Segment	
[insert]	[insert]	[insert]
[insert]	[insert]	[insert]

3 Weather Delay Periods

Segment		Weather Delay Period
Segment #	Name of Segment	
[insert]	[insert]	[insert]
[insert]	[insert]	[insert]

4 Reference Program

[insert]

Schedule 4

Procurement Methodology

(Clauses 1.1 and 4.2)

[Drafting Note: *It is contemplated that the Procurement Methodology will specify separately requirements of the Trustee and the Project Manager. The Trustee will be entitled to waive 'Trustee requirements' in its sole discretion and the Project Manager will be entitled to waive 'Project Manager requirements' in its sole discretion.*]

[Drafting Note: *The appointment of Aurizon Network or a Related Body Corporate of it as a Works Contractor is to be considered and negotiated by the parties on a transaction-by-transaction basis.*

*It is intended that if the Trustee permits Aurizon Network, or a Related Body Corporate of it, may be engaged as a Works Contractor under a Works Contract (**Related Party Works Contract**), the parties will negotiate and specify in this document suitable 'arm's length' procurement and contract management arrangements. These arrangements will comply with the principles set out below.*

Procurement principles

If the procurement process is conducted on a competitive basis, the Trustee is entitled to require that the Project Manager provide to an independent third party (see 'Other Principles' below), information which is in the possession of the Project Manager in relation to the engagement of the Related Body Corporate for the Related Party Works Contract, subject to suitable confidentiality agreements agreed between the Project Manager and that independent third party.

*If the procurement process is conducted on the basis of a competitive tender, any evaluation of a Related Party Works Contract will be subject to the information requirements of **clause 7.5**, as if the 'Related Party Works Contract' were a Major Works Contract. The consent/non-consent provisions of **clause 7.8** will not apply and instead the entry into a Related Party Works Contract will be subject to the agreement of a "Special Majority" as defined in the Unit Holders Deed) of the Preference Unit Holders (not including any "Aurizon Unit Holder" (as defined in the Unit Holders Deed) (**Special Majority Requirements**).*

If the procurement process is not conducted on the basis of a competitive tender, entry into any Related Party Works Contract will be subject to the "Special Majority" Requirements.

Works Contract management principles

*Any variation to the scope of a Related Party Works Contract will be deemed to be a 'Material Variation' to a 'Major Works Contract' and accordingly treated pursuant to **clause 7.6** of this Agreement.*

*Any variation to a Related Party Works Contract will be deemed to be a 'Variation to a Major Contract' and accordingly treated pursuant to **clause 7.6** of this Agreement. The Special Majority Requirements will apply in this instance.*

*Any dispute under a Related Party Works Contract will be deemed a Type 1 Major Works Contract Dispute for the purposes of **clause 7.10**.*

The Trustee is entitled to obtain from the Project Manager information in the possession of the Project Manager, in its capacity as Project Manager and not in any other capacity, in relation to the management of a Related Party Works Contract.

Other principles

The Trustee is entitled to nominate an independent party to audit the Project Manager's compliance with this Agreement in relation to the procurement and contract management of a Related Party Works Contract and to report on its findings to the Trustee.

The Project Manager will be required to reasonably cooperate with any such third party nominated by the Trustee to enable it to fulfil its functions, including providing that independent third party with information, subject to suitable confidentiality provisions.]

Schedule 5

Monthly Reports (Clause 12.2)

Each Monthly Report must contain the following information as at the end of the relevant Month:

- (a) Progress Summary for each Segment:
 - (i) original Target Available Date (as at the Commencement Date);
 - (ii) current Target Available Date;
 - (iii) current Estimated Available Date;
 - (iv) current Estimated Project Costs;
- (b) Safety Performance;
- (c) Milestone Achievement Summary – target date, forecast, actual
- (d) Three month rolling forecast – the amount of the Project Costs that the Project Manager reasonably estimates will be Incurred by the Trustee during the next three Months;
- (e) Project Cost Performance – target cost, forecast (providing a Month-by-Month breakdown of forecast Project Costs), actual, committed;
- (f) Segment Progress Measurement – planned % complete, forecast % complete, actual % complete;
- (g) Total Project Progress Measurement – planned % complete, forecast % complete, actual % complete;
- (h) Register of any variations to Scope of Works, Reference Program and Target Cost (if applicable) and Adjustment Events;
- (i) the occurrence of an Adjustment Event, including reasonable details of the Adjustment Event;
- (j) details of any dispute under Works Contract Disputes; and
- (k) a copy of the current Defects Register.

Schedule 6

Project Management Fee (Clause 1.1 and 13)

[Drafting note: This proposed fee regime will result in the same time measure (PTM or FTM) outcome for all Segments in a SUFA project at the provisional and final fee calculation stages. As the cost outcome may vary across Segments, the Provisional PMF Percentage and the Final PMF Percentage may differ from one Segment to another. The aggregate project management fee for all Segments will be borne by all Unit Holders (ie through the unit trust) on a pro rata basis.

This particular proposed fee regime is considered suitable for a project with a relatively simple configuration such as where all user funders are seeking incremental access between an (essentially shared) origin at one end of the corridor and a destination at the other end. This basic structure can be modified to accommodate multiple milestones if required for specific projects.]

1 Provisional Project Management Fee

1.1 Calculation of Provisional Project Management Fee

The Provisional Project Management Fee for a Segment is the amount which is the Provisional PMF Percentage for the Segment of the Target Cost for the Segment.

1.2 Calculation of Provisional PMF Percentage

(a) In this **item 1.2** of **schedule 6**:

Provisional Cost Measure or **PCM** for a Segment means the amount (expressed as a percentage) calculated in accordance with the following formula:

$$\text{PCM} = \frac{\text{APC} + \text{EPC}}{\text{TC}}$$

Where:

PCM = the PCM for the Segment

APC = the total Project Costs for the Segment Incurred by the Trustee prior to the end of the Construction Period less the amount of any Optimisation Fee paid or payable for the Segment

EPC = the total Project Costs for the Segment which the Project Manager reasonably estimates, as at the end of the Construction Period, will be Incurred or recovered after the end of the Construction Period

TC = the Target Cost for the Segment

Provisional Time Measure or PTM for a Segment means:

- (i) if the Available Date for the last of the Segments to become Available (**relevant Available Date**) is the same or earlier than the Extension Target Available Date – zero;
 - (ii) if the relevant Available Date is later than the Extension Target Available Date – the period (expressed as a number of calendar days) from the Extension Target Available Date to the relevant Available Date.
- (b) The Provisional PMF Percentage for a Segment is the percentage specified in the cell in the following table located in the row in which the PCM for the Segment occurs and the column in which the PTM for the Segment occurs:

PCM for Segment (%)	PTM for Segment				
	0	+1 to +45	+46 to +90	+91 to +180	>+180
<90	[insert]	[insert]	[insert]	[insert]	[insert]
≥90 & <95	[insert]	[insert]	[insert]	[insert]	[insert]
≥95 & <100	[insert]	[insert]	[insert]	[insert]	[insert]
≥100 & <105	[insert]	[insert]	[insert]	[insert]	[insert]
≥105 & <110	[insert]	[insert]	[insert]	[insert]	[insert]
≥110 & <115	[insert]	[insert]	[insert]	[insert]	[insert]
≥115 & <120	[insert]	[insert]	[insert]	[insert]	[insert]
≥120	[insert]	[insert]	[insert]	[insert]	[insert]

2 Final Project Management Fee

2.1 Calculation of Final Project Management Fee

The Final Project Management Fee for a Segment is the amount which is the Final PMF Percentage for the Segment of the Target Cost for the Segment.

2.2 Calculation of Final PMF Percentage

- (a) In this **item 2.2 of schedule 6**:

Final Cost Measure or FCM for a Segment means the amount (expressed as a percentage) calculated in accordance with the following formula:

$$FCM = \frac{FPC}{TC}$$

Where:

- FCM = the FCM for the Segment
- FPC = the total Project Costs for the Segment Incurred by the Trustee prior to the date that the Project Manager gives the Final Certificate to the Trustee less the amount of any Optimisation Fee paid or payable for the Segment and less the amount of the Increased Project Costs for the Segment
- TC = the Target Cost for the Segment

Final Time Measure or FTM for a Segment means:

- (i) if the Available Date for the last of the Segments to become Available (**relevant Available Date**) is the same or earlier than the Extension Target Available Date – zero;
- (ii) if the relevant Available Date is later than the Extension Target Available Date – the period (expressed as a number of calendar days) from the Extension Target Available Date to the relevant Available Date less the amount of the Increased Time for the Segment (provided that if such period is a negative number, such period will be taken to be zero).

Increased Project Costs for a Segment means the sum of the amounts which the Expert has determined under **clause 21.4(b)(iii)**, as at the Final Reconciliation Statement Date, to be the amounts by which the Project Costs for the Segment are greater than they otherwise would have been had the applicable breaches, negligence and/or fraud not occurred.

Increased Time for a Segment means the sum of the periods of time (expressed as a number of calendar days) which the Expert has determined under **clause 21.4(b)(iii)**, as at the Final Reconciliation Statement Date, to be the periods of time by which the time required for carrying out the Works for the Segment are greater than they otherwise would have been had the applicable breaches, negligence and/or fraud not occurred.

- (b) The Final PMF Percentage for a Segment is the percentage specified in the cell in the following table located in the row in which the FCM for the Segment occurs and the column in which the FTM for the Segment occurs:

FCM for Segment (%)	FTM for Segment				
	0	+1 to +45	+46 to +90	+91 to +180	>+180
<90	[insert]	[insert]	[insert]	[insert]	[insert]
≥90 & <95	[insert]	[insert]	[insert]	[insert]	[insert]
≥95 & <100	[insert]	[insert]	[insert]	[insert]	[insert]
≥100 & <105	[insert]	[insert]	[insert]	[insert]	[insert]

≥105 & <110	[insert]	[insert]	[insert]	[insert]	[insert]
≥110 & <115	[insert]	[insert]	[insert]	[insert]	[insert]
≥115 & <120	[insert]	[insert]	[insert]	[insert]	[insert]
≥120	[insert]	[insert]	[insert]	[insert]	[insert]

[Drafting note: This table to be completed on a transaction-by-transaction basis.]

3 Early Termination Project Management Fee

The Early Termination Project Management Fee for a Segment is the amount calculated in accordance with the following formula for the Segment:

$$\text{ETPMF} = \text{FPMF} \times \text{PC} / \text{EPC}$$

Where:

ETPMF = the Early Termination Project Management Fee for the Segment

FPMF = the amount which would be the Final Project Management Fee for the Segment assuming, for the purpose of calculating the Final Project Management Fee for the Segment, that:

- (a) “FPC” in **item 2.2** of this **schedule 6** is the amount of the Estimated Project Costs for the Segment as at the date of termination of this Agreement;
- (b) “TC” in **item 2.2** of this **schedule 6** is the Target Cost of the Segment as at the date of termination of this Agreement;
- (c) each Segment become Available on the Estimated Available Date for the Segment as at the date of termination of this Agreement; and
- (d) the Extension Target Available Date in **item 2.2** of this **schedule 6** is the Latest Target Available Date as at the date of termination of this Agreement.

PC = the Project Costs for the Segment Incurred by the Trustee as at the date of termination of this Agreement.

EPC = The Estimated Project Costs for the Segment as at the date of termination of this Agreement.

Schedule 7

Optimisation Fee (Clause 1.1 and 14)

1 Optimisation Fee

1.1 Definitions

In this **schedule 7**:

Actual Project Costs for a Segment means the Project Costs for the Segment which Aurizon Network Pty Ltd sought to include in the Regulatory Asset Base.

Construction Interest for the Optimised Project Costs for a Segment means the amount calculated in accordance with **item 1.4** of this **schedule 7** for the Optimised Project Costs for the Segment.

Excluded Amount (Trustee) for a Segment means the sum of the following amounts for that Segment:

- (a) Not Prudent Costs (Independent Engineer Costs);
- (b) Not Prudent Costs (Landholder Costs);
- (c) Not Prudent Costs (Procurement Methodology Costs);
- (d) Not Prudent Costs (Reimbursable Expenses);
- (e) Not Prudent Costs (Replacement Project Manager Costs);
- (f) Not Prudent Costs (Scope); and
- (g) Not Prudent Costs (Standard).

Landholder means Aurizon Network Pty Ltd in its capacity as 'Landholder' under the Rail Corridor Agreement.

Not Prudent Costs (Independent Engineer Costs) for a Segment means, if the Access Regulator makes a decision that some or all of the Actual Project Costs for that Segment Incurred by the Trustee under, or in connection with, the Independent Engineer Appointment Deed, are not prudent (in accordance with the requirements for assessing the prudence of costs under the then current Access Undertaking), that portion of the Actual Project Costs for that Segment.

Not Prudent Costs (Landholder Costs) for a Segment means, if the Access Regulator makes a decision that some or all of the Actual Project Costs for that Segment Incurred by the Trustee under the Rail Corridor Agreement are not prudent (in accordance with the requirements for assessing the prudence of

costs under the then current Access Undertaking), that portion of the Actual Project Costs for that Segment.

Not Prudent Costs (Procurement Methodology Costs) for a Segment means, if the Access Regulator makes a decision that some or all of the Actual Project Costs for that Segment Incurred by the Trustee as a result of a requirement under the Procurement Methodology are not prudent (in accordance with the requirements for assessing the prudence of costs under the then current Access Undertaking), that portion of the Actual Project Costs for that Segment.

Not Prudent Costs (Reimbursable Expenses) for a Segment means, for a Segment means, if the Access Regulator makes a decision that some or all of the Reasonable Reimbursable Expenses for that Segment which form part of the Actual Project Costs for that Segment are not prudent (in accordance with the requirements for assessing the prudence of costs under the then current Access Undertaking), that portion of the Actual Project Costs for that Segment.

Not Prudent Costs (Replacement Project Manager Costs) for a Segment means, if the Access Regulator makes a decision that some or all of the Actual Project Costs for that Segment:

- (a) paid to the Replacement Project Manager as fees or other charges in connection with the performance of the Replacement Services; or
- (b) Incurred by the Trustee (including, under a Works Contract) as a consequence of the performance, standard of performance or non-performance of the Replacement Services by the Replacement Project Manager,

are not prudent (in accordance with the requirements for assessing the prudence of costs under the then current Access Undertaking), that portion of the Actual Project Costs for that Segment.

Not Prudent Costs (Scope) for a Segment means, if the Access Regulator makes a decision that some or all of the Scope of Works for that Segment are not prudent (in accordance with the requirements for assessing the prudence of scope of works under the then current Access Undertaking), the portion of the Actual Project Costs for that Segment that the Access Regulator decides not to include into the Regulatory Asset Base as a consequence of the decision that some or all of the Scope of Works for that Segment are not prudent.

Not Prudent Costs (Standard) for a Segment means, if the Access Regulator makes a decision that some or all of the Scope of Works for that Segment are not prudent (in accordance with the requirements for assessing the prudence of standard of works under the then current Access Undertaking), the portion of the Actual Project Costs for that Segment that the Access Regulator decides not to include into the Regulatory Asset Base as a consequence of the decision that some or all of the Scope of Works for that Segment are not prudent.

Optimised Project Costs for a Segment means the amount calculated in accordance with **item 1.3** of this **schedule 7** for that Segment.

Reasonable Reimbursable Expenses for a Segment means the Reimbursable Expenses for that Segment to the extent they have been reasonably Incurred by the Project Manager in the performance of its obligations under this Agreement.

1.2 Calculation of Optimisation Fee

The Optimisation Fee for the Segment is the amount calculated in accordance with the following formula:

$$OF = OPC + CI$$

where:

OF	=	The Optimisation Fee for the relevant Segment
OPC	=	The Optimised Project Costs for the relevant Segment
CI	=	The Construction Interest for the Optimised Project Costs for the relevant Segment

1.3 Calculation of Optimised Project Costs

The Optimised Project Costs for a Segment is the amount calculated in accordance with the following formula (provided that if the amount calculated in accordance with the following formula is a negative number, the Optimised Project Costs for the Segment will be zero):

$$OPC = APC - (RAB + EAT)$$

where:

OPC	=	The Optimised Project Costs for the relevant Segment
APC	=	The Actual Project Costs for the relevant Segment
RAB	=	The portion of the Actual Project Costs for the relevant Segment that the Access Regulator determines to include in the Regulatory Asset Base
EAT	=	The Excluded Amount (Trustee) for the relevant Segment

1.4 Calculation of Construction Interest

The Construction Interest for the Optimised Project Costs for a Segment is the amount calculated in accordance with the following formula:

$$CI = \left[\sum_{x=1}^t OPC_x \times (1 + R_{mzn})^{t-x+1} \right] - OPC$$

where:

CI	=	The Construction Interest for the Optimised Project Costs for the relevant Segment
OPC	=	The total Optimised Project Costs for the relevant Segment
OPC _x	=	The part of the Optimised Project Costs for the relevant Segment incurred in Month x
R	=	The annual interest rate, expressed as a decimal, that the Access Regulator uses to capitalise interest on costs included in the Regulatory Asset Base for the Extension
R _{month}	=	$(1+R)^{1/12} - 1$
t	=	The number of months from the date of the first OPC _x amount is incurred to the Optimisation Date for the Segment
x	=	Each month after the first OPC _x amount is incurred (x = 1 in the first month after the first OPC _x amount is incurred)

Schedule 8

Form of confidentiality agreement for engagement of Auditor
(Clause 15.4)

[Drafting note: *Form of confidentiality agreement for engagement of Auditor to be included in this schedule 8.*]

Schedule 9

Terms of Works Contracts

1 Mandatory provisions

1.1 Trustee's limitation of liability

A Works Contract must contain a provision to the effect that:

- (a) the Works Contractor acknowledges that the Trustee enters into the Works Contract only as trustee of the Trust, and in no other capacity; and
- (b) A liability of the Trustee arising under or in connection with the Works Contract is limited to and can be enforced against the Trustee only to the extent to which the Trustee is entitled to be indemnified out of the Trust for the liability and the liability can be satisfied out of property of the Trust.

1.2 Independent Engineer and PUH Engineer

A Works Contract must contain a provision to the effect that the Works Contractor must:

- (a) provide the Independent Engineer and PUH Engineer with a copy of all notices, reports or other written information which is required to be given by the Works Contractor to the Project Manager (acting as the Trustee's disclosed agent); and
- (b) permit the Independent Engineer and PUH Engineer to attend any meetings between the Works Contractor and the Project Manager (acting as the Trustee's disclosed agent) which the Works Contractor and Project Manager (acting as the Trustee's disclosed agent) are required to attend under the Works Contract,

subject to the Independent Engineer and PUH Engineer first providing a confidentiality undertaking in favour of the Works Contractor on terms satisfactory to the Works Contractor (acting reasonably).

1.3 Payment Claims

- (a) A Works Contract must contain a provision which requires the Works Contractor to:
 - (i) serve each Payment Claim (which must be a valid tax invoice) on the Project Manager (as disclosed agent for the Trustee); and

- (ii) provide a copy of each Payment Claim to each of the Trustee, the Independent Engineer and the PUH Engineer on the same day that the Payment Claim is served on the Project Manager.
- (b) A Works Contract which is not a “construction contract” (as defined in the BCIP Act) must contain a provision under which a Payment Claim under the Works Contract is due for payment within a specified number of Business Days (which must be at least [15] Business Days) after the date the Payment Claim is served on the Project Manager.

[Drafting note: The timing for the payment of Payment Claims under a Works Contract referred to in item 1.3(b) of this schedule 9 will be considered on a transaction-by-transaction basis having regard to what is commercially appropriate for such Works Contracts.]

- (c) A Works Contract which is a “construction contract” (as defined in the BCIP Act) must contain a provision under which the due date for payment of any Payment Claim under the Works Contract is [15] Business Days after the Payment Claim is served on the Project Manager.

[Drafting note: The timing for the payment of Payment Claims under a Works Contract referred to in item 1.3(c) of this schedule 9 will be considered on a transaction-by-transaction basis having regard to the then applicable payment provisions under the Queensland Building Services Authority Act 1991 (Qld) and the BCIP Act.]

2 Discretionary provisions

2.1 Intellectual Property and Moral Rights

A Works Contract may contain a provision to the effect that the Works Contractor grants (or procures the grant of) Intellectual Property Rights to, and procures Moral Rights Consents for, the Project Manager which are reasonably required in connection with the legitimate interests of the Project Manager (or any Related Body Corporate of it) specified in **clause 3.6(a)(iv)**.

2.2 Defects

A Works Contract may contain a provision to the effect that the Works Contractor must, upon demand by the Project Manager, provide a legally binding undertaking in favour of Aurizon Network Pty Ltd, under which the Works Contractor undertakes that Aurizon Network Pty Ltd may exercise any rights against the Works Contractor which the Trustee (as principal under the Works Contract) can exercise against the Works Contractor.

Schedule 10

Reimbursable Expenses

[Drafting note: As part of “Aurizon Network’s Extension Process”, it is proposed that all pre-feasibility and feasibility study costs are to be paid by the Trustee to Aurizon Network when the transaction becomes unconditional. Aurizon Network will then repay any amounts funds under the relevant Technical Services Agreement (TSA).

For the purpose of the template SUFA documentation it is assumed that either:

- there will no expenditure on the early stages of the Extension’s development, such as preliminary works or procurement of long lead items (**Early Works**), until all SUFA documents for that transaction have full force and effect; or
- such expenditure will be addressed under a separate commercial arrangement from the SUFA documentation suite for the relevant extension.

As a consequence, there is no concept of “Reimbursable Expenses” being incurred before the Commencement Date. On a transaction specific basis, this concept may need to be provided for if customers seek Aurizon Network to conduct early works without a separate commercial arrangement in respect of them. There may also be a need to include an obligation to seek to include these costs in the RAB at the same time as the Trust Capital Costs.]

1 Definitions

In this **schedule 10**:

Additional Costs means:

- (a) any costs or expenses, other than Internal Costs, to the extent Incurred by the Project Manager in connection with the provision of the Services or the performance of its obligations under this Agreement, but excluding:
 - (i) the GST component of any costs or expenses which would otherwise be Additional Costs under this **paragraph (a)** of this definition to the extent that the Project Manager (or the representative member of the GST group of which the Project Manager is part) is entitled to claim an input tax credit in respect of such costs or expenses; and
 - (ii) Aurizon Network Land Acquisition Costs; **plus**
- (b) the Overhead Margin of the amount of any costs and expenses referred to in **paragraph (a)** of this definition; **plus**
- (c) the Holding Cost Margin of the amount of any costs and expenses referred to in **paragraph (a)** of this definition.

Billable Personnel means Employees and Contractors, other than Support Personnel and Management Personnel, within the Project Manager's project delivery unit.

Billable Personnel Class means a class of Billable Personnel, as determined by the Project Manager, acting reasonably, having regard to the functions of the Billable Personnel.

Contractors means contractors engaged by the Project Manager on a dedicated basis within the Project Manager's project delivery unit (including contractors providing Support Services).

Employees means employees of the Project Manager, or a Related Body Corporate of it, working within the Project Manager's project delivery unit (including employees providing Support Services and Management Services).

Estimated Billable Hours for Billable Personnel in a Billable Personnel Class for a Period means the total number of Remunerated Hours which the Project Manager reasonably estimates, as at the start of that Period, those Billable Personnel will be available to perform the project delivery services during that Period (and, for the avoidance of doubt, does not include any Remunerated Hours which the Project Manager reasonably estimates, as at the start of that Period, in which those Billable Personnel will not be available to perform the project delivery services during that Period due to holiday leave, other leave (including sick leave), statutory holidays, safety training and other mandatory requirements).

Manage means supervision and management of Billable Personnel within the Project Manager's project delivery unit.

Management Personnel means Employees, other than Billable Personnel and Support Personnel, that Manage Billable Personnel within the Project Manager's project delivery unit.

Management Services means general management within the Project Manager's project delivery unit.

Holding Cost Margin means **11**% (which, by way of explanation, represents a payment in lieu of recovery of holding costs Incurred by the Project Manager in respect of the underlying costs (for example payroll costs) between:

- (a) the date on which the Project Manager pays those underlying costs; and
- (b) the date on which the Project Manager receives payment in respect of those underlying costs.)

Internal Costs for a Period means:

- (a) the amount calculated under **item 4** of this **schedule 10** for that Period; **plus**
- (b) the Overhead Margin of the amount of any costs and expenses referred to in **paragraph (a)** of this definition; **plus**
- (c) the Holding Cost Margin of the amount of any costs and expenses referred to in **paragraph (a)** of this definition.

Overhead Margin means 71% (which, by way of explanation, represents a payment in lieu of recovery of overhead costs, being administration, general management, internal audit, external relations and other similar costs, of the Project Manager and the Related Bodies Corporate of it, other than any such costs in respect of the Project Manager's project delivery unit.

Personnel Costs for a Period means:

- (a) for an Employee, the aggregate of all costs and liabilities to be Incurred by the Project Manager in respect of the Employee during that Period, including:
 - (i) salaries and wages (including overtime);
 - (ii) the cost of annual leave, sick leave, long service leave and other allowances;
 - (iii) payroll tax and other governmental taxes, levies and charges;
 - (iv) personal expenses, where these are payable or reimbursable;
 - (v) fringe benefits;
 - (vi) worker's compensation insurance; and
 - (vii) the cost of providing employee benefits including:
 - (A) superannuation; and
 - (B) employee's group life insurance, hospital benefit, pension, retirement and other similar benefit plans,

calculated, in the case of the costs and liabilities referred to in **paragraphs (a)(ii) to (vii)** of this definition, on a "percentage assessment" basis of the costs and liabilities referred to in **paragraph (a)(i)** of this definition;

- (b) for a Contractor, the aggregate of all fees to be paid by the Project Manager to the Contractor during that Period; and
- (c) the indirect costs of Employees and Contractors referred to in **paragraphs (a) and (b)** of this definition, including:
 - (i) uniforms, personal protective equipment and training;
 - (ii) Brisbane office occupancy costs (including, for example, rent, information technology, communications, office equipment, stationery and utilities); and
 - (iii) non project-related travel, accommodation and meals,

but excluding the GST component of any costs or liabilities Incurred by the Project Manager which would otherwise be Personnel Costs under this definition to the extent that the Project Manager (or the representative member of the GST group of which the Project Manager is part) is entitled to claim an input tax credit in respect of such costs or liabilities.

Period means each one year period commencing on 1 July (and, if the Commencement Date is other than 1 July, includes the shorter period commencing on the Commencement Date and ending on the next 30 June).

Remunerated Hours means:

- (a) for an Employee, the paid hours of that Employee; and
- (b) for a Contractor, the billed hours of that Contractor.

Support Personnel means Employees and Contractors, other than Billable Personnel and Management Personnel, that provide Support Services for Billable Personnel within the Project Manager's project delivery unit.

Support Services means corporate, clerical, administrative and other support services.

Unit Cost Rate for a Billable Personnel Class for a Period means the hourly rate (expressed as dollars per hour) calculated for that Billable Personnel Class for that Period in accordance with **item 3** of this **schedule 10**.

2 Internal Cost information

2.1 Unit Cost Rates Table

The Project Manager must:

- (a) for the first Period - on or before the Commencement Date; and
- (b) for each subsequent Period – prior to the start of that Period,

prepare a document which specifies for that Period:

- (c) each Billable Personnel Class; and
- (d) the Unit Cost Rate for each Billable Personnel Class,

for the purposes of calculating Internal Costs during that Period.

2.2 Billable Personnel Classification Table

On or before the Commencement Date, the Project Manager must prepare, and must vary so that it remains up-to-date, a document (**Billable Personnel Classification Table**) which sets out, in respect of each person who is Billable Personnel utilised by the Project Manager in connection with the provision of the Services or the performance of its obligations under this Agreement, the Billable Personnel Class to which that Billable Personnel belongs, for the purposes of calculating Internal Costs.

3 Unit Cost Rates

The Unit Cost Rate for each person who is Billable Personnel Class for each Period will be calculated in accordance with the following formula:

$$\text{UCR} = \frac{\text{PC}}{\text{PH}}$$

EBH

where:

- UCR = the Unit Cost Rate for the relevant Billable Personnel Class for the relevant Period (expressed as dollars per hour).
- PC = the Project Manager's reasonable estimate, as at the start of the relevant Period, of the sum of:
- (a) the Personnel Costs for each person who is Billable Personnel in the relevant Billable Personnel Class, as at the start of the relevant Period, for the relevant Period;
 - (b) the Personnel Costs for each person who is Support Personnel that provides Support Services to Billable Personnel in the relevant Billable Personnel Class (but only to the extent they will provide Support Services to Billable Personnel in the relevant Billable Personnel Class, as reasonably estimated by the Project Manager), as at the start of the relevant Period, for the relevant Period; and
 - (c) the Personnel Costs for each person who is Management Personnel that Manage Billable Personnel in the relevant Billable Personnel Class (but only to the extent they Manage Billable Personnel in the relevant Billable Personnel Class, as reasonably estimated by the Project Manager), as at the start of the relevant Period, for the relevant Period.
- EBH = the Project Manager's reasonable estimate, as at the start of the relevant Period, of the sum of the Estimated Billable Hours for all Billable Personnel in the relevant Billable Personnel Class, as at the start of the relevant Period, for the relevant Period (applying, for the purpose of making such estimate, the then standard internal management accounting practices generally adopted by the Project Manager).

4 Calculation of Internal Costs

The Internal Costs for a Period is the sum of the amount for each person who is Billable Personnel equal to the product of:

- (a) the number of hours during which that Billable Personnel was utilised by the Project Manager in the provision of the Services or the performance of its obligations under this Agreement during that Period; and
- (b) the Unit Rate Cost for the Period during which that Period occurs for the Billable Personnel Class to which that Billable Personnel belongs.

5 No double claims

For the avoidance of doubt, the Project Manager is only entitled to categorise an Employee or Contractor as either a Billable Personnel, Support Personnel or Management Personnel and accordingly is only entitled to seek the recovery of the costs in respect of that person in any one such category.

Schedule 11

Allocation Principles

1 Allocation on basis of share of costs

Where:

- (a) costs, expenses and/or recovered amounts relate to two or more Segments; and
- (b) components of those costs, expenses and/or recovered amounts may be allocated between each of those Segments on the basis of each Segment's share of the Works for the Extension that gave rise to those costs, expenses and/or recovered amounts regardless of whether those Works are within or outside the area of that Segment,

those components of costs, expenses and/or recovered amounts must be allocated to each of the Segments to which they relate.

2 Allocation on pro-rata basis

(a) Where:

- (i) costs, expenses and/or recovered amounts relate to two or more Segments; and
- (ii) **item 1** of this **schedule 11** does not apply,

those costs, expenses and/or recovered amounts must be allocated to each of those Segments on a pro-rata basis, based on the proportion that the Target Cost for each such Segment bears to the total of the Target Costs for all such Segments.

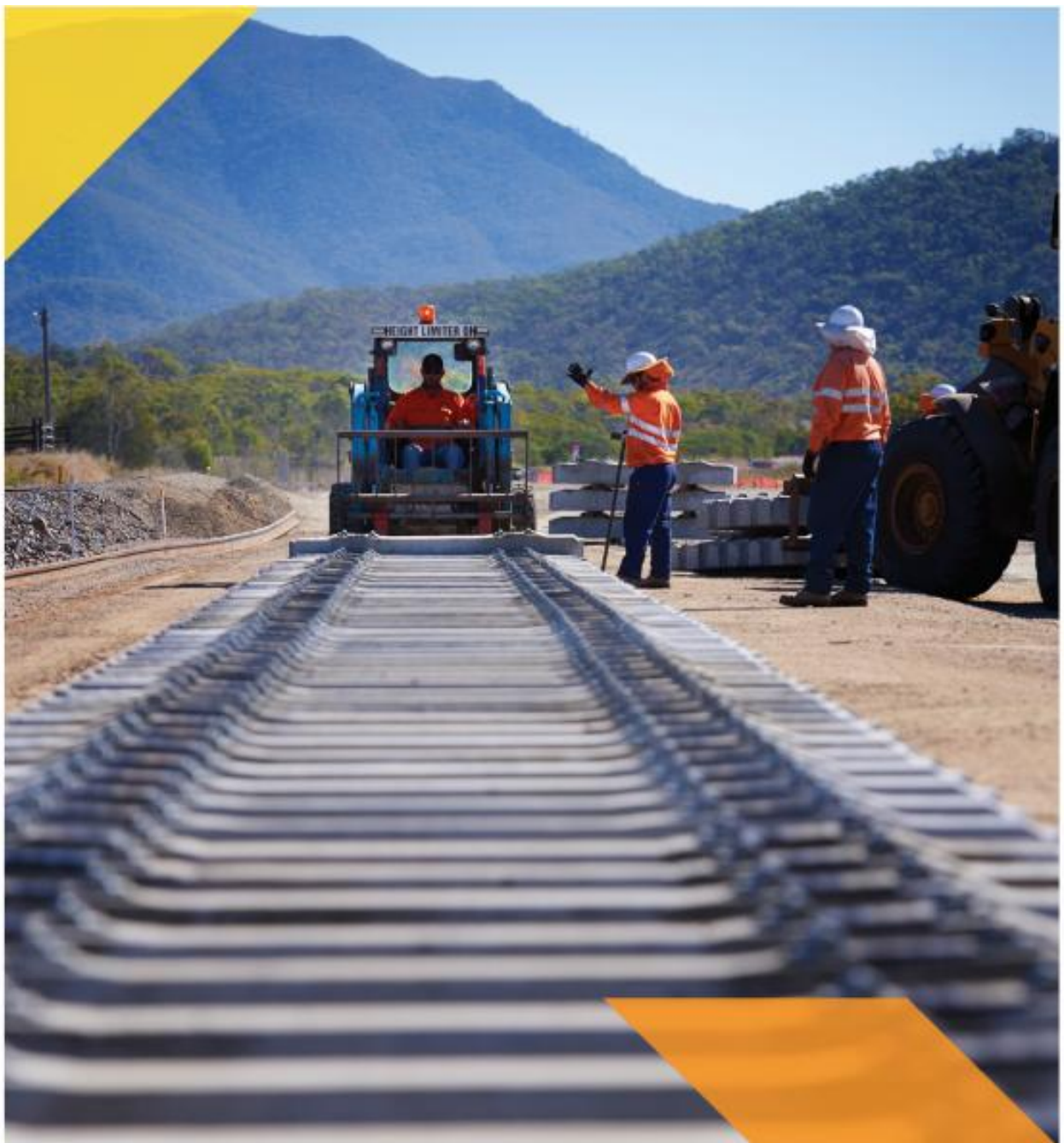
- (b) For the purpose of **item 2(a)** of this **schedule 11**, the allocation must be undertaken on the basis of the Target Cost for each Segment as at the time of that allocation. Any change to the Target Cost for any Segment does not affect any allocation conducted prior to, and only applies to an allocation conducted after, that change to the Target Cost.



AURIZON™

December 2012

Standard User Funding Agreement (**SUFA**) – SUFA Template Legal Documents (Volume 2B)



Contents

VOLUME 2A - CORE SUFA DOCUMENTS

Trust Deed (TD)

Subscription and Unitholders Deed (SUHD)

Project Management Agreement (PMA)

VOLUME 2B - CORE SUFA DOCUMENTS

Rail Corridor Agreement (RCA)

Umbrella Agreement (UA)

Extension Infrastructure Lease (EIL)

VOLUME 2B - STATE DOCUMENTS

Extension Infrastructure Agreement (EIA)

Integrated Network Deed (IND)

QCA submission draft
18 December 2012

[NewCo Pty Ltd] as trustee for the [Name of Trust]

Aurizon Network Pty Ltd

User Funding – Rail Corridor Agreement

*[insert Extension
name]*

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Date

Parties

[NewCo Pty Ltd] [ACN] as trustee for the **[Name of Trust]** of Level 14, Railcentre 1, 305 Edward Street, Brisbane, Queensland (**Trustee**)

Aurizon Network Pty Ltd ABN 78 132 181 116 of Level 14, Railcentre 1, 305 Edward Street, Brisbane, Queensland (**Landholder**)

Background

- A The Trustee wishes to:
- (a) design, supply, procure, construct, commission and complete the Extension Infrastructure; and
 - (b) operate, manage, repair, maintain and Modify the Extension Infrastructure,
- on the Extension Land.
- B The Landholder is the owner, lessee or licensee of the Extension Land and the Landholder Infrastructure.
- C The Parties agree that the Trustee may:
- (a) access and use the Extension Land and Modify the Landholder Infrastructure for the purpose of designing, supplying, procuring, constructing, commissioning and completing the Extension Infrastructure; and
 - (b) access and use the Extension Land for the purpose of operating, managing, repairing, maintaining and Modifying the Extension Infrastructure,
- in accordance with the terms of this Agreement.
-

Agreed terms

1 Interpretation

1.1 Definitions

In this Agreement:

Access Regulator has the meaning given in the Unit Holders Deed.

Access Undertaking has the meaning given in the Unit Holders Deed.

Activities means an activity in connection with “railway operations” as defined under the Rail Safety Act.

Agreement means this document, including the **schedules**.

Approved Designs and Specifications means, in respect of any Construction Works, the designs and specifications, and any variations to them, in respect of those Construction Works approved by, or deemed to be approved by, the Landholder under **clause 7.1**.

Associates of a Party means the Party’s officers, employees, contractors, agents and invitees (including licensees) or any of them (and, for the avoidance of doubt, in the case of the Trustee, includes the Project Manager, Works Contractors and the Extension Lessee but in the case of the Landholder does not include the Trustee).

Authority means any government or any governmental, semi-governmental, regulatory, statutory or similar entity or authority.

Authority Approval means a consent, licence, permit, authorisation, lodgement, filing, agreement, certificate, permission, direction, declaration, authority, accreditation, approval or exemption issued by an Authority.

Business Day means a day which is not a Saturday, Sunday or public holiday in Brisbane, Queensland.

Charge has the meaning given in **clause 22.4**.

Chargee has the meaning given in **clause 22.4**.

Claim includes any claim, demand, liability, cost, expense, damage, loss, proceeding, suit, litigation, investigation, audit, action or cause of action, whether judicial, administrative, investigative or otherwise and whether arising in contract, tort (including negligence), under statute or otherwise, of whatever nature, known or unknown, liquidated or unliquidated.

Commencement Date means the date of this Agreement.

Confidential Information of a Disclosing Party means:

- (a) the terms of this Agreement; and
- (b) information disclosed by, or on behalf of, the Disclosing Party to the Recipient under or in connection with this Agreement which:
 - (i) is by its nature confidential or commercially sensitive;
 - (ii) is identified by the Disclosing Party as confidential or commercially sensitive;
 - (iii) the Recipient knows, or ought to know, is confidential or commercially sensitive; or
 - (iv) relates to the business, operations or financial affairs of the Disclosing Party or a Related Body Corporate of it (and where the

Disclosing Party is the Trustee, any Unit Holder or a Related Body Corporate of a Unit Holder),

but does not include those terms of this Agreement, or any other information, which:

- (c) are or become public knowledge other than by:
 - (i) breach of this Agreement or by a breach of confidentiality by the Recipient or any third party to whom the Recipient has disclosed the information; or
 - (ii) breach of confidentiality by a Preference Unit Holder, the “Independent Engineer” (as defined in the Project Management Agreement), the “PUH Engineer” (as defined in the Project Management Agreement) or an “Auditor” or “Expert” (as defined in each Transaction Document);
- (d) are in the possession of the Recipient or a Related Body Corporate of it without restriction in relation to disclosure before the date of receipt; or
- (e) have been independently developed or acquired by the Recipient or a Related Body Corporate of it.

Consequential Loss means, subject to **paragraphs (e) and (f)** of this definition:

- (a) any special, indirect or consequential loss;
- (b) any economic loss in respect of any Claim in tort (including negligence);
- (c) any loss of profits, loss of production, loss of revenue, loss of use, loss of contract, loss of opportunity, loss of reputation, loss of goodwill or wasted overheads whatsoever; and
- (d) any loss arising out of any Claim by a third party,

but does not include:

- (e) a loss (including a loss arising out of a Claim by a third party) in respect of:
 - (i) the cost of repairing, replacing or reinstating any real or personal property of any person (including a Party) that has been lost, damaged or destroyed; or
 - (ii) personal injury to or death of any person; or
- (f) in respect of any personal injury Claim, special loss or economic loss as those terms are used in the context of personal injury Claims.

Construction Works means any construction, commissioning, Defects rectification and ancillary physical works and services associated with the construction and completion of the Extension.

Defect has the meaning given in the Project Management Agreement.

Disclosee has the meaning given in **clause 20.3**.

Disclosing Party has the meaning given in **clause 20.1(a)**.

Discrimination Dispute has the meaning given in **clause 19.2(a)**.

Dispute has the meaning given in **clause 19.1(a)** and includes a matter referred to an Expert for determination under this Agreement.

Dispute Notice has the meaning given in **clause 19.1(a)**.

DTMR means the State represented by the Department of Transport and Main Roads.

Expert has the meaning given in **clause 19.3(b)**.

Extension has the meaning given in the Unit Holders Deed.

Extension Infrastructure means "Total Extension Infrastructure" (as defined in the Extension Infrastructure Lease).

Extension Infrastructure Agreement has the meaning given in the Unit Holders Deed.

Extension Infrastructure Lease has the meaning given in the Unit Holders Deed.

Extension Land means:

- (a) from the Commencement Date until the Final Certificate Date, the area indicated on the plan(s) in **part 1 of schedule 2** as the "Extension Area" and the "Extension Construction Area"; and
- (b) after the Final Certificate Date, the area indicated on the plan(s) in **part 1 of schedule 2** as the "Extension Area",

as varied from time to time in accordance with **clause 3.4**.

Extension Lessee means the party that is:

- (a) 'Sublessee' under the Extension Infrastructure Agreement; and
- (b) 'Aurizon' under the Extension Infrastructure Lease.

Fee means the amount of \$1.00.

Final Certificate has the meaning given in the Project Management Agreement.

Final Certificate Date means the date on which the Final Certificate is taken to be given by the Project Manager to the Trustee under clause **[4.7]** of the Project Management Agreement.

Governmental Agency means a government or a governmental, semi-governmental or judicial entity or authority (including a self-regulatory organisation established under statute or a stock exchange).

Gross Negligence means any negligence committed by the Landholder in connection with this Agreement involving such wanton and reckless conduct as constitutes an utter disregard for the harmful, foreseeable and avoidable consequences which result from such conduct.

Head Lease means a lease from the Governor in Council to DTMR of land that includes all or part of the Extension Land.

Infrastructure Lease means each of:

- (a) the lease of infrastructure dated 30 June 2010 between Queensland Treasury Holdings Pty Ltd (ACN 011 027 295) (as lessor) and the Landholder (as lessee); and
- (b) the lease of infrastructure dated 30 June 2010 between Queensland Rail Limited (ACN 132 181 090) (as lessor) and the Landholder (as lessee).

Interest Rate means, for any day in a Month, the annual interest rate that is the sum of:

- (a) 2%; and
- (b) the Commonwealth Bank of Australia's "Corporate Overdraft Reference Rate" (monthly charging cycle) quoted by the Commonwealth Bank of Australia on its public website for the last trading day of the previous Month (or in the event that such a rate is not so quoted at or in respect of any relevant date, such other similar rate as is quoted by a major commercial bank as agreed by the Parties or, failing agreement, as determined by an Expert under **clause 19.4**).

Interface Risks means all risks to the safety of persons and property and Risks to the Environment arising from the interaction or interface between the Trustee's and its Associates' Activities or property, including:

- (a) the carrying out of the Works for the Extension; and
- (b) the operation, management, repair, maintenance and Modification of the Extension Infrastructure by the Extension Lessee (and persons authorised by the Extension Lessee) under the Extension Infrastructure Lease or Extension Infrastructure Agreement (as applicable),

and any one or more of:

- (c) the Railway Network (excluding the Extension Infrastructure);
- (d) Activities or property on the Railway Network (including those of the Landholder); and
- (e) persons using the Railway Network, persons on or near the Railway Network or members of the public (including any Activities on the Railway Network that may affect those matters).

Interface Risk Assessment means an assessment to:

- (a) identify, to the extent reasonably practicable, all Interface Risks;
- (b) assess the likelihood and consequences of those Interface Risks occurring and any factors relevant to the management of those Interface Risks;
- (c) identify appropriate controls and measures to manage effectively all identified Interface Risks within a risk management framework, including:

- (i) applicable safe working procedures and safety standards; and
- (ii) applicable environmental procedures and standards; and
- (d) identify the Party responsible for implementing, complying with and/or ensuring compliance with such controls and measures and ensuring their ongoing effectiveness.

Interface Risk Management Plan means the plan which sets out each of the matters required to be identified and assessed during an Interface Risk Assessment, as agreed or determined in accordance with **clause 6**, as amended from time to time in accordance with this Agreement.

Isolation means the action or arrangement whereby an electrical section is isolated from all possible sources of electrical supply and earthed so that it is no longer energised with electricity.

Landholder Infrastructure means any rail infrastructure that is:

- (a) owned, leased or licensed by the Landholder; and
- (b) located on the Rail Infrastructure Area,

but does not include the Extension Infrastructure.

Landholder Requirements has the meaning given in **clause 3.7(a)(viii)**.

Legislation means statutes, ordinances, regulations, by-laws, proclamations and subordinate legislation of the Commonwealth, the State or an Authority.

Losses has the meaning given in **clause 16.1**.

Modify means, in respect of the Landholder Infrastructure or Extension Infrastructure, any removal or replacement of, or modifications, alternations, additions or changes to, any part of the Landholder Infrastructure or Extension Infrastructure (as applicable).

Month means a calendar month, except that:

- (a) the first Month starts on the Commencement Date and ends on the last day of the Month in which the Commencement Date occurs; and
- (b) the last Month ends on:
 - (i) the last day of the term of this Agreement; or
 - (ii) if this Agreement is earlier terminated in accordance with its terms, the date of termination.

Non-Discrimination Provision means each of **clauses 3.7(b), 6.1(e), 7.1(d), 7.3(d) and 7.4(b)**.

Non-Proposing Party has the meaning given in **clause 3.4(a)**.

Notice has the meaning given in **clause 23.1**.

Parties means collectively the Landholder and the Trustee, and **Party** means one of them.

Permitted Purpose:

- (a) in respect of Extension Infrastructure which is “Extension Infrastructure” (as defined in the Extension Infrastructure Agreement), means the same as “Permitted Use” (as defined in the Extension Infrastructure Agreement); and
- (b) in respect of Extension Infrastructure which is “Leased Extension Infrastructure” (as defined in the Extension Infrastructure Lease), has the meaning given in the Extension Infrastructure Lease.

Preference Unit Holder has the meaning given in the Unit Holders Deed.

Proceedings has the meaning given in **clause 19.7(b)**.

Project Management Agreement has the meaning given in the Unit Holders Deed.

Project Manager means:

- (a) the party that is the “Project Manager” under the Project Management Agreement; or
- (b) if the Trustee engages a Replacement Project Manager under, and in accordance with, the Project Management Agreement, the Replacement Project Manager on and from the Replacement Date.

Proposed Variation has the meaning given in **clause 3.4(a)**.

Proposing Party has the meaning given in **clause 3.4(a)**.

Protection Officer means a protection officer or any other employee (including contract employee) of the Landholder authorised to act in that capacity.

Rail Infrastructure Area means the area(s) of land indicated on the plan(s) in **part 2 of schedule 2** as the “Rail Infrastructure Area”.

[Drafting Note: The Rail Infrastructure Area will be defined on a case-by-case basis as an area of land over which the Landholder has tenure that may be adversely affected (including any adverse affects on the Landholder Infrastructure) as a consequence of the acts or omissions of the Trustee or the Trustee’s Associates in relation to the Extension Infrastructure or the Extension Land. The Rail Infrastructure Area will include, but not be limited to, the Extension Land.]

Rail Safety Act means the *Transport (Rail Safety) Act 2010* (Qld).

Rail Safety Regulation means the *Transport (Rail Safety) Regulation 2010* (Qld).

Railway Network has the meaning given in the Unit Holders Deed.

RCTI has the meaning given in **clause 21.4(a)(i)**.

Recipient has the meaning given in **clause 20.1**.

Redundant Extension Infrastructure means

- (b) “Redundant Extension Infrastructure” (as defined in the Extension Infrastructure Agreement); and

- (c) “Redundant Extension Infrastructure” (as defined in the Extension Infrastructure Lease).

Reference Project means a notional rail infrastructure project of the same or similar nature and size as the Extension funded by the Landholder.

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth).

Relevant Information has the meaning given in **clause 3.9(a)**.

Removed Infrastructure means:

- (a) a “Removed Obsolete Part” or “Replaced Part” (as defined in the Extension Infrastructure Agreement); or
- (b) “Removed Infrastructure” (as defined in the Extension Infrastructure Lease).

Replacement Date has the meaning given in the Project Management Agreement.

Replacement Project Manager has the meaning given in the Project Management Agreement.

Risks to the Environment means a matter which may have an adverse effect or potential adverse effect (whether temporary, permanent and of whatever magnitude, duration or frequency) on the physical surroundings of humans including:

- (a) land, water, atmosphere, climate, sound, odour and taste;
- (b) the biological factors of animals and plants; or
- (c) the social factor of aesthetics affecting any human individually or in their social groupings,

and includes:

- (d) risks in relation to water quality, pollution, contaminated land, nature conservation, hazardous or dangerous substances, waste and noise; and
- (e) risks of “serious environmental harm”, “material environmental harm” and “environmental nuisance” (each as defined in the *Environmental Protection Act 1994* (Qld)).

Security Interest means any mortgage, pledge, lien, charge, encumbrance or any security or preferential interest or arrangement of any kind including:

- (a) any thing which gives a creditor priority to other creditors with respect to any asset; and
- (b) retention of title other than in the ordinary course of day-to-day trading and a deposit of money by way of security,

but it excludes a charge or lien arising in favour of a Governmental Agency by operation of statute unless there is default in payment of money secured by that charge or lien.

Segment has the meaning given in the Unit Holders Deed.

State means the State of Queensland.

Sublease means any sublease of the Head Lease between DTMR and the Landholder in respect of land including all or part of the Extension Land.

Supplier has the meaning given in **clause 21.3**.

TIA means the *Transport Infrastructure Act 1994* (Qld).

Track Closure means the closure of a section of the operating track to all rail traffic other than rail traffic utilised in connection with the carrying out of the Works for the Extension.

Track Possession means the period of a Track Closure granted by the Landholder to the Trustee during which the Trustee or its Associates are authorised to carry out Construction Work over, under or adjacent to the closed operating railway track.

Transaction Documents has the meaning given in the Unit Holders Deed.

Trust has the meaning given in the Trust Deed.

Trust Deed means the trust deed made by the Trustee entitled “*User Funding – Trust Deed of [Name of Trust]*”.

Trustee Supplies has the meaning given in **clause 21.4(a)(i)**.

Unit Holder has the meaning given in the Trust Deed.

Unit Holders Deed has the meaning given in the Trust Deed.

WH&S Act means the *Work Health and Safety Act 2011* (Qld).

WH&S Regulation means the *Work Health and Safety Regulation 2011* (Qld).

Wilful Default means an intentional breach of the terms of this Agreement.

Works Contractor has the meaning given in the Project Management Agreement.

Works for the Extension means all design, supply, procurement, testing, construction, commissioning, Defects rectification and ancillary works and services associated with the construction and completion of the Extension.

1.2 Interpretation

Unless expressed to the contrary, in this Agreement:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) where the day on or by which any thing is to be done is not a Business Day, it must be done on or by the preceding Business Day;
- (c) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded;
- (d) if a word or phrase is defined its other grammatical forms have corresponding meanings;

- (e) “includes” means includes without limitation;
- (f) no rule of construction will apply to the disadvantage of one Party on the basis that that Party put forward the documents comprising this Agreement;
- (g) if the documents comprising this Agreement contain any ambiguity, discrepancy or inconsistency, then the following order of precedence will apply to resolve that ambiguity, discrepancy or inconsistency:
 - (i) this Agreement excluding the schedules; and
 - (ii) the schedules;
- (h) words in the singular include the plural and vice versa;
- (i) words importing one gender will include every gender;
- (j) references to clauses and schedules are references to clauses of, and schedules to, this Agreement;
- (k) a requirement for a Party to obtain the consent or approval of the other Party requires the first Party to obtain the consent or approval in writing; and
- (l) a reference to:
 - (i) a person includes any company, partnership, joint venture, unincorporated association, corporation or other body corporate and a government or statutory body or authority;
 - (ii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified, consolidated, re-enacted or replaced;
 - (iii) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (iv) a right includes a benefit, remedy, discretion and power;
 - (v) time is to local time in Brisbane, Queensland;
 - (vi) \$ or dollars is a reference to Australian currency;
 - (vii) this Agreement or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
 - (viii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmission;
 - (ix) a Party includes that Party’s successors according to law and permitted assigns and any person to whom it novates its rights and obligations; and
 - (x) on land includes over or under the surface of the land.

2 Term

This Agreement commences on the Commencement Date and will continue until the earlier of:

- (a) the termination of the Trust; and
- (b) the expiration or earlier termination of any Sublease or Infrastructure Lease.

3 Licence

3.1 Grant of licence in respect of Extension Land

Subject to **clause 6.3**, the Landholder grants to the Trustee a non-exclusive licence to access and use the Extension Land at the Trustee's own cost and risk for the purposes of:

- (a) undertaking the Works for the Extension but only to the extent that the Works for the Extension are project managed by the Project Manager under, and in accordance with, the Project Management Agreement;
- (b) using for a Permitted Purpose, operating, managing, repairing, maintaining and Modifying the Extension Infrastructure but only to the extent that those activities are undertaken by the Extension Lessee (or a person authorised by it) under, and in accordance with, the Extension Infrastructure Agreement or Extension Infrastructure Lease (as applicable); and
- (c) undertaking any other activities:
 - (i) incidental or ancillary to the purposes specified in **clause 3.1(a)** or **3.1(b)**; or
 - (ii) required or permitted by any other provision of this Agreement, but only to the extent that those activities are undertaken by the Project Manager or the Extension Lessee (or a person authorised by it), in accordance with the terms of this Agreement.

3.2 Grant of licence in respect of Landholder Infrastructure

Subject to **clause 6.3**, the Landholder grants to the Trustee a non-exclusive licence to Modify the Landholder Infrastructure at the Trustee's own cost and risk for the purpose of undertaking the Works for the Extension but only to the extent that the Modifications are project managed by the Project Manager under, and in accordance with, the Project Management Agreement, in accordance with the terms of this Agreement.

3.3 Access and use

For the avoidance of doubt, the Landholder and its Associates and any third parties entitled by law are entitled to:

- (a) access and use the Extension Land; and

- (b) access and use the Landholder Infrastructure.

3.4 Extension Land

- (a) A Party (**Proposing Party**) may notify the other Party (**Non-Proposing Party**) of a proposal to vary the area of the Extension Land (**Proposed Variation**) (which proposal must include details of the variation, the reasons for the variation and any alternatives to that variation).
- (b) The Parties must meet to discuss a Proposed Variation within ten Business Days after a notice is given under **clause 3.4(a)** (or such longer period as agreed by the Parties, acting reasonably).
- (c) Within ten Business Days after a meeting under **clause 3.4(b)** (or such longer period as agreed by the Parties, acting reasonably), the Non-Proposing Party must notify the Proposing Party that the Non-Proposing Party either:
 - (i) consents to the relevant Proposed Variation together with any reasonable requirements or conditions; or
 - (ii) does not consent to the relevant Proposed Variation together with the reasons why it does not give that consent,provided that any such consent must not to be unreasonably withheld.
- (d) If the Non-Proposing Party does not give a notice under **clause 3.4(c)** within the time period specified in **clause 3.4(c)**, then the Non-Proposing Party is taken to consent to the Proposed Variation.
- (e) A Party must not give a Dispute Notice in respect of any Dispute relating to any matter under this **clause 3.4** (unless otherwise agreed by the Parties).
- (f) If a Party consents (or is deemed to consent) to a Proposed Variation, the Extension Land will be taken to be varied in accordance with that Proposed Variation from the date of such consent (or deemed consent).
- (g) Promptly following a variation to the Extension Land under this **clause 3.4**, the Landholder must give the Trustee a revised version of **schedule 2** which incorporates that variation and that revised version of **schedule 2** is taken to replace the existing **schedule 2**.

[Drafting note: This clause 3.4 is drafted on the basis that any additional land which becomes Extension Land as a consequence of a variation will be land in respect of which the Landholder already has appropriate tenure.]

3.5 Trustee responsible for Associates

Subject to **clause 17.1**:

- (a) the Trustee:
 - (i) must ensure that its Associates comply with the provisions of this Agreement; and

- (ii) is responsible for the acts and omission of its Associates as if those acts and omissions were the acts and omissions of the Trustee itself; and
- (b) the exercise of rights, or discharge of obligations, of the Trustee under this Agreement by any of its Associates will be treated as an exercise of those rights, or the discharge of those obligations, by the Trustee.

3.6 Role of Project Manager and Extension Lessee

- (a) The Landholder acknowledges that the Trustee has appointed the Project Manager under the Project Management Agreement as the disclosed agent of the Trustee for the purpose of:
 - (i) performing the Trustee's obligations; and
 - (ii) exercising the Trustee's rights (other than the Trustee's rights under **clauses 3.1** and **3.2** and its rights in respect of Disputes under **clause 19**),

under this Agreement, other than to the extent such obligations and rights must, by operation of law, be personally performed or exercised by the Trustee, during the term of the Project Management Agreement.

- (b) The Landholder acknowledges that the Trustee has appointed the Extension Lessee under the Extension Infrastructure Lease as the disclosed agent of the Trustee for the purpose of:
 - (i) performing the Trustee's obligations; and
 - (ii) exercising the Trustee's rights (other than the Trustee's rights under **clauses 3.1** and **3.2** and its rights in respect of Disputes under **clause 19**),

under this Agreement, other than to the extent such obligations and rights must, by operation of law, be personally performed or exercised by the Trustee, following the termination of the Project Management Agreement.

3.7 Trustee's general obligations

- (a) The Trustee must:
 - (i) not access or use the Extension Land, or permit it to be accessed or used, except as permitted under **clause 3.1**;
 - (ii) not Modify or otherwise interfere with the Landholder Infrastructure, or permit it to be Modified or otherwise interfered with, except as permitted under **clause 3.2**;
 - (iii) obtain and maintain, at its own cost, all necessary Authority Approvals required in connection with its and its Associates' access to and use of the Extension Land or Modification of the Landholder Infrastructure and, once obtained, provide copies of all such Authority Approvals to the Landholder;

- (iv) comply, at its own cost, with all Legislation, Authority Approvals and directions from Authorities applicable to its and its Associates' access to and use of the Extension Land or Modification of the Landholder Infrastructure;
- (v) promptly provide any information and documentation to the Landholder, and permit the Landholder to make copies of such information and documentation, which the Landholder reasonably requires from time to time in connection with this Agreement;
- (vi) notify the Landholder as soon as reasonably practicable of any damage to, or destruction of, the Rail Infrastructure Area, the Landholder Infrastructure or any property on the Rail Infrastructure Area which is caused or contributed to by the Trustee or its Associates except as authorised by the Landholder or in accordance with the express terms of this Agreement;
- (vii) not interfere with, hinder or prejudice the Landholder's conduct of its operations or business except as authorised by the Landholder or in accordance with the express terms of this Agreement; and
- (viii) subject to **clause 3.7(b)**, comply with all directions, policies, rules and procedures (including, in relation to safety, health and environmental matters) (**Landholder Requirements**) notified by the Landholder to the Trustee from time to time in connection with:
 - (A) the Trustee's and its Associates' access to and use of the Extension Land or Modification of the Landholder Infrastructure; and
 - (B) the Rail Infrastructure Area, the Landholder Infrastructure and the Extension Infrastructure.
- (b) The Landholder must not require the Trustee to comply with any Landholder Requirements which are materially more onerous than those which the Landholder would require of a Reference Project in the same or similar circumstances.

3.8 Landholder's obligations

- (a) Subject to **clause 3.8(b)** and except as otherwise provided under this Agreement, the Landholder must not damage, interfere with or Modify the Extension Infrastructure.
- (b) Aurizon Network Pty Ltd may interfere with or Modify or do anything else in relation to the Extension Infrastructure which it is permitted or required to do as:
 - (i) 'Sublessee' under the Extension Infrastructure Agreement;
 - (ii) 'Aurizon' under the Extension Infrastructure Lease;
 - (iii) 'Lessee' under an Infrastructure Lease;
 - (iv) 'Sublessee' under a Sublease; or
 - (v) 'rail infrastructure manager' under the Rail Safety Act.

3.9 Provision of information

- (a) Subject to **clause 3.9(c)**, the Landholder must, within a reasonable period after request from the Trustee, provide the Trustee with a copy of any document, in existence at the time of the request, in relation to the Extension Land and Landholder Infrastructure which is reasonably required by the Trustee for the purpose of carrying out the Works for the Extension (**Relevant Information**).
- (b) Without limiting **clause 3.9(a)**, but subject to **clause 3.9(c)**, the Landholder must, within a reasonable period after receipt of that request from the Trustee, provide the Trustee with:
 - (i) technical and engineering information and standards (including specifications in respect of the Landholder Infrastructure) to the extent reasonably relevant to carrying out the Works for the Extension;
 - (ii) interface, safety, environmental and cultural heritage standards in respect of the Landholder Infrastructure to the extent reasonably relevant to carrying out the Works for the Extension;
 - (iii) details of Authority Approvals relevant to the Landholder Infrastructure to the extent reasonably relevant to carrying out the Works for the Extension;
 - (iv) information in respect of train operations to the extent reasonably relevant to carrying out the Works for the Extension;
 - (v) access to employees of the Landholder who have knowledge of the Landholder Infrastructure and train operations but only for the purpose of discussing matters reasonably relevant to carrying out the Works for the Extension; and
 - (vi) details of existing utilities (including power, gas and water) to the extent reasonably relevant to carrying out the Works for the Extension.
- (c) The Project Manager may refuse to provide any information, and delete from any document, which the Landholder is otherwise required to provide to the Trustee under this **clause 3.9** any information, which:
 - (i) is not Relevant Information;
 - (ii) would be privileged from production in a legal proceeding on the ground of legal professional privilege;
 - (iii) if disclosed to the Trustee, would give rise to a breach of an obligation or duty of confidence by the Landholder;
 - (iv) relates to the planning and development of subsequent actual or potential projects for the development of new rail infrastructure or modifications of, or additions to, existing rail infrastructure; or
 - (v) which relates to the assessment of the Landholder's commercial position in relation to any matter.

- (d) For the avoidance of doubt, **clause 25.5(b)** will apply to any costs and expenses incurred by the Landholder in complying with its obligations under this **clause 3.9**.

4 Limited rights

- (a) The rights of the Trustee under this Agreement rest in contract only and do not create or confer upon the Trustee any tenancy or any estate or interest whatsoever in or over the Rail Infrastructure Area, the Extension Land or the Landholder Infrastructure.
- (b) The rights of the Trustee under this Agreement are those of a licensee only and do not comprise or include any further or other rights.

5 Fee

- (a) No fee is payable by the Trustee to the Landholder on the execution of this Agreement.
- (b) The Fee is payable by the Trustee to the Landholder on each anniversary of the Commencement Date, if demanded by the Landholder until the termination of this Agreement.
- (c) The Trustee will bear and pay all charges for utilities (for example gas, sewerage, water and electricity) consumed by the Trustee or its Associates on the Extension Land prior to the date which is the "Available Date" for the last of the "Segments" to become "Available" (each as defined in the Project Management Agreement) and must make its own arrangements for procuring and accessing such utilities.

6 Interface and other risk management

6.1 Development of Interface Risk Management Plan

- (a) Promptly after the Commencement Date, the Parties must:
 - (i) jointly undertake an Interface Risk Assessment; and
 - (ii) negotiate diligently and in good faith to endeavour to agree an Interface Risk Management Plan as a result of such Interface Risk Assessment.
- (b) Promptly upon the request at any time by either Party and, in any event, at least once every 12 months and upon the engagement of a Replacement Project Manager, the Parties must:
 - (i) jointly undertake an Interface Risk Assessment; and
 - (ii) negotiate in good faith to endeavour to agree any amendments to the Interface Risk Management Plan as a result of such Interface Risk Assessment.

- (c) If, following an Interface Risk Assessment under **clause 6.1(b)**, the Parties agree to amend the Interface Risk Management Plan, the Interface Risk Management Plan will be amended as agreed in writing between the Parties.
- (d) If, following an Interface Risk Assessment under **clause 6.1(a)** or **6.1(b)**, the Parties are unable to agree the Interface Risk Management Plan, or any aspect of it or amendment to it, the Interface Risk Management Plan, or the relevant aspect of it or amendment to it, will be determined by the Landholder.
- (e) In determining an Interface Risk Management Plan or an aspect of, or amendment to, an Interface Risk Management Plan under **clause 6.1(d)**, the Landholder must not impose requirements on the Trustee which are materially more onerous than those which the Landholder would require in respect of the relevant Interface Risks in respect of a Reference Project in the same or similar circumstances.

6.2 Role of Project Manager and Extension Lessee

The Trustee must procure the Project Manager (during the term of the Project Management Agreement) and the Extension Lessee (after the term of the Project Management Agreement) to:

- (a) jointly undertake any Interface Risk Assessments, with the Landholder, as required under **clause 6.1**; and
- (b) negotiate in good faith to endeavour to agree to the Interface Risk Management Plan and any amendments to it,

as disclosed agent for the Trustee.

6.3 Compliance with Interface Risk Management Plan

- (a) The Trustee must not exercise any rights under **clause 3** until the initial Interface Risk Management Plan has been agreed or determined.
- (b) The Parties must comply with their respective obligations under the Interface Risk Management Plan in force from time to time.
- (c) The Trustee must not do anything or permit anything to be done which may give rise to Interface Risks that are not addressed in the then applicable Interface Risk Management Plan.
- (d) The Trustee must procure the Project Manager (during the term of the Project Management Agreement) and the Extension Lessee (after the term of the Project Management Agreement), as disclosed agent for the Trustee, to comply with the Trustee's obligations under the Interface Risk Management Plan.

7 Construction Works

7.1 Approval of designs and specifications

- (a) Prior to any Construction Works being carried out, the Trustee must submit to the Landholder, for the Landholder's prior approval (not to be unreasonably withheld or delayed), detailed designs and specifications in respect of those Construction Works.
- (b) If the Trustee wishes to vary any Approved Designs and Specifications in respect of any Construction Works, the Trustee must submit to the Landholder, for the Landholder's prior approval (not to be unreasonably withheld or delayed), the variations to the Approved Designs and Specifications in respect of those Construction Works.
- (c) Subject to **clause 7.1(d)**, in considering whether to give or withhold its approval under **clause 7.1(a)** or **7.1(b)**, the Landholder is entitled to have regard to, without limitation:
 - (i) the Landholder's obligations and duties as railway infrastructure manager under the Rail Safety Act in respect of the Landholder Infrastructure, the Extension Land and the Rail Infrastructure Area;
 - (ii) the Landholder's interests as owner, lessee and/or licensee of the Extension Land and owner, lessee and/or licensee of the Landholder Infrastructure; and
 - (iii) the Extension Lessee's interests as sublessee under the Extension Infrastructure Agreement of existing Extension Infrastructure and/or the Extension Infrastructure to be constructed, incorporated, installed or attached during the carrying out of the Construction Works.
- (d) In exercising its discretion under **clause 7.1(a)** or **7.1(b)**, the Landholder must not impose requirements on the Trustee which are materially more onerous than those which the Landholder would require in respect of the same or similar Construction Works in respect of a Reference Project in the same or similar circumstances.
- (e) The giving of the Landholder's approval of any Approved Designs and Specifications, or variations to them, under this **clause 7.1** is not to be taken as either:
 - (i) an approval in relation to any safety, health or environmental matters; or
 - (ii) a representation that the Approved Designs and Specifications, or variations to them, are lawful or appropriate for the activities of the Trustee or the obligations of a Party under this Agreement or under any applicable Legislation (including in relation to any safety, health or environmental matters).
- (f) Any:

- (i) detailed designs and specifications submitted under **clause 7.1(a)**;
or
- (ii) any variations to Approved Designs and Specifications submitted under **clause 7.1(b)**,

by the Project Manager (other than a Replacement Project Manager), as disclosed agent for the Trustee, to the Landholder prior to the Replacement Date will be deemed to be approved by the Landholder.

7.2 Compliance

The Trustee must not carry out, or permit to be carried out, any Construction Works except in accordance with this Agreement and the Project Management Agreement, including:

- (a) the Approved Designs and Specifications in respect of those Construction Works;
- (b) all relevant Landholder Requirements;
- (c) all relevant Legislation, Authority Approvals and directions from Authorities; and
- (d) the Interface Risk Management Plan.

7.3 Supervision of Construction Works

- (a) If the Landholder determines that any aspects of the Construction Works require supervision by Protection Officers, the Landholder will provide such Protection Officers at the Trustee's cost.
- (b) The Trustee agrees that Protection Officers are entitled to stop or direct the movement of the Trustee's Associates in accordance with the Interface Risk Management Plan.
- (c) The Trustee must give the Landholder at least 14 days prior notice of the commencement and completion dates for the undertaking of any Construction Works that the Landholder has determined require supervision by Protection Officers.
- (d) The Landholder must ensure that a Protection Officer does not impose requirements on the Trustee that are materially more onerous than those which the Landholder would require in respect of the same or similar Construction Works in respect of a Reference Project in the same or similar circumstances.

7.4 Isolations, Track Closures and Possessions

- (a) Subject to **clause 7.4(b)**, the Landholder must arrange for any Isolations, Track Closures and Track Possessions required for the purpose of carrying out the Construction Works.
- (b) The Landholder must arrange Isolations, Track Closures and Track Possession under **clause 7.4(a)** which are not materially less favourable to the Trustee than those which the Landholder would arrange in respect

of the same or similar Construction Works in respect of a Reference Project in the same or similar circumstances.

7.5 Certification

Prior to operating or using any part of the Extension Infrastructure, or permitting any part of the Extension Infrastructure to be operated or used, for a purpose other than constructing, testing or commissioning of that part of the Extension Infrastructure, the Trustee must:

- (a) certify in writing to the Landholder that the relevant part of the Extension Infrastructure has been constructed and commissioned in accordance with this Agreement, including the applicable Approved Designs and Specifications; and
- (b) give the Landholder copies of all the certifications and reports from Works Contractors reasonably required by the Landholder in relation to the relevant part of the Extension Infrastructure.

8 Work health and safety

8.1 Definitions

In this **clause 8**:

- (a) the words “construction project”, “construction work”, “designer” (in relation to plant, substances and structures), “principal contractor”, and “workplace” each have the meaning given to that term in the WH&S Act and WH&S Regulation;
- (b) **Trustee Construction Workplace** means any part of the Extension Land or Extension Infrastructure where construction work is performed or to be performed by, for or on behalf of the Trustee;
- (c) **Workplace** includes a Trustee Construction Workplace, the Extension Land and the Extension Infrastructure.

8.2 Responsibility for health and safety

- (a) The Trustee agrees and acknowledges that:
 - (i) the Trustee is, for the purposes of the WH&S Act and WH&S Regulation:
 - (A) a person conducting a business or undertaking in respect of the workplace; and
 - (B) a person conducting a business or undertaking that commissions construction work or a construction project carried out at a Trustee Construction Workplace;
 - (ii) the Trustee must engage and appoint, or otherwise ensure the engagement or appointment of, the Project Manager as principal contractor for each construction project that is to be undertaken at a Trustee Construction Workplace under the WHS Act and WH&S

- Regulation, including authorising the Project Manager to have the necessary management or control of the relevant workplace;
- (iii) where the Trustee engages and appoints the Project Manager as principal contractor in accordance with **clause 8.2(a)(ii)**, then to the extent of any such appointment the Project Manager may engage and appoint a Works Contractor as the principal contractor for any construction project that is to be undertaken at a Trustee Construction Workplace under the WHS Act and WH&S Regulation, including authorising that Works Contractor to have the necessary management or control of the relevant workplace;
 - (iv) the Trustee must engage and appoint, or otherwise ensure the engagement or appointment of, the Project Manager or a Works Contractor as a designer of the Extension Infrastructure; and
 - (v) the Trustee must, so far as is reasonably practicable to discharge its obligations under the WHS Act and WH&S Regulation, consult with the designer of the Extension Infrastructure;
- (b) Where the Trustee engages and appoints a Works Contractor as a designer of the Extension Infrastructure, the Trustee must:
- (i) as soon as practicable after the engagement or appointment, provide notice to the Landholder of the engagement or appointment of the Works Contractor;
 - (ii) as soon as practicable after cessation of the engagement or appointment, provide notice to the Landholder of the cessation of the engagement or appointment of the Works Contractor; and
 - (iii) so far as its reasonably practicable, ensure the Works Contractor discharges the obligations imposed on the designer by the WH&S Act and WH&S Regulation.
- (c) The Trustee is responsible and assumes liability for the obligations under the WH&S Act and WH&S Regulation for which the Trustee is responsible and liable as between the Parties in accordance with this **clause 8**.
- (d) The Trustee will:
- (i) procure the Extension Lessee to develop (if not already developed) and, at all times during the term of this Agreement, implement a safety management system in relation to the ongoing operation and maintenance of the Extension Infrastructure;
 - (ii) procure the Project Manager and Extension Lessee to notify and keep the Landholder informed, to the Landholder's satisfaction, of the status of any safety or health related incidents that have occurred in relation to or in connection with the Extension Infrastructure;

- (iii) assist the Landholder as reasonably required with any investigations into any safety or health related incident in relation to or in connection with the Extension Infrastructure.

8.3 Indemnity

- (a) To the extent permitted by law, the Trustee indemnifies and will keep indemnified the Landholder from and against all loss and damage (excluding Consequential Loss) which may be brought against or made on the Landholder or which the Landholder may pay, sustain or be put to arising by reason of or in connection with:
 - (i) any breach by the Trustee of the WH&S Act, the WH&S Regulation, the Rail Safety Act, the Rail Safety Regulation or other safety related legislation at a workplace;
 - (ii) any breach by the Trustee of its obligations under this **clause 8** or the WH&S Act, the WH&S Regulation, the Rail Safety Act, the Rail Safety Regulation or other safety related legislation except to the extent that any negligent act, error or omission by the Landholder or any of its Associates or breach by the Landholder under this Agreement contributed to the loss or damage; and
 - (iii) the Landholder being deemed under the WH&S Act or the WH&S Regulation to be the principal contractor or designer for any workplace.
- (b) It is not necessary for the Landholder to incur expense or make a payment before enforcing any indemnity conferred by **clause 8.3**.

9 Sublease

- (a) The Trustee acknowledges that the Landholder's interest in the Extension Land is or may be held pursuant to a Sublease.
- (b) To the extent that the Landholder's interest in the Extension Land is or becomes held pursuant to a Sublease:
 - (i) the Trustee acknowledges that:
 - (A) this Agreement will be subject to all reservations contained in the Head Lease and the Sublease;
 - (B) it is a condition of the Head Lease that the land comprised within it is used for transport, purposes ancillary to transport and other commercial and community purposes as approved by the chief executive of DTMR; and
 - (C) it is a condition of the Sublease that the land comprised within it is used for the purpose of managing and operating a railway and is not used for any other purpose without the consent of the chief executive of DTMR;
 - (ii) despite any other clause in this Agreement, the Trustee:

- (A) must not act or omit to act or permit, cause or contribute to any act or omission which:
 - (1) causes a breach of the Sublease; or
 - (2) causes (directly or indirectly) the Landholder to incur any costs or expenses in complying with the Sublease that the Landholder would not otherwise have incurred;
- (B) must comply with the terms of the Sublease relevant to the Trustee's access to or use of any part of the Extension Land that is subject to the Sublease as if the Trustee were the sublessee under that Sublease;
- (C) acknowledges:
 - (1) DTMR's right to exercise any right or power held by the Landholder; and
 - (2) the rights of DTMR under the Sublease and that the Trustee's rights under this Agreement are subject to and subordinate to the rights of DTMR,in respect of any part of the Extension Land that is subject to the Sublease; and
- (D) acknowledges and agrees that:
 - (1) it must not create or allow to subsist a Security Interest over all or part of the Trustee's rights or interests under this Agreement or in the Extension Land (if any) without the prior consent of the Landholder; and
 - (2) without limitation to the Landholder's discretion to withhold the giving of such a consent, the Landholder is not required to give such a consent if doing so may breach the Sublease; and
- (iii) if there is an inconsistency between the terms of this Agreement and the terms of the Sublease which means that the Landholder or the Trustee cannot comply with both this Agreement and the Sublease, then the terms of the Sublease prevail to the extent of the inconsistency and the provisions of this Agreement will be construed accordingly.
- (c) If the Head Lease or the Sublease is terminated for any reason, then the Landholder must provide to the Trustee a copy of any such notice received in connection with the termination as soon as reasonably practicable (and in any event, not later than five Business Days) after it is received by the Landholder.
- (d) The Landholder must provide to the Trustee a copy of any notice which is given to the Landholder under the Sublease which materially affects the Trustee's rights and/or obligations under this Agreement as soon as

reasonably practicable (and in any event, not later than five Business Days) after it is received by the Landholder.

10 Ownership

- (a) Nothing in this Agreement will be construed as vesting in the Landholder any proprietary or other interest in the Extension Infrastructure or any Removed Infrastructure.
- (b) The Parties acknowledge that, as between them, the ownership of Removed Infrastructure is provided for under the Extension Infrastructure Agreement or the Extension Infrastructure Lease.

11 Rail infrastructure manager

11.1 Rail infrastructure manager

- (a) The Landholder must:
 - (i) if not already accredited, use reasonable endeavours to be accredited; and
 - (ii) once accredited, use reasonable endeavours to continue to be accredited,

as rail infrastructure manager under the Rail Safety Act for railway operations in respect of the Landholder Infrastructure, the Extension and the Rail Infrastructure Area.

- (b) Provided that the Landholder complies with **clause 11.1(a)**, the Trustee must not seek to be accredited as rail infrastructure manager under the Rail Safety Act for railway operations in respect of any part of the Landholder Infrastructure, the Extension or the Rail Infrastructure Area.

[Drafting note: This clause to be reviewed on a transaction-by-transaction basis having regard to the accreditation requirements under the Rail Safety Act at the time of entering into the transaction.]

11.2 Approval of railway manager

For the purposes of section 255 of the TIA, the Parties acknowledge and agree that the terms of this Agreement constitute:

- (a) the Landholder's approval as railway manager of all Construction Works and other activities to be undertaken by or for the Trustee on the Extension Land under and in accordance with this Agreement; and
- (b) for avoidance of doubt, reasonable conditions to which that approval is subject.

12 No impact on Landholder Infrastructure

- (a) The Trustee must, in accordance with proper and accepted work practices, construct, operate, manage, repair, maintain and Modify the Extension Infrastructure (and all parts of the Extension Infrastructure) as may be necessary from time to time during the term of the Agreement to ensure the safe, secure and proper operation of the Landholder Infrastructure.
- (b) The Trustee will notify the Landholder immediately after it becomes aware of any matter, act or thing which may impact upon or affect the safe, secure and proper operation of the Landholder Infrastructure.
- (c) The Trustee must:
 - (i) comply in all material respects with all environmental laws and the terms of any environmental Authority Approvals held by the Trustee;
 - (ii) notify the Landholder of any environmental damage to or contamination of the Rail Infrastructure Area or any adjoining land (or otherwise impacting on the Rail Infrastructure Area) which arises out of, is associated with, or is caused or contributed to by, the construction, operation, management, repair, maintenance or Modification of the Extension Infrastructure as soon as reasonably possible after the Trustee becomes aware of any such environmental damage or contamination;
 - (iii) remediate any environmental damage or contamination referred to in **clause 12(c)(ii)** to the reasonable satisfaction of the Landholder (provided that if, in the Landholder's reasonable opinion, the required remediation affects the Landholder Infrastructure or the continued operation of the Landholder Infrastructure, the Landholder may elect to carry out the remediation itself and recover the cost of doing so from the Trustee as a debt due and owing to the Landholder); and
 - (iv) upon request by the Landholder, cooperate with the Landholder in responding to any environmental Claims, notices or enquiries received by the Landholder in relation to the Rail Infrastructure Area.

13 Removal of infrastructure

13.1 General

Subject to the other Transaction Documents, the Trustee may, at any time, remove any part of the Extension Infrastructure with the prior consent of the Landholder (which consent must not be unreasonably withheld).

13.2 Redundant Extension Infrastructure

- (a) The Landholder may, in its absolute discretion:

- (i) itself (without any requirement for the consent of the Trustee); and/or
- (ii) require the Trustee to, within a reasonable period notified by the Landholder to the Trustee,

do any one or more of the following in respect of any part of the Redundant Extension Infrastructure:

- (iii) remove that part of the Redundant Extension Infrastructure;
- (iv) reinstate any Landholder Infrastructure that was Modified, altered, changed, removed, replaced or otherwise interfered with in connection with the construction, installation or attachment of that part of the Redundant Extension Infrastructure to the condition that such Landholder Infrastructure was in prior to such Modification, alteration, change, removal, replacement or other interference; and/or
- (v) remediate any part of the Extension Land which is affected by the:
 - (A) removal of that part of the Redundant Extension Infrastructure under this **clause 13.2(a)**; or
 - (B) reinstatement of such Landholder Infrastructure under this **clause 13.2(a)**,

to a state that the Landholder considers:

- (C) is safe, stable, clean and tidy; and
- (D) will not adversely affect:

- (1) the health and safety of any persons (including the risk of death, injury, illness or harm) in relation to or in connection with; or
- (2) the safe construction, operation, alteration, maintenance, use or other management of,
the Railway Network or the Rail Infrastructure Area.

(b) If the Landholder makes an offer to buy all or any part of any Redundant Extension Infrastructure and the Trustee accepts such offer, then the property in that Redundant Extension Infrastructure will pass to the Landholder on the payment of the consideration agreed between the Parties.

(c) If:

- (i) the Landholder makes an offer to buy all or any part of the Redundant Extension Infrastructure and the Trustee does not accept that offer;
- (ii) after such non-acceptance by the Trustee, the Landholder exercises its right under **clause 13.2(a)** to require the Trustee to remove any part of the Redundant Extension Infrastructure which was the subject of such offer; and

- (iii) that part of the Redundant Extension Infrastructure is not removed within 40 Business Days after the end of the time by which the Landholder requires the Trustee to remove that Redundant Extension Infrastructure under **clause 13.2(a)**,
- then:
- (iv) the Trustee must surrender and transfer all of the Trustee's right, title and interest in and to that Redundant Extension Infrastructure to the Landholder free from all Security Interests;
 - (v) that Redundant Extension Infrastructure, without further action from any Party, immediately vests in and becomes the absolute property of the Landholder free and clear of all Security Interests and the Trustee will cease to have any right, title and interest in that Redundant Extension Infrastructure; and
 - (vi) the Trustee must immediately deliver possession and control of that Redundant Extension Infrastructure to the Landholder.
- (d) For the avoidance of doubt, the Landholder may exercise its rights under **clause 13.2(a)** differently in relation to different parts of the Redundant Extension Infrastructure (for example, in respect of a particular part of the Redundant Extension Infrastructure, the Landholder may require the Trustee to remove that part of the Redundant Extension Infrastructure and to remediate the relevant part of the Extension Land but may itself reinstate the relevant part of the Landholder Infrastructure).
 - (e) If the Trustee does not do anything that the Landholder requires the Trustee to do in under **clause 13.2(a)** within the time period required under **clause 13.2(a)**, then the Landholder may elect to do that thing itself under **clause 13.2(a)**.
 - (f) The Landholder's costs and expenses of, or arising as a consequence of, exercising its rights or doing any thing under **clause 13.2(a)** (including costs and expenses associated with any Isolations, Track Closures and Track Possessions relating to the removal of the Redundant Extension Infrastructure) must be paid or reimbursed, as applicable, to the Landholder by the Trustee in accordance with **clause 14**.
 - (g) If the Landholder itself removes any part of the Redundant Extension Infrastructure, then:
 - (i) upon such removal, the Trustee must surrender and transfer all of the Trustee's right, title and interest in and to that Redundant Extension Infrastructure to the Landholder free from all Security Interests;
 - (ii) upon such removal, that Redundant Extension Infrastructure, without further action from any Party, immediately vests in and becomes the absolute property of the Landholder free and clear of all Security Interests and the Trustee will cease to have any right, title and interest in that Redundant Extension Infrastructure;

- (iii) following such removal, the Landholder must use its reasonable endeavours to dispose of (including sell or otherwise dispose of) that Redundant Extension Infrastructure; and
- (iv) following such disposal, the Landholder must pay the proceeds of such disposal to the Trustee less:
 - (A) the amount of the Landholder's costs and expenses referred to in **clause 13.2(f)** in respect of the removal of that Redundant Extension Infrastructure; and
 - (B) the Landholder's costs and expenses in connection with the disposal of that Redundant Extension Infrastructure,which costs and expenses will be taken to be paid by the Trustee to the Landholder under this Agreement.

14 Payments

14.1 Payment of invoices

- (a) Each Party will submit details of any amounts payable to it by the other Party under this Agreement when submitting invoices to that other Party.
- (b) Unless this Agreement provides otherwise, the due date for the payment of an amount payable by a Party under this Agreement is that date which is ten Business Days after the date on which that Party receives an invoice for that amount from the other Party.

14.2 Interest on overdue payments

- (a) If, for any reason, a Party does not pay an amount payable under or in connection with this Agreement on or before the due date for payment, it must pay interest to the other Party (who is entitled to receive the payment).
- (b) Interest will accrue on the outstanding amount from the due date for payment until that amount, together with the interest thereon, has been paid.
- (c) Interest will be calculated at the Interest Rate, and any interest accrued but unpaid at the end of each Month will be capitalised and will thereafter itself bear interest.

14.3 Method of payment

All payments to be made under or in connection with this Agreement must be paid in Australian currency, without set-off or deduction, by:

- (a) electronic payment to an account nominated by the Party entitled to receive the payment; or
- (b) such other method as the Party entitled to receive the payment may reasonably require from time to time.

15 Insurance

[Drafting note: Insurance requirements to be considered on a transaction by transaction basis.]

16 Indemnity

16.1 Trustee's indemnity

Subject to **clause 16.2**, the Trustee indemnifies the Landholder from and against all liabilities, actions, proceedings, Claims, demands, costs, losses, damage and expenses (**Losses**) (excluding Consequential Loss) which may be brought against or made upon the Landholder or which the Landholder may pay, sustain or be put to by reason of or in connection with:

- (a) any acts, errors or omissions of the Trustee (or its officers, employees, agents or contractors) under or in relation to this Agreement;
- (b) any acts, errors or omissions of the Trustee (or its officers, employees, agents or contractors) relating to:
 - (i) the design, construction, testing, commissioning, operation, management, repair, maintenance or Modification of the Extension Infrastructure; or
 - (ii) the Modification of the Landholder Infrastructure;
- (c) any acts, errors or omissions of persons other than the Trustee, but only if the same are a consequence of:
 - (i) the design, construction, commissioning, operation, management, repair, maintenance or Modification of the Extension Infrastructure; or
 - (ii) the Modification of the Landholder Infrastructure;
- (d) any negligence or default of the Trustee (or its officers, employees, agents or contractors) under or in relation to this Agreement; or
- (e) any breach by the Trustee (or its officers, employees, agents or contractors) of any intellectual property rights of a third party,

except to the extent that:

- (f) any:
 - (i) fraud or dishonesty; or
 - (ii) negligent act, error or omission,by the Landholder, the Project Manager (other than if a Replacement Project Manager) or Extension Lessee; or
- (g) any default by the Landholder under this Agreement, contributed to the Loss.

16.2 Limitation in relation to Defects

The indemnity given by the Trustee under **clause 16.1** does not extend to any Losses brought against or made upon the Landholder or which the Landholder pays, sustains or is put to by reason of or in connection with any Defects which the Extension Lessee must rectify, or procure the rectification of, under clause **[4.2]** of the Extension Infrastructure Lease.

17 Limitation of liability

17.1 Trustee not liable

- (a) Subject to **clause 17.1(b)**, the Landholder agrees that:
- (i) the Trustee will not be liable to the Landholder, and the Landholder will not have any Claim against the Trustee, under this Agreement; and
 - (ii) the Landholder will not have a right to terminate this Agreement, for any breach of this Agreement by the Trustee due to any act or omission of the Project Manager (during the term of the Project Management Agreement) or the Extension Lessee (after the term of the Project Management Agreement), acting as disclosed agent of the Trustee under this Agreement, except to the extent that such breach was caused, or contributed to (to the extent of the contribution), by an act or omission (including negligence) of:
 - (iii) the Trustee acting itself and not by the Project Manager or Extension Lessee (as applicable) acting as its disclosed agent; or
 - (iv) a Works Contractor.
- (b) **Clause 17.1(a)** does not apply during any period during which the Project Manager is a Replacement Project Manager.

17.2 Limitation of the Landholder's liability

Except to the extent:

- (a) that the Landholder has committed fraud, Gross Negligence or Wilful Default; or
- (b) otherwise prohibited by law,

the Landholder's liability in respect of a Claim arising out of, or in any way related to, this Agreement (excluding a Claim in respect of the non-payment by the Landholder of an amount that it is expressly required to pay under the terms of this Agreement) is limited to, and will in no event exceed, the total amount of \$1.00.

17.3 Trustee's limitation of liability

- (a) The Landholder acknowledges that the Trustee enters into this Agreement only as trustee of the Trust, and in no other capacity (other

than in respect of the warranties in relation to trustee capacity in **clause 24.5** which are given by the Trustee in its personal capacity).

- (b) A liability of the Trustee arising under or in connection with this Agreement is limited to and can be enforced against the Trustee only to the extent to which the Trustee is entitled to be indemnified out of the Trust for the liability and the liability can be satisfied out of property of the Trust.
- (c) The limitation of liability in this **clause 17.3** will not apply to any liability of the Trustee to the extent that the liability is not satisfied out of the property of the Trust because there is a reduction in the Trustee's right of indemnity as a result of the Trustee committing fraud, "Gross Negligence" or "Wilful Default" (each as defined in the Trust Deed).

17.4 Exclusion of Consequential Loss

Despite any other provision of this Agreement, neither Party will be liable to the other for, nor will any indemnity by either Party under this Agreement extend to, any Consequential Loss suffered by or Claimed against that other Party.

17.5 Scope of Claim, liability or loss

For the avoidance of doubt, references in this **clause 17** to a Claim, liability or loss include:

- (a) a Claim for, or liability or loss arising from, breach of contract, tort (including negligence), breach of equitable duty, breach of statutory duty, breach of the *Competition and Consumer Act 2010* (Cth) or otherwise; and
- (b) a Claim, liability or loss arising out of the performance or non-performance of any obligation under this Agreement, or arising out of a termination of this Agreement for any reason (including breach, repudiation or otherwise).

17.6 Claims against Landholder

The Trustee will not have, and must not make, any Claim against the Landholder in relation to or arising out of the entry into or the performance or non-performance of this Agreement, or give a Dispute Notice to the Landholder in respect of such a Claim under **clause 19.1**, unless the Trustee first provides the Landholder with a notice of the purported Claim and allows the Landholder a reasonable period to rectify the relevant default and the Landholder fails to rectify that default within that reasonable period.

18 Termination

18.1 No right to termination

Despite any rule of law or equity to the contrary, neither Party may terminate, rescind or treat as repudiated, or obtain any order with the effect of terminating or rescinding, this Agreement other than as expressly provided for in this Agreement.

18.2 No prejudice as to right to damages

Subject to **clause 17**, nothing in this **clause 18** prejudices in any way a Party's right to Claim and recover damages for any breach of this Agreement by the other Party.

19 Disputes

19.1 Notification of Disputes

- (a) If any Claim, dispute or question (**Dispute**) arises between the Parties under this Agreement, any Party may give to the other Party a notice in writing (**Dispute Notice**) specifying reasonable details of the Dispute and referring it for resolution in accordance with this **clause 19**.
- (b) Unless otherwise expressly provided to the contrary in this Agreement, a Dispute must be resolved in accordance with this **clause 19**.

19.2 Discrimination Dispute

- (a) This **clause 19.2** applies if the Trustee Disputes that the Landholder has complied with a Non-Discrimination Provision when exercising a right, power or discretion under this Agreement (**Discrimination Dispute**).
- (b) Within ten Business Days after the giving of a Dispute Notice in respect of a Discrimination Dispute, the Landholder must give to the Trustee a notice specifying whether or not the Landholder considers that it has complied with the Non-Discrimination Provision providing reasonable details of the Landholder's reasons for forming that opinion.
- (c) If the Landholder specifies in a notice given under **clause 19.2(b)** that it considers that it has not complied with the relevant Non-Discrimination Provision, the Landholder must, within ten Business Days after the giving of that notice, re-exercise the relevant right, power or discretion in a manner that complies with the Non-Discrimination Provision (in which case, the relevant Discrimination Dispute will be taken to be resolved).
- (d) If the Landholder specifies in a notice given under **clause 19.2(b)** that it considers that it has complied with the relevant Non-Discrimination Provision, then within ten Business Days after the giving of that notice, the Trustee may refer the Discrimination Dispute to the chief executive officer of the Landholder (or his or her nominee) and the chief executive officer of the Trustee (or his or her nominee) for the purposes of this **clause 19.2(d)** for resolution.

19.3 Chief executive officer resolution

- (a) Within ten Business Days after the giving of a Dispute Notice (or in the case of a Discrimination Dispute, if the Discrimination Dispute is not resolved within ten Business Days after referral under **clause 19.2(d)**), any Dispute must be referred in the first instance to the chief executive officer of the Landholder (or his or her nominee) and the chief executive

officer of the Trustee (or his or her nominee) for the purposes of this **clause 19.3** for resolution.

- (b) If the Dispute is not resolved within ten Business Days after the referral under **clause 19.3(a)** or in the event that either chief executive officer appoints a nominee that is unacceptable to the other Party, then the relevant Dispute:
 - (i) must, where this Agreement expressly requires referral to an expert; and
 - (ii) may, by agreement of the Parties in any other case, be referred for resolution by an expert (**Expert**) in accordance with **clause 19.4**.

19.4 Expert determination

Where any matter is referred to an Expert under **clause 19.3** or otherwise in accordance with the terms of this Agreement then the following provisions of this **clause 19.4** will apply:

- (a) an Expert must be appointed by agreement between the Parties, or in default of such appointment within ten Business Days of the requirement or right (as applicable) to refer the matter to an Expert, then that person is to be nominated at either Party's request by:
 - (i) where the Parties agree the Dispute is purely of a technical nature, the President (for the time being) of Engineers Australia – Queensland Division;
 - (ii) where the Parties agree the Dispute is purely of a financial or accounting nature, the President (for the time being) of The Institute of Chartered Accountants in Australia – Queensland Branch; and
 - (iii) in any other case, the President (for the time being) of the Queensland Law Society, Inc;
- (b) if the Expert is to be nominated by a person referred to in **clause 19.4(a)** and that person declines to nominate a person as the Expert but provides a list of people that could be appointed as the Expert:
 - (i) the first person specified in that list will be taken to be nominated as the Expert;
 - (ii) if the first person specified in that list does not accept the appointment as the Expert, the next person specified in that list will be taken to be the first person specified in that list and will be nominated as the Expert; and
 - (iii) the process specified in **clause 19.4(b)(ii)** will apply to the next and each subsequent person specified in that list until a person that is taken to be nominated as the Expert accepts the appointment as the Expert;

- (c) subject to **clause 19.4(b)**, if the Expert is to be nominated by a person referred to in **clause 19.4(a)** and the person nominated as the Expert does not accept the appointment as the Expert, then an alternative person is to be nominated as the Expert at either Party's request by the same person referred to in **clause 19.4(a)**;
- (d) if the Expert is to be nominated by a person referred to in **clause 19.4(a)** the Parties must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of that person (including providing relevant indemnities and paying any charges or fees (which charges or fees will be borne equally by the Parties)) that must be satisfied or complied with as a condition of that person agreeing to nominate an Expert;
- (e) the Parties must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of an agreed or nominated Expert (including providing relevant indemnities and paying any charges or fees (which charges or fees will be borne equally by the Parties)) that must be satisfied or complied with as a condition of that person accepting the appointment as an Expert; and
- (f) the Expert must:
 - (i) have appropriate qualifications and practical experience having regard to the nature of the Dispute;
 - (ii) have no interest or duty which conflicts or may conflict with his or her function as Expert, he or she being required to fully disclose any such interest or duty by notice to the Parties before his or her appointment;
 - (iii) not be, or have been in the last five years, an employee of the Trustee, the Landholder or a Preference Unit Holder or a Related Body Corporate of the Trustee, the Landholder or a Preference Unit Holder;
 - (iv) not be permitted to act until he or she has given notice to the Parties that he or she is willing and able to accept the appointment;
 - (v) have regard to the provisions of this Agreement and consider all submissions (including oral submissions by either Party provided that such oral submissions are made in the presence of the other Party), supporting documentation, information and data with respect to the matter submitted by the Parties;
 - (vi) provide both Parties with a copy of his or her determination in the form of a report setting out reasonable details of the reasons for the Expert's determination within a reasonable time after his or her appointment;
 - (vii) be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties (including, if required by a Party,

by entering into a confidentiality agreement in favour of the Parties); and

- (viii) be deemed to be and act as an expert and not an arbitrator and the law relating to arbitration including, without limitation, the *Commercial Arbitration Act 1990* (Qld), will not apply to him or her or the determination or the procedures by which he or she may reach a determination.

19.5 Parties to assist Expert

The Parties must do everything reasonably requested by the Expert to assist the Expert in determining the Dispute, including producing information and materials requested by the Expert and attending any hearing convened by the Expert.

19.6 Decision of Expert

In the absence of manifest error, the decision of the Expert is final and binding upon the Parties.

19.7 Determination by court

- (a) If any Dispute is not otherwise resolved in accordance with this **clause 19**, then the Dispute may be referred to one of the courts of the State having jurisdiction, and sitting in Brisbane.
- (b) Each Party irrevocably and unconditionally:
 - (i) agrees that the courts of the State, and any courts which have jurisdiction to hear appeals from any of those courts, are to have exclusive jurisdiction to settle disputes which may arise out of or in connection with this Agreement and that accordingly any suit, action or proceeding (**Proceedings**) arising out of or in connection with this Agreement may be brought in, and only in, such courts;
 - (ii) waives any objection which it may have now or hereafter to the laying of the venue of any Proceedings in such courts and any Claim that any such Proceedings have been brought in an inconvenient forum; and
 - (iii) agrees that a final judgment in any Proceedings brought in such courts will be final and binding upon such Party and may be enforced in the courts of any other jurisdiction.

19.8 Injunctive relief

Nothing in this Agreement will prevent a Party from seeking urgent injunctive relief from a court.

19.9 Discrimination Dispute

- (a) This **clause 19.9** applies in respect of a Discrimination Dispute.
- (b) If a Discrimination Dispute is not resolved in accordance with **clause 19.3** the Discrimination Dispute must be referred to an Expert to

determine whether or not the Landholder complied with the relevant Non-Discrimination Provision.

- (c) If it is agreed or determined through the Dispute resolution process that the Landholder failed to comply with a Non-Discrimination Provision, the Landholder must, as soon as reasonably practicable after such agreement or determination (and, in any event, within ten Business Days), exercise the relevant right, power or discretion in a manner that complies with the Non-Discrimination Provision (having regard to the agreement or determination, as applicable).
- (d) Despite a Discrimination Dispute, the exercise of the relevant right, power or discretion by the Landholder which is the subject of the Discrimination Dispute is taken to be valid unless and until:
 - (i) it is agreed or determined through the Dispute resolution process under this **clause 19** that the Landholder failed to comply with the Non-Discrimination Provision; and
 - (ii) the Landholder has, in accordance with **clause 19.9(c)**, exercised the relevant right, power or discretion in a manner that complies with the Non-Discrimination Provision.

19.10 Time bar

If a Party does not give a Dispute Notice under **clause 19.1(a)** in respect of a Dispute within 12 Months after the date the Party became aware, or ought reasonably to have become aware, of the occurrence of the event or circumstance giving rise to the Dispute:

- (a) the Party must not give the other Party such a Dispute Notice;
- (b) any such Dispute Notice which is given by the Party will be taken to be of no effect; and
- (c) the Party will not have, and must not make, any Claim against the other Party in respect of the Dispute.

20 Confidentiality

20.1 Confidentiality obligations

A Party (**Recipient**):

- (a) may use Confidential Information of the other Party (**Disclosing Party**) only for the purposes of this Agreement or another Transaction Document; and
- (b) must keep confidential all Confidential Information of a Disclosing Party except for disclosures permitted under **clause 20.2**.

20.2 Disclosure of Confidential Information

A Recipient may disclose Confidential Information of a Disclosing Party:

- (a) to any person, where the Disclosing Party has consented in writing to such disclosure (such consent not to be unreasonably withheld or delayed, and may be given subject to reasonable conditions, such as the signing of an appropriate confidentiality undertaking);
- (b) to the extent necessary to progress negotiations with any other person relevant to matters contemplated in this Agreement (for example, another intended user of the Extension Land) who executes a confidentiality undertaking in favour of the Disclosing Party on terms reasonably acceptable to it;
- (c) to the extent necessary to effect the administration or enforcement of this Agreement, or further negotiations pursuant to this Agreement, by employees, professional advisers (including legal advisers) and consultants of the Recipient;
- (d) to any Related Body Corporate of the Recipient to the extent necessary for reporting purposes within a relevant group of companies, governance and oversight of the relevant group of companies and obtaining any approval or consent (whether or not directly from that Related Body Corporate) in relation to the Recipient entering into this Agreement;
- (e) to potential purchasers, assignees or transferees of the shares in the Recipient or a Related Body Corporate of it or of the rights or obligations of the Recipient under this Agreement and the other Transaction Documents who execute a confidentiality undertaking in favour of the Disclosing Party on terms reasonably acceptable to it;
- (f) to a bank or other financial institution (and its professional advisers and any security trustee or agent for it) in connection with and for the purpose of any loan or other financial accommodation sought to be arranged by, or provided to, the Recipient or a Related Body Corporate of it;
- (g) to legal, accounting and financial or other advisers or consultants to the Recipient or a Related Body Corporate of it:
 - (i) whose duties in relation to the Recipient or the Related Body Corporate require the disclosure;
 - (ii) who are under a duty of confidentiality to the Recipient; and
 - (iii) who have been advised of the confidential nature of the Confidential Information;
- (h) to any officers or employees of the Recipient or a Related Body Corporate of the Recipient who:
 - (i) have a need to know for the purposes of this Agreement or another Transaction Document (and only to the extent that each has a need to know); and

- (ii) before disclosure, have been directed by the Recipient to keep confidential all Confidential Information of the Disclosing Party;
- (i) if, and to the extent, the Recipient is required to do so by law (other than by section 275 of the *Personal Property Securities Act 2009* (Cth)), any taxation authority or by any rules or regulations of a recognised stock exchange (including where the disclosure is to a Related Body Corporate of the Recipient that is responsible for making such disclosures for the relevant group of companies and for the purpose of such a Related Body Corporate determining whether, and the extent to which, such a disclosure is required to be made);
- (j) if disclosure is lawfully required by the Access Regulator, or in accordance with the Access Undertaking;
- (k) to any government (whether Federal, State or Territory, municipal or local) and any agency, authority, commission, department, instrumentality, regulator or tribunal thereof, including the Commissioner of Taxation and Australian Taxation Office to the extent required by law or where such disclosure is determined by the Trustee to be reasonably required for the administration of the Trust;
- (l) to an Expert under this Agreement or an "Expert" (as defined in the Unit Holders Deed) under the Unit Holders Deed;
- (m) to a Unit Holder or a Related Body Corporate of a Unit Holder; or
- (n) to advisors of Unit Holders:
 - (i) whose duties in relation to the Unit Holder require the disclosure;
 - (ii) who are under a duty of confidentiality to the Recipient; and
 - (iii) who have been advised of the confidential nature of the Confidential Information.

20.3 Conditions of disclosure

If a Recipient discloses Confidential Information of a Disclosing Party to a person under **clause 20.2 (Disclosee)**, the Recipient must:

- (a) ensure that the Disclosee is aware that the Confidential Information is confidential information of the Disclosing Party; and
- (b) use reasonable endeavours to ensure that the Disclosee does not improperly disclose or improperly use the Confidential Information.

21 GST

21.1 Construction

In this **clause 21**:

- (a) words and expressions which are not defined in this Agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law;

- (b) **GST Law** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
- (c) references to GST payable and input tax credit entitlement include GST payable by, and the input tax credit entitlement of, the representative member for a GST group of which the entity is a member.

21.2 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

21.3 Payment of GST

If GST is payable on any supply made by a Party (or any entity through which that Party acts) (**Supplier**) under or in connection with this Agreement, unless the consideration is expressly stated to be inclusive of GST, the recipient will pay to the Supplier an additional amount equal to the GST payable on the supply. Subject to **clause 21.4**, the recipient will pay the amount referred to in this **clause 21.3** in addition to, and at the same time that, the consideration for the supply is to be provided under this Agreement.

21.4 Tax invoices

- (a) (**Supplies by the Trustee**) The Parties agree that:
 - (i) the Landholder will issue a recipient created tax invoice (**RCTI**) in respect of any taxable supply which the Trustee makes to the Landholder under or in connection with this Agreement (**Trustee Supplies**);
 - (ii) the Trustee will not issue tax invoices in respect of the Trustee Supplies;
 - (iii) the Trustee is registered for GST as at the date of this Agreement and must notify the Landholder if it ceases to be registered;
 - (iv) the Landholder is registered for GST as at the date of this Agreement and must notify the Trustee if it ceases to be registered;
 - (v) the Landholder will issue an adjustment note to the Trustee for any adjustment events that arise in relation to a supply for which a RCTI has been issued;
 - (vi) each RCTI to be issued in accordance with this Agreement is a tax invoice belonging to the class of invoices that the Commissioner of Taxation has determined in writing may be issued by the recipient of a taxable supply; and
 - (vii) the agreement in this **clause 21.4(a)** will terminate immediately if the Landholder or the Trustee cease to satisfy any of the requirements under the GST Law for issuing a RCTI.
- (b) (**Supplies by the Landholder**) The Landholder must deliver a tax invoice or an adjustment note to the Trustee before the Landholder is

entitled to payment of an amount on account of GST under **clause 21.3** in respect of the supplies it makes to the Trustee. The Trustee can withhold payment of the amount on account of GST until the Landholder provides a tax invoice or an adjustment note, as appropriate.

21.5 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Agreement, the amount payable by the recipient under **clause 21.3** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier, or by the Supplier to the recipient, as the case requires.

21.6 Reimbursements

Where a Party is required under this Agreement to pay or reimburse an expense or outgoing of the other Party, the amount to be paid or reimbursed by the first Party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other Party is entitled; and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

22 Assignment

22.1 Assignment

Subject to **clauses 22.2, 22.3 and 22.4**, a Party must not assign, transfer, mortgage, charge, make the subject of a trust or otherwise deal with or encumber all or any of its rights or liabilities under this Agreement (or procure or permit any of those things) without the prior consent of the other Party.

22.2 Assignment by Landholder

- (a) If an entity will acquire all of the Landholder's interest in the parts of the Railway Network which include the Segments, the Landholder must transfer all of its rights and liabilities under this Agreement to that entity at the time that the entity acquires the Landholder's interest in the relevant parts of the Railway Network.
- (b) If an entity will acquire a portion of all of the Landholder's interest in part of the Railway Network which include the Segments, the Landholder must transfer the same proportion of all of its rights and liabilities under this Agreement to that entity at the time that the entity acquires the portion of the Landholder interest in the relevant part of the Railway Network.
- (c) The Trustee must, promptly upon demand by the Landholder, execute a deed of assignment or novation in a form acceptable to the Landholder (acting reasonably) to give effect to the transfer of any rights or liabilities of the Landholder required under this **clause 22.2**.

22.3 Assignment by Trustee

- (a) If the Trustee is replaced by a new trustee of the Trust, the Trustee must, with effect upon the appointment of the new trustee of the Trust, assign its rights and liabilities under this Agreement to the new trustee of the Trust.
- (b) The Trustee must not otherwise assign its rights and liabilities under this Agreement.

22.4 Charging

- (a) The Landholder may mortgage, charge or encumber (**Charge**) all or any of its rights and obligations under this Agreement in whole or in part, in favour of any financier, mortgagee or chargee (**Chargee**), provided that the Landholder, the Chargee and the Trustee execute any reasonable form of covenant, including terms to the effect that the Trustee acknowledges the existence of the Charge, and that the Chargee must comply with the provisions of this Agreement, including this **clause 22**, in the exercise of its rights under the Charge.
- (b) The Landholder must not Charge the Extension Infrastructure or any part of the Extension Infrastructure.

23 Notices

23.1 General

A notice, demand, certification, process or other communication (**Notice**) relating to this Agreement must be in writing in English and may be given by an agent of the sender.

23.2 How to give a Notice

In addition to any other lawful means, a Notice may be given by being:

- (a) personally delivered;
- (b) left at the Party's current business address for Notices;
- (c) sent to the Party's current postal address for Notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
- (d) sent by fax to the Party's current fax number for Notices.

23.3 Particulars for giving of Notices

- (a) Each Party's particulars for the giving of Notices are initially the particulars set out in **item 1 of schedule 1**.
- (b) Each Party may change its particulars for the giving of Notices by notice to the other Party.

- (c) A notice given to a Party which is signed is evidence that the Notice has been signed by a person duly authorised by the sender and that Party is entitled to rely on that Notice without further inquiry or investigation.

23.4 Notices by post

Subject to **clause 23.6**, a Notice is given if posted:

- (a) within Australia to an Australian postal address, three Business Days after posting; or
- (b) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, ten Business Days after posting.

23.5 Notices by fax

Subject to **clause 23.6**, a Notice is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

23.6 After hours Notices

If a Notice is given:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or public holiday in that place.

23.7 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this Agreement may be served by any method contemplated by this **clause 23** or in accordance with any applicable law.

24 Representations and warranties

24.1 General representations and acknowledgements

- (a) The Trustee covenants that it has satisfied itself that there are no legal, commercial or technical impediments or impositions which will preclude it from constructing, operating and maintaining the Extension Infrastructure on the Extension Land and that the Extension Land is suitable for its intended purpose.
- (b) The Trustee acknowledges and agrees that the Landholder is not liable to the Trustee for any latent or patent defect of the Extension Land.

24.2 No warranty by the Landholder regarding Extension Land

No warranty is given by the Landholder in relation to any matter, act or thing concerning the Extension Land including the rights of the Trustee to construct, test, commission, operate, inspect, repair, replace, maintain, alter, add to or

remove the Extension Infrastructure and to undertake Works for the Extension on the Extension Land.

24.3 Liability and responsibility

- (a) Without limiting any responsibility that Aurizon Network may have as 'Project Manager' under the Project Management Agreement, 'Sublessee' under the Extension Infrastructure Agreement or 'Aurizon' under the Extension Infrastructure Lease, the Trustee is responsible for the design, construction, operation and maintenance of each and every aspect of the Extension Infrastructure and all Works for the Extension associated therewith and the completeness, adequacy and accuracy thereof, and the Landholder has no responsibility or duty of care whatsoever in respect of such matters.
- (b) Without limiting **clause 24.3(a)**, the Trustee must not hold the Landholder responsible in any way for the design of the Extension Infrastructure as a result of any acceptance given by the Landholder under **clause 7**.

24.4 General warranties

Each Party warrants that:

- (a) it is a corporation validly existing under the laws applicable to it;
- (b) it is able to pay its debts as and when they fall due;
- (c) it has the power to enter into and perform this Agreement and has obtained all necessary consents to enable it to do so;
- (d) its obligations under this Agreement are enforceable in accordance with their terms;
- (e) no litigation, arbitration or administrative proceeding has been commenced before, and no judgment or award has been given or made by, any court, arbitrator, other tribunal or governmental agency against it which would have a material adverse effect on its ability to observe its obligations under this Agreement; and
- (f) it is not in breach or default under any agreement to which it is a party to an extent or in a manner which would have a material adverse effect on its ability to perform its obligations under this Agreement.

24.5 Trustee warranties

The Trustee warrants that:

- (a) it has full power and authority to enter into this Agreement and to perform the Trustee's obligations under this Agreement and the Trust Deed;
- (b) it is the sole trustee of the Trust and no action has been taken to remove or replace the Trustee; and
- (c) it has the right to be fully indemnified out of the assets of the Trust in respect of all its obligations under this Agreement, and the Trustee has

not done or omitted to do anything that would result in its right of indemnity being restricted or limited in any way.

24.6 Reliance

- (a) Each Party acknowledges that the other Party has entered (or will enter) into this Agreement in reliance upon the warranties contained in **clause 24.4**.
- (b) The Trustee acknowledges that the Landholder has entered (or will enter) into this Agreement in reliance upon the warranties contained in **clause 24.5**.

25 General

25.1 Survival

This **clause 25** and **clauses** [#] and [#] survive the termination of this Agreement.

25.2 Applicable law

This Agreement will be governed by and construed in accordance with the laws applicable in the State.

25.3 Waiver

- (a) Waiver of any right arising from a breach of this Agreement or any right arising from a default under this Agreement must be in writing and signed by the Party granting the waiver.
- (b) A single or partial exercise or waiver by a Party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (c) A failure or delay in exercise, or partial exercise, of a right arising from a breach of this Agreement does not result in a waiver of that right.

25.4 Duty

- (a) As between the Parties, the Trustee is liable for and must pay all duty (including any fine or penalty except where it arises from default by the Landholder) on or relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it.
- (b) If the Landholder pays any duty (including any fine or penalty) which the Trustee is liable to pay under **clause 25.4(a)**, the Trustee must pay that amount to the Landholder on demand.

25.5 Costs

The Trustee must pay (and, if paid by the Landholder, reimburse) to the Landholder:

- (a) the Landholder's legal costs and expenses of and incidental to the drafting, negotiating and execution of this Agreement; and

- (b) the Landholder's costs and expenses (including legal costs and expenses) of and incidental to performing its obligations and exercising its rights under this Agreement and enforcing this Agreement.

25.6 Amendments to be in writing

Except where this Agreement expressly provides a process for amendment or variation, an amendment or variation of this Agreement will only be effective if it is in writing and executed by both Parties to this Agreement.

25.7 Rights cumulative

Except as expressly stated otherwise in this Agreement, the rights of a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

25.8 Consents

Except as expressly stated otherwise in this Agreement, a Party may conditionally or unconditionally give or withhold any consent to be given under this Agreement and is not obliged to give its reasons for doing so.

25.9 Further assistance

Each Party must promptly sign, execute and complete all additional documents which may be necessary and do whatever else is reasonably required to effect, perfect, or complete the provisions of this Agreement and to perform its obligations under it.

25.10 Counterparts

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

25.11 Entire understanding

- (a) This Agreement and the other Transaction Documents together contain the entire understanding between the Parties as to the subject matter of this Agreement.
- (a) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement are merged in and superseded by this Agreement and the other Transaction Documents and are of no effect. Neither Party is liable to the other Party in respect of those matters.
- (b) No oral explanation or information provided by a Party to the other Party:
 - (i) affects the meaning or interpretation of this Agreement; or
 - (ii) constitutes any collateral agreement, warranty or understanding between the Parties.

25.12 Relationship of Parties

Except to the extent expressly provided in this Agreement, this Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.

25.13 Severability

- (a) Subject to **clause 25.13(b)**, if a provision of this Agreement is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this Agreement.
- (b) **Clause 25.13(a)** does not apply if severing the provision:
 - (i) materially alters the:
 - (A) scope and nature of this Agreement; or
 - (B) relative commercial or financial positions of the Parties; or
 - (ii) would be contrary to public policy.

25.14 Survival of representations and warranties

All representations and warranties in this Agreement will survive the execution and delivery of this Agreement and the completion of the transactions contemplated by it.

25.15 Enurement

The provisions of this Agreement will, subject as otherwise provided in this Agreement, enure for the benefit of and be binding on the Parties and their respective successors and permitted novatees and assigns.

25.16 Merger

The obligations contained in this Agreement will continue until satisfied in full.

25.17 Powers of attorney

An attorney by executing this Agreement declares that he or she has received no notice of revocation of the power of attorney pursuant to which he or she executes this Agreement.

25.18 Indemnity

It is not necessary for a Party to incur expense or make a payment before enforcing any indemnity conferred by this Agreement.

Executed as an agreement.

Executed by **[NewCo Pty Ltd]** as)
trustee for the **[Name of Trust]** in)
accordance with section 127 of the
Corporations Act 2001 (Cth):

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Date: / /

Executed by **Aurizon Network Pty**)
Ltd in accordance with section 127 of)
the *Corporations Act 2001* (Cth):

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Date: / /

Schedule 1

Notice details

1 Particulars for Notices

1.1 Trustee

Business address	Level 5 192 Ann Street BRISBANE QLD 4000
Postal address	GPO Box 456 BRISBANE QLD 4001
Facsimile No.	[insert]
Attention:	[insert]

1.2 Landholder

Business address	Level 5 192 Ann Street BRISBANE QLD 4000
Postal address	GPO Box 456 BRISBANE QLD 4001
Facsimile No.	07 3235 3930
Attention:	Vice President, Commercial Development

Schedule 2

Part 1 – Extension Land

[Drafting note: Plan(s) showing “Extension Area” and “Extension Construction Area” to be inserted on a transaction-by-transaction basis.]

Part 2 – Rail Infrastructure Area

[Drafting note: *Plan(s) showing “Rail Infrastructure Area” to be inserted on a transaction-by-transaction.*]

QCA submission draft
18 December 2012

Aurizon Network Pty Ltd

[NewCo Pty Ltd] as trustee for the [Name of Trust]

[Unit Holder]

User Funding – Umbrella Agreement

*[insert Extension
name]*

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Date

Parties

Aurizon Network Pty Ltd ABN 78 132 181 116 of Level 14, Railcentre 1, 305 Edward Street, Brisbane, Queensland (**Aurizon Aurizon Network**)

[NewCo Pty Ltd] [ACN] as trustee for the **[Name of Trust]** of Level 14, Railcentre 1, 305 Edward Street, Brisbane, Queensland (**Trustee**)

The party whose name, ABN and address are contained in item 1 of schedule 1 (Unit Holder)

Background

- A The Trustee will procure the design, supply, procurement, construction, testing and commissioning and completion of the Extension under the Project Management Agreement.
 - B The Trustee will lease and sublease the Extension Infrastructure to Aurizon Network under the Extension Infrastructure Lease.
 - C The Extension Infrastructure will be regulated as part of Aurizon Network's Railway Network under the Access Undertaking and the Access Legislation.
 - D The Unit Holder wishes to secure rights to access parts of Aurizon Network's Railway Network (including the Extension Infrastructure).
 - E Under this Agreement, the Unit Holder and Aurizon Network agree to enter into an access agreement under which Aurizon Network will grant the Unit Holder access to Aurizon Network's Railway Network (including the Extension Infrastructure).
-

Agreed terms

1 Interpretation

1.1 Definitions

In this Agreement:

Access Agreement means an Access Holder Access Agreement or an Operator Access Agreement.

Access Agreement Term for an Access Agreement entered into, or deemed to be entered into, under **clause 3** means a term ending ten years after the

Commitment Date for the Access Agreement (or other period agreed in writing between Aurizon Network and the Unit Holder).

[Drafting note: This definition may need to be updated depending upon the types of standard access agreements in place at the time this Agreement is entered into.]

Access Charges means access charges invoiced by Aurizon Network under an Access Agreement.

Access Holder Access Agreement means Aurizon Network's standard access agreement titled "Access Holder Access Agreement – Coal", as approved by the Access Regulator as at the time that the access agreement is entered into, or deemed to be entered into, under **clause 3**, as completed and modified by Aurizon Network in accordance with **clause 3**.

[Drafting note: This definition may need to be updated depending upon the types of standard access agreements in place at the time this Agreement is entered into.]

Access Legislation has the meaning given in the Unit Holders Deed.

Access Period means each year (or part year) specified in **part 1** of **schedule 2**.

[Drafting note: The Access Periods specified in part 1 of schedule 2 will typically be yearly periods during the Access Agreement Term but shorter Access Periods may be specified (most likely to during a ramp-up phase at the start of the Access Agreement Term).]

Access Regulator has the meaning given in the Unit Holders Deed.

Access Rights means the rights of access to the Railway Network granted, or to be granted, by Aurizon Network under an access agreement.

Access Undertaking has the meaning given in the Unit Holders Deed.

Access Utilisation Determination Notice has the meaning given in **clause 4.4(a)**.

Access Utilisation Notice has the meaning given in **clause 4.2(a)**.

Access Utilisation Notice Date means the date on which the Unit Holder gives, or is deemed to give, an Access Utilisation Notice to Aurizon Network under **clause 4.2**.

Agreement means this document, including the **schedules**.

Business Day means a day which is not a Saturday, Sunday or public holiday in Brisbane.

Capital Costs has the meaning given in **clauses 6.1(a)** and **6.1(b)**.

Claim includes any claim, demand, liability, cost, expense, damage, loss, proceeding, suit, litigation, investigation, audit, action or cause of action, whether judicial, administrative, investigative or otherwise and whether arising in contract, tort (including negligence), under statute or otherwise, of whatever nature, known or unknown, liquidated or unliquidated.

Commencement Date means the date on which the Trustee first issues a Preference Unit in accordance with the terms of the Trust Deed and Unit Holders Deed.

Commitment Date has the meaning given in **item 4 of part 2 of schedule 2**.

Confidential Information of a Disclosing Party means:

- (a) the terms of this Agreement; and
- (b) information disclosed (whether before or after the date of this Agreement) by, or on behalf of, the Disclosing Party to the Recipient which:
 - (i) is by its nature confidential or commercially sensitive;
 - (ii) is identified by the Disclosing Party as confidential or commercially sensitive;
 - (iii) the Recipient knows, or ought to know, is confidential or commercially sensitive; or
 - (iv) relates to the business, operations or financial affairs of the Disclosing Party or a Related Body Corporate of it,

but does not include those terms of this Agreement, or any other information, which:

- (c) are or become public knowledge other than by:
 - (i) breach of this Agreement or by a breach of confidentiality by the Recipient or any third party to whom the Recipient has disclosed the information; or
 - (ii) breach of confidentiality by a Preference Unit Holder, the “Independent Engineer” (as defined in the Project Management Agreement), the “PUH Engineer” (as defined in the Project Management Agreement) or an “Auditor” or “Expert” (as defined in each Transaction Document);
- (d) are in the possession of the Recipient or a Related Body Corporate of it without restriction in relation to disclosure before the date of receipt; or
- (e) have been independently developed or acquired by the Recipient or a Related Body Corporate of it.

Consequential Loss means, subject to **paragraphs (e) and (f)** of this definition:

- (a) any special, indirect or consequential loss;
- (b) any economic loss in respect of any Claim in tort;
- (c) any loss of profits, loss of production, loss of revenue, loss of use, loss of contract, loss of opportunity, loss of reputation, loss of goodwill or wasted overheads whatsoever; and
- (d) any loss arising out of any Claim by a third party,

but does not include:

- (e) a loss (including a loss arising out of a Claim by a third party) in respect of:
 - (i) the cost of repairing, replacing or reinstating any real or personal property of any person (including a Party) that has been lost, damaged or destroyed; or
 - (ii) personal injury to or death of any person; or
- (f) in respect of any personal injury Claim, special loss or economic loss as those terms are used in the context of personal injury Claims.

Consolidated Group has the meaning given to that expression in Part 3-90 of the Tax Act.

Construction Interest on the Capital Costs means the amount calculated in accordance with the formula in **clause 6.2**.

Construction Period has the meaning given in the Project Management Agreement.

Default Access Agreement has the meaning given in **clause 3.3(b)**.

Disclosee has the meaning given in **clause 10.3**.

Disclosing Party has the meaning given in **clause 10.1(a)**.

Dispute has the meaning given in **clause 8.1(a)** and includes:

- (a) a matter referred to an Expert for determination under this Agreement; and
- (b) a "Dispute" (as defined in an Other Umbrella Agreement) if Aurizon Network and/or the Trustee joins the Unit Holder and all of the Other Unit Holders to the dispute resolution process under the Other Umbrella Agreement in accordance with **clause 8.9**.

Dispute Notice has the meaning given in **clause 8.1(a)**.

Dispute Resolution Process means:

- (a) the dispute resolution process under **clause 8**; and
- (b) if Aurizon Network and/or the Trustee joins the Unit Holder and all of the Other Unit Holders to the dispute resolution process under an Other Umbrella Agreement in accordance with **clause 8.9**, the dispute resolution process under the Other Umbrella Agreement.

Disputing Action has the meaning given in **clause 5.2(b)(ii)**.

Due Date means the date which is the last of the Estimated Available Dates for all of the Unit Holder's Segments.

Effective Date means:

- (a) the date on which Aurizon Network gives the Unit Holder an Access Utilisation Determination Notice; or

- (b) if the Unit Holder gives Aurizon Network a Dispute Notice referred to in **clause 4.5(a)**, the date on which the Dispute which is the subject of that Dispute Notice is resolved under the Dispute Resolution Process.

Estimated Available Date for a Segment means the date which is the “Estimated Available Date” for that Segment under the Project Management Agreement.

Expert has the meaning given in **clause 8.2(b)**.

Extension has the meaning given in the Unit Holders Deed.

Extension Infrastructure means “Total Extension Infrastructure” (as defined in the Extension Infrastructure Lease).

Extension Infrastructure Agreement has the meaning given in the Unit Holders Deed.

Extension Infrastructure Lease has the meaning given in the Unit Holders Deed.

Extension Structure means the arrangements contemplated by the Project Management Agreement, the Unit Holders Deed, the Trust Deed, the Rail Corridor Agreement, the Extension Infrastructure Lease, Extension Infrastructure Agreement and Integrated Network Deed.

Extension Structure Tax Benefit has the meaning given in **clause 5.1(d)**.

Extension Structure Tax Cost means an amount calculated in accordance with **clause 5.1(c)**.

Governmental Agency means any government, whether Federal, State or Territory, municipal or local, and any agency, authority, commission, department, instrumentality, regulator or tribunal thereof, including the Commissioner of Taxation and Australian Taxation Office.

GST has the meaning given to that expression in the GST Law.

GST Law has the meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Gross Negligence means any negligence committed by Aurizon Network in connection with this Agreement involving such wanton and reckless conduct as constitutes an utter disregard for the harmful, foreseeable and avoidable consequences which result from such conduct.

Head Company means the head company of any Consolidated Group of which Aurizon Network is a subsidiary member.

Indemnified Entity has the meaning given to that expression in **clause 5.1(b)**.

Interest Rate means, for any day in a Month, the annual interest rate that is the sum of:

- (a) 2%; and
- (b) the Commonwealth Bank of Australia’s “Corporate Overdraft Reference Rate” (monthly charging cycle) quoted by the Commonwealth Bank of

Australia on its public website for the last trading day of the previous Month (or in the event that such a rate is not so quoted at or in respect of any relevant date, such other similar rate as is quoted by a major commercial bank as agreed by the Parties or, failing agreement, as determined by an Expert under **clause 8.3**).

Landholder means the party that is the “Landholder” under the Rail Corridor Agreement.

Law includes any law or legal requirement, including at common law, in equity, under any statute, regulation or by-law, any condition of any authorisation, and any decision, directive, guidance, guideline or requirements of any Governmental Agency.

Liability means any liability (whether actual, contingent or prospective), Loss, damage, cost and expense of whatsoever description and howsoever arising.

Linked Unit Holder means a Preference Unit Holder that holds Linked Preference Units.

Linked Preference Units for the Unit Holder means:

- (a) Preference Units which, following a transfer from the Unit Holder (or from the Trustee exercising a power of sale of the Unit Holder’s Preference Units), are held by an entity that, immediately following such transfer, is not:
 - (i) a party to an agreement; or
 - (ii) bound by obligations under an agreement, with Aurizon Network and the Trustee which is on substantially the same terms as this Agreement;
- (b) Preference Units referred to in **paragraph (a)** of this definition which, following one or more further transfers, are held by an entity that, immediately following such transfers, is not:
 - (i) a party to an agreement; or
 - (ii) bound by obligations under an agreement, with Aurizon Network and the Trustee which is on substantially the same terms as this Agreement;
- (c) Preference Units which are held by an entity from whom the Unit Holder assumed all of its obligations under this Agreement;
- (d) Preference Units which are held by an entity from whom another entity that was previously the “Unit Holder” under this Agreement, assumed all of its obligations under this Agreement; or
- (e) Preference Units referred to in **paragraphs (c)** or **(d)** of this definition which are held by an entity (other than the entity referred to **paragraphs (c)** or **(d)**, as applicable) following one or more transfers of those Preference Units.

Loss means any Liability, loss, damage, judgment, cost, charge, expense, diminution in value or deficiency of any kind or character which a Party pays, suffers or incurs or is liable for, however arising.

Maximum Utilised Nominated Access Rights means the maximum of the Nominated Access Rights (expressed as an even number of one-way train services) for any Access Period which:

- (a) Aurizon Network determines under **clause 4.4(a)(i)**; and
- (b) if the Unit Holder gives Aurizon Network a Dispute Notice referred to in **clause 4.5(a)**, it is agreed or determined under the Dispute Resolution Process,

the Unit Holder has a reasonable likelihood of utilising.

Month means a calendar month.

Nominated Access Rights for an Access Period means the Access Rights specified in **part 1 of schedule 2** for that Access Period.

Notice has the meaning given in **clause 13.1**.

Operator Access Agreement means Aurizon Network's standard access agreement titled "*Operator Access Agreement – Coal*", as approved by the Access Regulator as at the time that the access agreement is entered into (or deemed to be entered into) under **clause 3**, as completed and modified by Aurizon Network in accordance with **clause 3**.

[Drafting note: This definition may need to be updated depending upon the types of standard access agreements in place at the time this Agreement is entered into.]

Ordinary Unit has the meaning given in the Trust Deed.

Other Umbrella Agreement means an agreement on terms substantially similar to this Agreement and titled "*User Funding – Umbrella Agreement: [insert Extension name]*".

Other Unit Holder means a party which is the "Unit Holder" under an Other Umbrella Agreement.

Parties means collectively Aurizon Network, the Trustee and the Unit Holder, and **Party** means any one of them.

Preference Unit has the meaning given in the Trust Deed.

Preference Unit Holder has the meaning given in the Unit Holders Deed.

Price Sensitive Information means any information which Aurizon Network is under a contractual or other obligation (including an equitable obligation of confidence) not to disclose.

Pro Forma Access Agreement means an Access Holder Access Agreement between Aurizon Network and the Unit Holder which is taken to be modified and completed in accordance with **clause 3.2**, provided that:

- (a) the date of the Access Holder Access Agreement which is taken to be completed under **clause 3.2** will be the Due Date; and

- (b) the Nominated Access Rights which are taken to be included in the Access Holder Access Agreement under **clause 3.2** will be the Nominated Access Rights for each Access Period during the Access Agreement Term to the extent that the Nominated Access Rights for each Access Period during the Access Agreement Term are not otherwise the subject of an Access Holder Access Agreement or an Operator Access Agreement referred to in **clause 3.1**.

Proceedings has the meaning given in **clause 8.7(b)(i)**.

Project Management Agreement has the meaning given in the Unit Holders Deed.

Project Manager means the party that is the “Project Manager” under the Project Management Agreement.

Aurizon Network Land Acquisition Costs means costs incurred by Aurizon Network (in its own capacity) in acquiring land or an interest in land for the purposes of the Extension (whether before or after the date of this Agreement).

Rail Corridor Agreement has the meaning given in the Unit Holders Deed.

Railway Network has the meaning given in the Unit Holders Deed.

Railway Operator means a person who:

- (a) is a “rolling stock operator” and is an “accredited person” (each as defined in the Rail Safety Act); or
- (b) holds a “TIA accreditation” (as defined in the Rail Safety Act) that:
- (i) continues in force in accordance with section 290 of the Rail Safety Act; and
 - (ii) was granted to that person as a “railway operator” (as defined under the “unamended TIA”) under section 126 of the “unamended TIA” (as defined in the Rail Safety Act).

Rail Safety Act means the *Transport (Rail Safety) Act 2010* (Qld).

Recipient has the meaning given in **clause 10.1**.

Regulatory Asset Base has the meaning given in the Access Undertaking.

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth).

Security Documentation has the meaning given in the Unit Holders Deed.

Segment has the meaning given in the Unit Holders Deed.

Stamp Duty includes any duty or stamp duty and any transaction or registration duty or similar charge imposed by any Governmental Agency, and includes any interest, fine, penalty, charge or other amount in respect of the above but excludes GST.

State means the State of Queensland.

Supplier has the meaning given in **clause 11.3**.

Tax includes:

- (a) any tax, levy, impost, deduction, charge, rate, compulsory loan, withholding or duty by whatever name called levied, imposed or assessed under the Tax Act or any other Law in Australia or elsewhere;
- (b) unless the context otherwise requires, Stamp Duty or GST; and
- (c) any interest, penalty, charge, fine or fee or other amount of any kind assessed, charge or imposed on or in respect of anything listed in **paragraph (a)** or **(b)** of this definition.

Tax Act means the *Income Tax Assessment Act 1936* (Cth) (**1936 Act**), the *Income Tax Assessment Act 1997* (Cth) (**1997 Act**) or both the 1936 Act and the 1997 Act, as appropriate, and, to the extent applicable, the *Taxation Administration Act 1953* (Cth) and includes tax laws having a similar or corresponding object or effect in any jurisdiction.

Tax Adjustment Notice has the meaning given to that expression in **clause 5.2(b)(i)**.

Tax Claim Notice has the meaning given to that expression in **clause 5.2(a)**.

Tax Dispute Notice means a notice given by a Preference Unit Holder to an Indemnified Entity in relation to a Disputing Action pursuant to **clause 5.2(b)(ii)**.

Tax Expert means an independent Tax expert appointed in accordance with **clause 5.7**.

Tax Indemnity means the indemnity provided in **clause 5.1**.

Tax Indemnity Amount means any amount payable by the Unit Holder under **clause 5**.

Tax Law has the meaning given in the Trust Deed.

Tax Loss means a tax loss of an Indemnified Entity (calculated in accordance with section 36-10 of the Tax Act) and includes a carry forward loss referred to in section 36-15(7) of the Tax Act.

Tax Relief means any refund, credit, offset, relief, allowance, deduction, rebate, recoupment, compensation, penalty, damages, restitution, right to repayment or other benefit or saving in relation to Tax, but does not include a Tax Loss.

Transfer Date means:

- (a) if the rights and obligations of the Unit Holder under this Agreement have been transferred or novated to the Unit Holder – the date on which such transfer or novation took effect; or
- (b) otherwise, the date on which the Unit Holder and other Parties entered into this Agreement.

Transferee Umbrella Agreement has the meaning given in **clause 12.2(c)**.

Transaction Document has the meaning given in the Unit Holders Deed.

Trust has the meaning given in the Trust Deed.

Trust Capital Costs has the meaning given in the Unit Holders Deed.

Trust Deed means the trust deed made by the Trustee entitled “*User Funding – Trust Deed of [Name of Trust]*”.

Unit Holder’s Segment means a Segment for which the Unit Holder is a “Segment Unit Holder” (as defined in [item 1 of schedule 7] of the Unit Holders Deed) for that Segment.

Unit Holder Representative has the meaning given in **clause 5.2(f)**.

Unit Holders Deed has the meaning given in the Trust Deed.

Unit has the meaning given in the Trust Deed.

Under-utilised Access Period means each Access Period for which the Nominated Access Rights for the Access Period are greater than the Maximum Utilised Nominated Access Rights.

Unpaid Amount has the meaning given in **clause 5.8**.

Wilful Default means an intentional breach of the terms of this Agreement.

1.2 Interpretation

Unless expressed to the contrary, in this Agreement:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) where the day on or by which any thing is to be done is not a Business Day, it must be done on or by the preceding Business Day;
- (c) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded;
- (d) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (e) “includes” means includes without limitation;
- (f) no rule of construction will apply to the disadvantage of one Party on the basis that that Party put forward the documents comprising this Agreement;
- (g) if the documents comprising this Agreement contain any ambiguity, discrepancy or inconsistency, then the following order of precedence will apply to resolve that ambiguity, discrepancy or inconsistency:
 - (i) this Agreement excluding the schedules; and
 - (ii) the schedules;
- (h) words in the singular include the plural and vice versa;
- (i) words importing one gender will include every gender;
- (j) references to clauses and schedules are references to clauses of, and schedules to, this Agreement;

- (k) a requirement for a Party to obtain the consent or approval of another Party requires that Party to obtain the consent or approval in writing; and
- (l) a reference to:
 - (i) a person includes any company, partnership, joint venture, unincorporated association, corporation or other body corporate and a government or statutory body or authority;
 - (ii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified, consolidated, re-enacted or replaced;
 - (iii) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (iv) a right includes a benefit, remedy, discretion and power;
 - (v) time is to local time in Brisbane, Queensland;
 - (vi) \$ or dollars is a reference to Australian currency;
 - (vii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the Parties;
 - (viii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmission; and
 - (ix) a Party includes that Party's successors according to law and permitted assigns and any person to whom it novates its rights and obligations.

2 Term

This Agreement commences on the Commencement Date and will continue until the date of winding up of the Trust in accordance with the Trust Deed.

3 Access Agreement

3.1 Entry into Access Agreement

- (a) Within the six month period ending on the Due Date:
 - (i) the Unit Holder (or its nominee) must enter into an Access Holder Access Agreement with Aurizon Network for the Access Agreement Term for the whole of the Nominated Access Rights for each Access Period during the Access Agreement Term;
 - (ii) the Unit Holder must procure a Railway Operator, acceptable to Aurizon Network, to enter into an Operator Access Agreement with Aurizon Network for the Access Agreement Term for the whole of

the Nominated Access Rights for each Access Period during the Access Agreement Term; or

- (iii) the Unit Holder must ensure that any number or combination of Access Agreements (provided that, in the case of an Operator Access Agreement, the Railway Operator is acceptable to Aurizon Network) are entered into with Aurizon Network for the Access Agreement Term which together are for the whole of the Nominated Access Rights for each Access Period during the Access Agreement Term.
- (b) For the purposes of **clauses 3.1(a)(ii)** and **3.1(a)(iii)**, Aurizon Network may only decide that a Railway Operator is not acceptable to Aurizon Network if Aurizon Network could refuse to enter into an Operator Access Agreement with the Railway Operator, on the basis of the suitability of, or some other criteria related to, the Railway Operator, under the then current Access Undertaking.

3.2 Completion and modification of Access Agreement

- (a) If:
 - (i) the Unit Holder wishes to enter into an Access Holder Access Agreement under **clause 3.1**, then the Unit Holder irrevocably authorises and directs Aurizon Network;
 - (ii) the Unit Holder nominates a nominee to enter into an Access Holder Access Agreement under **clause 3.1**, then the Unit Holder must procure the nominee to irrevocably authorise and direct Aurizon Network; and/or
 - (iii) the Unit Holder nominates a Railway Operator acceptable to Aurizon Network to enter into an Operator Access Agreement under **clause 3.1**, then the Unit Holder must procure the nominated Railway Operator to irrevocably authorise and direct Aurizon Network,
- to:
 - (iv) complete the applicable Access Agreement by inserting the date of the applicable Access Agreement;
 - (v) complete the applicable Access Agreement by including a term equal to the Access Agreement Term;
 - (vi) complete the applicable Access Agreement to include the applicable Nominated Access Rights for each Access Period during the Access Agreement Term;
 - (vii) complete and include in the applicable Access Agreement all schedules and attachments referred to in, or contemplated by, the applicable Access Agreement;
 - (viii) complete any other blank spaces that have not otherwise been completed in the applicable Access Agreement; and

- (ix) modify the terms of the applicable Access Agreement in accordance with **part 2 of schedule 2**.
- (b) Aurizon Network must act reasonably and in good faith in completing and modifying any Access Agreements under this **clause 3.2**.
- (c) The Unit Holder must (and must procure its nominee or nominated Railway Operator, as applicable, to) act reasonably and in good faith in its dealings with Aurizon Network in relation to the completion and modification of any Access Agreements entered into under this **clause 3.2**.

[Drafting note: As an alternative to the approach contemplated under clauses 3.1 and 3.2, a near complete version of the applicable Access Agreement (modified in accordance with schedule 2) could be annexed to this Agreement. This clause 3 could be amended to provide for the Unit Holder to enter into that version of the Access Agreement after any incomplete matters have been completed by Aurizon Network. This clause 3 (and associated definitions) would need to be amended to give effect to that alternative approach.]

3.3 Default Access Agreement

- (a) This **clause 3.3** applies if (and only if) an Access Agreement or Access Agreements which meet the requirements of **clause 3.1** have not been entered by the date required under **clause 3.1**.
- (b) A document in the form of the Pro Forma Access Agreement (**Default Access Agreement**):
 - (i) is taken to be in full force and effect on and from the Due Date as an access agreement between Aurizon Network and the Unit Holder for the Access Agreement Term; and
 - (ii) binds Aurizon Network and the Unit Holder on and from the Due Date,
whether or not:
 - (iii) the details referred to in **clause 3.2**, or any of them, have been completed, or are capable of completion, as at the Due Date; or
 - (iv) Aurizon Network and the Unit Holder have properly executed that document.
- (c) After the Due Date:
 - (i) Aurizon Network must deliver a copy of the Default Access Agreement to the Unit Holder; and
 - (ii) promptly after the copy of the Default Access Agreement is delivered to the Unit Holder, the Unit Holder must duly execute a copy of the Default Access Agreement and deliver it to Aurizon Network.

3.4 Dispute

If the Unit Holder Disputes the form of:

- (a) an applicable Access Agreement completed and modified by Aurizon Network under **clause 3.2**; or
 - (b) the Default Access Agreement,
- then:
- (c) the Unit Holder may give Aurizon Network a Dispute Notice in respect of that matter; and
 - (d) if the Dispute is not resolved in accordance with **clause 8.2**, the matter may be referred to an Expert for the Expert to determine the form of the applicable Access Agreement (applying, for the purposes of such determination, the requirements imposed on Aurizon Network under this **clause 3**).

4 Utilisation of Nominated Access Rights

4.1 Application

This **clause 4** does not apply, and will be of no force or effect, if:

- (a) the Unit Holder is a “Preference Subscriber” (as defined in the Unit Holders Deed) which was issued Preference Units under clause **[5.10]** of the Unit Holders Deed; and
- (b) this Agreement was entered into between the Unit Holder, Aurizon Network and the initial trustee of the Trust following the execution of this Agreement by Aurizon Network in accordance with clause **[5.16]** of the Unit Holders Deed.

4.2 Access Utilisation Notice

- (a) If the Transfer Date occurs during the Construction Period, then within 60 Business Days after the Transfer Date, the Unit Holder must give a notice (**Access Utilisation Notice**) to Aurizon Network which:
 - (i) specifies:
 - (A) whether or not the Unit Holder, in its reasonable opinion, has a reasonable likelihood of utilising the whole of the Nominated Access Rights for each Access Period; and
 - (B) if not, the extent of the Nominated Access Rights (expressed as an even number of one-way train services) for each Access Period which the Unit Holder has a reasonable likelihood of utilising; and
 - (C) reasonable details of the reasons for the Unit Holder’s opinions in relation to the matters under **clauses 4.2(a)(i)(A)** and **4.2(a)(i)(B)**; and
 - (ii) is accompanied by reasonable documentary evidence which supports the Unit Holder’s opinions in relation to the matters under **clauses 4.2(a)(i)(A)** and **4.2(a)(i)(B)**.

- (b) If the Unit Holder does not give Aurizon Network an Access Utilisation Notice within the time required under **clause 4.2(a)**, the Unit Holder will be deemed to have given Aurizon Network, on the Transfer Date, an Access Utilisation Notice which specifies that the Unit Holder does not have a reasonable likelihood of utilising any of the Nominated Access Rights for any Access Period.

4.3 No utilisation of Nominated Access Rights

If the Unit Holder gives, or is deemed to give, Aurizon Network an Access Utilisation Notice which specifies that the Unit Holder does not have a reasonable likelihood of utilising any of the Nominated Access Rights for any Access Period then:

- (a) Aurizon Network may give a notice to the Unit Holder notifying it that **clause 3** ceases to apply, and will be of no further force or effect, with effect on and from the Access Utilisation Notice Date, in which case, **clause 3** will cease to apply, and will be of no further force or effect, with effect on and from the Access Utilisation Notice Date; and/or
- (b) Aurizon Network may terminate, with effect on the Access Utilisation Notice Date, any Access Agreement entered into, or deemed to be entered into, under **clause 3** before the Access Utilisation Notice Date by giving notice to the Unit Holder and the other parties to any such Access Agreement.

4.4 Access utilisation determination

- (a) Unless **clause 4.3** applies, within 30 Business Days after the Access Utilisation Notice Date, Aurizon Network must:
 - (i) determine, in its reasonable opinion:
 - (A) whether or not the Unit Holder has a reasonable likelihood of utilising the whole of the Nominated Access Rights for each Access Period; and
 - (B) if not, the extent of the Nominated Access Rights (expressed as an even number of one-way train services) for each Access Period which the Unit Holder has a reasonable likelihood of utilising;
 - (ii) give the Unit Holder a notice (**Access Utilisation Determination Notice**) specifying:
 - (A) Aurizon Network's determination(s) under **clause 4.4(a)(i)**; and
 - (B) reasonable details of the reasons for such determination(s).
- (b) The Unit Holder must promptly (and in any event, within five Business Days after being required to do so) provide Aurizon Network with any information or documentation reasonably required by Aurizon Network for the purpose of making the determination(s) under **clause 4.4(a)(i)**.

4.5 Dispute

- (a) If Aurizon Network gives the Unit Holder an Access Utilisation Determination Notice which specifies that Aurizon Network has determined under **clause 4.4(a)(i)** that the Unit Holder does not have a reasonable likelihood of utilising some or all of the Nominated Access Rights for any one or more Access Periods (and Aurizon Network's determination(s) specified in an Access Utilisation Determination Notice differs to the Unit Holder's opinion(s) specified in an Access Utilisation Notice), then the Unit Holder may, within ten Business Days after Aurizon Network gives the Access Utilisation Determination Notice to the Unit Holder, give Aurizon Network a Dispute Notice under **clause 8.1(a)** which Disputes Aurizon Network's determination(s) under **clause 4.4(a)(i)** as specified in the Access Utilisation Determination Notice.
- (b) If a Dispute referred to in **clause 4.5(a)** is not resolved in accordance with **clause 8.2**, then the Unit Holder may refer that Dispute to an Expert to determine, in its reasonable opinion, the matters that Aurizon Network was required to determine under **clause 4.4(a)(i)**.
- (c) If Aurizon Network gives the Unit Holder an Access Utilisation Determination Notice under **clause 4.4(a)(ii)** and the Unit Holder does not give Aurizon Network a Dispute Notice referred to in **clause 4.5(a)** within the time referred to in **clause 4.5(a)**, then:
 - (i) the Unit Holder must not give Aurizon Network a Dispute Notice under **clause 4.5(a)** which Disputes Aurizon Network's determination(s) under **clause 4.4(a)(i)** as specified in the Access Utilisation Determination Notice;
 - (ii) any such Dispute Notice which is given by the Unit Holder will be of no effect; and
 - (iii) the Unit Holder will not have, and must not make, any Claim against Aurizon Network in respect of that Dispute.

4.6 No utilisation of Access Rights

If:

- (a) Aurizon Network determines under **clause 4.4(a)(i)** (and the Unit Holder does not give Aurizon Network a Dispute Notice referred to in **clause 4.5(a)** in respect of such determination); or
- (b) if the Unit Holder gives Aurizon Network a Dispute Notice referred to in **clause 4.5(a)**, it is agreed or determined under the Dispute Resolution Process,

that the Unit Holder does not have a reasonable likelihood of utilising any of the Nominated Access Rights for any of the Access Periods, then:

- (c) Aurizon Network may give a notice to the Unit Holder notifying it that **clause 3** ceases to apply, and will be of no further force or effect, with effect on and from the Effective Date, in which case, **clause 3** will cease

to apply, and will be of no further force or effect, with effect on and from the Effective Date; and/or

- (d) Aurizon Network may terminate, with effect on the Effective Date, any Access Agreement entered into, or deemed to be entered into, under **clause 3** before the Effective Date by giving notice to the Unit Holder and the other parties to any such Access Agreement.

4.7 Variation of Nominated Access Rights and/or Access Rights

(a) If:

- (i) Aurizon Network determines under **clause 4.4(a)(i)** (and the Unit Holder does not give Aurizon Network a Dispute Notice referred to in **clause 4.5(a)** in respect of such determination); or
- (ii) if the Unit Holder gives Aurizon Network a Dispute Notice referred to in **clause 4.5(a)**, it is agreed or determined under the Dispute Resolution Process,

that the Unit Holder does not have a reasonable likelihood of utilising some or all of the Nominated Access Rights for any one or more Access Periods, then:

- (iii) Aurizon Network may give a notice to the Unit Holder notifying it that the Nominated Access Rights for each Under-utilised Access Period will be deemed to be varied, with effect upon the Effective Date, to be the Maximum Utilised Nominated Access Rights, in which case, the Nominated Access Rights for each Under-utilised Access Period will be deemed to be varied, with effect upon the Effective Date, to be the Maximum Utilised Nominated Access Rights; and/or
- (iv) if any Access Agreements have been entered into, or deemed to have been entered into, under **clause 3** before the Effective Date: then:
 - (A) if only one Access Agreement has been entered into, or deemed to have been entered into, under **clause 3** before the Effective Date, then:
 - (1) Aurizon Network may give a notice to the Unit Holder and the other parties to that Access Agreement, notifying them that the Access Rights granted under that Access Agreement for each Under-utilised Access Period will be varied, with effect upon the Effective Date, to be the Maximum Utilised Nominated Access Rights; and
 - (2) that Access Agreement will be deemed to be varied, as specified in the notice given by Aurizon Network to each of the parties to the Access Agreement under **clause 4.7(a)(iv)(A)(1)**, with effect on the Effective Date; and

- (B) if more than one Access Agreement has been entered into, or deemed to have been entered into, under **clause 3** before the Effective Date, then within 20 Business Days after the Effective Date, the Unit Holder must notify Aurizon Network of the variations which it requests to the Access Rights granted under those Access Agreements for each Under-utilised Access Period, so that, the Access Rights granted, in aggregate, under those Access Agreements for each Under-utilised Access Period equal the Maximum Utilised Nominated Access Rights.
- (b) If the Unit Holder gives Aurizon Network a notice under **clause 4.7(a)(iv)(B)**, within the time required under **clause 4.7(a)(iv)(B)** and in accordance with **clause 4.7(a)(iv)(B)**, then:
- (i) Aurizon Network may give a notice to the Unit Holder and the other parties to each of the Access Agreements which the Unit Holder has requested to be varied under **clause 4.7(a)(iv)(B)**, notifying them of the variations to the Access Rights for the Under-utilised Access Periods granted under their respective Access Agreements as requested in the notice given by the Unit Holder under **clause 4.7(a)(iv)(B)**; and
 - (ii) each such Access Agreement will be deemed to be varied, as specified in the notice given by Aurizon Network to each of the parties to the Access Agreements under **clause 4.7(b)(i)**, with effect on the Effective Date.
- (c) If:
- (i) the Unit Holder does not give Aurizon Network a notice referred to in **clause 4.7(a)(iv)(B)** within the time required under **clause 4.7(a)(iv)(B)**; or
 - (ii) the Unit Holder gives Aurizon Network a notice referred to in **clause 4.7(a)(iv)(B)** within the time required under **clause 4.7(a)(iv)(B)** but the notice is not in accordance with **clause 4.7(a)(iv)(B)**,
- then:
- (iii) Aurizon Network may, in its absolute discretion, determine to vary the Access Rights granted under any one or more of the Access Agreements referred to in **clause 4.7(a)(iv)(B)** for each Under-utilised Access Period, so that the Access Rights granted, in aggregate, under those Access Agreements for each Under-utilised Access Period equal the Maximum Utilised Nominated Access Rights;
 - (iv) Aurizon Network may, promptly after making the determination referred to in **clause 4.7(c)(iii)**, give a notice to the Unit Holder and each of the parties to each of the Access Agreements which Aurizon Network has determined to vary under **clause 4.7(c)(iii)**,

notifying them of the variations to the Access Rights for the Under-utilised Access Periods granted under their respective Access Agreements as determined by Aurizon Network in accordance with **clause 4.7(c)(iii)**; and

- (v) each such Access Agreement will be deemed to be varied, as specified in the notice given by Aurizon Network to each of the parties to the Access Agreements under **clause 4.7(c)(iv)**, with effect on the Effective Date.

5 Tax indemnity

5.1 Tax Indemnity

- (a) The Parties acknowledge and agree that the Extension Structure is not intended to result in any Extension Structure Tax Cost to an Indemnified Entity.
- (b) Subject to **clause 5.1(f)**, the Unit Holder must indemnify and keep indemnified Aurizon Network and the Trustee (both in its capacity as trustee of the Trust and in its personal capacity) (each an **Indemnified Entity**) against any:
 - (i) Extension Structure Tax Cost; and
 - (ii) all costs and expenses incurred or payable by an Indemnified Entity or a Related Body Corporate of it in connection with any Extension Structure Tax Cost referred to in this **clause 5.1(b)** or any action taken under or consistent with this **clause 5**, (for the avoidance of doubt, costs incurred by an Indemnified Entity in the ordinary course of its business in relation to matters that are unlikely to give rise to an Extension Structure Tax Cost are excluded), including:
 - (A) reasonable costs of engaging any person (other than an Indemnified Entity) to assist the Indemnified Entity;
 - (B) reasonable costs of employees of the Indemnified Entity or a Related Body Corporate of it; and
 - (C) all costs relating to legal proceedings concerning any Extension Structure Tax Cost, any audit or investigation made by a Governmental Agency in relation to the Tax treatment of the Extension Structure, and the settlement of, and steps taken to mitigate or resolve any process which could lead to, an Extension Structure Tax Cost, whether or not it transpires that it does,but only to the extent set out in **clause 5.6**.
- (c) An Extension Structure Tax Cost is:

- (i) any Liability for Tax that an Indemnified Entity or the Head Company incurs, suffers or is liable for, less any Extension Structure Tax Benefit;
- (ii) any Liability incurred by an Indemnified Entity under a Transaction Document to compensate another party to that document in respect of that party's Liability for Tax; or
- (iii) the tax effect (if any) of any Tax Relief of an Indemnified Entity or the Head Company that is utilised or denied,

in respect of the implementation of, participation in or exit from the Extension Structure where:

- (iv) the Liability, utilisation or denial would not have arisen or occurred; or
- (v) the Liability or the amount of the Tax Relief utilised or denied is greater than the amount that would have arisen, been utilised or denied,

had the Extension not been designed, procured, constructed and commissioned and the Extension Structure not been implemented.

- (d) An Extension Structure Tax Benefit means the tax effect of any Tax Relief available to an Indemnified Entity or the Head Company in relation to the Extension Structure for the year of income to which the Liability for Tax referred to in **clause 5.1(c)(i)** relates, but only if the Tax Relief has not already been taken into account in determining the Liability for Tax and only to the extent that the tax effect of any Tax Relief does not exceed the Liability for Tax.
- (e) In determining the tax effect of any Tax Relief for the purpose of **clause 5.1(c)** or **5.1(d)**, the income tax rate is that which applies to the Indemnified Entity or the Head Company, as the case may be (for the purposes of section 4-10 of the Tax Act and determined in accordance with section 23 of the *Income Tax Rates Act 1986* (Cth)), at the time that the Liability for Tax is incurred, suffered or arises or the Tax Relief is utilised or denied, expressed as a decimal.
- (f) The Unit Holder is not liable for a Claim under the Tax Indemnity to the extent that the Claim arises from any:
 - (i) amount derived by Aurizon Network (or the Head Company) as Project Manager under clause **[13]** of the Project Management Agreement;
 - (ii) amount of any "Fee" (as defined in the Rail Corridor Agreement) derived by Aurizon Network (or the Head Company) as Landholder under clause **[5]** of the Rail Corridor Agreement;
 - (iii) amount derived by Aurizon Network (or the Head Company) in its capacity as a Preference Unit Holder in the Trust;

- (iv) Liability for Tax of the Trustee that arises as a result of the Ordinary Unit Holder directing the Trustee under clause [15.5] of the Unit Holders Deed to accumulate income of the Trust;
 - (v) amount derived by the Trustee pursuant to clause [19] of the Trust Deed;
 - (vi) amount derived or expense incurred by Aurizon Network (or the Head Company) in satisfying its obligations to repair or replace the Extension Infrastructure (or part thereof) under clause [4] of the Extension Infrastructure Lease;
 - (vii) Stamp Duty payable on, in relation to, or as a consequence of any acquisition by Aurizon Network of Preference Units in the Trust;
 - (viii) Liability for Tax that arises in respect of any amount by which the proportion of an Access Charge for a fiscal year that is attributable to the operation and maintenance of the Extension exceeds the expenditure incurred by Aurizon Network or the Head Company in relation to the operation and maintenance of the Extension during that fiscal year;
 - (ix) failing to comply with a Tax Law (except where that failure arises as a result of the Indemnified Entity adopting a position after forming the view, acting reasonably, that the position would more likely than not prevail if adjudicated by a court);
 - (x) demand made by an Indemnified Entity after the expiry of 3 months after the expiration of the statutory period within which the relevant Governmental Agency may seek to recover the Tax to which the Claim relates;
 - (xi) "Optimisation Fee" (as defined in the Project Management Agreement) derived by the Trustee pursuant to the Project Management Agreement;
 - (xii) amount equal to "OPRA" (as defined in [schedule 2] of the Extension Infrastructure Lease) derived by Aurizon Network or the Head Company;
 - (xiii) amount of interest derived by an Indemnified Entity or the Head Company pursuant to clause [14.2] of the Rail Corridor Agreement or clause [8.3] of the Extension Infrastructure Lease; or
 - (xiv) charges, Taxes and rates payable by Aurizon Network, as lessee, in accordance with clause [#] of the Extension Infrastructure Lease.
- (g) For the avoidance of doubt, any Tax Relief or other Tax benefit that arises to an Indemnified Entity or the Head Company in respect of the matters set out in **clause 5.1(f)** will not reduce any amount payable by the Unit Holder under the Tax Indemnity.
 - (h) If the Unit Holder has made a payment to an Indemnified Entity under the Tax Indemnity and the Indemnified Entity or the Head Company

receives any payment (whether by way of refund, credit, offset, recoupment, compensation, penalty, damages, restitution, relief or otherwise) in respect of the Extension Structure Tax Cost giving rise to the payment under the Tax Indemnity, then the Indemnified Entity must pay to the Unit Holder within 30 Business Days of receipt of the payment an amount equal to the lesser of:

- (i) the Unit Holder's share of the value of the payment so received and allocated in accordance with **clause 5.6**; and
- (ii) the payment made by the Unit Holder to the Indemnified Entity under the Tax Indemnity to which the payment relates.

5.2 Amendments and dispute

- (a) If an Indemnified Entity becomes aware that the Extension Structure results in, or is likely to result in, an Extension Structure Tax Cost, then the Indemnified Entity must, within a reasonable time (having regard to the nature and complexity of the circumstances resulting in or likely to result in an Extension Structure Tax Cost and the applicable regulatory timeframes governing any dispute of the Extension Structure Tax Cost with the relevant Governmental Agency) of becoming aware, give the Unit Holder notice setting out the amount of the Extension Structure Tax Cost that it has calculated and reasonable particulars in relation to that calculation (including details of any Extension Structure Tax Benefit taken into account in the calculation of the Extension Structure Tax Cost) and the amount allocated to the Unit Holder pursuant to **clause 5.6 (Tax Claim Notice)**. Notwithstanding any other provision in this Agreement, the Unit Holder's sole remedy for any delay by an Indemnified Entity in providing a Tax Claim Notice will be that the Unit Holder will not be liable under the Tax Indemnity to the extent that the delay gives rise to or increases an amount contemplated by **clause 5.1(b)(i)**, net of any corresponding benefit arising from the delay.
- (b) The Unit Holder must notify the Indemnified Entity within 20 Business Days of receipt of a Tax Claim Notice if it:
 - (i) disagrees with the existence or calculation of the Extension Structure Tax Cost or the allocation to the Unit Holder contained in such notice and, if so, what modifications it proposes (**Tax Adjustment Notice**); or
 - (ii) proposes that an Indemnified Entity dispute or procure the dispute of the Extension Structure Tax Cost with the relevant Governmental Agency (**Tax Dispute Notice**). The Unit Holder may only issue a Tax Dispute Notice if it provides reasonable particulars (having regard to the nature and complexity of the circumstances resulting in or likely to result in an Extension Structure Tax Cost) of the action that the Unit Holder proposes be taken in respect of the Extension Structure Tax Cost (**Disputing Action**) and is accompanied by evidence reasonably satisfactory to the Indemnified Entity that Preference Unit Holders holding not

less than 75% of the total number of Preference Units on issue have agreed to the proposed Disputing Action.

- (c) On receipt of a Tax Adjustment Notice or Tax Dispute Notice within the requisite notice period, the Unit Holder and the Indemnified Entity must engage in good faith discussions to reach agreement in respect of:
 - (i) in the case of a Tax Adjustment Notice, corrections to the calculation of the Extension Structure Tax Cost and the allocation to the Unit Holder and, if such agreement is reached, the amount of the Extension Structure Tax Cost or the allocation to the Unit Holder will be adjusted accordingly; or
 - (ii) in the case of a Tax Dispute Notice, whether an Indemnified Entity will commence or procure the commencement of a Disputing Action and, if so, the type of Disputing Action.
- (d) If the Indemnified Entity and the Unit Holder cannot, within 20 Business Days after the day on which the Unit Holder gives a Tax Adjustment Notice to the Indemnified Entity, agree on the Extension Structure Tax Cost or the allocation to the Unit Holder, or if either **clause 5.7(b)(i)** or **clause 5.7(b)(ii)** applies in relation to the calculation of the Extension Structure Tax Cost or its allocation among Preference Unit Holders:
 - (i) the Extension Structure Tax Cost and the allocation to the Unit Holder is to be determined by a Tax Expert. In so acting, the Tax Expert:
 - (A) must be instructed to review the basis for and the calculation of the Extension Structure Tax Cost and the allocation to the Unit Holder by reference to the Tax Law applicable to the period relevant to the Extension Structure Tax Cost to achieve the aim set out in **clause 5.1(a)** using the principles in **clauses 5.1(c), 5.1(d), 5.1(e)** and **5.6**; and
 - (B) will act as an expert and not as an arbitrator and, in the absence of manifest error, his or her decision will be final and binding on the Parties with the amount of the Extension Structure Tax Cost and the allocation to the Unit Holder being adjusted accordingly; and
 - (ii) to the extent that the Tax Adjustment Notice given under **clause 5.2(b)(i)** gives rise to the reference to the Tax Expert under this **clause 5.2(d)**, as between the Parties, the Unit Holder and each Other Unit Holder that gave a Tax Adjustment Notice in respect of substantially the same matters under a provision of an agreement corresponding to **clause 5.2(b)(i)** of this Agreement will pay the Tax Expert's costs and expenses in respect of any such reference in the proportion which the number of Preference Units held by each of the Unit Holder and each Other Unit Holder that gave such a Tax Adjustment Notice bears to the total number of Preference Units on issue to the Unit Holder and Each Other Unit Holder that gave Tax Adjustment Notices, at that time.

- (e) If the Indemnified Entity and the Unit Holder cannot, within 20 Business Days after the day on which the Unit Holder gives a Tax Dispute Notice to the Indemnified Entity, agree on the matters contemplated by **clause 5.2(c)(ii)**, or if either **clause 5.7(b)(i)** or **clause 5.7(b)(ii)** applies in relation to the taking of any Disputing Action:
- (i) the matter is to be referred to a Tax Expert to determine:
 - (A) whether any such Disputing Action is more likely than not to succeed and, if so, what type of Disputing Action should be taken; and
 - (B) the Tax Expert will act as an expert and not as an arbitrator and, in the absence of manifest error, his or her decision will be final and binding on the Parties; and
 - (ii) to the extent that the Tax Dispute Notice given under **clause 5.2(b)(ii)** gives rise to the reference to the Tax Expert under this **clause 5.2(e)** then, as between the Parties, the Unit Holder and each Other Unit Holder to which a corresponding provision to **clause 5.2(b)(ii)** applies will pay the Tax Expert's costs and expenses in respect of any such reference in the proportion which the number of Preference Units held by each of the Unit Holder and each Other Unit Holder bears to the total number of Preference Units on issue to the Unit Holder and all Other Unit Holders, at that time.
- (f) If the Indemnified Entity and the Unit Holder agree, within 20 Business Days after the day on which the Unit Holder gives the Tax Dispute Notice to the Indemnified Entity, to commence or procure the commencement of a Disputing Action or the Tax Expert determines that any Disputing Action is more likely than not to succeed:
- (i) Aurizon Network must, within two Business Days of the date of the agreement to commence a Disputing Action or the date that the Tax Expert notifies the Parties of the determination in **clause 5.2(e)**, notify the Unit Holder regarding the entity that will take the Disputing Action;
 - (ii) if:
 - (A) more than one Unit Holder that is a party to the Unit Holders Deed has given notice to an Indemnified Entity under a provision of an agreement corresponding to **clause 5.2(b)(ii)** of this Agreement; or
 - (B) an Indemnified Entity is of the opinion, acting reasonably, that the Disputing Action may be relevant to one or more Preference Unit Holders that are parties to the Unit Holders Deed,
- the Indemnified Entity must call a meeting of the Preference Unit Holders for the purpose of nominating one Preference Unit Holder to represent them (**Unit Holder Representative**) for the purposes

of this **clause 5.2(f)**. The Unit Holder agrees that the Unit Holder Representative will be determined by Preference Unit Holders holding not less than 50% of the total number of Preference Units on issue at that time ;

- (iii) the Indemnified Entity will be responsible for conducting the Disputing Action including, subject to the Indemnified Entity complying with **clause 5.2(f)(iv)**, controlling all discussions, correspondence and communications with any Governmental Agency in relation to the Disputing Action;
- (iv) the Indemnified Entity must, in relation to the conduct of the Disputing Action:
 - (A) act in good faith at all times;
 - (B) liaise with the Unit Holder Representative as to any action proposed or not proposed to be taken;
 - (C) follow all reasonable instructions of the Unit Holder Representative. An instruction will not be regarded as reasonable if complying with it would cause material reputational damage to the Indemnified Entity or any Related Body Corporate;
 - (D) make available to the Unit Holder Representative, as soon as possible, but in any event within five Business Days, of receipt by the Indemnified Entity, a copy of the portion of any notice, correspondence or other document relating to the Disputing Action;
 - (E) notify the Unit Holder Representative regarding, and make provision for the Unit Holder Representative to attend all meetings, discussions or conferences with any Governmental Agency; and
 - (F) except if **clause 5.2(f)(iv)(C)** applies, not take any action which it is objectively unreasonable to take in all the circumstances;
- (v) the Unit Holder must, in relation to the conduct of the Disputing Action:
 - (A) bear all costs in relation to the conduct of the Disputing Action; and
 - (B) pay to the relevant Indemnified Entity so much of any Tax as is required by the relevant Governmental Agency to be paid in order to conduct the Disputing Action no later than the day that is five Business Days preceding the due date (or any extended date for payment permitted by the relevant Governmental Agency) specified in any notice issued by the Governmental Agency,

but only to the extent set out in **clause 5.6**; and

- (vi) the Indemnified Entity must not:
 - (A) accept, compromise, pay, agree to arbitrate, settle or admit liability in relation to the Disputing Action; or
 - (B) make any payment in respect of the Disputing Action to a Governmental Agency (except any payment made to a Governmental Agency as contemplated by **clause 5.2(f)(v)(B)**),
without the prior approval of the Unit Holder Representative (such approval not to be unreasonably withheld or delayed).
- (vii) For the avoidance of doubt, the Indemnified Entity has no obligations under **clauses 5.2(f)(iv)(B), (C), (D) or (E)** or **clause 5.2(f)(vi)** if the Preference Unit Holders fail to appoint a Unit Holder Representative under **clause 5.2(f)(ii)**.

5.3 Payment

- (a) The Unit Holder must pay to an Indemnified Entity an amount equal to:
 - (i) **(no adjustment or dispute)** if the Unit Holder does not give a Tax Adjustment Notice or a Tax Dispute Notice to the Indemnified Entity under **clause 5.2(b)** within the requisite period and neither **clause 5.7(b)(i)** or **clause 5.7(b)(ii)** applies, the amount of the Extension Structure Tax Cost allocated to the Unit Holder as specified in the Tax Claim Notice within 25 Business Days after the day the notice was given;
 - (ii) **(adjustment agreed)** if the Parties agree to the amount of the adjusted Extension Structure Tax Cost allocated to the Unit Holder in accordance with **clause 5.2(c)(i)** and **clause 5.2(d)** does not apply, that amount within five Business Days of reaching the agreement referred to in **clause 5.2(c)(i)**;
 - (iii) **(Tax Expert determined Extension Structure Tax Cost)** if **clause 5.2(d)** applies and no Disputing Action is or is to be taken, an amount equal to the adjusted Extension Structure Tax Cost allocated to the Unit Holder referred to in **clause 5.2(d)(i)(B)** within five Business Days of the Tax Expert notifying the Parties of the amount of the adjusted Extension Structure Tax Cost and the amount allocated to the Unit Holder; or
 - (iv) **(Tax Expert determined no Disputing Action)** if no Disputing Action is or is to be taken following a referral to the Tax Expert under **clause 5.2(e)**, an amount equal to the amount of the Extension Structure Tax Cost allocated to the Unit Holder as notified by the Indemnified Entity under **clause 5.2(a)** within five Business Days of the Tax Expert notifying the Parties of his or her decision.
- (b) If a Disputing Action is or is to be taken:

- (i) then subject to **clause 5.2(f)(v)(B)**, any payment that would otherwise be required to be made by the Unit Holder pursuant to **clause 5.3(a)** will be deferred until such time that the Disputing Action is concluded;
- (ii) within a reasonable time following the conclusion of the Disputing Action, the Indemnified Entity must recalculate the Extension Structure Tax Cost and its allocation to the Unit Holder having regard to the outcome of the Disputing Action and provide a copy of the recalculation to the Unit Holder;
- (iii) if the amount of the Extension Structure Tax Cost allocated to the Unit Holder as determined in accordance with **clause 5.3(b)(ii)**:
 - (A) exceeds the amount paid by the Unit Holder pursuant to **clause 5.2(f)(v)(B)** (if any), the Unit Holder must pay to the Indemnified Entity an amount equal to the Extension Structure Tax Cost as determined, but only to the extent set out in **clause 5.6**, less any amount paid by the Unit Holder pursuant to **clause 5.2(f)(v)(B)** and not refunded pursuant to **clause 5.1(h)**, within five Business Days of the determination; or
 - (B) is less than the amount paid by the Unit Holder pursuant to **clause 5.2(f)(v)(B)** (if any) and the Indemnified Entity or the Head Company receives any refund in respect of that amount, the Indemnified Entity must pay an amount equal to the lesser of:
 - (1) the refund so received; and
 - (2) the payment made by the Unit Holder pursuant to **clause 5.2(f)(v)(B)**,
 within five Business Days of receipt of the refund.
- (c) The Unit Holder must pay to the Indemnified Entity any amount under **clause 5.1(b)(ii)** allocated to the Unit Holder under **clause 5.6** or determined by the Tax Expert and any amount under **clause 5.2(f)(v)(A)**, but only to the extent set out in **clause 5.6**, within ten Business Days after notice of the Claim is provided to the Unit Holder.
- (d) The Unit Holder is not required to make a payment to the Indemnified Entity under this **clause 5.3** to the extent that the Indemnified Entity has recovered compensation in relation to the same matter under a Transaction Document (excluding this Agreement).

5.4 No further adjustment to particular Extension Structure Tax Cost

The Parties acknowledge and agree that, subject to **clause 5.1(h)** and **clause 5.3(b)(iii)(A)**, an Extension Structure Tax Cost which has been determined and settled in accordance with **clause 5.3** will be final and:

- (a) the Indemnified Entities are precluded from bringing any further claim under **clause 5.1**, and agree that the Unit Holder will not be liable to make any additional payment, in respect of that particular Extension Structure Tax Cost; and
- (b) the Unit Holder is precluded from bringing any claim against the Indemnified Entities, and agrees that the Indemnified Entities will not be liable to make any payment or refund to the Unit Holder, in respect of that particular Extension Structure Tax Cost.

However, for the avoidance of doubt, nothing in this **clause 5.4** prohibits a Tax Claim Notice in respect of any other Extension Structure Tax Cost.

5.5 Tax effect

If any payment by the Unit Holder to an Indemnified Entity under this Agreement, including **clause 5.3**, would require the Indemnified Entity or the Head Company to pay Tax (for the avoidance of doubt, including any amount calculated under Parts 3-1 to 3-3 of the *Income Tax Assessment Act 1997* (Cth)) as a result of the amount received by the Indemnified Entity, the Unit Holder must pay to the Indemnified Entity, within five Business Days of a demand from the Indemnified Entity, an additional amount calculated as follows:

$$AA = \left[\frac{P}{(1 - T)} \right] - P$$

where:

- AA** = the additional amount to be paid;
- P** = the amount payable by the Unit Holder to the Indemnified Entity disregarding this clause; and
- T** = the income tax rate that would apply to the Indemnified Entity or the Head Company, as the case may be (for the purposes of section 4-10 of the Tax Act and determined in accordance with section 23 of the *Income Tax Rates Act 1986* (Cth)), at the time that the calculation is performed, expressed as a decimal.

5.6 Apportionment

- (a) The amount of any:
 - (i) liability of the Unit Holder under the Tax Indemnity (including any amount referred to in **clauses 5.1(b)(i)**, **5.1(b)(ii)**, **5.2(f)(v)** and **5.3**); or
 - (ii) refund to be provided by the Indemnified Entities to the Unit Holder in accordance with **clause 5.1(h)** or **5.3(b)(iii)(A)**,

will be calculated as follows:

$$A = L \times P/TP$$

where:

A = the amount to be paid by the Unit Holder to an Indemnified Entity or to be refunded by an Indemnified Entity to the Unit Holder as the case may be;

L = the amount payable by or refundable to the Unit Holder disregarding this clause;

P = means the sum of:

(a) the number of Preference Units (if any) held by the Unit Holder; and

(b) the number of Linked Preference Units for the Unit Holder (if any) (excluding any Linked Preference Units for the Unit Holder that are held by an entity that is a "Unit Holder" under an "Umbrella Agreement" (as defined in the Unit Holders Deed)); and

TP = the total number of Preference Units on issue, including, for the avoidance of doubt, the Preference Units held by Aurizon Network (if any).

(b) For the purposes of the formula in **clause 5.6(a)**, the number of units held by a person is to be determined:

(i) for an Extension Structure Tax Cost referred to in **clause 5.1(b)(i)** (including where the subject of a payment under **clause 5.2(f)(v)**), at the time that the Tax Claim Notice is given by the Indemnified Entity under **clause 5.2(a)**;

(ii) for costs and expenses referred to in **clause 5.1(b)(ii)**, at the time that the relevant cost or expense is incurred or payable by an Indemnified Entity or a Related Body Corporate; and

(iii) for a refund in accordance with **clauses 5.1(h)** or **5.3(b)(iii)(A)**, at the time that the refund is to be provided.

5.7 Appointment of Tax Expert

(a) Where **clause 5.7(b)** does not apply, the Tax Expert will be an independent Tax expert that Aurizon Network and the Unit Holder agree or, failing such agreement within 10 Business Days, appointed by the President (or his or her delegate) of the Tax Institute (or its successor).

(b) If:

(i) one or more Preference Unit Holders that are parties to the Unit Holders Deed have given a notice to an Indemnified Entity under a provision of an agreement corresponding to **clause 5.2(b)** of this Agreement and the matter that is the subject of that notice is to be referred to a Tax Expert under a provision of that agreement corresponding to **clause 5.2(d)** or **clause 5.2(e)** of this Agreement; or

- (ii) an Indemnified Entity is of the opinion, acting reasonably, that a matter that is to be referred to a Tax Expert under:
 - (A) **clause 5.2(d)** or **clause 5.2(e)** of this Agreement may be relevant to one or more Preference Unit Holders that are parties to the Unit Holders Deed; or
 - (B) a provision of an agreement corresponding to **clause 5.2(d)** or **clause 5.2(e)** of this Agreement may be relevant to the Unit Holder under this Agreement,

then Aurizon Network may by notice to the Preference Unit Holders nominate two independent Tax experts to determine the matters in dispute under this Agreement and any agreement including a clause corresponding to **clause 5.2(d)** or **clause 5.2(e)** of this Agreement. Each Preference Unit Holder must promptly advise Aurizon Network which of the nominees it approves to be the Tax Expert. The Tax Expert will be the person that is approved by the most Preference Unit Holders based on the number of Preference Units on issue at that time.

- (c) The amount of any costs of the Tax Expert will be allocated pro rata among all Preference Unit Holders to whom the proviso in **clauses 5.2(d)(ii)** or **clause 5.2(e)(ii)** (or a provision of an agreement corresponding to those provisions) does not apply.

5.8 Deduction under Unit Holders Deed

If any Tax Indemnity Amount is not paid by the due date for payment under this **clause 5 (Unpaid Amount)**, then:

- (a) Aurizon Network may notify the Trustee of the non-payment of the Unpaid Amount;
- (b) the Trustee must exercise its rights under the Unit Holders Deed to deduct the Unpaid Amount from any amounts which are due and payable to the Unit Holder and any Linked Unit Holder under the Unit Holders Deed; and
- (c) the Trustee must pay any amount deducted to the relevant Indemnified Entity promptly after the date the amount is deducted.

6 Regulatory Asset Base

6.1 Inclusion into Regulatory Asset Base

Aurizon Network must seek to include:

- (a) the Trust Capital Costs (**Capital Costs**);
- (b) the Aurizon Network Land Acquisition Costs (also **Capital Costs**); and
- (c) the Construction Interest on the Capital Costs,

into the Regulatory Asset Base as soon as reasonably practicable under the Access Undertaking.

6.2 Calculation of Construction Interest

The Construction Interest on the Capital Costs is the amount calculated in accordance with the following formula:

$$CI = \left[\sum_{x=1}^t CC_x \times (1 + R_{mth})^{t-x+1} \right] - CC$$

where:

CI	=	The Construction Interest on the Capital Costs
CC	=	The total Capital Costs incurred by the Trustee and Aurizon Network
CC _x	=	The part of the Capital Costs incurred by the Trustee and Aurizon Network in Month x
R	=	The annual interest rate (expressed as a decimal) that the Access Regulator uses to capitalise interest on costs included in the Regulatory Asset Base for the Extension
R _{mth}	=	(1+R) ^{1/12} – 1
t	=	The number of months from the date of the first CC _x amount is incurred by the Trustee or Aurizon Network to the date the Capital Costs are included in the Regulatory Asset Base
x	=	Each month after the first CC _x is incurred (x = 1 in the first month after the first CC _x amount is incurred by the Trustee or Aurizon Network)

7 Termination

7.1 No rights of termination

Despite any rule of law or equity to the contrary, no Party may terminate, rescind or treat as repudiated, or obtain any order with the effect of terminating or rescinding, this Agreement.

7.2 No prejudice as to right to damages

Subject to **clause 9**, nothing in this **clause 7** prejudices in any way a Party's right to Claim and recover damages for any breach of this Agreement by the another Party.

8 Disputes

8.1 Notification of Disputes

- (a) If any Claim, dispute or question (except any Claim, dispute or question in relation to any Extension Structure Tax Cost, which must be dealt with

solely under **clause 5.2) (Dispute)** arises between the Parties under this Agreement, any Party may give to each other Party a notice in writing (**Dispute Notice**) specifying the Dispute and referring it for resolution in accordance with this **clause 8**.

- (b) Unless otherwise expressly provided to the contrary in this Agreement, a Dispute must be resolved in accordance with this **clause 8**.

8.2 Chief executive officer resolution

- (a) Within ten Business Days after the giving of a Dispute Notice any Dispute must be referred in the first instance to the chief executive officer of Aurizon Network (or his or her nominee), the chief executive officer of the Unit Holder (or his or her nominee) and the chief executive officer of the Trustee (or his or her nominee) for the purposes of this **clause 8.2** for resolution.
- (b) If the Dispute is not resolved within ten Business Days after the referral under **clause 8.2(a)** or in the event that any chief executive officer appoints a nominee that is unacceptable to another Party, then the relevant Dispute:
 - (i) must, where this Agreement expressly requires referral to an expert; and
 - (ii) may, by agreement of the Parties in any other case, be referred for resolution by an expert (**Expert**) in accordance with **clause 8.3**.

8.3 Expert determination

Where any matter is referred to an Expert pursuant to **clause 8.2** or otherwise in accordance with the terms of this Agreement then the following provisions of this **clause 8.3** will apply:

- (a) an Expert must be appointed by agreement between the Parties, or in default of such appointment within ten Business Days of the requirement or right (as applicable) to refer the matter to an Expert, then that person is to be nominated at any Party's request by:
 - (i) where the Parties agree the Dispute is purely of a technical nature, the President (for the time being) of Engineers Australia – Queensland Division;
 - (ii) where the Parties agree the Dispute is purely of a financial or accounting nature, the President (for the time being) of The Institute of Chartered Accountants in Australia – Queensland Branch; and
 - (iii) in any other case, the President (for the time being) of the Queensland Law Society, Inc;
- (b) if the Expert is to be nominated by a person referred to in **clause 8.3(a)** and that person declines to nominate a person as the Expert but provides a list of people that could be appointed as the Expert:

- (i) the first person specified in that list will be taken to be nominated as the Expert;
 - (ii) if the first person specified in that list does not accept the appointment as the Expert, the next person specified in that list will be taken to be the first person specified in that list and will be nominated as the Expert; and
 - (iii) the process specified in **clause 8.3(b)(ii)** will apply to the next and each subsequent person specified in that list until a person that is taken to be nominated as the Expert accepts the appointment as the Expert;
- (c) subject to **clause 8.3(b)**, if the Expert is to be nominated by a person referred to in **clause 8.3(a)** and the person nominated as the Expert does not accept the appointment as the Expert, then an alternative person is to be nominated as the Expert at either Party's request by the same person referred to in **clause 8.3(a)**;
- (d) if the Expert is to be nominated by a person referred to in **clause 8.3(a)** the Parties must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of that person (including providing relevant indemnities and paying any charges or fees (which charges or fees will be borne equally by the Parties)) that must be satisfied or complied with as a condition of that person agreeing to nominate an Expert;
- (e) the Parties must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of an agreed or nominated Expert (including providing relevant indemnities and paying any charges or fees (which charges or fees will be borne equally by the Parties)) that must be satisfied or complied with as a condition of that person accepting the appointment as an Expert;
- (f) the Expert must:
 - (i) have appropriate qualifications and practical experience having regard to the nature of the Dispute;
 - (ii) have no interest or duty which conflicts or may conflict with his or her function as Expert, he or she being required to fully disclose any such interest or duty by notice to the Parties before his or her appointment;
 - (iii) not be, or have been in the last five years, an employee of the Trustee, Aurizon Network or a Preference Unit Holder or a Related Body Corporate of the Trustee, Aurizon Network or a Preference Unit Holder;
 - (iv) not be permitted to act until he or she has given notice to the Parties that he or she is willing and able to accept the appointment;

- (v) have regard to the provisions of this Agreement and consider all submissions (including oral submissions by a Party provided that such oral submissions are made in the presence of the other Parties), supporting documentation, information and data with respect to the matter submitted by the Parties;
 - (vi) provide all Parties with a copy of his or her determination in the form of a report setting out reasonable details of the reasons for the Expert's determination within a reasonable time after his or her appointment;
 - (vii) be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties (including, if required by a Party, by entering into a confidentiality agreement in favour of the Parties); and
 - (viii) be deemed to be and act as an expert and not an arbitrator and the law relating to arbitration (including, without limitation, the *Commercial Arbitration Act 1990* (Qld)), will not apply to him or her or the determination or the procedures by which he or she may reach a determination; and
- (g) if the determination of a matter referred to the Expert would require the Expert to be provided with any Price Sensitive Information by Aurizon Network, the Expert must enter into a confidentiality agreement in favour of Aurizon Network requiring the Expert to keep the Price Sensitive Information confidential.

8.4 Parties to assist Expert

The Parties must do everything reasonably requested by the Expert to assist the Expert in determining the Dispute including producing information and materials requested by the Expert and attending any hearing convened by the Expert.

8.5 Decision of Expert

In the absence of manifest error, the decision of the Expert is final and binding upon the Parties.

8.6 Costs

- (a) The costs of the Expert and any advisers engaged by the Expert will be borne equally by the Parties to the Dispute.
- (b) Each Party to the Dispute will bear its own legal costs and the costs of any advisers to it in respect of the Dispute Resolution Process under this **clause 8**.

8.7 Determination by court

- (a) If any Dispute is not otherwise resolved in accordance with this **clause 8**, then the Dispute may be referred to one of the courts of the State having jurisdiction, and sitting in Brisbane.

- (b) Each Party irrevocably and unconditionally:
 - (i) agrees that the courts of the State, and any courts which have jurisdiction to hear appeals from any of those courts, are to have exclusive jurisdiction to settle disputes which may arise out of or in connection with this Agreement and that accordingly any suit, action or proceeding (**Proceedings**) arising out of or in connection with this Agreement may be brought in, and only in, such courts;
 - (ii) waives any objection which it may have now or hereafter to the laying of the venue of any Proceedings in such courts and any Claim that any such Proceedings have been brought in an inconvenient forum; and
 - (iii) agrees that a final judgment in any Proceedings brought in such courts will be final and binding upon such Party and may be enforced in the courts of any other jurisdiction.

8.8 Injunctive relief

Nothing in this Agreement will prevent a Party from seeking urgent injunctive relief from a court.

8.9 Disputes involving Unit Holders under Umbrella Agreements

If:

- (a) a Dispute which arises under this Agreement, or the outcome or consequences of that Dispute, may be relevant to the Trustee, Aurizon Network and/or an Other Unit Holder under an Other Umbrella Agreement; or
- (b) a "Dispute" (as defined under an Other Umbrella Agreement) which arises under the Other Umbrella Agreement, or the outcome or consequences of that Dispute, may be relevant to the Trustee, Aurizon Network and/or the Unit Holder under this Agreement,

then:

- (c) as applicable:
 - (i) Aurizon Network, the Trustee and/or the Unit Holder may join all (for the avoidance of doubt, not only some) of the Other Unit Holders to the dispute resolution process under this Agreement; or
 - (ii) Aurizon Network and/or the Trustee may join the Unit Holder and all (for the avoidance of doubt, not only some) of the Other Unit Holders to the dispute resolution process under the Other Umbrella Agreement; and
- (d) Aurizon Network, the Trustee, the Unit Holder and each Other Unit Holder joined to participate in the dispute resolution process under this Agreement or an Other Umbrella Agreement (as applicable) will be bound by the outcome of the resolution of the Dispute irrespective of whether or not Aurizon Network, the Trustee, the Unit Holder or the

Other Unit Holders (as applicable) choose to actively participate in the dispute resolution process.

8.10 Time bar

If a Party does not give a Dispute Notice under **clause 8.1(a)** in respect of a Dispute within 12 Months after the date it becomes aware or ought reasonably to have become aware of the occurrence of the event or circumstance giving rise to the Dispute:

- (a) the Party must not give the other Parties such a Dispute Notice;
- (b) any such Dispute Notice which is given by the Party will be taken to be of no effect; and
- (c) the Party will not have, and must not make, any Claim against the other Parties in respect of the Dispute.

9 Limitation of liability

9.1 Limitation of Aurizon Network's liability under this Agreement

Except:

- (a) as otherwise expressly provided in this Agreement; or
- (b) to the extent:
 - (i) that Aurizon Network has committed fraud in connection with this Agreement or Gross Negligence or Wilful Default; or
 - (ii) otherwise prohibited by law,

Aurizon Network's liability to each of the Unit Holder and Trustee in respect of a Claim arising out of, or in any way related to, this Agreement is limited to, and will in no event exceed, the total amount of \$1.00.

9.2 Limitation of Aurizon Network's liability to Unit Holder under another Transaction Document

Except as otherwise expressly provided in another Transaction Document, Aurizon Network's liability to the Unit Holder in respect of a Claim arising out of, or in any way related to, that other Transaction Document is limited to, and will in no event exceed, the total amount of \$1.00.

9.3 No liability in relation to capacity

Aurizon Network will not have any liability to the Trustee or the Unit Holder in respect of any Claim arising out of, or in any way related to, the level of capacity created by the Extension except for any liability Aurizon Network may have under the Access Undertaking or an Access Agreement.

9.4 Exclusion of Consequential Loss under this Agreement

- (a) Subject to **clause 9.4(b)**, a Party will not be liable to another Party for, and any indemnity given by a Party does not extend to, any

Consequential Loss suffered by or Claimed against another Party arising out of, or in any way related to, this Agreement.

- (b) **Clause 9.4(a)** does not apply to the indemnity given by the Unit Holder under **clauses 5** and **15.4** of this Agreement.

9.5 Exclusion of Consequential Loss under another Transaction Document

- (a) Subject to **clause 9.5(b)**, Aurizon Network will not be liable to the Unit Holder for, and any indemnity given by Aurizon Network to the Unit Holder does not extend to, any Consequential Loss suffered by or claimed against the Unit Holder arising out of, or in any way related to, another Transaction Document.
- (b) **Clause 9.5(a)** does not apply to the extent:
 - (i) expressly provided otherwise in another Transaction Document; or
 - (ii) that a Transaction Document expressly provides that Aurizon Network is liable to pay an amount to the Unit Holder.
- (c) For the avoidance of doubt, Aurizon Network will not be liable to any Party (including for any Consequential Loss) for any matter of whatever nature concerning or in relation to the Unit Holder's obligation to supply product from a mine to any third party or to make product available to transport.

9.6 Trustee's limitation of liability

- (a) Aurizon Network and the Unit Holder acknowledges that the Trustee enters into this Agreement only as trustee of the Trust, and in no other capacity (other than in respect of the warranties in relation to trustee capacity in **clause 14.2** which are given by the Trustee in its personal capacity).
- (b) A liability of the Trustee arising under, or in connection with, this Agreement is limited to and can be enforced against the Trustee only to the extent to which the Trustee is entitled to be indemnified out of the Trust for the liability and the liability can be satisfied out of property of the Trust.
- (c) The limitation of liability in this **clause 9.6** will not apply to any liability of the Trustee to the extent that the liability is not satisfied out of the property of the Trust because there is a reduction in the Trustee's right of indemnity as a result of the Trustee committing fraud, "Gross Negligence" or "Wilful Default" (each a defined in the Trust Deed).

9.7 Scope of Claim, liability or loss

For the avoidance of doubt:

- (a) references in this **clause 9** to a Claim, liability or loss include:
 - (i) a Claim for, or liability or loss arising from, breach of contract, tort (including negligence), breach of equitable duty, breach of

statutory duty, breach of the *Competition and Consumer Act 2010* (Cth) or otherwise; and

- (ii) a Claim, liability or loss arising out of the performance or non-performance of any obligation under a Transaction Document, or arising out of a termination of a Transaction Document for any reason (including breach, repudiation or otherwise).

9.8 Claims against Aurizon Network

The Trustee and the Unit Holder will not have, and must not make, any Claim against Aurizon Network in relation to, or arising out of, the entry into or the performance or non-performance of this Agreement, or give a Dispute Notice to Aurizon Network in respect of such a Claim under **clause 8.1**, unless:

- (a) the Trustee or the Unit Holder (as applicable) first provides Aurizon Network with a notice of the purported Claim and allows Aurizon Network a reasonable period to rectify the relevant default; and
- (b) Aurizon Network fails to rectify that default within that reasonable period.

10 Confidentiality

10.1 Confidentiality obligations

A Party (**Recipient**):

- (a) may use Confidential Information of a Party (**Disclosing Party**) only for the purposes of this Agreement or another Transaction Document; and
- (b) must keep confidential all Confidential Information of a Disclosing Party except for disclosures permitted under **clause 10.2**.

10.2 Disclosure of Confidential Information

A Recipient may disclose Confidential Information of a Disclosing Party:

- (a) to any person, where the Disclosing Party has consented in writing to such disclosure (such consent not to be unreasonably withheld or delayed, and may be given subject to reasonable conditions, such as the signing of an appropriate confidentiality undertaking);
- (b) to the extent necessary to progress negotiations with any other person relevant to matters contemplated in this Agreement who executes a confidentiality undertaking in favour of the Disclosing Party on terms reasonably acceptable to it;
- (c) to the extent necessary to effect the administration or enforcement of this Agreement, or further negotiations pursuant to this Agreement, by employees, professional advisers (including legal advisers) and consultants of the Recipient;
- (d) to any Related Body Corporate of the Recipient to the extent necessary for reporting purposes within a relevant group of companies, governance and oversight of the relevant group of companies and obtaining any

- approval or consent (whether or not directly from that Related Body Corporate) in relation to the Recipient entering into this Agreement;
- (e) to potential purchasers, assignees or transferees of the shares in the Recipient or a Related Body Corporate of it or of the rights or obligations of the Recipient under this Agreement and the other Transaction Documents who execute a confidentiality undertaking in favour of the Disclosing Party on terms reasonably acceptable to it;
 - (f) to a bank or other financial institution (and its professional advisers and any security trustee or agent for it) in connection with and for the purpose of any loan or other financial accommodation sought to be arranged by, or provided to, the Recipient or a Related Body Corporate of it;
 - (g) to legal, accounting and financial or other advisers or consultants to the Recipient or a Related Body Corporate of it:
 - (i) whose duties in relation to the Recipient or the Related Body Corporate require the disclosure;
 - (ii) who are under a duty of confidentiality to the Recipient; and
 - (iii) who have been advised of the confidential nature of the Confidential Information;
 - (h) to any officers or employees of the Recipient or a Related Body Corporate of the Recipient who:
 - (i) have a need to know for the purposes of this Agreement or another Transaction Document (and only to the extent that each has a need to know); and
 - (ii) before disclosure, have been directed by the Recipient to keep confidential all Confidential Information of the Disclosing Party;
 - (i) if, and to the extent, the Recipient is required to do so by law (other than by section 275 of the *Personal Property Securities Act 2009* (Cth)) or by any rules or regulations of a recognised stock exchange (including where the disclosure is to a Related Body Corporate of the Recipient that is responsible for making such disclosures for the relevant group of companies and for the purpose of such a Related Body Corporate determining whether, and the extent to which, such a disclosure is required to be made);
 - (j) to any Governmental Agency to the extent required by law or where such disclosure is determined by the Trustee to be reasonably required for the administration of the Trust;
 - (k) if disclosure is lawfully required by the Access Regulator, or in accordance with the Access Undertaking;
 - (l) to an Expert under this Agreement, an "Expert" (as defined under an Other Umbrella Agreement) under an Other Umbrella Agreement; and
 - (m) to another Party to the extent:

- (i) expressly provided in this Agreement; or
- (ii) reasonably required for the purposes of this Agreement or another Transaction Document.

10.3 Conditions of disclosure

If a Recipient discloses Confidential Information of a Disclosing Party to a person under **clause 10.2 (Disclosee)**, the Recipient must:

- (a) ensure that the Disclosee is aware that the Confidential Information is confidential information of the Disclosing Party; and
- (b) use reasonable endeavours to ensure that the Disclosee does not improperly disclose or improperly use the Confidential Information.

11 GST

11.1 Construction

In this **clause 11**:

- (a) words and expressions which are not defined in this Agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law; and
- (b) references to GST payable and input tax credit entitlement include GST payable by, and the input tax credit entitlement of, the representative member for a GST group of which the entity is a member and the GST joint venture operator of any GST joint venture of which the entity is a participant.

11.2 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

11.3 Payment of GST

If GST is payable on any supply made by a party (or any entity through which that Party acts) (**Supplier**) under or in connection with this Agreement, the recipient will pay to the Supplier an amount equal to the GST payable on the supply.

11.4 Timing of GST payment

The recipient will pay the amount referred to in **clause 11.3** in addition to, and at the same time that, the consideration for the supply is to be provided under this Agreement.

11.5 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient before the Supplier is entitled to payment of an amount under **clause 11.3**. The recipient can withhold payment of the amount until the Supplier provides a tax invoice or an adjustment note, as appropriate.

11.6 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Agreement, the amount payable by the recipient under **clause 11.3** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier, or by the Supplier to the recipient, as the case requires.

11.7 Reimbursements

Where a Party is required under this Agreement to pay or reimburse an expense or outgoing of another Party, the amount to be paid or reimbursed by the first Party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other Party is entitled; and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

12 Assignment

12.1 Assignment

Subject to **clauses 12.2 to 12.7**, a Party must not assign, transfer, mortgage, charge, make the subject of a trust or otherwise deal with or encumber all or any of its rights or liabilities under this Agreement (or procure or permit any of those things) without the prior consent of the other Parties.

12.2 Assignment by Unit Holder during Construction Period

- (a) During the Construction Period, if the Unit Holder proposes to transfer all of the Unit Holder's Preference Units to a proposed transferee, the Unit Holder must also transfer all of the Unit Holder's rights and obligations under this Agreement to the proposed transferee with effect upon the proposed transferee becoming the registered holder of the Preference Units.
- (b) The Parties and the proposed transferee must execute a deed of assignment and assumption or a deed of novation in a form acceptable to Aurizon Network (acting reasonably) to give effect to the transfer of the rights and liabilities of the Unit Holder under **clause 12.2(a)**.
- (c) During the Construction Period, if the Unit Holder proposes to transfer a portion of the Unit Holder's Preference Units to a proposed transferee, the Unit Holder must procure the proposed transferee to enter into an agreement with Aurizon Network and the Trustee (**Transferee Umbrella Agreement**) which:
 - (i) is on the same terms and conditions as this Agreement except that the Nominated Access Rights for each Access Period to be specified in part 1 of schedule 2 of the Transferee Umbrella Agreement will be the proportion (rounded to the nearest even

number of one-way train services, as determined by Aurizon Network, acting reasonably) of the Nominated Access Rights for each Access Period specified in **part 1 of schedule 2** of this Agreement (immediately prior to such transfer of Preference Units) which the number of Preference Units which are to be transferred to the proposed transferee bear to the total number of the Unit Holder's Preference Units immediately prior to such transfer of Preference Units; and

- (ii) unconditionally takes effect upon the proposed transferee becoming the registered holder of the transferred Preference Units.
- (d) If, during the Construction Period, the Unit Holder transfers a proportion of the Unit Holder's Preference Units to a proposed transferee in accordance with **clause 12.2(c)**, the Nominated Access Rights for each Access Period specified in **part 1 of schedule 2** of this Agreement will be taken to be varied (reduced), with effect upon the proposed transferee becoming the registered holder of the Preference Units, to be the proportion (rounded to the nearest even number of one-way train services, as determined by Aurizon Network, acting reasonably) of the Nominated Access Rights for each Access Period specified in **part 1 of schedule 2** of this Agreement (immediately prior to such transfer of Preference Units) which the number of Preference Units which are not to be transferred to the proposed transferee bears to the total number of the Unit Holder's Preference Units immediately prior to such transfer of Preference Units.
- (e) For the avoidance of doubt, this **clause 12.2** applies to a transfer of the Unit Holder's Preference Units under the option granted by it under clause **[8.6]** of the Unit Holders Deed.

12.3 Sale of Preference Units during Construction Period

If, during the Construction Period, the Trustee exercises its rights to sell or transfer all or a portion of the Unit Holder's Preference Units under the Trust Deed or the Unit Holders Deed, then **clause 12.2** will apply to the sale of such Preference Units as if the sale or transfer of the Preference Units by the Trustee was a transfer of such Preference Units by the Unit Holder.

12.4 Assignment by Unit Holder after Construction Period

- (a) The Unit Holder may, after the Construction Period, transfer all of its rights and obligations under this Agreement to a third party provided that:
 - (i) the Unit Holder is not in breach of any of its obligations under this Agreement; and
 - (ii) Aurizon Network, acting reasonably, is satisfied that the third party:
 - (A) is financially sound; and

- (B) is otherwise capable of performing the obligations of the Unit Holder under this Agreement.
- (b) The Parties and the third party transferee must execute a deed of assignment and assumption or a deed of novation in a form acceptable to Aurizon Network (acting reasonably) to give effect to the transfer of the rights and liabilities of the Unit Holder under this **clause 12.4**.

12.5 Assignment by Aurizon Network

- (a) If an entity will acquire all of Aurizon Network's interest in the parts of the Railway Network which include the Segments, Aurizon Network must transfer all of its rights and liabilities under this Agreement to that entity at the time that the entity acquires Aurizon Network's interest in the relevant parts of the Railway Network.
- (b) If an entity will acquire an undivided interest in the parts of the Railway Network which include the Segments, Aurizon Network must transfer to that entity a proportion of its rights and liabilities under this Agreement equivalent to that entity's undivided interest in the relevant parts of the Railway Network at the time that the entity acquires the interest in the relevant parts of the Railway Network.
- (c) The Parties must, promptly upon demand by Aurizon Network, execute a deed of assignment and assumption or a deed of novation in a form acceptable to Aurizon Network (acting reasonably) to give effect to the transfer of any rights or liabilities of Aurizon Network required under this **clause 12.5**.

12.6 Assignment by Trustee

- (a) If the Trustee is replaced by a new trustee of the Trust, the Trustee must, with effect upon the appointment of the new trustee of the Trust, assign its rights and liabilities under this Agreement to the new trustee of the Trust.
- (b) The Trustee must not otherwise assign its rights and liabilities under this Agreement.

12.7 Charging

Aurizon Network and the Unit Holder may mortgage, charge or encumber (**Charge**) all or any of its rights and obligations under this Agreement in whole or in part, in favour of any financier, mortgagee or chargee (**Chargee**), provided that the requirements of clause **12.4(a)** of the Unit Holders Deed are complied with.

13 Notices

13.1 General

A notice, demand, certification, process or other communication (**Notice**) relating to this Agreement must be in writing in English and may be given by an agent of the sender.

13.2 How to give a Notice

In addition to any other lawful means, a Notice may be given by being:

- (a) personally delivered;
- (b) left at the Party's current business address for Notices;
- (c) sent to the Party's current postal address for Notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
- (d) sent by fax to the Party's current fax number for Notices.

13.3 Particulars for giving of Notices

- (a) Each Party's particulars for the giving of Notices are initially the particulars set out in **item 2 of schedule 1**.
- (b) Each Party may change its particulars for the giving of Notices by Notice to each other Party.
- (c) A notice given to a Party which is signed is evidence that the notice has been signed by a person duly authorised by the sender and that Party is entitled to rely on that notice without further inquiry or investigation.

13.4 Notices by post

Subject to **clause 13.6**, a Notice is given if posted:

- (a) within Australia to an Australian postal address, three Business Days after posting; or
- (b) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, ten Business Days after posting.

13.5 Notices by fax

Subject to **clause 13.6**, a Notice is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

13.6 After hours Notices

If a Notice is given:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or public holiday in that place.

13.7 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this Agreement may be served by any method contemplated by this **clause 13** or in accordance with any applicable law.

14 Warranties

14.1 Warranties

Each Party warrants that:

- (a) it is a corporation validly existing under the laws applicable to it;
- (b) it is able to pay its debts as and when they fall due;
- (c) it has the power to enter into and perform this Agreement and has obtained all necessary consents to enable it to do so;
- (d) its obligations under this Agreement are enforceable in accordance with their terms;
- (e) no litigation, arbitration or administrative proceeding has been commenced before, and no judgment or award has been given or made by, any court, arbitrator, other tribunal or governmental agency against it which would have a material adverse effect on its ability to observe its obligations under this Agreement; and
- (f) it is not in breach or default under any agreement to which it is a party to an extent or in a manner which would have a material adverse effect on its ability to perform its obligations under this Agreement.

14.2 Trustee warranties

The Trustee warrants that:

- (a) it has full power and authority to enter into this Agreement and to perform the Trustee's obligations under this Agreement and the Trust Deed;
- (b) it is the sole trustee of the Trust and no action has been taken to remove or replace the Trustee; and
- (c) it has the right to be fully indemnified out of the assets of the Trust in respect of all its obligations under this Agreement, and the Trustee has not done or omitted to do anything that would result in its right of indemnity being restricted or limited in any way.

14.3 Reliance

- (a) Each Party acknowledges that each other Party has entered (or will enter) into this Agreement in reliance upon the warranties contained in **clause 14.1**.
- (b) The Trustee acknowledges that Aurizon Network has entered (or will enter) into this Agreement in reliance upon the warranties contained in **clause 14.2**.

15 General

15.1 Survival

This **clause 15** and **clauses 5** and **[#]** survive the termination of this Agreement.

15.2 Applicable law

This Agreement will be governed by and construed in accordance with the laws applicable in the State.

15.3 Waiver

- (a) Waiver of any right arising from a breach of this Agreement or any right arising from a default under this Agreement must be in writing and signed by the Party granting the waiver.
- (b) A single or partial exercise or waiver by a Party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (c) A failure or delay in exercise, or partial exercise, of a right arising from a breach of this Agreement does not result in a waiver of that right.

15.4 Stamp Duty

- (a) Except to the extent covered by **clause 5.1**, as between the Parties, the Unit Holder is liable for and must pay all Stamp Duty on or relating to:
 - (i) this Agreement, any document executed under it or any dutiable transaction contemplated, evidenced or effected by it; or
 - (ii) any Stamp Duty payable on, in relation to, or as a consequence of:
 - (A) any acquisition by the Unit Holder of Preference Units of any kind in the Trust, including partly paid Preference Units;
 - (B) the payment by the Unit Holder in response to any call, and any other paying up of outstanding amounts on its Preference Units;
 - (C) any redemption, surrender or cancellation of the Unit Holder's Preference Units;
 - (D) any change to the rights attaching to the Unit Holder's Preference Units;
 - (E) any change in capacity of the Unit Holder in holding its Preference Units;
 - (F) any change in the rights attaching to an Ordinary Unit; and
 - (G) any other act or event that results in Stamp Duty being payable in connection with the Unit Holder's Preference Units or in connection with Preference Units held by a holder of Ordinary Units except any Stamp Duty payable by the transferee in respect of a transfer of Preference Units,

whether or not the Unit Holder is liable under a statute to pay the Stamp Duty.

- (b) Aurizon Network is liable for and must pay all Stamp Duty on or relating to any act or omission by Aurizon Network in connection with Aurizon Network holding the Preference Unit.
- (c) If Aurizon Network or the Trustee pays any Stamp Duty to which **clause 15.4(a)** applies, the Unit Holder must pay that amount to Aurizon Network or the Trustee (as applicable) on demand and hereby indemnifies Aurizon Network and the Trustee for that amount.
- (d) If the Unit Holder pays any Stamp Duty to which **clause 15.4(b)** applies, Aurizon Network must pay that amount to the Unit Holder on demand and hereby indemnifies the Unit Holder for that amount.

15.5 Legal costs

Except as expressly stated otherwise in this Agreement, each Party must pay its own legal costs and expenses of the drafting, negotiating and execution of this Agreement.

15.6 Amendments to be in writing

Except where this Agreement expressly provides a process for amendment or variation, an amendment or variation of this Agreement will only be effective if it is in writing and executed by all Parties to this Agreement.

15.7 Rights cumulative

Except as expressly stated otherwise in this Agreement, the rights of a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

15.8 Consents

Except as expressly stated otherwise in this Agreement, a Party may conditionally or unconditionally give or withhold any consent to be given under this Agreement and is not obliged to give its reasons for doing so.

15.9 Further assistance

Each Party must promptly sign, execute and complete all additional documents which may be necessary and do whatever else is reasonably required to effect, perfect, or complete the provisions of this Agreement and to perform its obligations under it.

15.10 Counterparts

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

15.11 Entire understanding

- (a) This Agreement, the other Transaction Documents and the Security Documentation together contain the entire understanding between the Parties as to the subject matter of this Agreement.

- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement are merged in and superseded by this Agreement, the other Transaction Documents and the Security Documentation and are of no effect. No Party is liable to any other Party in respect of those matters.
- (c) No oral explanation or information provided by any Party to another:
 - (i) affects the meaning or interpretation of this Agreement; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the Parties.

15.12 Relationship of Parties

This Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.

15.13 Severability

- (a) Subject to **clause 15.13(b)**, if a provision of this Agreement is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this Agreement.
- (b) **Clause 15.13(a)** does not apply if severing the provision:
 - (i) materially alters the:
 - (A) scope and nature of this Agreement; or
 - (B) relative commercial or financial positions of the Parties; or
 - (ii) would be contrary to public policy.

15.14 Survival of representations and warranties

All representations and warranties in this Agreement will survive the execution and delivery of this Agreement and the completion of the transactions contemplated by it.

15.15 Enurement

The provisions of this Agreement will, subject as otherwise provided in this Agreement, enure for the benefit of and be binding on the Parties and their respective successors and permitted novatees and assigns.

15.16 Merger

The obligations contained in this Agreement will continue until satisfied in full.

15.17 Powers of attorney

An attorney by executing this Agreement declares that he or she has received no notice of revocation of the power of attorney pursuant to which he or she executes this Agreement.

15.18 Interest on overdue payments

- (a) If, for any reason, a Party does not pay an amount payable under or in connection with this Agreement on or before the due date for payment, it must pay interest to the Party who is entitled to receive the payment.
- (b) Interest will accrue on the outstanding amount from the due date for payment until that amount, together with the interest thereon, has been paid.
- (c) Interest will be calculated at the Interest Rate, and any interest accrued but unpaid at the end of each Month will be capitalised and will thereafter itself bear interest.

15.19 Indemnity

It is not necessary for a Party to incur expense or make a payment before enforcing any indemnity conferred by this Agreement.

Executed as an agreement.

Executed by **[NewCo Pty Ltd]** as)
trustee for the **[Name of Trust]** in)
accordance with section 127 of the
Corporations Act 2001 (Cth):

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Date: / /

Executed by **Aurizon Network Pty**)
Ltd in accordance with section 127 of)
the *Corporations Act 2001* (Cth):

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Date: / /

Executed by **[Unit Holder]** in)
accordance with section 127 of the)
Corporations Act 2001 (Cth):

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Date: / /

Schedule 1

Agreement details

1 Unit Holder

Name: [insert]

ABN: [insert]

Address: [insert]

2 Particulars for Notices

2.1 Trustee

Business address Level 5
192 Ann Street
BRISBANE QLD 4000

Postal address GPO Box 456
BRISBANE QLD 4001

Facsimile No. [insert]

Attention: [insert]

2.2 Aurizon Network

Business address Level 5
192 Ann Street
BRISBANE QLD 4000

Postal address GPO Box 456
BRISBANE QLD 4001

Facsimile No. 07 3235 3930

Attention: Vice President, Commercial Development

2.3 Unit Holder

Business address [insert]

Postal address [insert]

Facsimile No. [insert]

Attention: [insert]

Schedule 2

Access Agreement (Clause 3.2)

Part 1 - Nominated Access Rights

Access Period	Nominated Access Rights
[insert]	[insert]
[insert]	[insert]

[Drafting note: This part 1 of schedule 2 will specify the Nominated Access Rights (expressed as train service entitlements) for each Access Period (being a year or part year) during the Access Agreement Term for any Access Agreement(s) entered into, or deemed to be entered into, under clause 3. All of the details of the train service entitlements (including origins and destinations, section run times and train configurations) that would be completed in schedule 1 of an Access Agreement will be included in part 3 of this schedule 2.]

Part 2 - Modification to terms of Access Agreement

[Drafting note: The items in this part 2 of schedule 2 may need to be amended to reflect the provisions of any standard Access Agreement in effect at the time this Agreement is to be executed.]

Each:

- (a) Access Holder Access Agreement between Aurizon Network and the Unit Holder (or its nominee) (**Access Holder**); and/or
- (b) Operator Access Agreement between Aurizon Network and the Unit Holder's nominated Railway Operator (also an **Access Holder**),

to be entered into under **clause 3** is required to be modified as follows:

Item	Matter	Principle or requirement
1	Train service description	The train services to be operated by the Access Holder under the Access Agreement will be as described in part 3 of this schedule 2 .
2	Term	The term of the Access Agreement will commence on the date of execution of the Access Agreement (or such later date as agreed by the parties to the Access

Item	Matter	Principle or requirement
		Agreement) and end on the “Termination Date” (as defined in item 3 of this part 2 of schedule 2).
3	Termination Date	<p>The date of termination for the Access Agreement (Termination Date) must be the earlier of:</p> <ul style="list-style-type: none"> (a) ten years after the “Commitment Date” (as defined in item 4 of this part 2 of schedule 2); and (b) the date on which the Access Agreement is terminated pursuant to the provisions of the Access Agreement.
4	Commitment Date	<ul style="list-style-type: none"> (a) The date by which the access rights under the Access Agreement are to be available to the Access Holder (Commitment Date) must be the later of: <ul style="list-style-type: none"> (i) the Available Date for the last of the Unit Holder’s Segments to become Available; (ii) [insert date]; and <p>[Drafting note: The above date to be specified on a transaction-by-transaction basis.]</p> (iii) the date on which Aurizon Network, acting reasonably, is satisfied that any “Connecting Infrastructure” (as defined in Aurizon Network’s 2010 Access Undertaking (as approved on 1 October 2010) as at the date of this Agreement) in respect of the connection of the Required Mine Specific Infrastructure to Aurizon Network’s Railway Network and any other enhancements (other than the Extension) required to Aurizon Network’s Railway Network have been completed, <p>provided that the Commitment Date for any subsequent Derivative Access</p>

Item	Matter	Principle or requirement
		<p>Agreement entered into after the above dates have occurred will be the day following the date of the expiration or termination of the Access Agreement which the subsequent Derivative Access Agreement is replacing.</p> <p>(b) In this item 4 of part 2 of schedule 2:</p> <p>Available has the meaning given in the Project Management Agreement;</p> <p>Available Date has the meaning given in the Project Management Agreement;</p> <p>Derivative Access Agreement has the meaning given in item 7 of this part 2 of schedule 2; and</p> <p>Required Mine Specific Infrastructure means rail transport infrastructure (including any enhancements to existing rail transport infrastructure) or other infrastructure which does not form part of the Extension but is required to connect the Unit Holder's mine to Aurizon Network's Railway Network so as to enable the Nominated Access Rights to be used by or for the Access Holder (if any).</p>

Item	Matter	Principle or requirement
5	Completion of matters prior to commencement of train services	<p>(a) If the Access Agreement gives Aurizon Network a right to terminate it if the Access Holder, by a specified date, has not done (or procured the doing of) anything that is required to be done before the Access Holder can commence (or permit the commencement of) any train services, then that date is:</p> <p>(i) the date three Months prior to the Commitment Date provided, at that date, Aurizon Network has no reasonable expectation that the Access Holder will be able to comply with those requirements prior to the Commitment Date; or</p> <p>(ii) otherwise, the Commitment Date.</p> <p>(b) In this item 5 of part 2 of schedule 2, Commitment Date has the meaning given in item 4 of this part 2 of schedule 2.</p>
6	Direction to pay	<p>(a) The Access Holder must pay the Access Charges payable under any invoice issued by Aurizon Network under the Access Agreement in the manner directed by Aurizon Network.</p> <p>(b) Without limiting paragraph (a) of this item 6 of part 2 of schedule 2, Aurizon Network may direct the Access Holder to pay the Access Charges payable under any invoice issued by Aurizon Network under the Access Agreement into one or more bank accounts nominated by Aurizon Network (whether or not those bank accounts are in the name of Aurizon Network).</p> <p>(c) Any payment by the Access Holder of Access Charges in the manner directed by Aurizon Network is taken to be payment of the Access Charges to Aurizon Network for the purpose of the Access Agreement (whether or not</p>

Item	Matter	Principle or requirement
		<p>they are paid to Aurizon Network).</p> <p>(d) If, at the time that Aurizon Network gives the Access Holder an invoice for Access Charges for a Month, Aurizon Network does not give the Access Holder a direction to pay some or all of the amount payable under such invoice to the “Direction to Pay Account” (as defined in the Extension Infrastructure Lease), then the Access Holder must notify Aurizon Network that it has not been given a direction to pay some or all of the amount payable under such invoice to the “Direction to Pay Account” (as defined in the Extension Infrastructure Lease).</p> <p>(e) If:</p> <ul style="list-style-type: none"> (i) within five Business Days after receiving an invoice referred to in paragraph (d) of this item 6 of part 2 of schedule 2, the Access Holder notifies Aurizon Network that it has not been given a direction to pay some or all of the amount payable under such invoice to the “Direction to Pay Account” (as defined in the Extension Infrastructure Lease); and (ii) within five Business Days after the Access Holder gives Aurizon Network a notice referred to in paragraph (e)(i) of this item 6 of part 2 of schedule 2, Aurizon Network does not give the Access Holder a direction to pay some or all of the amount payable under such invoice to the “Direction to Pay Account” (as defined in the Extension Infrastructure Lease); <p>then, despite the Access Holder not being given a direction to pay, the Access Holder will be taken to have</p>

Item	Matter	Principle or requirement
		<p>been given a direction by Aurizon Network to pay the whole of the amount payable under such invoice into the “Direction to Pay Account” (as defined in the Extension Infrastructure Lease).</p>
7	Modifications to be included in Derivative Access Agreements	<p>(a) Aurizon Network and the Access Holder agree that the terms of any Derivative Access Agreement will, prior to execution of the Derivative Access Agreement, be modified in accordance with this part 2 of schedule 2 as if each reference to:</p> <ul style="list-style-type: none"> (i) “Access Holder” in this part 2 of schedule 2 is a reference to the access holder under the Derivative Access Agreement; and (ii) “Access Agreement” in this part 2 of schedule 2 is a reference to the Derivative Access Agreement. <p>(b) Entry into a Derivative Access Agreement by Aurizon Network is conditional upon the Derivative Access Agreement being consistent with the modifications provided in paragraph (a) of this item 7 of part 2 of schedule 2.</p> <p>(c) In this item 7 of part 2 of schedule 2, Derivative Access Agreement means:</p> <ul style="list-style-type: none"> (i) an access agreement entered into (or deemed to be entered into) under clause 3 of this Agreement; and (ii) any access agreement entered into as a consequence of: <ul style="list-style-type: none"> (A) the renewal, replacement, transfer, assignment or novation, in whole or in part, of an access agreement referred to in

Item	Matter	Principle or requirement
		<p>paragraph (c)(i) or this paragraph (c)(ii) of this item 7 of part 2 of schedule 2; and</p> <p>(B) the transfer, in whole or in part, of the access rights under an access agreement referred to in paragraph (c)(i) or this paragraph (c)(ii) of this item 7 of part 2 of schedule 2,</p> <p>despite the identity of the parties to such access agreement being different to the parties to an access agreement referred to in paragraph (c)(i) or this paragraph (c)(ii) of this item 7 of part 2 of schedule 2.</p>
8	Right of renewal	<p>(a) Aurizon Network will notify the Access Holder for coal carrying train services operating solely in the Central Queensland Coal Region (and the Customer of that Access Holder (if any)) no more than three (3) years and no less than two (2) years prior to the expiration of an Access Right of that Access Holder under the Access Agreement that, if:</p> <p>(i) the Access Holder or the Customer (if any) wishes to seek to retain the applicable Access Right beyond the expiry date for that Access Right; or</p> <p>(ii) the Customer wishes another Railway Operator to acquire the applicable Access Right on and from the expiry date for the Access Right,</p> <p>(Renewal),</p> <p>then the Access Holder, the Customer or the relevant Railway Operator must submit an Access Application to</p>

Item	Matter	Principle or requirement
		<p data-bbox="922 360 1385 501">Aurizon Network within 60 days after Aurizon Network gave such notice to the Access Holder and Customer (if any).</p> <p data-bbox="847 521 1401 981">(b) If an Access Application submitted under paragraph (a) of this item 8 of part 2 of schedule 2 is not a Renewal Application, then this item 8 of part 2 of schedule 2 will not apply to the Access Application (and, for the avoidance of doubt, it will be considered in accordance with the Access Undertaking in force at the time of such Access Application if, and to the extent that, it is required to be considered under that Access Undertaking).</p> <p data-bbox="847 1003 1401 1462">(c) Subject to paragraph (d) of this item 8 of part 2 of schedule 2, if an Access Application submitted under paragraph (a) of this item 8 of part 2 of schedule 2 is a Renewal Application, then, Aurizon Network will enter into an access agreement (on the terms of the applicable then standard access agreement modified as a “Derivative Access Agreement” in accordance with item 7 of this part 2 of schedule 2) to give effect to the Renewal under the Renewal Application.</p> <p data-bbox="847 1485 1401 1697">(d) Paragraph (c) of this item 8 of part 2 of schedule 2 will not apply to a Renewal Application submitted after the date that the Extension Infrastructure Lease expires or terminates (for any reason).</p> <p data-bbox="847 1720 1401 1899">(e) For the avoidance of doubt, if an Access Holder makes an access application for access rights in addition to the Access Rights sought under a Renewal Application, then:</p> <p data-bbox="922 1921 1401 2018">(i) this item 8 of part 2 of schedule 2 will not apply to that access application;</p>

Item	Matter	Principle or requirement
		<p>(ii) that access application will not prejudice the Access Holder's rights under this item 8 of part 2 of schedule 2 in respect of a Renewal Application; and</p> <p>(iii) that access application will be considered in accordance with the Access Undertaking in force at the time of that access application if, and to the extent that, it is required to be considered under that Access Undertaking.</p> <p>(f) In this item 8 of part 2 of schedule 2, Renewal Application means an Access Application submitted under, and within the time required in, paragraph (a) of this item 8 of part 2 of schedule 2 in respect of Access Rights:</p> <p>(i) not in excess of those under the relevant Access Holder's existing Access Agreement;</p> <p>(ii) for the existing mine which receives the benefit of those Access Rights or a Replacement Mine; and</p> <p>(iii) for a term of at least ten (10) years or, if the Access Application relates to an existing mine, the remaining life of that mine,</p> <p>but does not include such an Access Application in respect of Access Rights:</p> <p>(iv) that were granted to the relevant Access Holder under its existing Access Agreement as a transferee (whether by the transfer of the Access Holder's rights under its existing Access Agreement to the Access Holder or by Aurizon Network entering</p>

Item	Matter	Principle or requirement
		<p>into the Access Holder’s existing Access Agreement as a new Access Agreement with the Access Holder to give effect to a transfer of Access Rights to the Access Holder); or</p> <p>(v) which do not have a demonstrated ability to exit the Railway Network for unloading.</p> <p>(g) Capitalised terms (other than “Access Holder”, “Renewal” and “Renewal Application”) used in this item 8 of part 2 of schedule 2 which are defined in Aurizon Network’s 2010 Access Undertaking (as approved on 1 October 2010) have the meaning given in that Access Undertaking as at the date of this Agreement.</p>
9	Obligation to pay ‘Take or Pay’ charges	<p>(a) If:</p> <p>(i) the Access Agreement is entered into under clause 3; and</p> <p>(ii) both of the following dates have occurred:</p> <p>(A) the Available Date for the last of the Unit Holder’s Segments to become Available; or</p> <p>(B) [insert date]; and</p> <p>[Drafting note: The above date to be specified on a transaction-by-transaction basis.]</p> <p>(iii) Aurizon Network, acting reasonably, is not satisfied that any “Connecting Infrastructure” (as defined in Aurizon Network’s 2010 Access Undertaking (as approved on 1 October 2010) as at the date of this Agreement) in respect of the connection of the Required Mine Specific Infrastructure to Aurizon Network’s Railway Network and</p>

Item	Matter	Principle or requirement
		<p>any other enhancements (other than the Extension) required to Aurizon Network's Railway Network have been completed,</p> <p>then, despite the Commitment Date having not occurred, the provisions of the Access Agreement relating to, to the extent they relate to, the Access Holder's liability for, and the calculation, invoicing and payment of, Take or Pay will be deemed to commence and apply on and from the Pre-Commitment Date until the Commitment Date as if, for the purpose of those provisions:</p> <ul style="list-style-type: none"> (iv) the Commitment Date under the Access Agreement occurred on the Pre-Commitment Date; (v) all of the Train Services that the Access Holder would have been entitled to operate during that period, had the Commitment Date occurred on the Pre-Commitment Date, were unable to be operated; and (vi) the reason those Train Services were unable to be operated was not as a result of a Aurizon Network Cause. <p>(b) In this item 9 of part 2 of schedule 2, the terms Available, Available Date, Commitment Date and Required Mine Specific Infrastructure each have the meaning given in item 4 of this part 2 of schedule 2.</p> <p>(c) In this item 9 of part 2 of schedule 2, the terms Aurizon Network Cause, Take or Pay and Train Service each have the meaning given in the Access Agreement.</p> <p>(d) In this item 9 of part 2 of schedule 2, Pre-Commitment Date means later to occur of the dates referred to in</p>

Item	Matter	Principle or requirement
		item 9(a)(ii) of this part 2 of schedule 2.
10	Suspension – non-payment of amounts under Agreement	<p>If:</p> <ul style="list-style-type: none"> (a) the Unit Holder does not pay any amount which is due and payable by it under this Agreement; and (b) does not pay such amount within a further ten Business Days after Aurizon Network gives the Unit Holder a notice to remedy requesting it to pay such amount, <p>then Aurizon Network may suspend the right of the Access Holder to operate some or all of the train services under the Access Agreement until such amount is paid.</p>
11	Suspension – non-payment of Transfer Consideration	<p>If the Unit Holder does not pay the “Transfer Consideration” (as defined in the Unit Holders Deed) to another Preference Unit Holder by the “Transfer Effective Date” (as defined in the Unit Holders Deed) under the Unit Holders Deed, then Aurizon Network may suspend the right of the Access Holder to operate some or all of the train services under the Access Agreement until such amount is paid.</p>
12	Excusal – User funder trusts	<p>If the default or negligence of a lessor or sublessor (other than Queensland Treasury Holdings Pty Ltd or Queensland Rail Limited but including the Trustee) of rail infrastructure to Aurizon Network under an infrastructure lease or sublease (including the Extension Infrastructure Lease) with Aurizon Network (as lessee or sublessee), causes or contributes (except to the extent that the default or negligence of the lessor or sublessor was caused or contributed to by any default of Aurizon Network under a Transaction Document) to Aurizon Network being unable to provide some or all of the access rights under the Access Agreement, then, Aurizon Network is excused from providing such access rights and will have no liability to the Access Holder under the Access Agreement or otherwise in respect</p>

Item	Matter	Principle or requirement
		of the non-provision of such access rights.
13	Nominated Network	The “Nominated Network” under the Access Agreement will be the relevant parts of Aurizon Network’s coal system excluding privately owned or Queensland Rail Ltd owned infrastructure (other than for such infrastructure that is leased to Aurizon Network).
14	Termination – clause 4.3(b)	If Aurizon Network gives the Access Holder a notice contemplated under clause 4.3(b) , the Access Agreement will terminate with effect on the Access Utilisation Notice Date, and no party will have any liability to any other party under the Access Agreement on and from the Access Utilisation Notice Date.
15	Termination – clause 4.6(d)	If Aurizon Network gives the Access Holder a notice contemplated under clause 4.6(d) , the Access Agreement will terminate with effect on the Effective Date, and no party will have any liability to any other party under the Access Agreement on and from the Effective Date.
16	Variation of Access Rights – clause 4.7(a)(iv)(A)(1), 4.7(b)(i) or 4.7(c)(iv)	If Aurizon Network gives the Access Holder a notice contemplated under clause 4.7(a)(iv)(A)(1), 4.7(b)(i) or 4.7(c)(iv) , the Access Rights under the Access Agreement will be varied, with effect on the Effective Date, as specified in such notice.
17	Transfer of Preference Units	<p>(a) If:</p> <ul style="list-style-type: none"> (i) the Access Agreement is entered into under clause 3; and (ii) after the Access Agreement is entered into but before the end of the Construction Period, <p>any of the Linked Preference Unit Holder’s Preference Units are transferred by:</p> <ul style="list-style-type: none"> (iii) the Linked Preference Unit Holder; or (iv) the Trustee exercising a power of sale of the Linked Preference

Item	Matter	Principle or requirement
		<p style="text-align: center;">Unit Holder’s Preference Units, (Transferred Preference Units), then the Access Holder’s Access Rights for each Access Period under the Access Agreement will, with effect from the date the Transferred Preference Units are transferred, be varied to be reduced by the proportion (rounded to the nearest even number of one-way train services, as determined by Aurizon Network acting reasonably) of the Access Rights for each Access Period under the Access Agreement (immediately prior to such transfer) which the number of Transferred Preference Units bears to the total number of the Linked Preference Unit Holder’s Preference Units immediately prior to such transfer of Preference Units.</p> <p>(b) In this item 17 of this part 2 of schedule 2 “Linked Preference Unit Holder” means the party that was the “Unit Holder” under this Agreement at the time the Access Agreement was entered into under clause 3.</p>

Part 3 – Train Service Description

[Drafting note: The Train Service Description to be specified in the Access Agreement to be determined on a transaction-by-transaction basis.]

[NewCo Pty Ltd] as trustee for the [Name of Trust]

Aurizon Network Pty Ltd

User Funding – Extension Infrastructure Lease

[*insert Extension
name*]

Drafting note: *The parties will consider on a transaction-by-transaction basis whether changes to this Agreement are required for the purposes of the Personal Property and Securities Act 2009 (Cth).*

Drafting note: *If the SUFA transaction will involve the construction of infrastructure which will form part of the Central Queensland Coal Network (other than the two sections of the North Coast Line which form part of the Central Queensland Coal Network) then an Extension Infrastructure Agreement and Integrated Network Deed will be entered into with Queensland Treasury Holdings Pty Ltd (the infrastructure lessor in respect of the Central Queensland Coal Network (other than the two sections of the North Coast Line which form part of the Central Queensland Coal Network)). If the SUFA transaction will involve the construction of infrastructure which will form part of either of the two sections of the North Coast Line in respect of which Aurizon is railway manager, then an Extension Infrastructure Agreement and Integrated Network Deed will be*

entered into with Queensland Rail Limited (the infrastructure lessor in respect of those sections of the North Coast Line).

This template Extension Infrastructure Lease has been drafted on the basis that the infrastructure will form part of the Central Queensland Coal Network (other than the two sections of the North Coast Line which form part of the Central Queensland Coal Network) and will need to be amended if that is not the case.

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Date

Parties

[NewCo Pty Ltd] [ACN] as trustee for the **[Name of Trust]** of Level 14, Railcentre 1, 305 Edward Street, Brisbane, Queensland (**Trustee**)

Aurizon Network Pty Ltd ABN 78 132 181 116 of Level 14, Railcentre 1, 305 Edward Street, Brisbane, Queensland (**Aurizon**)

Background

- A The Leased Extension Infrastructure (if any) will be owned by the Trustee.
 - B The Subleased Extension Infrastructure will be owned by the Extension Infrastructure Lessor and leased to the Trustee under the Extension Infrastructure Agreement.
 - C The Trustee agrees to lease the Leased Extension Infrastructure, and sublease the Subleased Extension Infrastructure, to Aurizon in accordance with the terms of this Agreement.
-

Agreed terms

1 Interpretation

1.1 Definitions

In this Agreement:

2010 Access Undertaking means the access undertaking prepared by Aurizon and approved by the Queensland Competition Authority pursuant to the *Queensland Competition Authority Act 1997* (Qld) which commenced on 1 October 2010, as at the date of this Agreement.

Access Charges for a Month means the access charges (however described) payable under an access agreement for the provision of access to Aurizon's Railway Network during that Month.

Access Legislation has the meaning given in the Unit Holders Deed.

Access Regulator has the meaning given in the Unit Holders Deed.

Access Undertaking has the meaning given in the Unit Holders Deed.

Agreement means this document, including the **schedules**.

Auditor has the meaning given in **clause 11.2(a)**.

Audits has the meaning given in **clause 11.2(a)**.

Aurizon Additional Infrastructure means any Infrastructure, part, accessory or equipment which is constructed, incorporated or installed in or attached to the Leased Extension Infrastructure or a Segment by or for:

- (a) Aurizon in the performance of its obligations under **clause 6.2**; or
- (b) Aurizon (or a third party authorised by Aurizon) in exercise of its rights under **clause 4.8**.

Aurizon Defect Rectification Costs has the meaning given in **clause 6.2(b)**.

Aurizon's Associates means any Personnel, licensee or invitee of Aurizon but does not include the Trustee or the Trustee's Associates, or any person other than those mentioned exercising any right of access to the Total Extension Infrastructure under any Law.

Authority means any government or any governmental, semi-governmental, regulatory, statutory or similar entity or authority.

Authority Approval means a consent, licence, permit, authorisation, lodgement, filing, agreement, certificate, permission, direction, declaration, authority, accreditation, approval or exemption issued by an Authority.

Available Date for a Segment means the "Available Date" for that Segment as defined in the Project Management Agreement.

Business Day means a day which is not a Saturday, Sunday or public holiday in Brisbane.

Change in Law means the occurrence of any of the following after the Commencement Date:

- (a) the introduction or commencement of, repeal of, or a change in, applicable Legislation or a change in the common law or law of equity;
- (a) a change in the terms and conditions imposed under an Authority Approval after it has been given or the imposition of any new terms or conditions under such Authority Approval, in each case other than if caused by the default of a party under that Authority Approval;
- (b) the revocation or cancellation of an Authority Approval, other than if caused by the default of a party under that Authority Approval; or
- (c) the non-renewal or failure of an Authority to re-issue an Authority Approval or its renewal or re-issue on new terms that are materially different from the terms of such Authority Approval as at the Commencement Date, in each case other than if caused by the default of a party under that Authority Approval.

Charge has the meaning given in **clause 19.4(a)**.

Chargee has the meaning given in **clause 19.4(a)**.

Claim includes any claim, demand, liability, cost, expense, damage, loss, proceeding, suit, litigation, investigation, audit, action or cause of action, whether judicial, administrative, investigative or otherwise and whether arising in contract, tort (including negligence), under statute or otherwise, of whatever nature, known or unknown, liquidated or unliquidated.

Commencement Date means the date of this Agreement.

Confidential Information of a Disclosing Party means:

- (a) the terms of this Agreement; and
- (b) information disclosed by, or on behalf of, the Disclosing Party to the Recipient, under or in connection with this Agreement, which:
 - (i) is by its nature confidential or commercially sensitive;
 - (ii) is identified by the Disclosing Party as confidential or commercially sensitive;
 - (iii) the Recipient knows, or ought to know, is confidential or commercially sensitive; or
 - (iv) relates to the business, operations or financial affairs of the Disclosing Party or a Related Body Corporate of it (and where the Disclosing Party is the Trustee, any Unit Holder or a Related Body Corporate of a Unit Holder),

but does not include those terms of this Agreement, or any other information, which:

- (c) are or become public knowledge other than by:
 - (i) breach of this Agreement or by a breach of confidentiality by the Recipient or any third party to whom the Recipient has disclosed the information; or
 - (ii) breach of confidentiality by a Preference Unit Holder, the "Independent Engineer" (as defined in the Project Management Agreement), the "PUH Engineer" (as defined in the Project Management Agreement) or an "Auditor" or "Expert" (as defined in each Transaction Document);
- (d) are in the possession of the Recipient or a Related Body Corporate of it without restriction in relation to disclosure before the date of receipt; or
- (e) have been independently developed or acquired by the Recipient or a Related Body Corporate of it.

Consequential Loss means, subject to **paragraphs (e), (f) and (g)** of this definition:

- (a) any special, indirect or consequential loss;
- (b) any economic loss in respect of any Claim in tort (including negligence);

(c) any loss of profits, loss of production, loss of revenue, loss of use, loss of contract, loss of opportunity, loss of reputation, loss of goodwill or wasted overheads whatsoever; and

(d) any loss arising out of any Claim by a third party,

but does not include:

(e) a loss (including a loss arising out of a Claim by a third party) in respect of:

(i) the cost of repairing, replacing or reinstating any real or personal property of any person (including a Party) that has been lost, damaged or destroyed; or

(ii) personal injury to or death of any person;

(f) in respect of any personal injury Claim, special loss or economic loss as those terms are used in the context of personal injury Claims; or

(g) the payment by Aurizon to the Trustee of the Rent in accordance with the terms of this Agreement.

Consolidated Group has the meaning given to that expression in Part 3-90 of the Tax Act.

Construction Period has the meaning given in the Project Management Agreement.

Customer Confidential Information means any information about an access holder, or an access holder's customer, or its business, operations or financial affairs, which, if disclosed by Aurizon to the Trustee, would give rise to a breach of an obligation or duty of confidence by Aurizon.

[Drafting note: The definition of "Customer Confidential Information" and clauses 11.2 and 16.4 are drafted on the assumption that Aurizon will be entitled to disclose Customer Confidential Information to an Auditor or an Expert. That definition and those clauses will need to be redrafted if that is not the case.]

Defect means any:

(a) defect, shrinkage, movement, error, omission, deficiency or other imperfection in the Total Extension Infrastructure in respect of, or arising from, any cause including design, materials or workmanship;

(b) aspect of the Works for the Extension which is not in accordance with any Works Contract;

(c) physical damage to the Total Extension Infrastructure resulting from any of the matters referred to in **paragraphs (a) and (b)** of this definition; or

(d) impact on the physical condition of, or ability to safely and efficiently use, the Railway Network (other than the Total Extension Infrastructure) resulting from any of the matters referred to in **paragraphs (a), (b) and (c)** of this definition.

Defects Rectification Period has the meaning given in the Project Management Agreement.

Defects Register has the meaning given in the Project Management Agreement.

Direction to Pay Account has the meaning given in **clause 9.3(a)**.

Direction to Pay Amount for:

- (a) an Extension Access Agreement for a Month means:
 - (i) the portion of the Access Charges for that Month payable under the Extension Access Agreement calculated in accordance with **schedule 4**; or
 - (ii) if **clause 9.1(b)** applies, the whole of the Access Charges for that Month payable under the Extension Access Agreement; and
- (b) a Nominated Access Agreement for a Month means the portion of the Access Charges for that Month payable under the Nominated Access Agreement which Aurizon directs the Nominated Access Agreement Customer to pay into the Direction to Pay Account under **clause 9.2**.

Direction to Pay Undertaking means an undertaking, in the form set out in **schedule 6**, given by the party to an access agreement that is required to pay access charges to Aurizon under the access agreement under which that party undertakes to Aurizon to pay the access charges payable under that access agreement to Aurizon by, if directed by Aurizon, paying the whole or part of those access charges into the Direction to Pay Account as directed by Aurizon.

Disclosee has the meaning given in **clause 17.3**.

Disclosing Party has the meaning given in **clause 17.1(a)**.

Discrimination Dispute has the meaning given in **clause 16.2(a)**.

Dispute has the meaning given in **clause 16.1(a)** and includes:

- (a) a matter referred to an Expert for determination under this Agreement; and
- (b) a "Dispute" (as defined in the Unit Holders Deed) if the Trustee joins Aurizon to the dispute resolution process under the Unit Holders Deed in accordance with **clause 16.11**.

Dispute Notice has the meaning given in **clause 16.1(a)**.

Dispute Resolution Process means:

- (a) the dispute resolution process under **clause 16**; and
- (b) if the Trustee joins Aurizon to the dispute resolution process under the Unit Holders Deed in accordance with **clause 16.11**, the dispute resolution process under the Unit Holders Deed.

DTP Audit has the meaning given in **clause 11.3(a)**.

DTP Auditor has the meaning given in **clause 11.3(a)**.

End Date means the earlier of:

- (a) the date on which the State Infrastructure Lease terminates (for any reason) or expires; and
- (b) the date which is 12 months after the Zero Value Date.

Excluded Extension Infrastructure has the meaning given in the Integrated Network Deed.

Expected Rent for a Month means the amount which Aurizon calculates, within five Business Days after the end of that Month, would be the Rent for that Month, applying the Rent Calculation Methodology, assuming for the purpose of such calculation that all applicable Access Charges for that Month are paid by the due date for payment:

- (a) **less**, if the Total Direction to Pay Amount for the previous Month exceeds the Expected Rent for the previous Month, the amount of the difference between the Total Direction to Pay Amount for the previous Month and the Expected Rent for the previous Month;
- (b) **plus** the amount of any Rent Shortfall Adjustment Amount which Aurizon calculated under **clause 9.6(a)** after Aurizon calculated the Expected Rent for the immediately preceding Month; and
- (c) **less** the amount of any Late Payment Adjustment Amount which Aurizon calculated under **clause 9.7(a)** after Aurizon calculated the Expected Rent for the immediately preceding Month.

Expert has the meaning given in **clause 16.3(b)**.

Extension has the meaning given in the Unit Holders Deed.

Extension Access Agreement means:

- (a) an access agreement entered into (or deemed to be entered into) under clause **[3]** of an Umbrella Agreement; and
- (b) any access agreement entered into as a consequence of:
 - (i) the renewal, replacement, transfer, assignment or novation, in whole or in part, of an access agreement referred to in **paragraph (a)** or this **paragraph (b)** of this definition; and
 - (ii) the transfer, in whole or in part, of the access rights under an access agreement referred to in **paragraph (a)** or this **paragraph (b)** of this definition,

despite the identity of the parties to such access agreement being different to the parties to an access agreement referred to in **paragraph (a)** or **paragraph (b)** of this definition.

Extension Access Agreement Customer means the party to an Extension Access Agreement that is required to pay access charges under the Extension Access Agreement to Aurizon.

Extension Access Agreement Invoice for a Month means a tax invoice issued by Aurizon to an Extension Access Agreement Customer for the payment of Access Charges for that Month by the Extension Access Agreement Customer under the Extension Access Agreement.

Extension Infrastructure Agreement means the Agreement entitled “*User Funding – Extension Infrastructure Agreement: [insert Extension name]*” between *[insert name of Trustee]* as trustee of the *[insert name of Trust]*, Aurizon Network Pty Ltd (ABN 78 132 181 116) and Queensland Treasury Holdings Pty Ltd (ACN 011 027 295) entered into on or about the date of this Agreement.

Extension Infrastructure Lessor means the person that is the “Lessor” under the Extension Infrastructure Agreement.

Force Majeure Event in respect of Aurizon means any event or circumstance:

- (a) which is beyond the reasonable control of Aurizon; and
- (b) the effects of which could not, by the exercise of reasonable diligence by Aurizon, have been avoided;

and (to the extent it meets the above criteria) includes any of the following :

- (a) act of God;
- (b) law, rule, regulation or order of any government or governmental authority;
- (c) executive or administrative orders or acts of either general or particular application of any government or of any official acting under the authority of such government;
- (d) act of war (declared or undeclared);
- (e) public disorder;
- (f) riot, insurrection, rebellion, sabotage or act of terrorists;
- (g) fire, earthquake, tidal wave or other natural calamity;
- (h) drought, flood, storm, hail, lightning, inclement weather or other severe weather conditions;
- (i) explosion, breakdown or injury to or expropriation, confiscation or requisitioning of production, manufacturing, selling, transportation or delivery facilities;
- (j) quarantine or customs restrictions;
- (k) strike, boycott, lockout or other labour disturbance (whether national, state-wide or otherwise);
- (l) act (including a delay in performing an act) or omission of any Authority;
- (m) a Change in Law;

- (n) act or omission of the Trustee or any of the Trustee's officers, employees, agents or contractors;
- (o) any of the above events delaying a supplier or contractor to Aurizon in performing its obligations; and
- (p) other failure by a third party to perform its obligations, or a delay by a third party in performing its obligations.

Governmental Agency means any government, whether Federal, State or Territory, municipal or local, and any agency, authority, commission, department, instrumentality, regulator or tribunal thereof, including the Commissioner of Taxation and Australian Taxation Office.

Gross Negligence means any negligence committed by Aurizon in connection with this Agreement involving such wanton and reckless conduct as constitutes an utter disregard for the harmful, foreseeable and avoidable consequences which result from such conduct.

Group means the Consolidated Group of which Aurizon is a member.

Infrastructure means "Railway Transport Infrastructure" (as defined in the Extension Infrastructure Agreement as at the Commencement Date).

Initial Rent Month means the Month during which Aurizon first earns access charges attributable to any part of the Total Extension Infrastructure.

Insolvency Event in respect of Aurizon means:

- (a) a liquidator is appointed to Aurizon and is not removed or withdrawn within 20 Business Days; or
- (b) Aurizon is deregistered under the *Corporations Act 2001* (Cth).

Integrated Network Deed means the deed entitled "*User Funding – Integrated Network Deed: [insert Extension name]*" between *[insert name of Trustee]* as trustee of the *[insert name of Trust]*, Aurizon Network Pty Ltd (ABN 78 132 181 116), the State of Queensland (represented by the Department administering the *Transport Infrastructure Act 1994* (Qld)) and Queensland Treasury Holdings Pty Ltd (ACN 011 027 295) entered into on or about the date of this Agreement.

Intellectual Property Rights includes both in Australia and throughout the world and for the duration of the rights:

- (a) any patents, utility models, copyrights, eligible layout rights, designs and other like rights;
- (b) any invention, discovery, trade secret, know-how, computer software and confidential information; and
- (c) any business, scientific, technical and product information, including proprietary information relating to the development of new products, whether registered, registrable or unregistered.

Interest Rate means, for any day in a Month, the annual interest rate that is the sum of:

- (a) 2%; and
- (b) the Commonwealth Bank of Australia's reference rate being the "Corporate Overdraft Reference Rate" (monthly charging cycle) quoted by the Commonwealth Bank of Australia on its public website for the last trading day of the previous Month (or in the event that such a rate is not so quoted at or in respect of any relevant date, such other similar rate as is quoted by a major commercial bank as agreed by the Parties or, failing agreement, as determined by an Expert under **clause 16.4**).

Land Lease has the meaning given in the Extension Infrastructure Agreement.

Late Payment Adjustment Amount means an amount calculated in accordance with **clause 9.7(a)**.

Law has the meaning given in the Extension Infrastructure Agreement as at the Commencement Date.

Leased Extension Infrastructure means:

- (a) any:
 - (i) Infrastructure, part, accessory or equipment which is deemed to be Leased Extension Infrastructure under **clause 4.1(b)**;
 - (ii) Excluded Extension Infrastructure which is deemed to be Leased Extension Infrastructure under **clause 4.1(c)**;
 - (iii) Trustee Additional Infrastructure,
but does not include any:
 - (iv) Removed Infrastructure;
 - (v) Aurizon Additional Infrastructure;
 - (vi) Redundant Extension Infrastructure (from the date that Aurizon gives the Trustee a Notice under **clause 4.12(a)**);
 - (vii) "Extension Infrastructure" (as defined under the Extension Infrastructure Agreement) leased to the Trustee under the Extension Infrastructure Agreement; or
 - (viii) "Infrastructure" (as defined in the State Infrastructure Lease) leased to Aurizon under the State Infrastructure Lease.
- (b) in respect of a Segment, any Leased Extension Infrastructure (as defined in **paragraph (a)** of this definition) which is constructed, incorporated, installed in or attached to the Segment.

Legislation means statutes, ordinances, regulations, by-laws, proclamations and subordinate legislation of the Commonwealth, the State or an Authority.

Modifications mean, in respect of the Leased Extension Infrastructure, any removal or replacement of, or modifications, alterations, additions or changes

to, all or any part of the Leased Extension Infrastructure (other than by or for Aurizon in the performance of its obligations under **clause 4.6**).

Month means a calendar month.

Monthly Invoice has the meaning given under **clause 8.1(a)**.

Monthly Invoice Date for a Month means the date on which the last of the Relevant Access Charges for that Month are due and payable to Aurizon.

Moral Rights means the moral rights granted under the *Copyright Act 1968* (Cth), and any similar rights existing under foreign laws.

Moral Rights Consent means a waiver of Moral Rights to the extent permitted by law and an unconditional consent to any act or omission in relation to the Records by or on behalf of Aurizon, any person authorised by Aurizon or any licensee of copyright in the Records.

Nominated Access Agreement means:

- (a) an access agreement which is the subject of a Direction to Pay Undertaking; or
- (b) an access agreement which expressly requires the party to the access agreement that is required to pay the access charges under the access agreement to pay the whole or any part of any access charges payable under the access agreement to Aurizon and/or any other entities nominated by Aurizon, in the manner nominated by Aurizon, from time to time,

but does not include an Extension Access Agreement.

Nominated Access Agreement Customer means:

- (a) in respect of a Nominated Access Agreement referred to in **paragraph (a)** of the definition of “Nominated Access Agreement”, the party to a Nominated Access Agreement that gives a Direction to Pay Undertaking; and
- (b) in respect of a Nominated Access Agreement referred to in **paragraph (b)** of the definition of “Nominated Access Agreement”, the party to the Nominated Access Agreement that is required to pay the access charges under the Nominated Access Agreement.

Nominated Access Agreement Invoice for a Month means a tax invoice issued by Aurizon to a Nominated Access Agreement Customer for the payment of Access Charges for that Month by the Nominated Access Agreement Customer under the Nominated Access Agreement.

Non-Discrimination Provision means each of **clause 4.6(b)(iii)** and **4.13**.

Notice has the meaning given in **clause 20.1**.

Objective has the meaning given in **clause 10.1**.

Overpayment has the meaning given in **clause 9.5(b)(i)**.

Parties means collectively Aurizon and the Trustee, and **Party** means one of them.

Permitted Lien means:

- (a) a repairer's lien arising in the ordinary course of business; or
- (b) a lien or charge which arises by operation of Law for unpaid taxes, which, in either case, relates to a payment obligation that is:
- (c) not yet due for payment; or
- (d) due for payment but being contested in good faith and by appropriate proceedings that are being conducted diligently and do not involve a material risk of the foreclosure, sale, forfeiture or loss of, or material interference with, the Total Extension Infrastructure or any title to, use of or interest in the Total Extension Infrastructure (or any part of it).

Permitted Purpose means use of the Leased Extension Infrastructure:

- (a) for the purpose of Aurizon managing and operating a railway;
- (b) for purposes ancillary to Aurizon managing and operating a railway; and
- (c) for other lawful purposes (including, to the extent the Leased Extension Infrastructure is located on Rail Corridor Land, purposes that are consistent with the permitted use of that Rail Corridor Land under the Land Lease) provided that such use would not preclude or materially impede the Leased Extension Infrastructure being used to manage and operate a railway.

Personnel means, in respect of an entity, any officer, employee, agent or contractor of that entity and includes any officer, employee, subcontractor or agent of a contractor or subcontractor of that entity.

Preference Unit Holder has the meaning given in the Unit Holders Deed.

Proceedings has the meaning given in **clause 16.8(b)**.

Project Manager means the party which is the "Project Manager" under the Project Management Agreement.

Project Management Agreement has the meaning given in the Unit Holders Deed.

Rail Corridor Agreement has the meaning given in the Unit Holders Deed.

Rail Corridor Land has the meaning given in the Extension Infrastructure Agreement.

Railway Network has the meaning given in the Unit Holders Deed.

RCTI has the meaning given in **clause 18.4(a)(i)**.

Recipient has the meaning given in **clause 17.1**.

Records means all present or future documents, drawings, specifications, reports, manuals, data and other information in any media whatsoever:

- (a) in the possession, or under the control, of the Trustee relating to the design, procurement, construction, testing, commissioning, defects rectification, operation, maintenance and repair of the Total Extension Infrastructure;
- (b) created by or for a “Replacement Project Manager” (as defined in the Project Management Agreement) relating to the design, procurement, construction, testing, commissioning and defects rectification of the Extension or the “Replacement Services” (as defined in the Project Management Agreement); or
- (c) in the possession, or under the control, of the Trustee in connection with any “Major Works Contract Dispute” (as defined under the Project Management Agreement) in respect of which the Trustee elects to assume responsibility for the conduct of under clause [8] of the Project Management Agreement.

Redundant Extension Infrastructure has the meaning given in clause 4.12(c)(i).

Reference Infrastructure means:

- (a) if there is a section of the Railway Network that is similar to the applicable part of the Leased Extension Infrastructure, that section of the Railway Network; or
- (b) if paragraph (a) of this definition does apply, a notional section of the Railway Network which is similar to the applicable part of the Leased Extension Infrastructure,

in each case, where the construction of such section was, or was notionally, funded by Aurizon.

Regulatory Asset Base has the meaning given in the Access Undertaking.

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth).

Relevant Access Charges for a Month means the Access Charges for that Month which are relevant to the calculation of the Rent for that Month.

Removed Infrastructure means any part of the Leased Extension Infrastructure which is permanently removed from the Leased Extension Infrastructure or a Segment by or for:

- (a) the Trustee in the performance of its obligations under **clause 6.1**;
- (b) Aurizon in the performance of its obligations under **clause 6.2** or **4.6**; or
- (c) Aurizon (or a third party authorised by Aurizon) in the exercise of its rights under **clause 4.8**.

Removed Obsolete Part has the meaning given in the Extension Infrastructure Agreement.

Rent for a Month means the amount calculated in accordance with the Rent Calculation Methodology for that Month:

- (a) **less**, if Aurizon adds any Rent Shortfall Adjustment Amount to the Expected Rent for that Month under paragraph (b) of the definition of Expected Rent, the Rent Reduction Amount which Aurizon calculated under **clause 9.6(b)** at the time it calculated such Rent Shortfall Adjustment Amount; and
- (b) **plus**, if Aurizon deducts any Late Payment Adjustment Amount from the Expected Rent for that Month under paragraph (c) of the definition of Expected Rent, the Rent Increase Amount which Aurizon calculated under **clause 9.7(b)** at the time it calculated such Late Payment Adjustment Amount.

Rent Calculation Methodology means the methodology set out in **schedule 3** as varied from time to time.

Rent Calculation Methodology Dispute has the meaning given in **clause 10.6(a)(i)**.

Rent Increase Amount means the amount calculated in accordance with **clause 9.7(b)**.

Rent Reduction Amount means the amount calculated in accordance with **clause 9.6(b)**.

Rent Shortfall Adjustment Amount means an amount calculated in accordance with **clause 9.6(a)**.

Repair means a repair for the purposes of the Tax Act.

Replaced Part has the meaning given in the Extension Infrastructure Agreement.

Security Interest means any mortgage, pledge, lien, charge, encumbrance or any security or preferential interest or arrangement of any kind. Security Interest includes:

- (a) any thing which gives a creditor priority to other creditors with respect to any asset; and
- (b) retention of title other than in the ordinary course of day-to-day trading and a deposit of money by way of security,

but it excludes a charge or lien arising in favour of a Governmental Agency by operation of statute unless there is default in payment of money secured by that charge or lien.

Segment has the meaning given in the Unit Holders Deed.

SIL Extension Infrastructure means "Extension Infrastructure" (as defined in the Extension Infrastructure Agreement) which:

- (a) is leased to the Trustee under the Extension Infrastructure Agreement immediately prior to the termination of the Extension Infrastructure Agreement; and
- (b) under clause [11.6] of the Extension Infrastructure Agreement, is deemed to be “Infrastructure” (as defined in the State Infrastructure Lease) for the purpose of the State Infrastructure Lease,

but, for the avoidance of doubt, does not include:

- (c) any Excluded Extension Infrastructure; and
- (d) any “Extension Infrastructure” (as defined in the Extension Infrastructure Agreement) which the Trustee and the State agree may be removed by the Trustee under clause [12.1] of the Extension Infrastructure Agreement.

State means the State of Queensland.

State Infrastructure Lease means the lease entitled "*Infrastructure Lease*" between Queensland Treasury Holdings Pty Ltd (ACN 011 027 295) and Aurizon Network Pty Ltd (ABN 78 132 181 116) dated 30 June 2010.

Sublease means the sublease of the Subleased Extension Infrastructure by the Trustee to Aurizon under **clause 3.1(a)**.

Subleased Extension Infrastructure means the “Extension Infrastructure” (as defined in the Extension Infrastructure Agreement) that is leased, but only for so long as it is leased, by the Extension Infrastructure Lessor to the Trustee under the Extension Infrastructure Agreement.

Supplier has the meaning given in **clause 18.3**.

Tax Act means the *Income Tax Assessment Act 1936* (Cth) (**1936 Act**), the *Income Tax Assessment Act 1997* (Cth) (**1997 Act**) or both the 1936 Act and the 1997 Act, as appropriate, and, to the extent applicable, the *Taxation Administration Act 1953* (Cth) and includes tax laws having a similar or corresponding object or effect in any jurisdiction.

Term means the period commencing on the Commencement Date and ending on the End Date.

Total Direction to Pay Amount for a Month means the sum of the amounts which Aurizon has directed (or is taken to have directed) an Extension Access Agreement Customer or a Nominated Access Agreement Customer (if applicable) to pay into the Direction to Pay Account under **clauses 9.1** and **9.2** for that Month, as specified in the Notice given by Aurizon to the Trustee under **clause 9.4** for that Month.

Total Extension Infrastructure means:

- (a) Subleased Extension Infrastructure (from time to time); and
- (b) Leased Extension Infrastructure (from time to time).

Transaction Documents has the meaning given in the Unit Holders Deed.

Trust has the meaning given in the Trust Deed.

Trust Deed means the trust deed made by the Trustee entitled “*User Funding – Trust Deed of [Name of Trust]*”, as amended from time to time.

Trustee Additional Infrastructure means any Infrastructure, part, accessory or equipment which is constructed, incorporated, installed in or attached to the Leased Extension Infrastructure or a Segment by or for:

- (a) the Trustee in the performance of its obligations under **clause 6.1**; or
- (b) Aurizon in the performance of its obligations under **clause 4.6**.

Trustee Supplies has the meaning given in **clause 18.4(a)(i)**.

Trustee’s Associates means any Personnel, consultant, adviser, licensee or invitee of the Trustee but does not include Aurizon or Aurizon’s Associates or any person other than those mentioned exercising any right of access to the Total Extension Infrastructure under any Law.

Umbrella Agreement has the meaning given in the Unit Holders Deed.

Unit Holder has the meaning given in the Trust Deed.

Unit Holders Deed has the meaning given in the Trust Deed.

Variation Notice has the meaning given in **clause 10.4**.

Wilful Default means an intentional breach by Aurizon of the terms of this Agreement.

Works has the meaning given in the Project Management Agreement.

Works Contract has the meaning given in the Project Management Agreement.

Zero Value means, in respect of the Total Extension Infrastructure:

- (a) if the Total Extension Infrastructure is then regulated, the Total Extension Infrastructure has no value in the Regulatory Asset Base; and
- (b) if the Total Extension Infrastructure is not then regulated, zero Rent has been payable to the Trustee for three consecutive Months.

Zero Value Date means:

- (a) if the Trustee does not give Aurizon a Dispute Notice referred to in **clause 2.2(c)**, the date which is 60 Business Days after the date that Aurizon gives the Trustee the Notice under **clause 2.2(b)**; or
- (b) if the Trustee gives Aurizon a Dispute Notice referred to in **clause 2.2(c)**, the date on which it is agreed or determined under the Dispute Resolution Process that the Total Extension Infrastructure has Zero Value.

1.2 Interpretation

Unless expressed to the contrary, in this Agreement:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) where the day on or by which any thing is to be done is not a Business Day, it must be done on or by the preceding Business Day;
- (c) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded;
- (d) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (e) "includes" means includes without limitation;
- (f) no rule of construction will apply to the disadvantage of one Party on the basis that that Party put forward the documents comprising this Agreement;
- (g) if the documents comprising this Agreement contain any ambiguity, discrepancy or inconsistency, then the following order of precedence will apply to resolve that ambiguity, discrepancy or inconsistency:
 - (i) this Agreement excluding the schedules; and
 - (ii) the schedules;
- (h) words in the singular include the plural and vice versa;
- (i) words importing one gender will include every gender;
- (j) references to clauses and schedules are references to clauses of, and schedules to, this Agreement;
- (k) a requirement for a Party to obtain the consent or approval of the other Party requires the first Party to obtain the consent or approval in writing; and
- (l) a reference to:
 - (i) a person includes any company, partnership, joint venture, unincorporated association, corporation or other body corporate and a government or statutory body or authority;
 - (ii) any Legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified, consolidated, re-enacted or replaced;
 - (iii) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (iv) a right includes a benefit, remedy, discretion and power;
 - (v) time is to local time in Brisbane, Queensland;
 - (vi) \$ or dollars is a reference to Australian currency;

- (vii) this Agreement or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
- (viii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmission; and
- (ix) a Party includes that Party's successors according to law and permitted assigns and any person to whom it novates its rights and obligations.

2 Term

2.1 Term

This Agreement commences on the Commencement Date and, unless earlier terminated in accordance with this Agreement, continues until the End Date.

2.2 Total Extension Infrastructure has Zero Value

- (a) Not more than seven months, but not less than six months, prior to the date that Aurizon estimates, acting reasonably, that the Total Extension Infrastructure will have Zero Value, Aurizon must give the Trustee a Notice specifying the date on which Aurizon estimates, acting reasonably, that the Total Extension Infrastructure will have Zero Value.
- (b) Promptly after Aurizon determines, acting reasonably, that the Total Extension Infrastructure has Zero Value, Aurizon must give the Trustee a Notice specifying that the Total Extension Infrastructure has Zero Value.
- (c) Within 60 Business Days after Aurizon gives the Trustee the Notice under **clause 2.2(b)**, the Trustee may give Aurizon a Dispute Notice which Disputes that the Total Extension Infrastructure has Zero Value.
- (d) If:
 - (i) the Trustee gives Aurizon a Dispute Notice referred to in **clause 2.2(c)**; and
 - (ii) the Dispute is not resolved in accordance with **clause 16.2**, the Dispute must be referred to an Expert to determine whether or not the Total Extension Infrastructure has Zero Value.
- (e) If the Trustee does not give Aurizon a Dispute Notice referred to in **clause 2.2(c)** within the time referred to in **clause 2.2(c)**, then:
 - (i) the Trustee must not give Aurizon a Dispute Notice Disputing that the Total Extension Infrastructure has Zero Value; and
 - (ii) any such Dispute Notice which is given by the Trustee will be of no force or effect.

3 Subleased Extension Infrastructure

3.1 Sublease of Subleased Extension Infrastructure

- (a) In consideration for the grant of the sublease under this **clause 3**, Aurizon must pay the Trustee the sum of \$1.00 but only if demanded in writing by the Trustee.
- (b) The Trustee subleases each part of the Subleased Extension Infrastructure to Aurizon immediately upon the leasing of that part of the Subleased Extension Infrastructure to the Trustee under the Extension Infrastructure Agreement for so long as that part of the Subleased Extension Infrastructure is leased to the Trustee under the Extension Infrastructure Agreement.
- (c) The Trustee and Aurizon acknowledge:
 - (i) the rights of the Extension Infrastructure Lessor under the Extension Infrastructure Agreement and the Integrated Network Deed; and
 - (ii) that their rights under the Sublease are subject and subordinate to the rights of the Extension Infrastructure Lessor under the Extension Infrastructure Agreement and the Integrated Network Deed.

3.2 Extension Infrastructure Agreement

- (a) The Trustee must comply with its obligations under the Extension Infrastructure Agreement.
- (b) The Trustee:
 - (i) irrevocably nominates Aurizon as the Trustee's nominee for the purpose of clause **[6.5(a)]** of the Extension Infrastructure Agreement during the term of this Agreement; and
 - (ii) must promptly notify the Extension Infrastructure Lessor that the Trustee has nominated Aurizon as the Trustee's nominee for the purpose of clause **[6.5(a)]** of the Extension Infrastructure Agreement during the term of this Agreement.
- (c) The Trustee must not exercise its right under clause **[6.5(b)]** of the Extension Infrastructure Agreement without the prior written consent of Aurizon.
- (d) The Trustee:
 - (i) irrevocably nominates Aurizon as the Trustee's nominee for the purpose of clause **[6.5(c)]** of the Extension Infrastructure Agreement during the term of this Agreement; and
 - (ii) must promptly notify the Extension Infrastructure Lessor that the Trustee has nominated Aurizon as the Trustee's nominee for the purpose of clause **[6.5(c)]** of the Extension Infrastructure Agreement during the term of this Agreement.

- (e) The Trustee must pay Aurizon's costs and expenses of permanently removing any Removed Obsolete Part promptly upon demand.
- (f) The Trustee must promptly notify Aurizon in writing upon becoming aware of any matter which Aurizon is required to notify to the Extension Infrastructure Lessor under clause [7.5] of the Extension Infrastructure Agreement.
- (g) If Aurizon gives a Notice to the Extension Infrastructure Lessor under clause [7.5] of the Extension Infrastructure Agreement, Aurizon must, at the same time as it gives that Notice to the Extension Infrastructure Lessor, give a copy of that Notice to the Trustee.
- (h) If Aurizon gives the asset register to the Extension Infrastructure Lessor under clause [7.6] of the Extension Infrastructure Agreement, Aurizon must, at the same time as it gives the asset register to the Extension Infrastructure Lessor, give a copy of the asset register to the Trustee.
- (i) The Trustee, as between the Parties, is liable for and must pay all amounts payable by the Parties under:
 - (i) clause 16(a) of the Extension Infrastructure Agreement; or
 - (ii) clause 21 of the Integrated Network Deed.
- (j) If Aurizon pays any amount referred to in **clause 3.2(i)**, the Trustee must pay that amount to Aurizon promptly on demand.

3.3 Indemnity

- (a) The Trustee indemnifies Aurizon against any amounts which are paid or payable by Aurizon to the Extension Infrastructure Lessor under clause [10.2] of the Extension Infrastructure Agreement in respect of any "Losses" (as defined in the Extension Infrastructure Agreement) of every kind that may be incurred or sustained, whether directly or indirectly, by the Extension Infrastructure Lessor in respect of or arising from or in any way connected with any matter referred to in clauses [10.2(a)(i)] to [(vii)] of the Extension Infrastructure Agreement to the extent that the relevant matter was caused, or contributed to (to the extent of the contribution), by any act, omission, negligence or failure on the part of the Trustee or a Trustee's Associate.
- (b) It is not necessary for Aurizon to incur any expense or make any payment before enforcing a right of indemnity under this **clause 3.3**.
- (c) The indemnity under this **clause 3.3** is a continuing obligation separate and independent of the Trustee's other obligations.

3.4 Termination of Sublease

- (a) The Sublease automatically terminates, without the need for either Party to notify the other Party, at the same time as the Extension Infrastructure Agreement terminates (for any reason).

- (b) For the avoidance of doubt, the terms of this Agreement, other than **clause 3.1(a)**, continue in full force and effect despite the termination of the Sublease under this **clause 3.4**.

3.5 Compensation arrangement – Aurizon cause

- (a) This **clause 3.5** applies if the Extension Infrastructure Lessor exercises its right to terminate the Extension Infrastructure Agreement under:
 - (i) clause **[11.4]** of the Extension Infrastructure Agreement due to the occurrence of any event or circumstance specified in clause **[11.4]** of the Extension Infrastructure Agreement which was caused by an act or omission of Aurizon; or
 - (ii) clause **[11.5]** of the Extension Infrastructure Agreement due to the Trustee exercising its right of termination under **clause 13.1** or **13.2** of this Agreement.
- (b) If this **clause 3.5** applies:
 - (i) despite the SIL Extension Infrastructure ceasing to be Subleased Extension Infrastructure subleased to Aurizon under this **clause 3**, all of the terms of this Agreement (other than this **clause 3**) will continue to apply as if the SIL Extension Infrastructure was Subleased Extension Infrastructure subleased by the Trustee to Aurizon under this **clause 3**; and
 - (ii) the Parties acknowledge and agree that the amount of the Rent payable each Month to the Trustee by operation of **clause 3.5(b)(i)** will not be rent payable for the sublease of the SIL Extension Infrastructure but, rather, will be a compensation amount payable by Aurizon to the Trustee as a consequence of the early termination of the Extension Infrastructure Agreement due to Aurizon's cause.

3.6 Compensation arrangement – other cause

- (a) This **clause 3.6** applies if the Extension Infrastructure Lessor exercises its right to terminate the Extension Infrastructure Agreement under:
 - (i) clause **[11.1]** of the Extension Infrastructure Agreement; or
 - (ii) clause **[11.4]** of the Extension Infrastructure Agreement (other than for a reason as specified in **clause 3.5(a)(i)**).
- (b) If this **clause 3.6** applies, then the Parties must negotiate in good faith to endeavour to agree the terms of an arrangement under which Aurizon will pay amounts to the Trustee to compensate the Trustee for the SIL Extension Infrastructure ceasing to be Subleased Extension Infrastructure subleased to Aurizon under this **clause 3**, provided that in no circumstances will Aurizon be required to agree to an arrangement which results in:
 - (i) a capital or lump sum payment by it; or

- (ii) the Group (or, if Aurizon is not a member of a Consolidated Group, Aurizon) being financially worse-off (taking into account the overall "Tax" (as defined in the Unit Holders Deed), accounting and other financial consequences for the Group (or, if Aurizon is not a member of a Consolidated Group, Aurizon) of the arrangement) than it would have been if the SIL Extension Infrastructure continued to be Subleased Extension Infrastructure subleased to Aurizon under this **clause 3**.

4 Leased Extension Infrastructure

4.1 Lease of Leased Extension Infrastructure

- (a) The Trustee must ensure that each part of the Infrastructure which is constructed, and each part, accessory and equipment that is incorporated or installed in, or attached to, the Infrastructure, comprising the Extension, is owned wholly by the Trustee free from all Security Interests (other than Permitted Liens) from the time on which that part of the Infrastructure, part, accessory or equipment is constructed, incorporated, installed or attached.
- (b) With effect upon the date on which a part of the Infrastructure, part, accessory or equipment referred to in **clause 4.1(a)** is constructed, incorporated, installed or attached, such Infrastructure, part, accessory or equipment is deemed to be Leased Extension Infrastructure and is leased by the Trustee to Aurizon under this Agreement until:
 - (i) the time at which such Infrastructure, part, accessory or equipment is transferred by the Trustee to the Extension Infrastructure Lessor under clause **[3.1(b)]** of the Extension Infrastructure Agreement (at which time, such Infrastructure, part, accessory or equipment will cease to be Leased Extension Infrastructure and will ceased to be leased to Aurizon under this Agreement); or
 - (ii) otherwise, the end of the Term.
- (c) With effect upon the date on which the Extension Infrastructure Lessor transfers ownership of any Excluded Extension Infrastructure to the Trustee under the Integrated Network Deed, the Excluded Extension Infrastructure is deemed to be Leased Extension Infrastructure and is leased by the Trustee to Aurizon under this Agreement until the end of the Term.
- (d) The Parties acknowledge and agree that:
 - (i) as between the Parties, the Leased Extension Infrastructure is owned by the Trustee;
 - (ii) the Leased Extension Infrastructure is leased under this Agreement separately from the land on, under or above which it is situated;

- (iii) nothing in this Agreement grants to Aurizon any right or interest in or to the land on, under or above which the Leased Extension Infrastructure is situated regardless of whether or not any part of it is affixed to the land; and
- (iv) nothing in this Agreement grants to the owner of the land on, under or above which the Leased Extension Infrastructure is situated any right or interest in the Leased Extension Infrastructure regardless of whether or not any part of it is affixed to the land.

4.2 Use only for Permitted Purposes

- (a) Aurizon must only use the Leased Extension Infrastructure for a Permitted Purpose.
- (b) For the avoidance of doubt, Aurizon may authorise other persons to access and use all or part of the Leased Extension Infrastructure.
- (c) Aurizon must:
 - (i) obtain, maintain and comply with all Authority Approvals; and
 - (ii) otherwise comply with all Legislation,that are required to be obtained, maintained or complied with (as applicable) in order for Aurizon to lawfully use the Leased Extension Infrastructure for any Permitted Purpose for which Aurizon uses the Leased Extension Infrastructure.
- (d) The Trustee must:
 - (i) not unreasonably withhold or delay the giving of, and must not impose any conditions upon, any consent that is required from the Trustee for Aurizon to comply with its obligations under **clause 4.2(c)**; and
 - (ii) promptly, upon written request by Aurizon, do all things reasonably required by Aurizon (including executing documents) to enable Aurizon to comply with its obligations under **clause 4.2(c)**.

4.3 Title

- (a) Aurizon acknowledges that it has no rights in relation to the Leased Extension Infrastructure other than its rights as lessee under this Agreement.
- (b) The Trustee must promptly, upon written request by Aurizon, exercise any of its rights and entitlements in, or in relation to, the Leased Extension Infrastructure to assist Aurizon to the extent necessary to enable Aurizon to use the Leased Extension Infrastructure for any Permitted Purpose where Aurizon is unable to act itself by reason of the Trustee's interest in, or in relation to, the Leased Extension Infrastructure.

4.4 Exclusive use and possession

- (a) Subject to **clause 4.4(b)**, Aurizon will have exclusive use and possession of the Leased Extension Infrastructure and may peaceably possess and enjoy the Leased Extension Infrastructure for the Term without any interruption or disturbance from the Trustee (or any other person lawfully claiming by, from or under the Trustee) subject only to any interruption or disturbance which results from the exercise by the Trustee of its rights under this Agreement or any rights conferred on the Trustee by Legislation.
- (b) Subject to **clause 4.4(c)**, Aurizon permits the Trustee and the Trustee's Associates to access and use the Leased Extension Infrastructure for the purpose of:
 - (i) carrying out the Works for the Extension; and
 - (ii) performing the Trustee's obligations under **clause 6.1**.
- (c) The Trustee must, and must ensure the Trustee's Associates:
 - (i) only access and use the Leased Extension Infrastructure at times permitted by Aurizon and only for the purposes referred to in **clause 4.4(b)**; and
 - (ii) comply with all reasonable requirements of Aurizon in connection with the Trustee and the Trustee's Associates accessing and using the Leased Extension Infrastructure in connection with the purpose referred to in **clause 4.4(b)**.
- (d) Subject to **clause 4.4(e)**, Aurizon permits the Trustee and the Trustee's Associates, at reasonable times and having given Aurizon reasonable notice, access any Leased Extension Infrastructure for purpose of inspecting the Leased Extension Infrastructure.
- (e) When exercising its rights under **clause 4.4(c)**, the Trustee and the Trustee's Associates:
 - (i) must not interfere with Aurizon's operations or business;
 - (ii) will be subject to the same limitations upon and conditions of access as apply to any third party visitor to the place where the relevant Leased Extension Infrastructure is located; and
 - (iii) must comply with all safety requirements and other reasonable directions of Aurizon in relation to such access.
- (f) The Trustee must, and must ensure that the Trustee's Associates, only access and use the Leased Extension Infrastructure for the purposes referred to in **clauses 4.4(b)** and **4.4(d)**.
- (g) The Trustee must promptly upon demand pay all costs and expenses reasonably incurred by Aurizon in facilitating and supervising access to and use of the Total Extension Infrastructure for the purpose referred to in **clause 4.4(b)** and **4.4(d)**.

- (h) The Trustee must ensure that the Trustee's Associates do not do anything in relation to the Leased Extension Infrastructure which, if done by the Trustee, would be a breach of this Agreement by the Trustee.

4.5 Obligation to operate and manage

- (a) This **clause 4.5** does not apply in respect of any Leased Extension Infrastructure for a Segment until the Available Date for that Segment.
- (b) Aurizon must operate and manage the Leased Extension Infrastructure in accordance with all applicable Legislation and the requirements of all relevant Authority Approvals (including the Access Undertaking).
- (c) Aurizon must ensure that Aurizon's Associates do not do anything in respect of the Leased Extension Infrastructure which, if done by Aurizon, would be a breach of this Agreement by Aurizon.

4.6 Obligation to Repair and maintain

- (a) This **clause 4.6** does not apply in respect of any Leased Extension Infrastructure for a Segment until the Available Date for that Segment.
- (b) Subject to **clauses 6** and **4.7**, Aurizon must, at its cost, Repair and maintain the Leased Extension Infrastructure:
 - (i) in accordance with all applicable Legislation;
 - (ii) in accordance with the requirements of all relevant Authority Approvals (including the Access Undertaking); and
 - (iii) to a standard that is not materially lower than the standard to which Aurizon would Repair and maintain the Reference Infrastructure in the same or similar circumstances.
- (c) Aurizon must, at its cost, replace any part of the Leased Extension Infrastructure that is lost or destroyed.

4.7 No obligation to replace

Except as required under **clause 4.6(c)**, nothing in this Agreement requires Aurizon to replace any part of the Leased Extension Infrastructure (including, for the avoidance of doubt, any part of the Leased Extension Infrastructure which is obsolete or life expired).

4.8 Modifications

- (a) This **clause 4.8** does not apply in respect of any Leased Extension Infrastructure for a Segment until the earlier of:
 - (i) the Available Date for that Segment; or
 - (ii) the date of termination of the Project Management Agreement (for any reason).
- (b) Aurizon may:
 - (i) make any Modifications to the Leased Extension Infrastructure; or

- (ii) authorise third parties to make any Modifications to the Leased Extension Infrastructure.
- (c) Aurizon must maintain reasonable details of all Modifications made, or authorised to be made, to the Leased Extension Infrastructure under **clause 4.8(b)**.

4.9 Trustee Additional Infrastructure

- (a) The Trustee and Aurizon (as applicable) must ensure that any Trustee Additional Infrastructure is owned wholly by the Trustee free from all Security Interests (other than Permitted Liens) from the time on which it is constructed, incorporated, installed or attached.
- (b) With effect upon the date on which any Trustee Additional Infrastructure is constructed, incorporated, installed or attached, the Trustee Additional Infrastructure is deemed to form part of the Leased Extension Infrastructure and is leased by the Trustee to Aurizon under this Agreement.
- (c) As between the Trustee and Aurizon, title to the Trustee Additional Infrastructure remains with the Trustee.

4.10 Aurizon Additional Infrastructure

Despite any Aurizon Additional Infrastructure being constructed, incorporated or installed in or attached to the Leased Extension Infrastructure or a Segment:

- (a) Aurizon Additional Infrastructure does not form part of the Leased Extension Infrastructure; and
- (b) as between the Trustee and Aurizon, title to Aurizon Additional Infrastructure remains with Aurizon.

4.11 Removed Infrastructure

- (a) Removed Infrastructure will cease being part of the Leased Extension Infrastructure from the time it is permanently removed from the Leased Extension Infrastructure or a Segment.
- (b) The Trustee must transfer title to Removed Infrastructure to Aurizon or its nominee for nil consideration and free from all Security Interests (other than Permitted Liens) except in the case of any Removed Infrastructure which is:
 - (i) removed by or for the Trustee in the performance of its obligations under **clause 6.1**; or
 - (ii) removed by or for Aurizon and not replaced.

4.12 Termination of Project Management Agreement

- (a) If the Project Management Agreement terminates during the Construction Period, then within 20 Business Days after the termination of the Project Management Agreement, Aurizon may notify the Trustee that it no longer wishes the whole, or particular parts, of the Leased Extension Infrastructure to be subject to the lease under this **clause 4**.

- (b) A Notice given under **clause 4.12(a)** must specify:
 - (i) that Aurizon no longer wishes the whole of the Leased Extension Infrastructure to be subject to the lease under this **clause 4**; or
 - (ii) the particular parts of the Leased Extension Infrastructure which Aurizon no longer wishes to be subject to the lease under this **clause 4**.
- (c) On the date that Aurizon gives the Trustee a Notice under **clause 4.12(a)**:
 - (i) the Leased Extension Infrastructure specified in the Notice given under **clause 4.12(a) (Redundant Extension Infrastructure)** will immediately cease being subject to the lease under this **clause 4**; and
 - (ii) for the avoidance of doubt, the Leased Extension Infrastructure (other than the Redundant Extension Infrastructure) will continue to be subject to the lease under this **clause 4**.

4.13 Insurance

Aurizon must effect and maintain insurance policies and/or adopt internal 'self-insurance strategies' in respect of:

- (a) the replacement and reinstatement of the Leased Extension Infrastructure; and
- (b) public liability risks in connection with the Leased Extension Infrastructure,

which provide a level of cover that is not materially lower than the level of cover provided under the insurance policies and/or internal 'self-insurance strategies' that Aurizon would effect, maintain and/or adopt in respect of:

- (c) the replacement and reinstatement of Reference Infrastructure; and
- (d) public liability risks in connection with Reference Infrastructure.

5 Total Extension Infrastructure

5.1 Non-discrimination

- (a) Aurizon must not take any action in respect of the Total Extension Infrastructure where such action is for the sole purpose (and no other purpose) of reducing the Rent payable by it under this Agreement.
- (b) Nothing in this **clause 5.1** imposes any restriction or limitation on the making of any submissions or representations by Aurizon to the Access Regulator and the content of such submissions or representations.

5.2 Provision of Records by Trustee

- (a) The Trustee must, promptly upon written request by Aurizon from time to time, deliver to Aurizon, in the format reasonably required by Aurizon, a copy of any Records requested by Aurizon.

- (b) The Trustee must grant to Aurizon, or procure that Aurizon is granted, a non-exclusive licence to exercise the Intellectual Property Rights in any Records (including the right to sub-licence) delivered to Aurizon under **clause 5.2(a)**.
- (c) To the extent that the Trustee has Moral Rights in any Records delivered to Aurizon under **clause 5.2(a)**, the Trustee must give a Moral Rights Consent.
- (d) To the extent that a person other than the Trustee or Aurizon has Moral Rights in any Records delivered to Aurizon under **clause 5.2(a)**, the Trustee must:
 - (i) use reasonable endeavours to obtain a Moral Rights Consent from that person on request from Aurizon; and
 - (ii) once obtained, promptly deliver the Moral Rights Consent to Aurizon.
- (e) The Trustee warrants that:
 - (i) it has the right to grant the rights granted to Aurizon under this **clause 5.2**; and
 - (ii) the Records delivered to Aurizon under **clause 5.2(a)**, and the acts of Aurizon or any person authorised by Aurizon in relation to those Records, do not infringe the Intellectual Property Rights or Moral Rights of any person.

5.3 Keeping of Records by Aurizon

- (a) Aurizon must keep and maintain reasonable records relating to the operation, management, repair, maintenance, Modification and use and condition of the Total Extension Infrastructure.
- (b) Aurizon must, promptly upon written request by the Trustee from time to time, deliver to the Trustee, in the format Aurizon generally keeps records of that nature, a copy of any record kept and maintained by Aurizon under **clause 5.3(a)**.

5.4 Lease continues

For the avoidance of doubt, unless this Agreement is earlier terminated in accordance with the terms of this Agreement, this Agreement will continue for the Term despite there ceasing to be any Total Extension Infrastructure subleased or leased (as applicable) under this Agreement prior to the end of the Term.

5.5 Outgoings

- (a) Despite the Extension Infrastructure Agreement:
 - (i) during the Construction Period, the Trustee must pay all charges, taxes and rates which are payable in respect of the Total Extension Infrastructure or services provided for the Total Extension Infrastructure.

- (ii) after the end of the Construction Period, Aurizon must pay all charges, taxes and rates which are payable in respect of the Total Extension Infrastructure or services provided for the Total Extension Infrastructure, except for taxes on the revenues or capital gains of the Trustee.
- (b) For the avoidance of doubt, Aurizon is not responsible under this Agreement to pay any charges, taxes and rates which are payable in respect of land.

5.6 Replacement of Total Extension Infrastructure

If Aurizon replaces any part of the Total Extension Infrastructure which is a “depreciating asset” (as defined in the Tax Act) (the **original depreciating asset**) that is “lost or destroyed” (as referred to in item 8 of section 40-300(2) of the Tax Act), the Trustee must choose under section 40-365 of the Tax Act to exclude all of any amount that would otherwise be included in the Trustee’s assessable income as a result of a “balancing adjustment event” (as defined in the Tax Act) occurring because the original depreciating asset is “lost or destroyed” (as referred to in item 8 of section 40-300(2) of the Tax Act).

6 Rectification of Defects

6.1 Rectification of Defects by Trustee

- (a) The Trustee must, at its cost, procure the rectification of any Defects promptly after they are recorded (or required to be recorded) in the Defects Register.
- (b) Aurizon acknowledges that the Trustee has appointed the Project Manager under the Project Management Agreement as the Trustee’s disclosed agent to perform the Trustee’s obligations under this **clause 6.1**.

6.2 Rectification of Defects by Aurizon

- (a) After the end of the Defects Rectification Period, Aurizon must rectify, or procure the rectification of, all Defects other than Defects which are recorded (or required to be recorded) in the Defects Register.
- (b) As between the Trustee and Aurizon, Aurizon will be responsible for the costs of rectifying, or procuring the rectification of, Defects under **clause 6.2(a) (Aurizon Defect Rectification Costs)**.
- (c) The Trustee acknowledges that Aurizon may seek to include Aurizon Defect Rectification Costs in the Regulatory Asset Base as part of the capital cost of the Total Extension Infrastructure.
- (d) The Trustee acknowledges that Aurizon may procure the rectification of Defects under **clause 6.2(a)** by exercising any rights which Aurizon has in relation to the rectification of such Defects under Works Contracts.

[Drafting note: Works Contracts may contain provisions which give Aurizon direct rights against Works Contractors in relation to the rectification of Defects.]

7 Rail Corridor Agreement

7.1 Appointment as agent

On and from the date on which the Project Management Agreement terminates in accordance with its terms, and provided the Rail Corridor Agreement has not terminated in accordance with its terms, the Trustee:

- (a) appoints Aurizon as the disclosed agent of the Trustee for the purpose of performing the Trustee's obligations, and exercising the Trustee's rights (other than the Trustee's rights under clauses [3.1] and [3.2] of the Rail Corridor Agreement and its rights in respect of "Disputes" (as defined in the Rail Corridor Agreement) under clause [20] of the Rail Corridor Agreement), under the Rail Corridor Agreement, other than to the extent such obligations and rights must, by operation of law, be personally performed or exercised by the Trustee; and
- (b) must not, other than through Aurizon acting as the Trustee's disclosed agent under this Agreement, perform the Trustee's obligations, or exercise the Trustee's rights (other than the Trustee's rights under clauses [3.1] and [3.2] of the Rail Corridor Agreement and its rights in respect of "Disputes" (as defined in the Rail Corridor Agreement) under clause [20] of the Rail Corridor Agreement), under the Rail Corridor Agreement, unless:
 - (i) such obligations and rights must, by operation of law, be personally performed or exercised by the Trustee;
 - (ii) requested to do so in writing by Aurizon; or
 - (iii) expressly required or permitted to do so under this Agreement.

7.2 Acting for benefit of Aurizon

Despite any fiduciary obligations which would, but for the operation of this Agreement, arise as a consequence of Aurizon acting as disclosed agent for the Trustee under the Rail Corridor Agreement, the Trustee:

- (a) irrevocably consents to Aurizon, when acting as disclosed agent for the Trustee under the Rail Corridor Agreement, doing acts and making omissions which may:
 - (i) be in the interest of, or advantage, Aurizon or any Related Body Corporate of it; and
 - (ii) not be in the interest of, or disadvantage, the Trustee; and
- (b) agrees Aurizon will have no obligation to fully disclose to it the interest, advantage or disadvantage prior to the relevant act or omission, provided that:
- (c) Aurizon is not expressly prohibited from doing the relevant act or making the relevant omission under this Agreement; and

- (d) the relevant act is done or relevant omission is made by Aurizon acting in good faith having regard to Aurizon's (or any of its Related Body Corporate's):
 - (i) legitimate interests as:
 - (A) "Aurizon" under this Agreement;
 - (B) "Project Manager" under the Project Management Agreement;
 - (C) "Landholder" under the Rail Corridor Agreement;
 - (D) lessee or sublessee under a land or infrastructure lease or sublease in respect of the Railway Network (or any part of it);
 - (E) operator and manager of the Railway Network;
 - (F) access provider under access agreements in respect of the Railway Network; and
 - (G) the accredited railway manager of the Railway Network; and
 - (ii) rights and obligations under Legislation (including the *Transport (Rail Safety) Act 2010* (Qld) and the *Work Health and Safety Act 2011* (Qld)).

8 Rent and other payments

8.1 Rent

- (a) Within seven Business Days after the Monthly Invoice Date for the Initial Rent Month and each subsequent Month during the Term, Aurizon must give the Trustee a RCTI (**Monthly Invoice**) specifying the Rent for that Month.
- (b) Within ten Business Days after Aurizon gives the Trustee a Monthly Invoice for a Month, Aurizon must pay the total invoice amount specified in the Monthly Invoice for that Month to the Trustee.

8.2 Supporting information

- (a) Subject to **clause 8.2(b)**, each Monthly Invoice given by Aurizon to the Trustee under **clause 8.1** must be accompanied by reasonable details of the calculation of the Rent for the Month specified in the Monthly Invoice.
- (b) Nothing in this Agreement obliges Aurizon to disclose any Customer Confidential Information to the Trustee.

8.3 Interest on overdue payments

- (a) If, for any reason, a Party does not pay an amount payable under this Agreement on or before the due date for payment, it must pay interest to the other Party.

- (b) Interest will accrue on the outstanding amount from the due date for payment until that amount, together with the interest on that amount, has been paid.
- (c) Interest will be calculated at the Interest Rate, and any interest accrued but unpaid at the end of each Month will be capitalised and will thereafter itself bear interest.

8.4 Disputes

- (a) If the Trustee Disputes the amount of the Rent for a Month specified in a Monthly Invoice, the Trustee may give Aurizon a Dispute Notice under **clause 16.1(a)**.
- (b) Upon resolution of a Dispute referred to in **clause 8.4(a)**, if the amount of the Rent payable under the relevant Monthly Invoice as agreed or determined under the Dispute Resolution Process is:
 - (i) more than the amount that was paid by Aurizon under the Monthly Invoice, then, within five Business Days after the date of the resolution of the Dispute, Aurizon must:
 - (A) give the Trustee a further RCTI or adjustment note (as applicable) for the amount of the difference, together with interest on that amount calculated in accordance with **clause 8.3** (provided that, for the purpose of calculating that interest, the due date for payment is deemed to be the due date for payment of the Monthly Invoice under **clause 8.1(b)**); and
 - (B) pay the amount referred to in **clause 8.4(b)(i)(A)** to the Trustee; or
 - (ii) less than the amount that was paid by Aurizon under the Monthly Invoice, then:
 - (A) within five Business Days after the date of the resolution of the Dispute, Aurizon must give the Trustee an adjustment note for the amount of the difference, together with interest on that amount calculated in accordance with **clause 8.3** (provided that, for the purpose of calculating that interest, the amount of the difference will be deemed to be a payment due and payable by the Trustee to Aurizon and the due date for payment will be deemed to be the date when the amount payable under the Monthly Invoice was paid by Aurizon); and
 - (B) within ten Business Days after receipt of the adjustment note from Aurizon under **clause 8.4(b)(ii)(A)**, the Trustee must pay the amount referred to in **clause 8.4(b)(ii)(A)** to Aurizon.

8.5 Correction of errors

- (a) If, at any time:

- (i) the Trustee discovers an error in the Monthly Invoice resulting in an underpayment or overpayment, then the Trustee must promptly notify Aurizon of this error; and
 - (ii) Aurizon discovers an error in the Monthly Invoice resulting in an underpayment or overpayment, then Aurizon must promptly notify the Trustee of this error.
- (b) Despite Aurizon's payment of a Monthly Invoice, if, at any time, an error (resulting in an underpayment or overpayment) is discovered and notified to the other Party in accordance with **clause 8.5(a)**, then:
- (i) if the error results in an underpayment, Aurizon must, within five Business Days after the date the error is verified by Aurizon:
 - (A) give the Trustee a further RCTI or adjustment note (as applicable) for the amount of the underpayment, together with interest on that amount calculated in accordance with **clause 8.3** (provided that, for the purpose of calculating that interest, the due date for payment is deemed to be the date when the amount of the underpayment would have been due and payable but for the error); and
 - (B) pay the amount referred to in **clause 8.5(b)(i)(A)** to the Trustee; or
 - (ii) if the error results in an overpayment:
 - (A) within five Business Days after the date the error is verified by Aurizon, Aurizon may give the Trustee an adjustment note for the amount of the overpayment to Aurizon, together with interest on that amount calculated in accordance with **clause 8.3** (provided that, for the purpose of calculating that interest, the amount of the overpayment will be deemed to be a payment due and payable by the Trustee to Aurizon and the due date for payment will be deemed to be the date when the overpayment was paid by Aurizon); and
 - (B) within ten Business Days after receipt of the adjustment note from Aurizon under **clause 8.5(b)(ii)(A)**, the Trustee must pay the amount referred to in **clause 8.5(b)(ii)(A)** to Aurizon.

8.6 Aurizon's right of set-off

Aurizon may deduct from any amounts which are due and payable by Aurizon to the Trustee under this Agreement any amounts which are due and payable by the Trustee to Aurizon under this Agreement or any other Transaction Document.

8.7 Method of payment

All payments to be made under or in connection with this Agreement must be paid in Australian currency, without set-off or deduction (subject to **clause 8.6**), by:

- (a) electronic payment to an account nominated by the Party entitled to receive the payment; or
- (b) such other method as the Party entitled to receive the payment may reasonably require from time to time.

9 Direction to pay

9.1 Direction to pay – Extension Access Agreement

- (a) At the time that Aurizon gives an Extension Access Agreement Customer an Extension Access Agreement Invoice for a Month, Aurizon must, by notice to the Extension Access Agreement Customer (such notice to be copied to the Trustee), direct the Extension Access Agreement Customer to pay by the due date for payment under the Extension Access Agreement:
 - (i) into the Direction to Pay Account – the Direction to Pay Amount for the Extension Access Agreement for that Month; and
 - (ii) to Aurizon (in the manner required under the Extension Access Agreement) – the remaining amount of the Access Charges, if any, which are payable under the Extension Access Agreement Invoice for the Month after subtracting the amount referred to in **clause 9.1(a)(i)**.
- (b) If:
 - (i) at the time that Aurizon gives an Extension Access Agreement Customer an Extension Access Agreement Invoice for a Month, Aurizon does not give the Extension Access Agreement Customer a direction to pay under **clause 9.1(a)**;
 - (ii) within five Business Days after receiving the Extension Access Agreement Invoice, the Extension Access Agreement Customer notifies Aurizon that it has not been given a direction to pay under **clause 9.1(a)**; and
 - (iii) within five Business Days after the Extension Access Agreement Customer gives Aurizon a Notice referred to in **clause 9.1(b)(ii)**, Aurizon does not give the Extension Access Agreement Customer a direction to pay under **clause 9.1(a)**,then, despite the Extension Access Agreement Customer not being given a direction to pay under **clause 9.1(a)**:
 - (iv) the Direction to Pay Amount for the Extension Access Agreement for that Month will be taken to be the whole of the amount of the Access Charges payable under the Extension Access Agreement Invoice for that Month; and

- (v) the Extension Access Agreement Customer will be taken to have been given a direction to pay the Direction to Pay Amount for that Month into the Direction to Pay Account under **clause 9.1(a)**.

9.2 Direction to pay – Nominated Access Agreements

- (a) The Trustee may procure access agreement customers to give Aurizon a Direction to Pay Undertaking.
- (b) The Parties acknowledge and agree that Aurizon will treat a Direction to Pay Undertaking as being in force and binding upon the Nominated Access Agreement Customer unless and until the Nominated Access Agreement Customer notifies Aurizon that it revokes the Direction to Pay Undertaking.
- (c) If:
 - (i) the sum of the Direction to Pay Amounts for all Extension Access Agreements for a Month is less than the Expected Rent for the Month; and
 - (ii) the difference between the sum of the Direction to Pay Amounts for all Extension Access Agreements for the Month and the Expected Rent for the Month is greater than the sum of the amount of the Access Charges payable under Nominated Access Agreement Invoices for the Month,

then, at the time that Aurizon gives each Nominated Access Agreement Customer its Nominated Access Agreement Invoice for the Month, Aurizon must, by notice to each Nominated Access Agreement Customer, direct each Nominated Access Agreement Customer to pay the whole of the amount of the Access Charges payable under its Nominated Access Agreement Invoice for the Month into the Direction to Pay Account by the due date for payment under the Nominated Access Agreement.

- (d) If:
 - (i) the sum of the Direction to Pay Amounts for all Extension Access Agreements for a Month is less than the Expected Rent for the Month; and
 - (ii) the difference between sum of the Direction to Pay Amounts for all Extension Access Agreements for that Month and the Expected Rent for the Month is less than the sum of the amounts of the Access Charges payable under Nominated Access Agreement Invoices for that Month,

then, at the time that Aurizon gives the Nominated Access Agreement Customers their Nominated Access Agreement Invoices for that Month, Aurizon must, by notice to one or more Nominated Access Agreement Customers, direct one or more Nominated Access Agreement

Customers to pay by the due date for payment under the applicable Nominated Access Agreement:

- (iii) into the Direction to Pay Account – the whole or part of the amount of the Access Charges payable under the Nominated Access Agreement Customer's Nominated Access Agreement Invoice for that Month; and
- (iv) to Aurizon (in the manner required under the Nominated Extension Access Agreement) – the remaining amount of the Access Charges, if any, which are payable under the Nominated Access Agreement Invoice for that Month after subtracting the amount referred to in **clause 9.2(d)(iii)**,

so that, in total, Aurizon has directed one or more Nominated Access Agreement Customers to pay into the Direction to Pay Account the difference between the sum of the Direction to Pay Amounts for all Extension Access Agreements for that Month and the Expected Rent for that Month.

- (e) Despite this **clause 9.2**, Aurizon is not required to give a direction to pay to a Nominated Access Agreement Customer under this **clause 9.2** if, and to the extent that, Aurizon is under an obligation to direct the Nominated Access Agreement Customer to pay the access charges payable under the Nominated Access Agreement to a third party.

9.3 Direction to Pay Account

- (a) Prior to the Initial Rent Month, the Trustee must establish, and maintain during the remainder of the Term, a separate bank account (**Direction to Pay Account**), in the name of the Trustee, for the purpose of receiving payments which Aurizon directs Extension Access Agreement Customers and Nominated Access Agreement Customers to pay under this **clause 9**.
- (b) The Trustee must:
 - (i) not deposit funds into the Direction to Pay Account; and
 - (ii) use reasonable endeavours to ensure that the only funds (excluding interest earned on funds in the Direction to Pay Account) deposited into the Direction to Pay Account are amounts which Aurizon directs Extension Access Agreement Customers and Nominated Access Agreement Customers to pay into the Direction to Pay Account under this **clause 9**.
- (c) Promptly after:
 - (i) the due date for payment of a Direction to Pay Amount for a Month for an Extension Access Agreement or Nominated Access Agreement (as notified by Aurizon to the Trustee under **clause 9.4**); and

- (ii) if the Direction to Pay Amount referred to in **clause 9.3(c)(i)** is not paid (in whole or in part) into the Direction to Pay Account by the due date for payment but is subsequently paid (in whole or in part) into the Direction to Pay Account – the date of such late payment, the Trustee must give Aurizon a Notice specifying:
 - (iii) the amount (if any) paid into the Direction to Pay Account by the Extension Access Agreement Customer or Nominated Access Agreement Customer for that Extension Access Agreement or Nominated Access Agreement; and
 - (iv) if applicable, the date of payment of that amount into the Direction to Pay Account.

9.4 Notice of directions to pay

Promptly after Aurizon gives all of the directions to pay for a Month to Extension Access Agreement Customers and Nominated Access Agreement Customers (if applicable) under **clauses 9.1** and **9.2**, Aurizon must give the Trustee a Notice specifying:

- (a) the Total Direction to Pay Amount for the Month;
- (b) each of the Extension Access Agreement Customers and Nominated Access Agreement Customers (if applicable) to which Aurizon has given a direction to pay;
- (c) the Direction to Pay Amounts that Aurizon directed such Extension Access Agreement Customer and Nominated Access Agreement Customer (if applicable) to pay into the Direction to Pay Account for that Month; and
- (d) the due date for payment of such Direction to Pay Amounts for that Month.

9.5 Application of Total Direction to Pay Amount

- (a) The Total Direction to Pay Amount for a Month will be taken to have been paid by Aurizon to the Trustee by the due date for payment of the Monthly Invoice for that Month for the purpose of **clause 8.1(b)** (regardless of whether or not an Extension Access Agreement Customer or Nominated Access Agreement Customer actually paid the applicable Direction to Pay Amount for that Month into the Direction to Pay Account as directed by Aurizon by the due date for payment).
- (b) If the Expected Rent for a Month exceeds the Rent for the Month, then the Trustee must:
 - (i) issue a credit note to Aurizon for the amount by which the Expected Rent for the Month exceeds the Rent for the Month (**Overpayment**); and
 - (ii) apply the Overpayment, plus interest on the Overpayment calculated in accordance with **clause 8.3** as if the Overpayment

was an outstanding amount for the period from the due date of the Monthly Invoice for the Month until the date that the Overpayment (or relevant part of it) is credited against Rent payable under a further Monthly Invoice, as a credit in favour of Aurizon against Rent payable under the Monthly Invoice for the next Month (and, if necessary, under Monthly Invoices for subsequent Months until the Overpayment plus interest has been fully credited in favour of Aurizon against Rent payable by Aurizon).

9.6 Rent Shortfall Adjustment Amount

If an Extension Access Agreement Customer or Nominated Access Agreement Customer does not pay the whole or part of the Direction to Pay Amount for a Month (**relevant Month**) into the Direction to Pay Account as directed under **clause 9.1** and **9.2** within three months after the due date for payment of such Direction to Pay Amount, then, promptly after the end of that three month period, Aurizon must calculate:

- (a) the Rent Shortfall Adjustment Amount in accordance with the following formula:

$$RSAA = R_i - (R_o - S)$$

where:

RSAA = The Rent Shortfall Adjustment Amount

R_i = The Rent for the relevant Month (calculated in accordance with the Rent Calculation Methodology using the same inputs as originally used to calculate the Rent for the relevant Month subject only to the non-payment of "S" (as defined in the formula in this **clause 9.6(a)**) being taken into account for the purpose of such recalculation)

R_o = The Rent for the relevant Month as invoiced in the Monthly Invoice for the relevant Month

S = The amount of the Direction to Pay Amount which the relevant Extension Access Agreement Customer or Nominated Access Agreement Customer (as applicable) did not pay into the Direction to Pay Account within three months after the due date for the payment of such Direction to Pay Amount into the Direction to Pay Account

- (b) the Rent Reduction Amount in accordance with the following formula:

$$RRA = S - RSAA$$

where:

RRA = The Rent Reduction Amount

S = The amount of "S" (as defined in the formula in **clause**

9.6(a)

RSAA = The Rent Shortfall Adjustment Amount calculated in accordance with **clause 9.6(a)** as a consequence of the non-payment of “S” (as defined in the formula in **clause 9.6(a)**)

9.7 Late Payment Adjustment Amount

If Aurizon is required to calculate a Rent Shortfall Adjustment Amount under **clause 9.6** and, after the end of the three month period referred to in **clause 9.6**, the relevant Extension Access Agreement Customer or Nominated Access Agreement Customer pays the whole or part of the Direction to Pay Amount for the relevant Month referred to in **clause 9.6** into the Direction to Pay Account, then, promptly after such payment, Aurizon must calculate:

- (a) the Late Payment Adjustment Amount in accordance with the following formula:

$$\text{LPAA} = \text{LPA/S} \times \text{RSAA}$$

where:

LPAA = The Late Payment Adjustment Amount

LPA = The amount of the Direction to Pay Amount which the relevant Extension Access Agreement Customer or Nominated Access Agreement Customer (as applicable) paid into the Direction to Pay Account later than three months after the due date for the payment of such Direction to Pay Amount into the Direction to Pay Account

S = The amount of the Direction to Pay Amount which the relevant Extension Access Agreement Customer or Nominated Access Agreement Customer (as applicable) did not pay into the Direction to Pay Account within three months after the due date for the payment of such Direction to Pay Amount into the Direction to Pay Account

RSAA = The Rent Shortfall Adjustment Amount calculated in accordance with **clause 9.6(a)** as a consequence of the non-payment of “S” (as defined in the formula in this **clause 9.7(a)**)

- (b) the Rent Increase Amount in accordance with the following formula:

$$\text{RIA} = \text{LPA/S} \times \text{RRA}$$

where:

RIA = The Rent Increase Amount

LPA = The amount of the Direction to Pay Amount which the

relevant Extension Access Agreement Customer or Nominated Access Agreement Customer (as applicable) paid into the Direction to Pay Account later than three months after the due date for the payment of such Direction to Pay Amount into the Direction to Pay Account

S = The amount of "S" (as defined in the formula in **clause 9.7(a)**)

RRA = The Rent Reduction Amount calculated in accordance with **clause 9.6(b)** as a consequence of the non-payment of "S" (as defined in the formula in **clause 9.7(a)**)

10 Calculation of Rent

10.1 Objective

The Parties agree that the amount of the Rent for a Month payable by Aurizon to the Trustee under this Agreement is intended to be calculated so as to achieve the objective set out in **schedule 2 (Objective)**.

10.2 Rent Calculation Methodology

The Parties acknowledge and agree that the Rent Calculation Methodology as at the Commencement Date achieves the Objective as at the Commencement Date.

10.3 Calculation of Rent

- (a) The Rent for a Month will be the amount calculated in accordance with the Rent Calculation Methodology (as varied from time to time under this **clause 10**).
- (b) For the purpose of calculating the Rent for a Month, any Direction to Pay Amount for the Month which Aurizon has directed an Extension Access Agreement Customer or Nominated Access Agreement Customer to pay into the Direction to Pay Account under **clause 9.1** and **9.2** will be taken to have been paid by the Extension Access Agreement Customer or Nominated Access Agreement Customer (as applicable) into the Direction to Pay Account by the due date for payment (regardless of whether or not the amount was actually paid into the Direction to Pay Account as directed by the due date for payment).

10.4 Variations to Rent Calculation Methodology

If, at any time, a Party considers, acting reasonably, that the Rent Calculation Methodology at that time fails, or will in the future fail, to achieve the Objective for any reason, then that Party may give a Notice (**Variation Notice**) to the other Party:

- (a) specifying how the Rent Calculation Methodology fails, or will in the future fail, to achieve the Objective;

- (b) requesting that the Rent Calculation Methodology be varied, to the extent necessary, so that the Rent Calculation Methodology achieves, or will in the future achieve, the Objective; and
- (c) setting out the Party's proposed variations to the Rent Calculation Methodology.

10.5 Good faith negotiations

- (a) If a Party gives a Variation Notice, the Parties must promptly (and in any event within ten Business Days) negotiate in good faith to endeavour to agree in writing the variations to the Rent Calculation Methodology, to the extent necessary, so that the Rent Calculation Methodology achieves, or will in the future achieve, the Objective.
- (b) For the purposes of the negotiations referred to in **clause 10.5(a)**, the Parties must:
 - (i) act fairly, reasonably and honestly;
 - (ii) work together and cooperate with each other; and
 - (iii) meet regularly with each other or as otherwise reasonably required by either of them.

10.6 Determination of Rent Calculation Methodology Dispute

- (a) If, within one month after a Party gives a Variation Notice to the other Party, the Parties have not agreed on variations to the Rent Calculation Methodology:
 - (i) a Dispute (**Rent Calculation Methodology Dispute**) will be taken to exist between the Parties; and
 - (ii) either Party may refer the Rent Calculation Methodology Dispute to an Expert for determination under **clause 16.4**.
- (b) If a Party refers the Rent Calculation Methodology Dispute to an Expert for determination under **clause 16.4** then, subject to **clause 10.6(c)**, the Parties must jointly appoint the Access Regulator as the Expert to determine the Rent Calculation Methodology Dispute.
- (c) If:
 - (i) the Access Regulator does not accept the appointment as the Expert to determine the Rent Calculation Methodology Dispute; or
 - (ii) the Parties agree to have the Rent Calculation Methodology Dispute determined by an Expert other than the Access Regulator,then the Rent Calculation Methodology Dispute will be determined by another Expert appointed in accordance with **clause 16.4**.
- (d) If a Rent Calculation Methodology Dispute is referred to an Expert other than the Access Regulator for determination, the Expert must apply the principles which it considers, acting reasonably, would be applied by the

Access Regulator if it were appointed as the Expert to determine the Rent Calculation Methodology Dispute.

- (e) Unless otherwise agreed between the Parties, in determining a Rent Calculation Methodology Dispute, the Expert (whether or not the Access Regulator) must determine:
 - (i) the extent to which the Rent Calculation Methodology fails, or will in the future fail, to achieve the Objective; and
 - (ii) the variations to the Rent Calculation Methodology (if any) required so that the Rent Calculation Methodology (once varied) will achieve the Objective.
- (f) If the Expert determines any variations to the Rent Calculation Methodology in accordance with **clause 10.6(e)**, the Rent Calculation Methodology will be taken to be varied as determined by the Expert:
 - (i) if the Rent Calculation Methodology Dispute is about the Rent Calculation Methodology failing to achieve the Objective in the future – on the date that the Rent Calculation Methodology would, but for the variations, fail to achieve the Objective in the future; or
 - (ii) otherwise – on the date that the Expert notifies in the Expert's determination that the variation to the Rent Calculation Methodology takes effect.

11 Records and auditing

11.1 Keeping of records

- (a) Aurizon must maintain full and complete records of all information which may be reasonably required by the Trustee to verify the determination of the Rent (including the regulatory value of the Total Extension Infrastructure in its Regulatory Asset Base by asset type and by location on a basis that shows the Total Extension Infrastructure separately from other assets of the same asset type and location).
- (b) Aurizon must preserve and maintain the records referred to in **clause 11.1(a)** for a period of not less than five years following the end of the year in which the records ceased being necessary to enable calculation of the amounts payable to the Trustee under this Agreement.

11.2 Audit

- (a) The Trustee may appoint an independent auditor nominated by it and approved by Aurizon (**Auditor**) to carry out audits in order to verify the amounts included in Monthly Invoices and the determination of Rent under this Agreement (**Audits**).
- (b) Aurizon must approve any Auditor proposed by the Trustee unless Aurizon is of the opinion that the proposed Auditor has previously breached the terms of any confidentiality undertaking which has previously been given by the proposed Auditor to Aurizon.

- (c) The costs and expenses of an Auditor must be borne solely by the Trustee.
- (d) Prior to the Auditor undertaking its first Audit, the Trustee must ensure that the Auditor provides Aurizon with a signed confidentiality undertaking from the Auditor in favour of Aurizon in the form shown in **schedule 5** or in a form otherwise acceptable to Aurizon (acting reasonably).
- (e) Upon at least ten Business Days prior written request given by the Trustee (not more than once each year of this Agreement), Aurizon must:
 - (i) give the Auditor reasonable access during normal business hours to the books, accounts and records of Aurizon relevant to an Audit; and
 - (ii) otherwise provide reasonable assistance and co-operation to the Auditor in relation to the conduct of the Audit.
- (f) The Parties acknowledge and agree that, except to the extent otherwise provided in the confidentiality undertaking referred to in **clause 11.2(d)**, the Auditor will only be entitled to disclose to the Trustee:
 - (i) whether or not the Auditor verified the amounts included in Monthly Invoices and the determination of Rent under this Agreement; and
 - (ii) if the Auditor is unable to verify any amount included in a Monthly Invoice and/or the determination of Rent under this Agreement, the nature and extent of the Auditor's inability to verify the amount included in the Monthly Invoice and/or the determination of Rent under this Agreement.
- (g) The Parties acknowledge and agree that the confidentiality undertaking referred to in **clause 11.2(d)** will:
 - (i) not prevent the Auditor from disclosing the result of its Audit (other than Customer Confidential Information) to the Trustee;
 - (ii) subject to **clause 11.2(g)(iii)**, require the Auditor to keep all Customer Confidential Information confidential (including from the Trustee); and
 - (iii) permit the Auditor to disclose Customer Confidential Information to an Expert (but not the Trustee) to the extent that the Expert requires access to the Customer Confidential Information for the purpose of resolving a Dispute under the Dispute Resolution Process about any amount included in a Monthly Invoice and/or the determination of Rent under this Agreement provided that the Expert has first signed a confidentiality undertaking in favour of Aurizon under which the Expert undertakes to keep the Customer Confidential Information confidential (including from the Trustee).

11.3 Audit of Direction to Pay Account

- (a) Aurizon may appoint an independent auditor nominated by it and approved by the Trustee (such approval not to be unreasonably withheld or delayed) (**DTP Auditor**) to carry out audits in order to verify amounts paid into the Direction to Pay Account (**DTP Audits**).
- (b) The costs and expenses of a DTP Auditor will be borne solely by the Trustee and the Trustee must reimburse Aurizon for any such costs and expenses incurred by Aurizon.
- (c) Upon at least ten Business Days prior written request given by Aurizon (not more than once each year of this Agreement), the Trustee must:
 - (i) give the DTP Auditor reasonable access during normal business hours to the books, accounts, bank statements and records of the Trustee relevant to an DTP Audit; and
 - (ii) otherwise provide reasonable assistance and cooperation to the DTP Auditor in relation to the conduct of the DTP Audit.

12 Force majeure

- (a) If Aurizon is prevented or hindered by a Force Majeure Event from fully or partly performing any obligation (except for the payment of money) under this Agreement, then Aurizon will be excused from performing that obligation for the period that Aurizon is so prevented or hindered.
- (b) Upon the occurrence of any Force Majeure Event which prevents or hinders Aurizon from fully or partly performing any obligation under this Agreement, Aurizon must:
 - (i) give notice of the event to the Trustee as soon as reasonably practicable;
 - (ii) use all reasonable endeavors to mitigate the effect of the Force Majeure Event upon the performance of its obligations under this Agreement; and
 - (iii) resume full performance of its obligations under this Agreement as soon as reasonably practicable, and notify the Trustee when it does so.

13 Termination

13.1 Termination by Trustee for Insolvency Event

The Trustee may immediately terminate this Agreement by notice to Aurizon if an Insolvency Event occurs in respect of Aurizon.

13.2 Termination by Trustee for non-payment

The Trustee may immediately terminate this Agreement by notice to Aurizon if Aurizon does not pay any money which is due for payment to the Trustee

under a Monthly Invoice by the due date for payment and Aurizon does not pay that money, together with interest under **clause 8.3**, within a further period of 12 months after the Trustee gives a Notice to Aurizon requesting payment of that money.

13.3 No other rights of termination

- (a) Except as provided in **clause 13.1** and **13.2** and despite any rule of law or equity to the contrary:
 - (i) neither Party may terminate, rescind or treat as repudiated, or obtain any order with the effect of terminating or rescinding, this Agreement; and
 - (ii) this Agreement will not terminate, be frustrated (whether at common law, by equity or by statute), be repudiated or taken to have been repudiated for any reason.
- (b) Neither the Trustee nor Aurizon may surrender any part of its interest in this Agreement.

13.4 No prejudice as to right to damages

Subject to **clause 14**, nothing in this **clause 13** prejudices in any way a Party's right to Claim and recover damages for any breach of this Agreement by the other Party.

14 Limitation of liability

14.1 Limitation of Aurizon's liability

Except to the extent:

- (a) that Aurizon has committed fraud, Gross Negligence or Wilful Default; or
- (b) otherwise prohibited by law,

Aurizon's liability in respect of a Claim arising out of, or in any way related to, this Agreement (excluding a Claim in respect of the non-payment by Aurizon of an amount that it is expressly required to pay under the terms of this Agreement) is limited to, and will in no event exceed, the total amount of \$1.00.

14.2 Trustee's limitation of liability

- (a) Aurizon acknowledges that the Trustee enters into this Agreement only as trustee of the Trust, and in no other capacity (other than in respect of the warranties in relation to trustee capacity in **clause 21.2** which are given by the Trustee in its personal capacity).
- (b) A liability of the Trustee arising under or in connection with this Agreement is limited to and can be enforced against the Trustee only to the extent to which the Trustee is entitled to be indemnified out of the Trust for the liability and the liability can be satisfied out of property of the Trust.

- (c) The limitation of liability in this **clause 14.2** will not apply to any liability of the Trustee to the extent that the liability is not satisfied out of the property of the Trust because there is a reduction in the Trustee's right of indemnity as a result of the Trustee committing fraud, "Gross Negligence" or "Wilful Default" (each as defined in the Trust Deed).

14.3 Exclusion of Consequential Loss

- (a) Subject to **clause 14.3(b)**, despite any other provision of this Agreement, neither Party will be liable to the other for any Consequential Loss suffered by or Claimed against that other Party.
- (b) **Clause 14.3(a)** does not apply to the indemnity in **clause 3.3**.

14.4 Scope of Claim, liability or loss

For the avoidance of doubt, references in this **clause 14** to a Claim, liability or loss include:

- (a) a Claim for, or liability or loss arising from, breach of contract, tort (including negligence), breach of equitable duty, breach of statutory duty, breach of the *Competition and Consumer Act 2010* (Cth) or otherwise; and
- (b) a Claim, liability or loss arising out of the performance or non-performance of any obligation under this Agreement, or arising out of a termination of this Agreement for any reason (including breach, repudiation or otherwise).

14.5 Claims against Aurizon

The Trustee will not have, and must not make, any Claim against Aurizon in relation to or arising out of the entry into or the performance or non-performance of this Agreement, or give a Dispute Notice to Aurizon in respect of such a Claim under **clause 16**, unless the Trustee first provides Aurizon with a Notice of the purported Claim and allows Aurizon a reasonable period to rectify the relevant default and Aurizon fails to rectify that default within that reasonable period.

15 Trustee's risks

15.1 Acknowledgement

The Trustee acknowledges and accepts, each as a material term of this Agreement and to induce Aurizon to enter this Agreement, that:

- (a) its right to the payment of Rent under this Agreement and the quantum of the Rent payable under this Agreement is determined (in part) by Aurizon's revenue from each mainline system of which the Total Extension Infrastructure forms part;
- (b) Aurizon's revenue from each of those systems is dependent on various known and unknown risks, uncertainties and other factors (some of which are within, and some of which are beyond, Aurizon's control); and

- (c) those risks, uncertainties and other factors may cause Aurizon's actual revenue, and the actual payments to the Trustee under this Agreement, to differ from that expected by Aurizon or the Trustee.

15.2 No liability

Aurizon will have no liability to the Trustee, and the Trustee will not make any Claim against Aurizon, arising out of or in connection with the size, timing or nature of Aurizon's revenue from each mainline system of which the Total Extension Infrastructure forms part or the size or timing of the Rent payments to the Trustee under this Agreement.

16 Disputes

16.1 Notification of Disputes

- (a) If any Claim, dispute or question (**Dispute**) arises between the Parties under this Agreement, any Party may give to the other Party a Notice in writing (**Dispute Notice**) specifying reasonable details of the Dispute and referring it for resolution in accordance with this **clause 16**.
- (b) Unless otherwise expressly provided to the contrary in this Agreement, a Dispute must be resolved in accordance with this **clause 16**.

16.2 Discrimination Dispute

- (a) This **clause 16.2** applies if the Trustee Disputes that Aurizon has complied with a Non-Discrimination Provision when exercising a right, power or discretion under this Agreement (**Discrimination Dispute**).
- (b) Within ten Business Days after the giving of a Dispute Notice in respect of a Discrimination Dispute, Aurizon must give to the Trustee a Notice specifying whether or not Aurizon considers that it has complied with the relevant Non-Discrimination Provision providing reasonable details of the Landholder's reasons for forming that opinion.
- (c) If Aurizon specifies in a Notice given under **clause 16.2(b)** that it considers that it has not complied with the relevant Non-Discrimination Provision, Aurizon must, within ten Business Days after the giving of that Notice, re-exercise the relevant right, power or discretion in a manner that complies with the relevant Non-Discrimination Provision (in which case, the relevant Discrimination Dispute will be taken to be resolved).
- (d) If Aurizon specifies in a Notice given under **clause 16.2(b)** that it considers that it has complied with the relevant Non-Discrimination Provision, then within ten Business Days after the giving of that Notice, the Trustee may refer the Discrimination Dispute to the chief executive officer of Aurizon (or his or her nominee) and the chief executive officer of the Trustee (or his or her nominee) for the purposes of this **clause 16.2(d)** for resolution.

16.3 Chief executive officer resolution

- (a) Within ten Business Days after the giving of a Dispute Notice (or in the case of a Discrimination Dispute, if the Discrimination Dispute is not

resolved within ten Business Days after referral under **clause 16.2(d)**), any Dispute must be referred in the first instance to the chief executive officer of Aurizon (or his or her nominee) and the chief executive officer of the Trustee (or his or her nominee) for the purposes of this **clause 16.3** for resolution.

- (b) If the Dispute is not resolved within ten Business Days after the referral under **clause 16.2(a)** or in the event that either chief executive officer appoints a nominee that is unacceptable to the other Party, then the relevant Dispute:
 - (i) must, where this Agreement expressly requires referral to an expert; and
 - (ii) may, by agreement of the Parties in any other case, be referred for resolution by an expert (**Expert**) in accordance with **clause 16.4**.

16.4 Expert determination

Where any matter is referred to an Expert under **clause 16.3** or otherwise in accordance with the terms of this Agreement then the following provisions of this **clause 16.4** will apply:

- (a) an Expert must be appointed by agreement between the Parties, or in default of such appointment within ten Business Days of the requirement or right (as applicable) to refer the matter to an Expert, then that person is to be nominated at either Party's request by:
 - (i) where the Parties agree the Dispute is purely of a technical nature, the President (for the time being) of Engineers Australia – Queensland Division;
 - (ii) where the Parties agree the Dispute is purely of a financial or accounting nature, the President (for the time being) of The Institute of Chartered Accountants in Australia – Queensland Branch; and
 - (iii) in any other case, the President (for the time being) of the Queensland Law Society, Inc;
- (b) if the Expert is to be nominated by a person referred to in **clause 16.4(a)** and that person declines to nominate a person as the Expert but provides a list of people that could be appointed as the Expert:
 - (i) the first person specified in that list will be taken to be nominated as the Expert;
 - (ii) if the first person specified in that list does not accept the appointment as the Expert, the next person specified in that list will be taken to be the first person specified in that list and will be nominated as the Expert; and

- (iii) the process specified in **clause 16.4(b)(ii)** will apply to the next and each subsequent person specified in that list until a person that is taken to be nominated as the Expert accepts the appointment as the Expert;
- (c) subject to **clause 16.4(b)**, if the Expert is to be nominated by a person referred to in **clause 16.4(a)** and the person nominated as the Expert does not accept the appointment as the Expert, then an alternative person is to be nominated as the Expert at either Party's request by the same person referred to in **clause 16.4(a)**;
- (d) if the Expert is to be nominated by a person referred to in **clause 16.4(a)** the Parties must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of that person (including providing relevant indemnities and paying any charges or fees (which charges or fees will be borne equally by the Parties)) that must be satisfied or complied with as a condition of that person agreeing to nominate an Expert;
- (e) the Parties must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of an agreed or nominated Expert (including providing relevant indemnities and paying any charges or fees (which charges or fees will be borne equally by the Parties)) that must be satisfied or complied with as a condition of that person accepting the appointment as an Expert; and
- (f) the Expert must:
 - (i) have appropriate qualifications and practical experience having regard to the nature of the Dispute;
 - (ii) have no interest or duty which conflicts or may conflict with his or her function as Expert, he or she being required to fully disclose any such interest or duty by notice to the Parties before his or her appointment;
 - (iii) not be, or have been in the last five years, an employee of the Trustee, Aurizon or a Preference Unit Holder or a Related Body Corporate of the Trustee, Aurizon or a Preference Unit Holder;
 - (iv) not be permitted to act until he or she has given notice to the Parties that he or she is willing and able to accept the appointment;
 - (v) have regard to the provisions of this Agreement and consider all submissions (including oral submissions by either Party provided that such oral submissions are made in the presence of the other Party), supporting documentation, information and data with respect to the matter submitted by the Parties;
 - (vi) provide both Parties with a copy of his or her determination in the form of a report setting out reasonable details of the reasons for the Expert's determination within a reasonable time after his or her appointment;

- (vii) be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties (including, if required by a Party, by entering into a confidentiality agreement in favour of the Parties); and
- (viii) be deemed to be and act as an expert and not an arbitrator and the law relating to arbitration (including, without limitation, the *Commercial Arbitration Act 1990 (Qld)*) will not apply to him or her or the determination or the procedures by which he or she may reach a determination.

16.5 Parties to assist Expert

The Parties must do everything reasonably requested by the Expert to assist the Expert in determining the Dispute, including producing information and materials requested by the Expert and attending any hearing convened by the Expert.

16.6 Decision of Expert

In the absence of manifest error, the decision of the Expert is final and binding upon the Parties.

16.7 Costs

- (a) The costs of the Expert and any advisers engaged by the Expert will be borne equally by the Parties to the Dispute.
- (b) Each Party to the Dispute will bear its own legal costs and the costs of any advisers to it in respect of the Dispute Resolution Process under this **clause 16**.

16.8 Determination by court

- (a) If any Dispute is not otherwise resolved in accordance with this **clause 16**, then the Dispute may be referred to one of the courts of the State having jurisdiction, and sitting in Brisbane.
- (b) Each Party irrevocably and unconditionally:
 - (i) agrees that the courts of the State, and any courts which have jurisdiction to hear appeals from any of those courts, are to have exclusive jurisdiction to settle Disputes which may arise out of or in connection with this Agreement and that accordingly any suit, action or proceeding (**Proceedings**) arising out of or in connection with this Agreement may be brought in, and only in, such courts;
 - (ii) waives any objection which it may have now or hereafter to the laying of the venue of any Proceedings in such courts and any Claim that any such Proceedings have been brought in an inconvenient forum; and
 - (iii) agrees that a final judgment in any Proceedings brought in such courts will be final and binding upon such Party and may be enforced in the courts of any other jurisdiction.

16.9 Discrimination Dispute

- (a) This **clause 16.9** applies in respect of a Discrimination Dispute.
- (b) If a Discrimination Dispute is not resolved in accordance with **clause 16.3** the Discrimination Dispute must be referred to an Expert to determine whether or not Aurizon complied with the relevant Non-Discrimination Provision.
- (c) If it is agreed or determined through the Dispute resolution process that Aurizon failed to comply with the relevant Non-Discrimination Provision, Aurizon must, as soon as reasonably practicable after such agreement or determination (and, in any event, within ten Business Days), exercise the relevant right, power or discretion in a manner that complies with the relevant Non-Discrimination Provision (having regard to the agreement or determination, as applicable).
- (d) Despite a Discrimination Dispute, the exercise of the relevant right, power or discretion by Aurizon which is the subject of the Discrimination Dispute is taken to be valid unless and until:
 - (i) it is agreed or determined through the Dispute resolution process under this **clause 16** that Aurizon failed to comply with the Non-Discrimination Provision; and
 - (ii) Aurizon has, in accordance with **clause 16.9(c)**, exercised the relevant right, power or discretion in a manner that complies with the relevant Non-Discrimination Provision.

16.10 Injunctive relief

Nothing in this Agreement will prevent a Party from seeking urgent injunctive relief from a court.

16.11 Disputes involving Unit Holders

If:

- (a) a Dispute which arises under this Agreement, or the outcome or consequences of that Dispute, may be relevant to the Trustee and/or one or more Unit Holders under the Unit Holders Deed; or
- (b) a “Dispute” (as defined under the Unit Holders Deed) which arises under the Unit Holders Deed, or the outcome or consequences of that Dispute, may be relevant to the Trustee and/or Aurizon under this Agreement,

then:

- (c) as applicable:
 - (i) Aurizon and/or the Trustee may join all (for the avoidance of doubt, not only some) of the Unit Holders to the dispute resolution process under this Agreement; or
 - (ii) the Trustee may join Aurizon to the dispute resolution process under the Unit Holders Deed; and

- (d) Aurizon, the Trustee and each Unit Holder joined to participate in the dispute resolution process under this Agreement or the Unit Holders Deed (as applicable) will be bound by the outcome of the resolution of the Dispute irrespective of whether or not Aurizon, the Trustee and the Unit Holder (as applicable) choose to actively participate in the dispute resolution process.

16.12 Time bar

If a Party does not give a Dispute Notice under **clause 16.1(a)** in respect of a Dispute within 12 Months after the date the Party became aware, or ought reasonably to have become aware, of the occurrence of the event or circumstance giving rise to the Dispute:

- (a) the Party must not give the other Party such a Dispute Notice;
- (b) any such Dispute Notice which is given by the Party will be taken to be of no effect; and
- (c) the Party will not have, and must not make, any Claim against the other Party in respect of the Dispute.

17 Confidentiality

17.1 Confidentiality obligations

A Party (**Recipient**):

- (a) may use Confidential Information of the other Party (**Disclosing Party**) only for the purposes of this Agreement or another Transaction Document; and
- (b) must keep confidential all Confidential Information of a Disclosing Party except for disclosures permitted under **clause 17.2**.

17.2 Disclosure of Confidential Information

A Recipient may disclose Confidential Information of a Disclosing Party:

- (a) to any person, where the Disclosing Party has consented in writing to such disclosure (such consent not to be unreasonably withheld or delayed, and may be given subject to reasonable conditions, such as the signing of an appropriate confidentiality undertaking);
- (b) to the extent necessary to progress negotiations with any other person relevant to matters contemplated in this Agreement who executes a confidentiality undertaking in favour of the Disclosing Party on terms reasonably acceptable to it;
- (c) to the extent necessary to effect the administration or enforcement of this Agreement, or further negotiations pursuant to this Agreement, by employees, professional advisers (including legal advisers) and consultants of the Recipient;
- (d) to any Related Body Corporate of the Recipient to the extent necessary for reporting purposes within a relevant group of companies, governance

- and oversight of the relevant group of companies and obtaining any approval or consent (whether or not directly from that Related Body Corporate) in relation to the Recipient entering into this Agreement;
- (e) to potential purchasers, assignees or transferees of the shares in the Recipient or a Related Body Corporate of it or of the rights or obligations of the Recipient under this Agreement and the other Transaction Documents who execute a confidentiality undertaking in favour of the Disclosing Party on terms reasonably acceptable to it;
 - (f) to a bank or other financial institution (and its professional advisers and any security trustee or agent for it) in connection with and for the purpose of any loan or other financial accommodation sought to be arranged by, or provided to, the Recipient or a Related Body Corporate of it;
 - (g) to legal, accounting and financial or other advisers or consultants to the Recipient or a Related Body Corporate of it:
 - (i) whose duties in relation to the Recipient or the Related Body Corporate require the disclosure;
 - (ii) who are under a duty of confidentiality to the Recipient; and
 - (iii) who have been advised of the confidential nature of the Confidential Information;
 - (h) to any officers or employees of the Recipient or a Related Body Corporate of the Recipient who:
 - (i) have a need to know for the purposes of this Agreement or another Transaction Document (and only to the extent that each has a need to know); and
 - (ii) before disclosure, have been directed by the Recipient to keep confidential all Confidential Information of the Disclosing Party;
 - (i) if, and to the extent, the Recipient is required to do so by law (other than by section 275 of the *Personal Property Securities Act 2009* (Cth)), any taxation authority or by any rules or regulations of a recognised stock exchange (including where the disclosure is to a Related Body Corporate of the Recipient that is responsible for making such disclosures for the relevant group of companies and for the purpose of such a Related Body Corporate determining whether, and the extent to which, such a disclosure is required to be made);
 - (j) to any Governmental Agency to the extent required by law or where such disclosure is determined by the Trustee to be reasonably required for the administration of the Trust;
 - (k) if disclosure is lawfully required by the Access Regulator or in accordance with the Access Undertaking;
 - (l) to an Auditor or Expert under this Agreement or an "Expert" (as defined in the Unit Holders Deed) under the Unit Holders Deed;

- (m) to a Unit Holder or a Related Body Corporate of a Unit Holder; or
- (n) to advisors of the Unit Holders:
 - (i) whose duties in relation to the Unit Holder require that disclosure;
 - (ii) who are under a duty of confidentiality to the Recipient; and
 - (iii) who have been advised of the confidential nature of the Confidential Information.

17.3 Conditions of disclosure

If a Recipient discloses Confidential Information of a Disclosing Party to a person under **clause 17.2 (Disclosee)**, the Recipient must:

- (a) ensure that the Disclosee is aware that the Confidential Information is confidential information of the Disclosing Party; and
- (b) use reasonable endeavours to ensure that the Disclosee does not improperly disclose or improperly use the Confidential Information.

18 GST

18.1 Construction

In this **clause 18**:

- (a) words and expressions which are not defined in this Agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law;
- (b) **GST Law** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
- (c) references to GST payable and input tax credit entitlement include GST payable by, and the input tax credit entitlement of, the representative member for a GST group of which the entity is a member.

18.2 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

18.3 Payment of GST

If GST is payable on any supply made by a Party (or any entity through which that Party acts) (**Supplier**) under or in connection with this Agreement, unless the consideration is expressly stated to be inclusive of GST, the recipient will pay to the Supplier an additional amount equal to the GST payable on the supply. Subject to **clause 18.4**, the recipient will pay the amount referred to in this **clause 18.3** in addition to and at the same time that the consideration for the supply is to be provided under this Agreement.

18.4 Tax invoices

- (a) (**Supplies by the Trustee**) The Parties agree that:

- (i) Aurizon will issue a recipient created tax invoice (**RCTI**) in respect of any taxable supply which the Trustee makes to Aurizon under or in connection with this Agreement (**Trustee Supplies**);
 - (ii) the Trustee will not issue tax invoices in respect of the Trustee Supplies;
 - (iii) the Trustee is registered for GST as at the date of this Agreement and must notify Aurizon if it ceases to be registered;
 - (iv) Aurizon is registered for GST as at the date of this Agreement and must notify the Trustee if it ceases to be registered;
 - (v) Aurizon will issue an adjustment note to the Trustee for any adjustment events that arise in relation to a supply for which a RCTI has been issued;
 - (vi) each RCTI to be issued in accordance with this Agreement is a tax invoice belonging to the class of invoices that the Commissioner of Taxation has determined in writing may be issued by the recipient of a taxable supply; and
 - (vii) the agreement in this **clause 18.4(a)** will terminate immediately if Aurizon or the Trustee cease to satisfy any of the requirements under the GST Law for issuing a RCTI.
- (b) (**Supplies by Aurizon**) Aurizon must deliver a tax invoice or an adjustment note to the Trustee before Aurizon is entitled to payment of an amount on account of GST under **clause 18.3** in respect of the supplies it makes to the Trustee. The Trustee can withhold payment of the amount on account of GST until Aurizon provides a tax invoice or an adjustment note, as appropriate.

18.5 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Agreement, the amount payable by the recipient under **clause 18.3** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier, or by the Supplier to the recipient, as the case requires.

18.6 Reimbursements

Where a Party is required under this Agreement to pay or reimburse an expense or outgoing of the other Party, the amount to be paid or reimbursed by the first Party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other Party is entitled; and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

19 Assignment

19.1 Assignment

Subject to **clauses 19.2, 19.3 and 19.4**, a Party must not assign, transfer, mortgage, charge, make the subject of a trust or otherwise deal with or encumber all or any of its rights or liabilities under this Agreement (or procure or permit any of those things) without the prior consent of the other Party.

19.2 Assignment by Aurizon

- (a) If an entity will acquire all of Aurizon's interest in the parts of the Railway Network which include the Segments, Aurizon must transfer all of its rights and liabilities under this Agreement to that entity at the time that the entity acquires Aurizon's interest in the relevant parts of the Railway Network.
- (b) If an entity will acquire a portion of all of Aurizon's interest in part of the Railway Network which include the Segments, Aurizon must transfer the same proportion of all of its rights and liabilities under this Agreement to that entity at the time that the entity acquires the portion of Aurizon's interest in the relevant part of the Railway Network.
- (c) The Trustee must, promptly upon demand by Aurizon, execute a deed of assignment or novation in a form acceptable to Aurizon (acting reasonably) to give effect to the transfer of any rights or liabilities of Aurizon required under this **clause 19.2**.

19.3 Assignment by Trustee

- (a) If the Trustee is replaced by a new trustee of the Trust, the Trustee must, with effect upon the appointment of the new trustee of the Trust, assign its rights and liabilities under this Agreement to the new trustee of the Trust.
- (b) The Trustee must not otherwise assign its rights and liabilities under this Agreement.

19.4 Charging

- (a) Aurizon may mortgage, charge or encumber (**Charge**) all or any of its rights and obligations under this Agreement in whole or in part, in favour of any financier, mortgagee or chargee (**Chargee**), provided that Aurizon, the Chargee and the Trustee execute any reasonable form of covenant, including terms to the effect that the Trustee acknowledges the existence of the Charge, and that the Chargee must comply with the provisions of this Agreement, including this **clause 19**, in the exercise of its rights under the Charge.
- (b) Aurizon must not Charge the Leased Extension Infrastructure or any part of the Leased Extension Infrastructure.

20 Notices

20.1 General

A notice, demand, certification, process or other communication (**Notice**) relating to this Agreement must be in writing in English and may be given by an agent of the sender.

20.2 How to give a Notice

In addition to any other lawful means, a Notice may be given by being:

- (a) personally delivered;
- (b) left at the Party's current business address for Notices;
- (c) sent to the Party's current postal address for Notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
- (d) sent by fax to the Party's current fax number for Notices.

20.3 Particulars for giving of Notices

- (a) Each Party's particulars for the giving of Notices are initially the particulars set out in **item 1 of schedule 1**.
- (b) Each Party may change its particulars for the giving of Notices by notice to the other Party.
- (c) A Notice given to a Party which is signed is evidence that the Notice has been signed by a person duly authorised by the sender and that Party is entitled to rely on that Notice without further inquiry or investigation.

20.4 Notices by post

Subject to **clause 20.6**, a Notice is given if posted:

- (a) within Australia to an Australian postal address, three Business Days after posting; or
- (b) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, ten Business Days after posting.

20.5 Notices by fax

Subject to **clause 20.6**, a Notice is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

20.6 After hours Notices

If a Notice is given:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or public holiday in that place.

20.7 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this Agreement may be served by any method contemplated by this **clause 20** or in accordance with any applicable law.

20.8 Signature to Notice

The signature to any Notice to be given by the Trustee may be written or printed or stamped and the signature may be that of any authorised officer of the Trustee.

21 Warranties

21.1 Warranties

Each Party warrants that:

- (a) it is a corporation validly existing under the laws applicable to it;
- (b) it is able to pay its debts as and when they fall due;
- (c) it has the power to enter into and perform this Agreement and has obtained all necessary consents to enable it to do so;
- (d) its obligations under this Agreement are enforceable in accordance with their terms;
- (e) no litigation, arbitration or administrative proceeding has been commenced before, and no judgment or award has been given or made by, any court, arbitrator, other tribunal or Governmental Agency against it which would have a material adverse effect on its ability to observe its obligations under this Agreement; and
- (f) it is not in breach or default under any agreement to which it is a party to an extent or in a manner which would have a material adverse effect on its ability to perform its obligations under this Agreement.

21.2 Trustee warranties

The Trustee warrants that:

- (a) it has full power and authority to enter into this Agreement and to perform the Trustee's obligations under this Agreement and the Trust Deed;
- (b) it is the sole trustee of the Trust and no action has been taken to remove or replace the Trustee; and
- (c) it has the right to be fully indemnified out of the assets of the Trust in respect of all its obligations under this Agreement, and the Trustee has not done or omitted to do anything that would result in its right of indemnity being restricted or limited in any way.

21.3 Reliance

- (a) Each Party acknowledges that the other Party has entered (or will enter) into this Agreement in reliance upon the warranties contained in **clause 21.1**.

- (b) The Trustee acknowledges that Aurizon has entered (or will enter) into this Agreement in reliance upon the warranties contained in **clause 21.2**.

22 General

22.1 Survival

This **clause 22** and **clauses 17** and **[#]** survive the termination of this Agreement.

22.2 Applicable law

This Agreement will be governed by and construed in accordance with the laws applicable in the State.

22.3 Subcontracting

- (a) For the avoidance of doubt, Aurizon may delegate or subcontract the performance of all or any of its obligations under this Agreement to a third party (including a Related Body Corporate of it).
- (b) The subcontracting or delegation of an obligation, as applicable, under **clause 22.3(a)** does not relieve Aurizon of any liability or obligation under this Agreement in respect of the obligation which has been subcontracted or delegated (as applicable) and Aurizon will be liable to the Trustee for the acts and omissions of the subcontractor or delegate, as applicable, their employees and agents involved in undertaking those obligations as if they were the acts or omissions of Aurizon.

22.4 Waiver

- (a) Waiver of any right arising from a breach of this Agreement or any right arising from a default under this Agreement must be in writing and signed by the Party granting the waiver.
- (b) A single or partial exercise or waiver by a Party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (c) A failure or delay in exercise, or partial exercise, of a right arising from a breach of this Agreement does not result in a waiver of that right.

22.5 Duty

- (a) As between the Parties, the Trustee is liable for and must pay all duty (including any fine or penalty except where it arises from default by Aurizon) on or relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it.
- (b) If Aurizon pays any duty (including any fine or penalty) which the Trustee is liable to pay under **clause 22.5(a)**, the Trustee must pay that amount to Aurizon on demand.

22.6 Legal costs

Except as expressly stated otherwise in this Agreement, each Party must pay its own legal costs and expenses of the drafting, negotiating and execution of this Agreement.

22.7 Amendments to be in writing

Except where this Agreement expressly provides a process for amendment or variation, an amendment or variation of this Agreement will only be effective if it is in writing and executed by both Parties to this Agreement.

22.8 Rights cumulative

Except as expressly stated otherwise in this Agreement, the rights of a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

22.9 Consents

Except as expressly stated otherwise in this Agreement, a Party may conditionally or unconditionally give or withhold any consent to be given under this Agreement and is not obliged to give its reasons for doing so.

22.10 Further assistance

Each Party must promptly sign, execute and complete all additional documents which may be necessary and do whatever else is reasonably required to effect, perfect, or complete the provisions of this Agreement and to perform its obligations under it.

22.11 Counterparts

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

22.12 Entire understanding

- (a) This Agreement and the other Transaction Documents together contain the entire understanding between the Parties as to the subject matter of this Agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement are merged in and superseded by this Agreement and the other Transaction Documents and are of no effect. Neither Party is liable to the other Party in respect of those matters.
- (c) No oral explanation or information provided by a Party to the other Party:
 - (i) affects the meaning or interpretation of this Agreement; or
 - (ii) constitutes any collateral agreement, warranty or understanding between the Parties.

22.13 Relationship of Parties

Except to the extent expressly provided in this Agreement, this Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.

22.14 Severability

- (a) Subject to **clause 22.14(b)**, if a provision of this Agreement is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this Agreement.
- (b) **Clause 22.14(a)** does not apply if severing the provision:
 - (i) materially alters the:
 - (A) scope and nature of this Agreement; or
 - (B) relative commercial or financial positions of the Parties; or
 - (ii) would be contrary to public policy.

22.15 Survival of representations and warranties

All representations and warranties in this Agreement will survive the execution and delivery of this Agreement and the completion of the transactions contemplated by it.

22.16 Enurement

The provisions of this Agreement will, subject as otherwise provided in this Agreement, enure for the benefit of and be binding on the Parties and their respective successors and permitted novatees and assigns.

22.17 Merger

The obligations contained in this Agreement will continue until satisfied in full.

22.18 Powers of attorney

An attorney by executing this Agreement declares that he or she has received no notice of revocation of the power of attorney pursuant to which he or she executes this Agreement.

Schedule 1

Agreement details

1 Particulars for Notices

1.1 Trustee

Business address	Level 5 192 Ann Street BRISBANE QLD 4000
Postal address	GPO Box 456 BRISBANE QLD 4001
Facsimile No.	[insert]
Attention:	[insert]

1.2 Aurizon

Business address	Level 5 192 Ann Street BRISBANE QLD 4000
Postal address	GPO Box 456 BRISBANE QLD 4001
Facsimile No.	[insert]
Attention:	Vice President, Commercial Development

Schedule 2

Objective (clause 10.1)

1 Objective during regulatory period

1.1 Application

This **item 1** of **schedule 2** applies while the Railway Network is regulated under Access Legislation.

1.2 Definitions

In this **item 1** of **schedule 2**:

Access Agreement means an agreement, in or substantially in the form of any standard access agreement of Aurizon approved by the Access Regulator, between Aurizon and a third party that grants that third party a right to access the System for the operation of train services (and, for the avoidance of doubt, does not include any agreement or arrangement in relation to Aurizon facilitating, constructing, funding, providing or otherwise undertaking any extension, enhancement, expansion, augmentation, duplication or replacement of any part of the Railway Network).

Adjustments has the meaning given in **item 1.3** of this **schedule 2**.

Capital Value means:

- (a) in respect of a System, the capital value, under the relevant regulated pricing regime, of the assets comprising the System including any depreciation and appreciation of that capital value; and
- (b) in respect of the System Total Extension Infrastructure, the capital value, under the relevant regulated pricing regime, of the assets comprising the System Total Extension Infrastructure including any depreciation and appreciation of that capital value.

Excluded Revenue means:

- (a) in respect of the Extension Pre-Tax Allowable Revenue and the System Pre-Tax Allowable Revenue, any revenue which, under the relevant regulated pricing regime, may be earned in relation to operation or maintenance (including OPRA), and any other revenue component not based on the Capital Value of the System or the System Total Extension Infrastructure (as applicable); and
- (b) in respect of the System Capital Revenue, any revenue which, under the relevant regulated pricing regime, is received in relation to operation or maintenance (including OPRA), and any other revenue component not

based on the Capital Value of the System.

Extension Pre-Tax Allowable Revenue means, for a System, the pre-tax amount of revenue from the relevant Pricing Component that the relevant regulated pricing regime specifies may be earned under Access Agreements from train services that use the System Total Extension Infrastructure and that is calculated based on the Capital Value of the System Total Extension Infrastructure, as relied on by the Access Regulator for approval of that pre-tax amount of revenue (and, for the avoidance of doubt, excludes all Excluded Revenue).

OPRA means, for a System, the operational and performance risk allowance approved by the Access Regulator in respect of any relevant commercial or regulatory risk borne by Aurizon in connection with the operation and maintenance of that System.

Pricing Component means a pricing component relating to parts of the Rail Network that differs from pricing components relating to other parts of the Rail Network based on differences in cost and utilisation, as approved by the Access Regulator. For example, under the 2010 Access Undertaking:

- (a) the component of the Reference Tariff (or access charges derived from the Reference Tariff) calculated based on AT₅ is a Pricing Component; and
- (b) the component of the Reference Tariff (or access charges derived from the Reference Tariff) calculated based on AT₂, AT₃ and AT₄ is another Pricing Component.

In this definition, AT₂, AT₃, AT₄, AT₅ and Reference Tariff have the meaning given to those terms in the 2010 Access Undertaking.

SEI Capital Revenue means, for a System, the SEI Proportion multiplied by the System Capital Revenue, subject to **item 1.3(b)** of this **item 1** of **schedule 2**.

SEI Proportion means, for a System, the proportion which the Extension Pre-Tax Allowable Revenue bears to the System Pre-Tax Allowable Revenue.

System means, as applicable, each relevant part of the Railway Network to which a Pricing Component applies. For example, under the 2010 Access Undertaking:

- (a) the relevant parts of the Railway Network in an Individual Coal System for which a component of the Reference Tariff (or access charges derived from the Reference Tariff) calculated based on AT₅ applies is a System; and
- (b) the relevant parts of the Railway Network in that Individual Coal System for which a component of the Reference Tariff (or access charges derived from the Reference Tariff) calculated based on AT₂, AT₃ and AT₄ applies is another System.

In this definition, Individual Coal System, AT₂, AT₃, AT₄, AT₅ and Reference Tariff, have the meaning given to those terms in the 2010 Access Undertaking.

System Capital Revenue means, for a System, the revenue from the relevant Pricing Component received by Aurizon under Access Agreements for the provision of access to the System for the operation of train services (including revenue payable where trains were entitled to operate but did not operate – that is, take or pay revenue) for the same type of train services as those taken into account for the purpose of calculating the System Pre-Tax Allowable Revenue less all Excluded Revenue and adjusted to reflect any increase or decrease to the System Pre-tax Allowable Revenue associated with incentives or other efficiency sharing mechanisms.

System Total Extension Infrastructure means, for a System:

- (a) the Total Extension Infrastructure which forms part of the System (from time to time);
- (b) any Removed Infrastructure which forms part of the System and which has a value in the Regulatory Asset Base; and
- (c) any Replaced Part or Removed Obsolete Part which forms part of the System and which has a value in the Regulatory Asset Base.

System Pre-Tax Allowable Revenue means, for a System, the pre-tax amount of revenue from the relevant Pricing Component that the relevant regulated pricing regime specifies may be earned under Access Agreements from train services that use the System and that is calculated based on the Capital Value of the System, as relied on by the Access Regulator for approval of that pre-tax amount of revenue (and, for the avoidance of doubt, includes the Extension Pre-Tax Allowable Revenue but excludes all Excluded Revenue).

1.3 Objective

- (a) The mutual objective of the Parties is that the Rent payable by Aurizon to the Lessor under this Agreement for a Month will be the sum of the SEI Capital Revenue for each System for that Month.
- (b) However, if the calculation of the relevant System Capital Revenue includes:
 - (i) charges, adjustments, off-sets, refunds or any other positive or negative amounts that are payable in respect of access;
 - (ii) adjusted access charges that were increased or decreased in relation to an under or over recovery of revenue from that System; or
 - (iii) any other adjustment,in respect of a time prior to the relevant Month (**Adjustments**), then the SEI Capital Revenue must be adjusted so that each Adjustment is applied in proportion to the SEI Proportion that would have applied at the time in respect of which that Adjustment relates.

2 Objective following regulatory period

2.1 Application

This **item 2** of **schedule 2** applies after the Railway Network ceases to be regulated under Access Legislation.

2.2 Definitions

Capital Revenue means, in respect of a Section:

- (a) actual access revenue, where access is provided as a separate commercial service;
- (b) Notional Access Revenue where access is provided as part of a CITS; or
- (c) a combination of both actual access revenue and Notional Access Revenue,

as applicable for that Section less Aurizon's operating and maintenance expenditure for that Section.

CITS means a commercially integrated transportation service for which the provider incurs both below-rail costs and Other Transportation Costs, and charges its customer an integrated fee for transportation services rendered to it.

CITS Provider means Aurizon or any Related Body Corporate of it that provides CITS to a customer.

Determined Other Transportation Costs means the determined quantum of Other Transportation Costs that the CITS Provider would have avoided had it not provided the Other Transportation Elements, including:

- (a) operating costs of providing the Other Transportation Elements;
- (b) administrative costs related to the provision of the Other Transportation Elements; and
- (c) an appropriate allowance for the capital costs of providing the Other Transportation Elements, which allowance must reflect the opportunity costs of the CITS Provider's relevant assets where they exist or otherwise the acquisition cost of the relevant assets (which may not be new assets), comprising both depreciation and return on assets.

End Regulation Date means the date on which this **item 2** of **schedule 2** commenced to apply.

Final Regulatory Regime means the Access Legislation and Access Undertaking that applied to Aurizon immediately prior to the End Regulation Date.

Notional Access Revenue means, in respect of the CITS provision relating to a Section, the lesser of:

- (a) the access revenue that would have been allowable to Aurizon in respect of that Section at the time of provision of the CITS had the Final

Regulatory Regime continued to apply beyond the End Regulation Date, and

- (b) the revenue received by the CITS Provider for the provision of the CITS less the relevant Determined Other Transportation Costs, both being in respect of that Section.

Other Transportation Costs means costs other than below-rail costs incurred by the CITS Provider in providing CITS.

Other Transportation Elements means all elements of the CITS (service) other than the below-rail element.

Section has the meaning given in **item 2.3** of this **schedule 2**.

2.3 Objective

Pricing of access

Where Aurizon provides a customer with access between any two points of rail infrastructure and Total Extension Infrastructure constitute any part of the rail infrastructure over which the access is provided (the rail infrastructure between those two points being a **Section**), the access agreement or CITS agreement as applicable between Aurizon and the customer must feature:

- (a) a no more favourable pricing regime (from the customer's perspective) for the provision of access or CITS as applicable in respect of Total Extension Infrastructure within that Section; than
- (b) the pricing regime applicable to the provision of access or CITS as applicable in respect of other assets within that Section,

due to the Total Extension Infrastructure ownership.

For the avoidance of doubt, Aurizon may adopt

- (i) in an access agreement, pricing in respect of a Section below the maximum amount that would have been allowed had the Final Regulatory Regime continued to apply beyond the End Regulation Date; and
- (ii) in a CITS agreement, pricing in respect of a Section as Aurizon sees fit.

Revenue sharing

Aurizon will pay to the Trustee the percentage of Capital Revenue attributable to each Section on the basis that would have applied at the time that Aurizon earned that Capital Revenue had the Final Regulatory Regime continued to apply beyond the End Regulation Date.

[Drafting note: A special dispute resolution process for a Dispute in respect of item 2 of schedule 2 (to be absolutely clear, this special arrangement is required **only for a post regulatory dispute) is to be included. The special dispute resolution process will involve expert determination by a panel of three Experts, with one nominee by the Trustee, another nominee by the Lessee and the third by agreement or failing that by an independent party. Panel decisions require any two panel members to agree. Each**

*Expert must of meet the standards set out in **clause 16.4(f)**, as modified to reflect decision by a panel of experts rather than a single expert.]*

Schedule 3

Rent Calculation Methodology (clause 10.2)

Determination of Rent for each Month

For each mainline system upgraded by Aurizon, the Rent for each Month due to the Trustee in respect of any Month during the period from the Initial Rent Month until the end of the Term shall be:

$[AID_t * (AT_{2-4} \text{ Distribution Pool})] +$

$[AID_{(t-2)} * AT_{2-4} RAA_{(t-2)}] +$

$[AIE_t * AT_5 \text{ Distribution Pool}] +$

$[AIE_{(t-2)} * AT_5 RAA_{(t-2)}] +$

$$\sum_{n=1}^{n=q} (AID_{(t-n)} * AC_{AT\ 2-4(t-n)} + AIE_{(t-n)} * AC_{AT\ 5(t-n)})$$

The Rent for each Month shall be subject to adjustment for:

- (a) invoicing corrections for prior months that fall within the period from the Initial Rent Month until the end of the Term; and
- (b) bad debts in prior months that fall within the period from the Initial Rent Month until the end of the Term.

Definitions

AC_{AT2-4(t-n)} means an amount that is one twelfth of the annual Adjustment Charge in relation to AT₂₋₄ for the relevant mainline system as set by the Access Regulator for the Year n years prior intended to be adjusted in this year.

AC_{AT5(t-n)} means an amount that is one twelfth of the annual Adjustment Charge in relation to AT₅ for the relevant mainline system as set by the Access Regulator for the Year n years prior intended to be adjusted in this year.

Adjustment Charge has the meaning given to it in the 2010 Access Undertaking.

Applicable Interest – Diesel (or AID) means the greater of:

- (c) zero, and
- (d) $(X - Y) / (Z - T)$

where:

X = the capital component of the System Allowable Revenue Amount for AT₂₋₄ attributable to the System Total Extension Infrastructure;

Y = OPRA in relation to non-electric, to the extent it is included in X;

Z = the capital component of the System Allowable Revenue Amount (including the portion due to the Total Extension Infrastructure) for AT₂₋₄; and

T = OPRA, to the extent it is included in Z,

expressed as a decimal for any part or full Year that falls within the period from the Initial Rent Month until the end of the Term, and shall be calculated at the commencement of that Year.

Applicable Interest – Electric (or AIE) means the greater of:

- (a) zero, and
- (b) $(P - Q) / (R - S)$

where:

P = the capital component of the System Allowable Revenue Amount for AT₅ attributable to the [System] Extension Infrastructure;

Q = OPRA in relation to electric, to the extent it is included in P;

R = the capital component of the System Allowable Revenue Amount (including the portion due to the Total Extension Infrastructure) for AT₅; and

S = OPRA, to the extent it is included in R,

expressed as a decimal for any part or full Year that falls within the period from the Initial Rent Month until the end of the Term, and shall be calculated at the commencement of that Year.

AT₂₋₄ has the meaning given to it in the 2010 Access Undertaking.

AT₂₋₄ Distribution Pool means AT₂₋₄ Received Amount less

- (a) any AT₂₋₄ RAA;
- (b) any AC_{AT2-4(t-n)};
- (c) any approved non-electric operating costs for the relevant mainline system for the month; and
- (d) OPRA to the extent it is included in AT₂₋₄ Received Amount

AT₂₋₄ Received Amount means, in respect of a month:

- (a) the amount received by Aurizon as payment for invoices provided by Aurizon in respect of AT₂₋₄ for that month for the relevant mainline system (noting that any Direction to Pay Amount will be deemed to be received, other than in the calculation of R_i in accordance with **clause 9.6**); **plus**
- (b) the amount received by Aurizon as payment for invoices provided by Aurizon in respect of AT₂₋₄ for any previous month for the relevant mainline system, not yet included in AT₂₋₄ Received Amount for any previous month.

AT₂₋₄ RAA means one twelfth of the annual AT₂₋₄ Revenue Adjustment Amount for the relevant mainline system that is set by the Access Regulator, to the extent that the amount applies in respect of the Month for which the Rent is to be calculated.

AT₂₋₄ Revenue Adjustment Amount has the meaning given to it in the 2010 Access Undertaking.

AT₅ has the meaning given to it in the 2010 Access Undertaking.

AT₅ Distribution Pool means AT₅ Received Amount less

- (a) any AT_5 RAA;
- (b) any $AC_{AT_5(t-n)}$;
- (c) any approved electric operating costs for the relevant mainline system for the month; and
- (d) OPRA to the extent it is included in AT_5 Received Amount

AT_5 Received Amount means, in respect of a month:

- (a) the amount received by Aurizon as payment for invoices provided by Aurizon in respect of AT_5 for that month for the relevant mainline system (noting that any Direction to Pay Amount will be deemed to be received, other than in the calculation of R_i in accordance with **clause 9.6**); **plus**
- (b) the amount received by Aurizon as payment for invoices provided by Aurizon in respect of AT_5 for any previous month for the relevant mainline system not yet included in the AT_5 Received Amount for any previous month.

AT_5 RAA means an AT_5 Revenue Adjustment Amount that is set by the Access Regulator, to the extent that the amount applies in respect of the Month for which the Rent is to be calculated.

AT_5 Revenue Adjustment Amount has the meaning given to it in the 2010 Access Undertaking.

OPRA has the meaning given in **schedule 2**.

' q ' means the maximum number of years previous to t to which an Adjustment Charge applying in respect of t related.

Regulatory Asset Base has the meaning given to it in the 2010 Access Undertaking.

Revenue Adjustment Amount has the meaning given to it in the 2010 Access Undertaking.

System Allowable Revenue has the meaning given to it in the 2010 Access Undertaking.

System Allowable Revenue Amount means

- (a) if during that Year the Access Regulator does not approve a variation to/of the System Allowable Revenue for that Year, the System Allowable Revenue for that Year; or
- (b) if during that Year the Access Regulator approves a variation to/of the System Allowable Revenue for that Year, the System Allowable Revenue as varied and approved by the Access Regulator as from the effective date of that approved variation.

System Total Extension Infrastructure means, for a System:

- (a) the Total Extension Infrastructure which forms part of the System (from time to time);
- (b) any Removed Infrastructure which forms part of the System and which has a value in the Regulatory Asset Base; and
- (c) any Replaced Part or Removed Obsolete Part which forms part of the System and which has a value in the Regulatory Asset Base.

't' means, in relation to the AID or the AIE as applicable, the Year that includes the month in respect of which the current Rent for the Month is determined.

't-n' means, in relation to the AID (or the AIE), each Year, that is n years prior to t and to which the $AC_{AT2-4(t-n)}$ (or the $AC_{AT5(t-n)}$) applies for adjustment in t.

't-2' means, in relation to the AID, the AIE, the $AT_{2-4}RAA$ or the AT_5RAA as applicable, the Year 2 years prior to the Year that includes the Month in respect of which the Rent is determined.

Year has the meaning given to it in the 2010 Access Undertaking.

Schedule 4

Calculation of Direction to Pay Amount (clauses 1.1 and 9.1)

The Direction to Pay Amount for each Extension Access Agreement for the Month is the amount calculated in accordance with the following formula:

$$DPA_{EAA} = AC_{EAA} \times \text{the lesser of } Z \text{ and } 1$$

where:

DPA_{EAA}	=	The Direction to Pay Amount for the relevant Extension Access Agreement for the relevant Month
AC_{EAA}	=	The Access Charges for the Month payable to Aurizon under the relevant Extension Access Agreement for the relevant Month
ER	=	The Expected Rent for the relevant Month
Z	=	ER / AC_{EAA}

Schedule 5

Form of confidentiality agreement for engagement of Auditor
(clause 11.2)

[Drafting note: *Form of confidentiality agreement for engagement of Auditor to be included in this schedule 5.*]

Schedule 6

Form of Direction to Pay Undertaking (clause 1.1)

[Drafting note: *Form of direction to pay to be included in this schedule 6.*]

Executed as an agreement.

Executed by [NewCo Pty Ltd] as)
trustee for the **[Name of Trust]** in)
accordance with section 127 of the
Corporations Act 2001 (Cth):

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Date: / /

Executed by Aurizon Network Pty)
Ltd in accordance with section 127 of)
the *Corporations Act 2001* (Cth):

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Date: / /

QCA submission draft
18 December 2012

Queensland Treasury Holdings Pty Ltd

[NewCo Pty Ltd] as trustee for the [Name of Trust]

Aurizon Network Pty Ltd

User Funding – Extension Infrastructure Agreement

*[insert Extension
name]*

General drafting notes:

Clause cross references to other documents are square bracketed and highlighted in yellow and will need to be confirmed on a transaction-by-transaction basis having regard to any amendments made to those documents.

The mechanics contemplated for the timing of entry into this Agreement and the Integrated Network Deed is as follows:

- The Trustee and Aurizon Network will execute the Trust Deed;

- The relevant State parties will execute this Agreement and Integrated Network Deed;
- Each Preference Unit Holder will execute the Unit Holders Deed and (except in the case of an Aurizon Network Preference Unit Holder) an Umbrella Agreement for that Preference Unit Holder;
- Aurizon Network and the Trustee will execute the Unit Holders Deed; and
- On completion of the process described in clause 5 of the Unit Holders Deed, Aurizon Network and the Trustee will each execute the Umbrella Agreements, the Project Management Agreement, Extension Infrastructure Lease, Rail Corridor Agreement, Integrated Network Deed and this Agreement.

This template Extension Infrastructure Agreement (**CQCN EIA**) is relevant to SUFA transactions involving the construction of Extension Infrastructure which will form part of the Central Queensland Coal Network (other than the two sections of the North Coast Line which form part of the Central Queensland Coal Network). Queensland Treasury Holdings Pty Ltd is the Infrastructure Lessor in respect of the Central Queensland Coal Network (other than the two sections of the North Coast Line which form part of the Central Queensland Coal Network).

If a SUFA transaction will involve the construction of Extension Infrastructure which will form part of either of the two sections of the North Coast Line in respect of which Aurizon Network is railway manager, an Extension Infrastructure Agreement for the North Coast Line (**NCL EIA**) will be required. Queensland Rail Limited is the infrastructure lessor in respect of those sections of the North Coast Line.

If a SUFA transaction will involve the construction of Extension Infrastructure which will form part of the Central Queensland Coal Network only, the relevant parties will enter into a CQCN EIA.

If a SUFA transaction will involve the construction of Extension Infrastructure which will form part of the Aurizon Network-controlled sections of the North Coast Line only, the relevant parties will enter into an NCL EIA.

If a SUFA transaction will involve the construction of Extension Infrastructure which will form part of both the Central Queensland Coal Network and the Aurizon Network-controlled sections of the North Coast Line, the relevant parties will enter into both a CQCN EIA and an NCL EIA.

The entry into of an Extension Infrastructure Agreement is in the absolute discretion of Queensland Treasury Holdings Pty Ltd or Queensland Rail Limited (as applicable) on a transaction-by-transaction basis.

This Agreement has been drafted on the basis that the Extension will be solely constructed on land that is the subject of a rail corridor sublease from the State of Queensland to Aurizon Network Pty Ltd that is granted under section 240 of the *Transport Infrastructure Act 1994* (Qld) and is dated 1 July 1995. It will need to be modified to the extent that the Extension is to be constructed on land that is not subject to this sublease. The State of Queensland is not under any obligation to, and makes no representation that it will, acquire, or facilitate the acquisition of, any interest in land for the construction of any Extension.

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Date

Parties

Queensland Treasury Holdings Pty Ltd ACN 011 027 295 of Level 14, 61 Mary Street, Brisbane, Queensland (**Lessor**)

[NewCo Pty Ltd] [ACN] as trustee for the **[Name of Trust]** of Level 14, Railcentre 1, 305 Edward Street, Brisbane, Queensland (**Lessee**)

Aurizon Network Pty Ltd ABN 78 132 181 116 of Level 14, Railcentre 1, 305 Edward Street, Brisbane, Queensland (**Sublessee**)

Background

- A The Lessee wishes to procure the delivery and operation of the Extension.
 - B The Lessor agrees to lease the Extension Infrastructure to the Lessee in accordance with the terms of this Agreement.
 - C Under this Agreement the Lessor consents to the Lessee subleasing the Extension Infrastructure to the Sublessee in accordance with the terms of this Agreement.
-

Agreed terms

1 Interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise:

Additional Land means:

- (a) any land owned by the Lessee or the Sublessee; and
- (b) any rights in, over or in respect of land (including proprietary or contractual rights, rights of way, easements and rights under leases or licences) that are held by the Lessee or the Sublessee or of which the Lessee or the Sublessee has the benefit,

being land or rights that is or are reasonably required to enable:

- (c) the Extension Infrastructure to be kept in the place where it is located and to be operated as part of a fully functioning railway network; or

- (d) access to and the management, operation, repair, maintenance, alteration, modification, change and replacement of the Extension Infrastructure,

but excludes:

- (e) any rights in, over or in respect of Rail Corridor Land that are held by the Lessee or the Sublessee or of which the Lessee or the Sublessee has the benefit; and
- (f) any land or rights that comprise "Additional Land" (as that term is defined in the Infrastructure Lease) under the Infrastructure Lease.

Affected Party has the meaning given in **clause 14.1**.

Agreement means this agreement, including the **schedules**.

Authorisation means:

- (a) any consent, authorisation, registration, filing, lodgement, agreement, notarisation, certificate, permission, licence, approval, authority or exemption from, by or with a Governmental Agency; or
- (b) in relation to anything which will be fully or partly prohibited or restricted by Law if a Governmental Agency intervenes or acts in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action.

Business Day means a day other than Saturday, Sunday or a public holiday in Brisbane.

Commencement Date means the date of this Agreement.

Contamination means "contamination" as defined in the *Environmental Protection Act 1994* (Qld) where such contamination is likely to cause or does cause "unlawful environmental harm" (as that term is defined in the *Environmental Protection Act 1994* (Qld)).

Corporations Act means the *Corporations Act 2001* (Cth).

Default Rate means a rate equivalent to 2% per annum above the one month base lending rate published by the National Australia Bank (or such other bank as the Lessor may, after consultation with the other Parties, determine from time to time, acting reasonably) during any period in which an amount payable under this Agreement remains unpaid.

Defect has the meaning given in the Project Management Agreement.

Defects Rectification Period has the meaning given in the Project Management Agreement.

Defects Register has the meaning given in the Project Management Agreement.

Effective Date means the date on which both conditions precedent in **clause 2(a)** have been notified by the Sublessee and Lessee to the Lessor as being satisfied in accordance with **clause 2(b)** and **2(c)** (respectively).

Extension means the new rail infrastructure, and/or modifications and/or upgrades of and/or additions to existing rail infrastructure, generally described in **schedule 1**.

Extension Infrastructure means:

- (a) the Railway Transport Infrastructure, and all parts, accessories and equipment that are incorporated or installed in, or attached to, such Railway Transport Infrastructure, that are deemed to be Extension Infrastructure by virtue of the operation of **clause 3.1(b)**; and
- (b) any assets that are deemed to be Extension Infrastructure by virtue of the operation of **clause 3.1(c)** or **3.1(d)**,

but does not include:

- (c) the Leased Infrastructure;
- (d) any replacements of, or modifications, alterations, additions or changes to, the Extension Infrastructure (as defined in **paragraphs (a)** and **(b)**) that are installed on a temporary basis pending completion of permanent repairs or the installation of permanent replacement parts (for these purposes, if a replacement or modification continues to be in place for more than 24 months, it will not be considered to be installed on a temporary basis);
- (e) any Replaced Parts;
- (f) any Removed Obsolete Parts;
- (g) any Other Extension Infrastructure;
- (h) any Redundant Extension Infrastructure; or
- (i) any Extension Infrastructure (as defined in this definition) which the Lessee and the State agree may be removed by the Lessee under **clause 12.1**.

Force Majeure Event has the meaning given in **clause 14.1**.

Good Operating Practice means the exercise of that degree of skill, diligence, prudence and foresight that reasonably would be expected from a prudent, efficient and experienced railway network operator in Australia under conditions comparable to those applicable to the railway network of which the Extension Infrastructure forms a part and having regard to the Permitted Use (for the avoidance of doubt, and if consistent with the foregoing, Good Operating Practice may entail part of the Extension Infrastructure being put into care and maintenance).

Governmental Agency means a government or a governmental, semi-governmental or judicial entity or authority including the Commissioner of Taxation and the Australian Taxation Office. It also includes a self-regulatory organisation established under statute or a stock exchange.

Guarantee means the deed poll guarantee in the form shown in **schedule 3**.

Guarantor means [Aurizon Holdings Limited (ABN 14 146 335 622)].

Infrastructure Lease means the lease entitled "*Infrastructure Lease*" between Queensland Treasury Holdings Pty Ltd (ACN 011 027 295) and Aurizon Network Pty Ltd (ABN 78 132 181 116) dated 30 June 2010.

Initial Unit Call Amount has the meaning given in the Unit Holders Deed.

Insolvency Event means, in relation to the Lessee:

- (a) the Lessee stops or suspends or threatens to stop or suspend payment of all or a class of its debts (other than in accordance with a right of it to do so);
- (b) the Lessee is insolvent within the meaning of section 95A of the Corporations Act;
- (c) a court is required by reason of section 459C(2) of the Corporations Act to presume that the Lessee is insolvent;
- (d) the Lessee fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act);
- (e) an administrator is appointed over all or any of the Lessee's assets or undertaking;
- (f) a controller within the meaning of section 9 of the Corporations Act or similar officer is appointed to all or any of the Lessee's assets or undertaking;
- (g) an application or order is made (and, in the case of an application, is not stayed, withdrawn or dismissed within 30 Business Days), proceedings are commenced, a resolution is passed or proposed in a notice of meeting or an application to a court or other steps are taken (other than frivolous or vexatious applications, proceedings, notices or steps) for the Lessee's winding up or dissolution or for the Lessee to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them (in each case, other than to carry out a reconstruction or amalgamation while the Lessee is solvent); or
- (h) any event occurs which, under the laws of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above.

Integrated Network Deed means the deed entitled "*User Funding – Integrated Network Deed: [insert Extension name]*" between [insert name of Lessee] as trustee of the [insert name of Trust], Aurizon Network Pty Ltd (ABN 78 132 181 116), the State of Queensland (represented by the Department administering the *Transport Infrastructure Act 1994* (Qld)) and Queensland Treasury Holdings Pty Ltd (ACN 011 027 295) entered into on or about the date of this Agreement.

Land Lease means the lease of land between the State of Queensland (represented by the Department of Transport and Main Roads), as sublessor,

and Aurizon Network Pty Ltd (ABN 78 132 181 116), as sublessee, dated 1 July 1995.

Land Lessor means the State of Queensland in its capacity as the sublessor under the Land Lease.

Land Licence means a licence granted, in accordance with clause 20.3(a) of the Land Lease, by the Sublessee to the Lessee under which the Lessee has access to and use of certain Rail Corridor Land for the purpose of, among other things, constructing, modifying, operating, maintaining, inspecting, repairing, replacing, altering and removing the Extension.

Law means:

- (a) any statute, regulation or subordinate legislation of the Commonwealth of Australia, the State of Queensland or local or other government in force in the State of Queensland;
- (b) the common law and principles of equity as applied from time to time in the State of Queensland; and
- (c) any code, ruling, guideline, policy or other instrument that is legally binding on the persons to which it applies.

Lease End Date means the date on which this Agreement is terminated in accordance with **clause 11**.

Leased Infrastructure means the "Infrastructure" (as defined in the Infrastructure Lease) leased by the Lessor from time to time under the Infrastructure Lease (and, for the avoidance of doubt, includes all parts, accessories and equipment that are incorporated or installed in, or attached to, the Extension Infrastructure, and any replacements of, and modifications, alterations, additions or changes to, the Extension Infrastructure that are deemed to be "Infrastructure" by virtue of the operation of **clause 3.5(a)**).

Lessee Additional Land means Additional Land which is owned or held by the Lessee.

Lessee Railway Assets means Railway Assets which are owned or held by the Lessee.

Lessee's Associates means any officer, employee, agent, contractor, consultant, adviser, licensee or invitee of the Lessee but does not include the Lessor or the Lessor's Associates, the Sublessee or the Sublessee's Associates, or any person other than those mentioned exercising any right of access to the Extension Infrastructure under any Law.

Lessor's Associates means any officer, employee, agent, contractor, consultant, adviser or invitee of the Lessor but does not include the Lessee or the Lessee's Associates, the Sublessee or the Sublessee's Associates, or any person other than those mentioned exercising any right of access to the Extension Infrastructure under any Law.

Loss means any and all losses, actions, claims, suits, liabilities, damages, compensation, costs, expenses, diminution in value or deficiencies of any kind or character, including all interest and other amounts payable to third parties, all liabilities on account of taxes and all legal (on a full indemnity basis) and other expenses reasonably incurred in connection with investigating or defending any claims or actions, whether or not resulting in any liability and all amounts paid in settlement of claims or actions, but does not include any consequential or indirect losses, or losses of profit, contract, opportunity, revenue or production, unless expressly provided otherwise.

Major Authorisation means accreditation as a railway manager under the *Transport Infrastructure Act 1994* (Qld) or as a rail infrastructure manager under the *Transport (Rail Safety) Act 2010* (Qld), or a similar or equivalent Authorisation that is required for the purpose of managing or operating a railway that includes the Extension Infrastructure.

Nominating Party means:

- (a) the Lessor during:
 - (i) the period commencing on the date which is ten years prior to the expiry of the Term and ending on the expiry of the Term (assuming that the Term will end at the same time as the "Term" (as defined in the Infrastructure Lease) will expire); or
 - (ii) any period:
 - (A) commencing upon the occurrence of an event or circumstance that, with the passage of time or the giving of a notice by the lessor under the Infrastructure Lease or both, would result in the occurrence of a "Lessor Termination Event" (as defined under the Infrastructure Lease); and
 - (B) if the applicable "Lessor Termination Event" (referred to in **paragraph (a)(ii)(A)** of this definition) does not occur, ending at the time that the applicable "Lessor Termination Event" is no longer capable of occurring as a result of the occurrence of the applicable event or circumstance; and
- (b) the Sublessee other than during a period referred to in **paragraph (a)** of this definition.

Non-Available Extension Infrastructure means Extension Infrastructure which has been commissioned under the Project Management Agreement but the proper operation of which requires the commissioning of other assets that were to be commissioned under the Project Management Agreement but have not been commissioned under the Project Management Agreement as at the date of termination of the Project Management Agreement.

Notice has the meaning given in **clause 19**.

Obsolete Part means any part of the Extension Infrastructure that is no longer required for the effective, safe and efficient operation of the Extension Infrastructure as part of a fully functioning rail network.

Other Extension Infrastructure means the assets leased by the Lessor from time to time under an Other Extension Infrastructure Agreement.

Other Extension Infrastructure Agreement means an agreement, other than this Agreement, between (among others) the Lessor and the Sublessee which contains an acknowledgement and agreement in the form of **clause 1.4**.

Other Integrated Network Deed has the meaning given in the Integrated Network Deed.

Parties means collectively the Lessor, the Lessee and the Sublessee, and **Party** means one of them.

Permitted Lien means:

- (a) a repairer's lien arising in the ordinary course of business; or
- (b) a lien or charge which arises by operation of Law for unpaid taxes, which, in either case, relates to a payment obligation that is:
 - (c) not yet due for payment; or
 - (d) due for payment but being contested in good faith and by appropriate proceedings that are being conducted diligently and do not involve a material risk of the foreclosure, sale, forfeiture or loss of, or material interference with, the Extension Infrastructure or any title to, use of or interest in the Extension Infrastructure (or any part of it).

Permitted Use means use of the Extension Infrastructure:

- (a) for the purpose of the Sublessee managing and operating a railway;
- (b) for purposes ancillary to the Sublessee managing and operating a railway; and
- (c) for other lawful purposes (including, to the extent the Extension Infrastructure is located on Rail Corridor Land, purposes that are consistent with the permitted use of that Rail Corridor Land under the Land Lease) provided that such use would not preclude or materially impede the Extension Infrastructure being used to manage and operate a railway.

Policy means an insurance policy effected or required to be effected in accordance with **clause 9**.

Preference Unit has the meaning given in the Unit Holders Deed.

Preference Unit Holder has the meaning given in the Unit Holders Deed.

Project Management Agreement means the agreement entitled "*User Funding – Project Management Agreement*" between **[insert name of Lessee]** as trustee of the **[insert name of Trust]** and Aurizon Network Pty Ltd (ABN 78

132 181 116) entered into on or about the date of this Agreement.

Rail Corridor Land means any land that is leased pursuant to the Land Lease.

Rail Land means any land on, above or under which Extension Infrastructure is located.

Railway Assets means any assets (including contractual and other rights) of the Lessee or the Sublessee that are reasonably required to enable the Extension Infrastructure to be operated as part of a fully functioning railway network, but does not include:

- (a) the Leased Infrastructure;
- (b) any "Railway Assets" or "Additional Land" (as those terms are defined in the Infrastructure Lease) under the Infrastructure Lease; or
- (c) any Other Extension Infrastructure.

For the avoidance of doubt, Railway Assets may include:

- (d) assets other than Railway Transport Infrastructure, such as freight centres and depots, maintenance depots, workshops and associated railway track and works that are used to manage and operate the railway network;
- (e) such intellectual property rights as are used in connection with the management and operation of the railway network of which the Extension Infrastructure forms a part; and
- (f) contractual rights and other rights to use assets referred to in **paragraphs (d) and (e)**.

Railway Transport Infrastructure means facilities necessary for operating a railway, including:

- (a) railway track and works built for the railway (such as cuttings, drainage works, excavations, land fill and track support earthworks); and
- (b) things that are associated with the operation of the railway (such as bridges, communication systems, marshalling yards, notice boards, notice markers and signs, overhead electrical power supply systems, over-track structures, platforms, power and communication cables, service roads, signalling facilities and equipment, stations, train operation control facilities, tunnels and under-track structures),

but does not include:

- (c) freight centres and depots;
- (d) maintenance depots;
- (e) office buildings or housing;
- (f) rolling stock or vehicles that operate on a railway;
- (g) workshops; or

- (h) any railway track, works or other thing that is part of anything mentioned in paragraphs (c) to (g).

Redundant Extension Infrastructure has the meaning given in **clause 13.2(d)(i)**.

Related Body Corporate has the meaning given in the Corporations Act.

Removed Obsolete Part means any Obsolete Part that has been permanently removed from the Extension Infrastructure.

Rent means the rent payable in accordance with **clause 5.1** during the Term.

Replaced Part means any part, accessory or other equipment that is:

- (a) permanently removed from the Extension Infrastructure; and
- (b) replaced with another part, accessory or other equipment which restores the condition of the Extension Infrastructure to at least the condition it was in immediately prior to the replacement (assuming that the Extension Infrastructure was in the condition required to be maintained under this Agreement at that time).

Security Interest means any mortgage, pledge, lien, charge, encumbrance or any security or preferential interest or arrangement of any kind. Security Interest includes:

- (a) any thing which gives a creditor priority to other creditors with respect to any asset; and
- (b) retention of title other than in the ordinary course of day-to-day trading and a deposit of money by way of security,

but it excludes a charge or lien arising in favour of a Governmental Agency by operation of statute unless there is default in payment of money secured by that charge or lien.

State means the State of Queensland but does not include any State bodies which are separate legal entities.

Sublease has the meaning given in **clause 3.2(a)**.

Sublessee Additional Land means Additional Land which is owned or held by the Sublessee.

Sublessee Railway Assets means Railway Assets which are owned or held by the Sublessee.

Sublessee's Associates means any officer, employee, agent, contractor, consultant, adviser, licensee or invitee of the Sublessee but does not include the Lessor or the Lessor's Associates, the Lessee or the Lessee's Associates, or any person other than those mentioned exercising any right of access to the Extension Infrastructure under any Law.

Sub-sublessee has the meaning given in **clause 15.3(b)**.

Taxable Supply has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) excluding the reference to section 84-5 of that Act.

Term means the period commencing on the Effective Date and ending on the Lease End Date.

Transferee Extension Infrastructure Agreement has the meaning given in clause 15.2(e).

Trust means the trust constituted under the Trust Deed.

Trust Deed means the trust deed between the [insert name of Lessee] and QR Network (as ordinary subscriber) entitled “*User Funding – Trust Deed of [Name of Trust]*” dated [insert date].

Unit Holders Deed has the meaning given in the Trust Deed.

1.2 Interpretation

The following rules apply unless the context requires otherwise:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (c) “includes” means includes without limitation;
- (d) no rule of construction will apply to the disadvantage of one Party on the basis that that Party put forward the documents comprising this Agreement;
- (e) words in the singular include the plural and vice versa;
- (f) words importing one gender will include every gender;
- (g) references to clauses and schedules are references to clauses of, and schedules to, this Agreement;
- (h) a requirement for a Party to obtain the consent or approval of another Party requires the first Party to obtain the consent or approval in writing; and
- (i) a reference to:
 - (i) a person includes any company, partnership, joint venture, trust, unincorporated association, corporation or other body corporate and a government or statutory body or authority;
 - (ii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified, consolidated, re-enacted or replaced;
 - (iii) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;

- (iv) a right includes a benefit, remedy, discretion and power;
- (v) time is to local time in Brisbane;
- (vi) \$ or dollars is a reference to Australian currency;
- (vii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
- (viii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmission; and
- (ix) a Party includes that Party's successors according to law and permitted assigns and any person to whom it novates its rights and obligations.

1.3 Survival

In addition to this **clause 1.3**, the following clauses survive the termination of this Agreement: **clauses [#]** and **[#]**.

1.4 Acknowledgement

The Parties acknowledge and agree that this Agreement is an "Other Extension Infrastructure Agreement" (as defined in an Other Extension Infrastructure Agreement).

2 Condition precedent

- (a) This Agreement (except for this **clause 2** and **clauses [#]** and **[#]** **[Drafting note: for example clause 18 (Confidentiality)]**) is of no force or effect, unless and until:
 - (i) the Sublessee delivers to the Lessor an original copy of the Guarantee duly executed by the Guarantor; and
 - (ii) the Lessee applies the Initial Unit Call Amount for each Preference Unit Holder in paying up Preference Units under the Unit Holders Deed.
- (b) The Sublessee must notify the other Parties promptly, and in any event within two Business Days, of the condition precedent in **clause 2(a)(i)** being satisfied.
- (c) The Lessee must notify the other Parties promptly, and in any event within two Business Days, of the condition precedent in **clause 2(a)(ii)** being satisfied.

3 Lease and sublease

3.1 Lease

- (a) In consideration for the grant of the lease contemplated by this Agreement, the Lessee must pay the Lessor the sum of \$1.00 but only if demanded in writing by the Lessor.
- (b) The Lessee must ensure that, as from the time that any Railway Transport Infrastructure (and any parts, accessories and equipment that are incorporated or installed in, or attached to, such Railway Transport Infrastructure) comprising the Extension is commissioned for use, or otherwise first able to be used, as part of the Extension, that Railway Transport Infrastructure (and such parts, accessories and equipment) is owned wholly by the Lessee free from all Security Interests (other than Permitted Liens), in which case, with effect from that time, the Lessee hereby transfers ownership of that Railway Transport Infrastructure (and such parts, accessories and equipment) to the Lessor free from all Security Interests (other than Permitted Liens), and that Railway Transport Infrastructure (and such parts, accessories and equipment) is hereby leased by the Lessor to the Lessee under this Agreement separately from the land on, under or above which that Extension Infrastructure is situated.
- (c) The Lessee must ensure that all parts, accessories and equipment that are incorporated or installed in, or attached to, the Extension Infrastructure, and any replacements, modifications, alterations, additions or changes that are made to the Extension Infrastructure, to rectify any Defect in the Extension Infrastructure recorded in the Defects Register, are, upon being incorporated, installed, attached or made (as the case may be), owned wholly by the Lessee free from all Security Interests (other than Permitted Liens), in which case, with effect from their incorporation, installation, attachment or making, the Lessee hereby transfers ownership of them to the Lessor free from all Security Interests (other than Permitted Liens), whereupon they are deemed to be Extension Infrastructure and are hereby leased by the Lessor to the Lessee under this Agreement separately from the land on, under or above which that Extension Infrastructure is situated.
- (d) The Sublessee must ensure that all parts, accessories and equipment that are incorporated or installed in, or attached to, the Extension Infrastructure, and any replacements, modifications, alterations, additions or changes that are made in respect of the Extension Infrastructure:
 - (i) to repair or maintain the Extension Infrastructure in accordance with **clause 6.1(a)**; or
 - (ii) to replace any Extension Infrastructure that is lost or destroyed, are, upon being incorporated, installed, attached or made (as the case may be), owned wholly by the Sublessee free from all Security Interests (other than Permitted Liens), in which case, with effect from their incorporation, installation, attachment or making, the Sublessee hereby transfers ownership of them to the Lessor free from all Security Interests

(other than Permitted Liens), whereupon they are deemed to be Extension Infrastructure and are hereby leased by the Lessor to the Lessee under this Agreement separately from the land on, under or above which that Extension Infrastructure is situated.

- (e) **Clause 3.1(d)** only applies to any parts, accessories and equipment that are incorporated or installed in, or attached to, the Extension Infrastructure, and any replacements of, and modifications, alterations, additions or changes to, the Extension Infrastructure for the purpose referred to in **clause 3.1(d)(ii)** to the extent that the parts, accessories, equipment, replacements, modifications, alterations, additions or changes restore the functionality of the Extension Infrastructure to the functionality that existed immediately prior to the Extension Infrastructure being lost or destroyed (and, for avoidance of doubt, **clause 3.5(a)** applies to any parts, accessories and equipment that are incorporated or installed in, or attached to, the Extension Infrastructure, and any replacements of, and modifications, alterations, additions or changes to, the Extension Infrastructure, to the extent that the parts, accessories, equipment, replacements, modifications, alterations, additions or changes provide new or additional functionality).

3.2 Sublease

- (a) The Lessor hereby consents to the Lessee subleasing the Extension Infrastructure to the Sublessee, immediately upon the leasing of that Extension Infrastructure by the Lessor to the Lessee under this Agreement, on terms (a **Sublease**) that are not inconsistent with the rights and obligations of the Lessee and the Sublessee under this Agreement or the Integrated Network Deed, and under which:
 - (i) the Lessee and the Sublessee expressly acknowledge the rights of the Lessor under this Agreement and the Integrated Network Deed and that their rights are subject and subordinate to the rights of the Lessor under this Agreement and the Integrated Network Deed; and
 - (ii) the Sublease terminates at the same time as this Agreement terminates.
- (b) The Parties acknowledge and agree that:
 - (i) the Sublease will form part of an agreement between the Lessee and the Sublessee which extends to matters other than just the Sublease;
 - (ii) a reference to the Sublease in this Agreement is a reference only to those terms of such agreement between the Lessee and Sublessee which give effect to the Sublease and is not a reference to any other terms of such agreement; and
 - (iii) a reference to the termination of the Sublease in this Agreement is a reference to the termination of the operation of those terms of

such agreement between the Lessee and Sublessee which give effect to the Sublease, whether or not such agreement in its entirety has been terminated.

- (c) Except as provided in **clause 3.2(d)**, or with the prior written consent of the Lessor, the Lessee must not:
 - (i) create or allow to subsist a Security Interest (other than a Permitted Lien) over any of its rights under the Sublease; or
 - (ii) assign or transfer all or any of its rights or obligations under the Sublease.
- (d) The Lessee:
 - (i) may assign and transfer all (but not part only) of its rights and obligations under the Sublease to a person to whom it assigns or transfers at the same time all (but not part only) of its rights and obligations under this Agreement, the Integrated Network Deed and any Land Licence; and
 - (ii) must assign and transfer all of its rights and obligations under the Sublease to a person to whom it assigns or transfers any of its rights or obligations under this Agreement, the Integrated Network Deed or any Land Licence.
- (e) Except as provided in **clause 3.2(f)**, or with the prior written consent of the Lessor (such consent not to be unreasonably withheld or delayed or given subject to unreasonable conditions), the Sublessee must not:
 - (i) create or allow to subsist a Security Interest (other than a Permitted Lien) over any of its rights under the Sublease; or
 - (ii) assign or transfer all or any of its rights or obligations under the Sublease.
- (f) The Sublessee:
 - (i) may assign and transfer all (but not part only) of its rights and obligations under the Sublease to a person to whom it assigns or transfers at the same time all (but not part only) of its rights and obligations under this Agreement, the Integrated Network Deed and any Land Licence; and
 - (ii) must assign and transfer all of its rights and obligations under the Sublease to a person to whom it assigns or transfers any of its rights or obligations under this Agreement, the Integrated Network Deed or any Land Licence.
- (g) The Lessor agrees and acknowledges to each other Party that:
 - (i) certain obligations are imposed directly on, and certain rights are granted directly to, the Sublessee under this Agreement while the Sublease is on foot;

- (ii) except as provided in **clause 3.2(g)(iii)**, the obligations imposed directly on, and the rights granted directly to, the Sublessee under this Agreement are only obligations and rights of the Sublessee to the extent that, and only for so long as, the Sublease is on foot;
 - (iii) if the Sublease terminates for any reason, the obligations imposed directly on, and the rights granted directly to, the Sublessee under this Agreement will (except for the obligation contained in **clause 15.2(e)**) be deemed to be novated and transferred to the Lessee and will be the obligations and rights of the Lessee on and from the date the Sublease terminates; and
 - (iv) each of the Lessee and the Sublessee is responsible (and only responsible) for and liable only for those obligations expressly imposed on that Party under this Agreement.
- (h) The Lessee agrees and acknowledges to each other Party that:
- (i) except as provided in **clause 3.2(h)(ii)**, the obligations imposed directly on, and the rights granted directly to, the Sublessee under this Agreement are only obligations and rights of the Sublessee to the extent that, and only for so long as, the Sublease is on foot; and
 - (ii) if the Sublease terminates for any reason, the obligations imposed directly on, and the rights granted directly to, the Sublessee under this Agreement will (except for the obligation contained in **clause 15.2(e)**) be deemed to be novated and transferred to the Lessee and will be the obligations and rights of the Lessee on and from the date the Sublease terminates.

3.3 Extension Infrastructure to be used only for the Permitted Use

- (a) The Sublessee must only use the Extension Infrastructure for the Permitted Use.
- (b) The Sublessee must obtain, keep current and comply with all Authorisations, and otherwise comply with all Laws, that are required to be obtained, kept or complied with by the Sublessee in order for the Sublessee to use the Extension Infrastructure for the Permitted Use.
- (c) The Lessee must obtain, keep current and comply with all Authorisations, and otherwise comply with all Laws, that are required to be obtained, kept or complied with by the Lessee in order for the Sublessee to use the Extension Infrastructure for the Permitted Use.
- (d) The Lessor must not unreasonably withhold (and must not impose unreasonable conditions upon) any consent necessary for the Sublessee or Lessee (as the case may be) to apply for, retain or keep current any Authorisation referred to in **clauses 3.3(b)** or **3.3(c)** or to comply with any Law.
- (e) Any consent given by the Lessor under **clause 3.3(d)** does not:

- (i) limit or otherwise affect the Lessee's or the Sublessee's obligations under any Authorisation or Law;
- (ii) restrict or fetter the exercise by the Lessor or a Governmental Agency of any rights, powers or discretions, or any regulatory power; or
- (iii) act as an estoppel, representation or warranty or create an agreement of any kind, in relation to the matters referred to in **clauses 3.3(e)(i) or 3.3(e)(ii)**.

3.4 Use of network unit

- (a) To the extent that the Sublessee is entitled under this Agreement to use, or to authorise another person to use, Extension Infrastructure that is a "network unit" (as that term is defined in the *Telecommunications Act 1997* (Cth)), the Sublessee must ensure that such use does not cause the owner of the network unit to contravene section 42 of the *Telecommunications Act 1997* (Cth).
- (b) Nothing in this **clause 3.4** obliges the Lessor to become a licensed carrier to obtain the benefit of a nominated carrier declaration under the *Telecommunications Act 1997* (Cth), nor obtain the benefit of a Ministerial determination under section 51 of the *Telecommunications Act 1997* (Cth), in respect of any such network unit.

3.5 "Infrastructure" under Infrastructure Lease

- (a) Subject to **clauses 3.1(b), 3.1(c) and 3.1(d)**, the Sublessee must ensure that all parts, accessories and equipment that are incorporated or installed in, or attached to, the Extension Infrastructure, and any replacements, modifications, alterations, additions or changes that are made in respect of the Extension Infrastructure are, upon being incorporated, installed, attached or made (as the case may be), owned wholly by the Sublessee free from all Security Interests (other than Permitted Liens), in which case, with effect from their incorporation, installation, attachment or making, the Sublessee hereby transfers ownership of them to the Lessor free from all Security Interests (other than Permitted Liens), whereupon, unless otherwise agreed in writing between the Lessor and Sublessee, they are deemed to be "Infrastructure" (as defined under the Infrastructure Lease) and are hereby leased by the Lessor to the Sublessee under the Infrastructure Lease separately from the land on, under or above which that Infrastructure is situated.
- (b) For the avoidance of doubt, **clause 3.5(a)** applies to all parts, accessories and equipment that are incorporated or installed in, or attached to, the Extension Infrastructure, and any replacements, modifications, alterations, additions or changes that are made in respect of the Extension Infrastructure:

- (i) to rectify any Defects in the Extension Infrastructure (other than Defects recorded in the Defects Register);
- (ii) as the Sublessee considers necessary or desirable in the proper conduct of its business.

4 Exclusion of warranties

The Lessee and the Sublessee each acknowledge and agree that:

- (a) it has not relied on any promise, representation, warranty or undertaking given by or on behalf of the Lessor or the State other than a promise, representation, warranty or undertaking that is expressly set out in this Agreement and the Integrated Network Deed;
- (b) it accepts the Extension Infrastructure in its condition, age, capacity, quality, suitability and fitness current as at the date it is leased to the Lessee under this Agreement, with all defects and faults (if any), and no promise, representation, warranty or undertaking has been given by or on behalf of the Lessor or the State as to those matters; and
- (c) all conditions, representations and warranties relating to the Extension Infrastructure (whether express, implied, statutory, collateral or otherwise), other than those expressly set out in this Agreement, are excluded to the maximum extent permitted by law.

5 Rent and other payments

5.1 Rent

The Lessee must pay to the Lessor, by way of Rent, \$1.00 per annum but only if demanded in writing by the Lessor.

5.2 Other payments

Each of the Lessee and the Sublessee must duly and punctually pay all other money payable by it under this Agreement during the Term.

5.3 Payment of Rent and other payments

All payments to be made by a Party to the Lessor under this Agreement must be made:

- (a) in immediately available and irrevocable funds to such bank account as the Lessor may notify to that Party from time to time; and
- (b) net of all duties and statutory charges and without any set off, deduction or withholding.

5.4 Default interest

- (a) A Party must pay to the Lessor interest on any amount payable by it to the Lessor which remains unpaid at the end of the date on which that

amount is due for payment under this Agreement (including interest payable under this **clause 5.4**).

- (b) Interest will accrue at the Default Rate on the outstanding amount on a daily basis from (and including) the date on which the amount became due and payable to the date the amount is paid in full both before and after judgment (as a separate and independent obligation).
- (c) The right to require payment of interest under this **clause 5.4** is without prejudice to any other rights and remedies of the Lessor in respect of any failure to make any payment due and payable under this Agreement.

5.5 Abatement

Despite any law to the contrary, the obligation of the Lessee to pay Rent will not abate for any reason.

6 Operation, repair, maintenance and removal

6.1 Operation, repair and maintenance

- (a) The Sublessee must manage, operate, repair and maintain the Extension Infrastructure:
 - (i) in accordance with Good Operating Practice;
 - (ii) in accordance with all applicable Laws and the requirements of all relevant Authorisations, including in so far as such Laws and Authorisations:
 - (A) relate to safety, environmental matters, matters in respect of trade waste and dangerous goods and the health and safety of people in the vicinity of the Extension Infrastructure; or
 - (B) impose obligations on the Lessor or the Lessee (as applicable) in relation to the management, operation, repair or maintenance of the Extension Infrastructure and the performance of those obligations by the Sublessee is not prohibited by the Law or Authorisation;
 - (iii) in accordance with all notices, orders and directions lawfully given by any Governmental Agency (including in so far as they impose obligations on the Lessor or the Lessee (as applicable) and the performance of those obligations by the Sublessee is not prohibited by Law); and
 - (iv) in a manner and to the extent necessary to comply in all material respects with the requirements specified in any insurance policy required to be maintained under this Agreement.
- (b) The Lessee must promptly provide the Sublessee with all information (including details of any obligations imposed on it in relation to the Extension Infrastructure and its operation and management and any

notice, direction or order given by any Governmental Agency) reasonably required by the Sublessee for the purpose of the Sublessee complying with its obligations under **clause 6.1(a)**.

6.2 Interference with adjoining land

The Lessee and the Sublessee must each use all reasonable endeavours to minimise interference with land that adjoins the Rail Land provided that this **clause 6.2** does not:

- (a) apply to any land owned or occupied by the Lessee or the Sublessee (as applicable);
- (b) limit or otherwise affect the Lessee's or the Sublessee's (as applicable) obligations under any Authorisation or Law;
- (c) prevent the Sublessee from operating the railway network of which the Extension forms a part in a commercial, proper and businesslike manner; or
- (d) require the Sublessee to undertake any measures that are not in accordance with Good Operating Practice.

6.3 Outgoings

The Sublessee must pay all charges, taxes (including land tax) and rates which are payable in respect of the Extension Infrastructure or services provided for the Extension Infrastructure except for taxes on the revenues or capital gains of the Lessor.

6.4 Improvements

- (a) The Sublessee must, at its own expense, make all alterations, modifications, changes and additions to the Extension Infrastructure as and when required by any applicable Law or Authorisation.
- (b) Subject to the other provisions of this **clause 6**, the Sublessee may, at its own expense, make any alterations, modifications, changes or additions to the Extension Infrastructure as the Sublessee considers necessary or desirable in the proper conduct of its business.
- (c) All alterations, modifications, changes and additions to the Extension Infrastructure made under clauses **6.4(a)** or **6.4(b)** must be made in a good and workmanlike manner and in accordance with Good Operating Practice.
- (d) For the avoidance of doubt, the Sublessee may make any alterations, modifications, changes and additions to the Extension Infrastructure under clauses **6.4(a)** or **6.4(b)** as it thinks fit without reference to, or the consent of, the Lessor or Lessee.

6.5 Replaced Parts and Obsolete Parts

- (a) Upon the permanent removal of a Replaced Part from the Extension Infrastructure, and the replacement of it by another part, accessory or

other equipment which restores the condition of the Extension Infrastructure to at least the condition it was in immediately prior to the replacement (assuming that the Extension Infrastructure was in the condition required to be maintained under this Agreement at that time), title to that Replaced Part is hereby transferred to the Lessee or its nominee and the Lessee or its nominee may deal with that Replaced Part as it thinks fit.

- (b) If the Lessee or Sublessee reasonably considers that part of the Extension Infrastructure is an Obsolete Part, then the Lessee or Sublessee may remove that Obsolete Part from the Extension Infrastructure.
- (c) Upon the permanent removal of an Obsolete Part from the Extension Infrastructure, title to that Removed Obsolete Part is hereby transferred to the Lessee or its nominee and the Lessee or its nominee may deal with that Removed Obsolete Part as it thinks fit.
- (d) As soon as reasonably practicable after being notified of the permanent removal of an Obsolete Part from the Extension Infrastructure, the Lessor must procure the release and discharge of all Security Interests over all or any of its right, title and interest in the Removed Obsolete Part.

7 Records, information and inspection

7.1 Records

- (a) The Sublessee must:
 - (i) prepare and keep (or ensure the preparation and keeping of) all records and reports in respect of the Extension Infrastructure, the Rail Land, the Railway Assets and the Additional Land that are required to be prepared and kept by the Lessee, the Sublessee or any of their Related Bodies Corporate under applicable Laws and Authorisations in accordance with the requirements of those Laws and Authorisations; and
 - (ii) maintain copies of all Authorisations that are required by Law to be held for the purposes of managing and operating the Extension Infrastructure and using the Rail Land and the Additional Land for the purpose of the Sublessee managing and operating a railway.
- (b) The Sublessee must maintain (or ensure the maintenance of):
 - (i) a complete and current set of 'as built' plans and specifications and line diagrams in relation to the Extension Infrastructure and the Railway Assets, and their configuration and design;
 - (ii) a complete and current set of records relating to the operation, maintenance, use and condition of the Extension Infrastructure, the Rail Land, the Railway Assets and the Additional Land; and

- (iii) all relevant handbooks, training, maintenance and operating manuals and instructions, information processes and timetables with respect to the Extension Infrastructure and the Railway Assets,

in each case in accordance with Good Operating Practice.

- (c) The documents referred to in **clause 7.1(b)** must be held by the Sublessee or otherwise be accessible by or under the control of the Sublessee until 12 months after the Lease End Date, unless already delivered to the Lessor or otherwise specified or directed by the Lessor.

7.2 Information

The Sublessee must, within a reasonable period after any request by the Lessor, provide the Lessor and its authorised representatives with, and allow them to make copies of:

- (a) information on the location, condition and operation of any Extension Infrastructure, and information on the condition and use of any Rail Land, which requests must not, unless the circumstances require, be more frequent than once in every three years; and
- (b) any other information that the Lessor reasonably requires for the purposes of determining the Lessee's or the Sublessee's (as applicable) compliance with this Agreement.

7.3 Inspection

- (a) The Sublessee must permit the Lessor and its authorised representatives, at reasonable times and having given the Sublessee reasonable notice, to inspect any Extension Infrastructure.
- (b) When exercising its rights under **clause 7.3(a)**, the Lessor and its authorised representatives:
 - (i) must not interfere with the Sublessee's operations or business;
 - (ii) will be subject to the same limitations upon and conditions of access as apply to any third party visitor to the place where the relevant Extension Infrastructure is located; and
 - (iii) must comply with all safety requirements and other reasonable directions of the Sublessee in relation to such access.
- (c) The Lessor must not, unless the circumstances require, carry out inspections under **clause 7.3(a)** more frequently than once every three years.

7.4 Access to third parties

The Lessee and Sublessee must each:

- (a) use its best endeavours to ensure that the Lessor and its authorised representatives are provided with access to such information as is

maintained by third parties and which the Lessor is entitled to have access to, or copies of, under this Agreement; and

- (b) ensure that any contractual arrangements between it and any third party acknowledge the Lessor's rights of access under **clause 7.4(a)**.

7.5 Notification

The Sublessee must promptly notify the Lessor in writing of:

- (a) any material loss or material damage to the Extension Infrastructure, the Rail Land, any Railway Assets or any Additional Land;
- (b) any suspension, cancellation, revocation, surrender or expiry of the accreditation of the Sublessee as a railway manager under the *Transport Infrastructure Act 1994* (Qld) or as a rail infrastructure manager under the *Transport (Rail Safety) Act 2010* (Qld), or of a similar Authorisation that is required for the purpose of the Sublessee managing and operating a railway;
- (c) any circumstances likely to be or cause any material danger, risk or hazard to the Extension Infrastructure, the Rail Land, any Railway Assets or any Additional Land or to any persons on or in the vicinity thereof; and
- (d) any notification from a Governmental Agency or an insurer under a policy of insurance required to be taken out under this Agreement which indicates that the Lessee or the Sublessee may not be complying with this Agreement.

7.6 Asset register

- (a) The Sublessee must maintain and keep current an asset register that sets out:
 - (i) all of the assets that are leased to the Lessee, identifying each such asset by an asset identification number and an asset description; and
 - (ii) for each such asset referred to in paragraph **7.6(a)(i)**:
 - (A) the date it first became leased to the Lessee under this Agreement; and
 - (B) its accounting book cost, depreciation, accumulated depreciation and accounting book written down value as at the immediately preceding 30 June.
- (b) The Sublessee must:
 - (i) by 31 July in each year;
 - (ii) within 30 days of being requested to do so during any year (the Lessor only being entitled to make one such request each year);
 - (iii) within 120 days after the completion of the whole of the Extension; and

- (iv) within 120 days after the completion of any substantial alteration, modification, change or addition to the Extension Infrastructure, provide the Lessor and its authorised representatives with, and allow them to make copies of, the asset register referred to in **clause 7.6(a)**.
- (c) The Lessee and Sublessee acknowledge and agree that the Lessor will be entitled to disclose information provided to the Lessor under **clause 7.6(b)** to the auditors of the Lessor and such auditors are entitled to, and will, rely on that information.
- (d) The Lessee and Sublessee agree that the asset register referred to in **clause 7.6(a)** will be conclusive, as between them, as to the assets leased to the Lessee under this Agreement.

7.7 Defects Register

- (a) The Sublessee must:
 - (i) by 31 July in each year (until the next 31 July occurring after the end of the Defects Rectification Period, the Lessor only being entitled to make one such request each year);
 - (ii) within 30 days of being requested to do so during any year (until the end of the year during which the Defects Rectification Period ends);
 - (iii) within 30 days after the end of the Defects Rectification Period, provide the Lessor and its authorised representatives with, and allow them to make copies of, the Defects Register current at the time provided to the Lessor.
- (b) The Lessee and Sublessee agree that the Defects Register provided to the Lessor under **clause 7.7(a)** will be conclusive, as between them, at the time it is provided to the Lessor.

7.8 No release from liability or responsibility

The Lessee and the Sublessee each acknowledge and agree that, by being provided with information under this **clause 7** or exercising its rights under this **clause 7**, the Lessor is not to be taken as:

- (a) accepting any liability or responsibility in relation to; or
- (b) relieving the Lessee or the Sublessee from its responsibility for, the performance of, or compliance with, the Lessee's and the Sublessee's (as applicable) obligations under this Agreement or the Land Lease.

8 Title and quiet enjoyment

8.1 Lessor's title

- (a) Each of the Lessee and the Sublessee acknowledge that it has no rights in relation to the Extension Infrastructure as against the Lessor other than the rights under this Agreement and the Integrated Network Deed, and the rights conferred on it by applicable Laws or Authorisations.
- (b) The Lessor must, if requested by a Party and at the expense and risk of that Party, exercise its rights and entitlements in or in relation to the Extension Infrastructure to assist that Party in respect of any matter relating to the Extension Infrastructure where all of the following apply:
 - (i) the Party is unable to act itself by reason of the Lessor's interest in or in relation to the Extension Infrastructure;
 - (ii) the matter to be undertaken by the Party is one not forbidden by or otherwise inconsistent with the terms of this Agreement or the Integrated Network Deed; and
 - (iii) either:
 - (A) in exercising such rights or entitlements the Lessor assumes or incurs no obligation or present or contingent liabilities to any other person (including the Lessee and the Sublessee) for which the Lessor is not fully insured under an insurance policy taken out by the Sublessee and of which the Lessor has the benefit; or
 - (B) the Lessor is, to the reasonable satisfaction of the Lessor, fully indemnified by the Party in respect of the obligations and liabilities referred to in **clause 8.1(b)(iii)(A)** and the liability of that Party under such indemnity is the subject of such security in favour of the Lessor as the Lessor may reasonably require.

8.2 Protection of title

- (a) The Lessee and Sublessee must each, to the extent reasonably practicable having regard to its legal capacity and its rights and obligations under this Agreement:
 - (i) safeguard and protect the property, title and rights of the Lessor in and in relation to the Extension Infrastructure; and
 - (ii) not do or permit to be done any act, omission or thing which might jeopardise the property, title or rights of the Lessor in or in relation to the Extension Infrastructure.
- (b) The Lessee and Sublessee each must not, and must not seek to, partition the Extension Infrastructure or its interest in the Extension Infrastructure.

8.3 Quiet enjoyment by the Sublessee

- (a) Subject to **clause 8.3(b)**, if the Sublessee duly and punctually observes and performs the terms, covenants and conditions in this Agreement and the Integrated Network Deed which the Sublessee is required to observe and perform, the Sublessee will and may peacefully possess and enjoy the Extension Infrastructure for the Term without any interruption or disturbance from the Lessor or the Lessee or any other person or persons lawfully claiming by, from, or under the Lessor or Lessee save only where an interruption or disturbance results from:
 - (i) the exercise by either the Lessor or the Lessee of such rights as are expressly or impliedly conferred on it under this Agreement or the Integrated Network Deed or are conferred by Law; or
 - (ii) the exercise by the Land Lessor of such rights as are conferred on it under the Land Lease or the Integrated Network Deed, or are conferred by Law, in relation to Rail Corridor Land or in relation to any activities undertaken on, or any things that are located on, under or over, Rail Corridor Land.
- (b) The Sublessee acknowledges and agrees that the Land Lessor is entitled to exercise such rights as are expressly or impliedly conferred on it under the Land Lease or the Integrated Network Deed, or are conferred by Law, in relation to Rail Corridor Land or in relation to any activities undertaken on, or any things that are located on, under or over, Rail Corridor Land.

9 Insurance

9.1 Required insurance policies

The Sublessee must, with effect from the earlier of 30 Business Days after the Effective Date and commencement of physical construction of the Extension:

- (a) effect and subsequently maintain throughout the Term, insurance policies with an insurance company or companies approved by the Australian Prudential Regulation Authority (or its successor) to underwrite insurance business in Australia and which has a public rating of at least 'A' by Standard & Poors or such other rating from a reputable rating agency which is equivalent to a rating of 'A' by Standard & Poors; or
- (b) provide the Lessor with evidence to the reasonable satisfaction of the Lessor that the Sublessee has sufficient financial capacity and internal 'self-insurance' strategies,

to cover (to the extent required in accordance with Good Operating Practice):

- (c) the replacement or reinstatement of the Extension Infrastructure;

- (d) public liability risks in connection with the Extension Infrastructure and the Rail Land; and
- (e) the Lessee's and Sublessee's liabilities under this Agreement and the Integrated Network Deed, including all risks of an insurable nature in respect of which the Lessee or the Sublessee is obliged to indemnify the Lessor under this Agreement or the Integrated Network Deed,

in the manner and to the extent reasonably determined by the Lessor.

9.2 Requirements for Policies

To the extent **clause 9.1(a)** applies, the Sublessee must:

- (a) ensure that the Lessee, the Lessor and (where the Rail Land includes Rail Corridor Land) the Land Lessor are each noted (or dealt with in such manner as may be equivalent to noting) on each Policy as an insured party;
- (b) ensure, where legally possible, that each Policy provides that all insuring agreements and endorsements shall operate in the same manner as if there were a separate policy of insurance covering each insured party;
- (c) ensure, where legally possible, that each Policy provides that the insurer waives all rights, remedies or relief which it might become entitled to by subrogation against any insured parties, and that failure by any insured party to observe and fulfil the terms of the Policy shall not prejudice the insurance in regard to any other insured party;
- (d) ensure, where legally possible, that each Policy contains a non-imputation clause providing that any non-disclosure or misrepresentation (whether fraudulent or otherwise), any breach of a term or condition of the Policy, or any fraud or other act, omission or default by one insured party, will not affect another insured party, unless those acts or omissions were made with the connivance or actual knowledge of the other insured party;
- (e) ensure that the amount of any excess or deductible payable by an insured party in respect of a claim under each Policy will not exceed the amount determined by two experienced insurance brokers, one of whom must be nominated by the Lessor, as customary for similar policies;
- (f) ensure that each Policy waives all claims for insurance premiums, levies, stamp duties, charges or commissions against the Lessor or the Land Lessor;
- (g) ensure that all Policy conditions, alterations, exclusions and endorsements which may have a material adverse effect on the Lessor's interests under this Agreement or the Integrated Network Deed, or the Land Lessor's interests under the Land Lease, have been first approved in writing by the Lessor (such approval not to be unreasonably withheld or delayed);

- (h) upon request by the Lessor (such requests not to be made more than once in any 12 month period) produce to the Lessor annual certificates of currency of Policies taken out pursuant to this **clause 9** by the earlier of 30 Business Days after the Effective Date and commencement of physical construction of the Extension and on every anniversary of the Effective Date;
- (i) not do or permit to be done, or bring or keep or permit to be brought or kept, on the Rail Land or the Additional Land, anything which may materially prejudice or affect or render void or voidable, a Policy;
- (j) use its best endeavours to ensure that the Policies taken out pursuant to this **clause 9** contain provisions, reasonably acceptable to the Lessor, which provide that a notice of claim given by the Lessor or the Land Lessor to an insurer shall be accepted by the insurer as a notice of claim given to the insurer by the Sublessee; and
- (k) review the Policies required by this **clause 9** from time to time but at least every two years, to ensure reasonably adequate indemnity is maintained.

9.3 Notification and provision of information

- (a) To the extent **clause 9.1(a)** applies, the Sublessee must immediately notify the Lessor in writing of any occurrence or incident likely to give rise to a claim under the Policies which may materially adversely affect the interests of the Lessor or the Land Lessor.
- (b) To the extent that **clause 9.1(b)** applies, the Sublessee must:
 - (i) on request from the Lessor from time to time provide the Lessor with evidence to the Lessor's reasonable satisfaction of the current financial capacity of the Sublessee; and
 - (ii) immediately inform the Lessor of any change in the Sublessee's financial capacity which may materially adversely affect the Sublessee's ability to 'self-insure' in accordance with this **clause 9** in respect of any of the matters referred to in **clause 9.1**, whereupon the Sublessee must effect external insurance as required by **clause 9.1(a)**.

9.4 Failure to insure

If the Sublessee is unable or fails to procure or maintain the policies of insurance which it is required to procure or maintain under this **clause 9** and is unable to satisfy the Lessor (acting reasonably) as to its financial capacity to 'self-insure', the Lessor may (without derogation from its rights under this Agreement or the Integrated Network Deed or the Land Lessor's interests under the Land Lease or rights under the Integrated Network Deed), but is not obliged to, procure in its own name and/or the name of the Land Lessor such insurance policies as may in the Lessor's discretion be required to insure against the risks contemplated by this **clause 9** and the Sublessee must on

demand reimburse the Lessor for any premiums and other reasonable costs paid by the Lessor to obtain those policies.

9.5 Compliance and enforcement

- (a) The Sublessee must:
 - (i) comply with the terms of each Policy and not do or fail to do anything the consequence of which is to materially prejudice or render void or voidable its coverage under any Policy;
 - (ii) take all steps necessary or desirable to claim, and to collect or recover, money that is or (with taking such steps) would be likely to become due to it under or in respect of a Policy; and
 - (iii) do everything (including providing documents, evidence and information) necessary or desirable in the reasonable opinion of the Lessor to claim, and to collect or recover, money due to the Lessor or the Land Lessor under or in respect of each Policy.
- (b) The Lessor must do (and procure that the Land Lessor does) everything (including providing documents, evidence and information) necessary or desirable in the reasonable opinion of the Sublessee to enable the Sublessee to claim, and to collect or recover, money due to it under or respect of a Policy.

9.6 Notice of claims

The Sublessee must notify the Lessor as soon as possible of:

- (a) a cancellation of, or change in or reduction in the coverage of, a Policy;
- (b) a Policy becoming void or voidable; or
- (c) any other material circumstance or correspondence relating to a Policy.

9.7 Use of insurance proceeds

Except as otherwise agreed by the Lessor and the Sublessee, the Sublessee must use the proceeds of any Policy received by it in reinstating or replacing the Extension Infrastructure, discharging the relevant liability or making good the covered loss, as applicable.

9.8 Payment of premiums

- (a) Subject to **clause 9.8(b)**, the Sublessee must pay when due all premiums, commissions, levies, stamp duties, charges and other expenses necessary for effecting and maintaining each Policy.
- (b) If the Sublessee considers that the manner or extent of the Policies required to be effected in accordance with **clause 9.1(a)** exceeds that which a prudent lessor and a prudent lessee of the Extension Infrastructure, each bound by this Agreement and the Integrated Network Deed, would require by way of such insurances (taking into account the arrangements under which the Rail Land is made available), then the Sublessee may refer the apportionment of the costs of effecting and

maintaining such insurances as between the Lessor and the Sublessee to an independent expert for determination on the basis that:

- (i) the Lessor will be liable to contribute to so much of the costs of such insurances as is attributable to the manner and extent of insurances that is in excess of that which a prudent lessor and a prudent lessee of the Extension Infrastructure, each bound by the terms of this Agreement and the Integrated Network Deed, would require (taking into account the arrangements under which the Rail Land is made available);
- (ii) the Lessor will not be liable to contribute to any premium or other cost that is attributable to the actions or inactions of the Sublessee; and
- (iii) the Lessor will not be liable to contribute to any premium or other cost that is taken into account by the Sublessee in determining charges in respect of the use of the Extension Infrastructure.

The Lessor must promptly pay the Sublessee such portion of the costs of effecting and maintaining such insurances as the independent expert determines is payable by the Lessor as set out above.

- (c) The Sublessee must not delay in obtaining the insurances pending the outcome of the independent expert's determination as referred to in **clause 9.8(b)**.

10 Risk and indemnities

10.1 Risk

- (a) Except as otherwise expressly provided in this Agreement or the Integrated Network Deed, all things which the Lessee is required or permitted to do under this Agreement or the Integrated Network Deed are at its own risk and cost.
- (b) Except as otherwise expressly provided in this Agreement or the Integrated Network Deed, all things which the Sublessee is required or permitted to do under this Agreement or the Integrated Network Deed are at its own risk and cost.

10.2 Indemnity

- (a) To the maximum extent permitted by law, the Sublessee indemnifies and must keep indemnified the Lessor from and against all Losses of every kind that may be incurred or sustained, whether directly or indirectly, by the Lessor in respect of or arising from or in any way connected with:
 - (i) the Extension Infrastructure or any part of it or the possession, condition, management, operation, use, repair, maintenance, alteration, modification, change, addition or replacement of the Extension Infrastructure or any part of it;

- (ii) the design of, or a defect in, the Extension Infrastructure or any part of it;
 - (iii) any act, omission or negligence on the part of the Lessee or the Lessee's Associates or the Sublessee or the Sublessee's Associates;
 - (iv) any failure by the Lessee or the Sublessee to comply with its obligations under this Agreement or the Integrated Network Deed;
 - (v) any failure by the Lessee or the Lessee's Associates or the Sublessee or the Sublessee's Associates to comply with any applicable Law or Authorisation relating to the Extension Infrastructure or its possession, condition, management, operation, use, repair, maintenance, alteration, modification or replacement;
 - (vi) any Contamination to the extent caused or contributed to by the Lessee or the Lessee's Associates or the Sublessee or the Sublessee's Associates during the Term in connection with the Extension Infrastructure or its management, operation, use, repair, maintenance, alteration, modification or replacement; and
 - (vii) any death, personal injury, loss or damage suffered or sustained by any person in connection with the Extension Infrastructure or its condition, management, operation, use, repair, maintenance, alteration, modification or replacement.
- (b) The indemnity in this **clause 10** does not apply to the extent that the Loss is caused or contributed to by:
- (i) the Lessor's breach of this Agreement or the Integrated Network Deed;
 - (ii) the acts, omissions or negligence of the Lessor acting in its capacity as lessor of the Extension Infrastructure;
 - (iii) the acts, omissions or negligence of the Lessor's Associates to the extent they are acting for the Lessor in its capacity as lessor of the Extension Infrastructure; or
 - (iv) any act or omission of a person other than the Lessee or the Lessee's Associates or the Sublessee or the Sublessee's Associates where that act or omission occurs after the Lease End Date.
- (c) The Lessor must use all reasonable endeavours to mitigate the Losses that may be incurred or sustained by it and for which it is indemnified under this **clause 10.2**.
- (d) The Lessor may not recover from the Sublessee an amount that exceeds the amount of all Losses that it has incurred or sustained and for which it is entitled to be indemnified under this **clause 10**.

- (e) Subject to **clause 10.2(d)**, this indemnity does not exclude any other right of the Lessor to be indemnified by the Lessee or the Sublessee.

10.3 Insurance not to limit indemnity

No provision of **clause 9**, nor the holding of any insurance policy, limits the Sublessee's liability in relation to the indemnity contained in this **clause 10**.

10.4 No requirement for expense before enforcement of indemnity

It is not necessary for the Lessor to incur any expense or make any payment before enforcing a right of indemnity conferred by this **clause 10**.

10.5 Indemnity continuing

The indemnity contained in this **clause 10** is a continuing obligation separate and independent of the Sublessee's other obligations.

11 Termination

11.1 Lessee Insolvency Event

- (a) If an Insolvency Event in respect of the Lessee occurs and within six months following the date of occurrence of that Insolvency Event:
 - (i) the Insolvency Event has not been cured; or
 - (ii) the Lessee's rights and obligations under this Agreement have not been assigned or transferred to a person that is solvent in accordance with **clause 15.2** (including, a replacement trustee of the Trust that is solvent),

the Lessor may terminate this Agreement by notice to the other Parties with effect from a date specified in the Notice (being a date that is no earlier than the date on which the Notice is given to the other Parties).

- (b) The Lessee must promptly notify the Lessor in writing upon becoming aware of the occurrence of an Insolvency Event.

11.2 Termination or expiry of the Infrastructure Lease

If the Infrastructure Lease:

- (a) terminates prior to the expiry of the "Term" as defined in the Infrastructure Lease; or
- (b) expires in accordance with its terms,

this Agreement will terminate on the date of termination or expiration (as applicable) of the Infrastructure Lease.

11.3 Termination of the Trust or Trust Deed

- (a) Unless the Lessee has assigned and transferred all of its rights and obligations under this Agreement to another person that is not the trustee

of the Trust in accordance with **clause 15.2**, this Agreement will terminate at the same time as:

- (i) the Trust or the Trust Deed terminates;
 - (ii) the Lessee ceases to be the trustee of the Trust; or
 - (iii) the Lessee ceases to be the sole trustee of the Trust.
- (b) The Lessee must promptly notify the Lessor in writing of the occurrence of any of the events referred to in **clause 11.3(a)(i), 11.3(a)(ii) or 11.3(a)(iii)**.

11.4 Other termination events

The Lessor may terminate this Agreement by notice in writing to the other Parties with effect from a date specified in the Notice (being a date that is no earlier than the date on which the Notice is given to the other Parties) where any of the following occurs:

- (a) the Lessee or the Sublessee does not, within a period of 45 days following delivery to the Lessee or the Sublessee (as the case may be) of a written demand from the Lessor, pay to the Lessor or another person nominated by the Lessor an amount that:
 - (i) has become due and payable under this Agreement or the Integrated Network Deed; and
 - (ii) is not the subject of a bona fide dispute,where the aggregate of that amount and all other amounts that:
 - (iii) have become due and payable (and have not been paid) to the Lessor under this Agreement or the Integrated Network Deed;
 - (iv) have been the subject of a written demand from the Lessor and have not been paid within a period of 45 days following delivery of that written demand; and
 - (v) are not the subject of a bona fide dispute,exceeds \$100,000;
- (b) except as expressly permitted under this Agreement or the Integrated Network Deed, the Lessee or Sublessee:
 - (i) assigns, transfers or otherwise disposes of any of its rights or obligations under this Agreement or the Integrated Network Deed or its right, title or interest in all or any part of the Extension Infrastructure;
 - (ii) subleases, or grants a licence in respect of, its interest in all or any part of the Extension Infrastructure; or
 - (iii) creates or allows to subsist a Security Interest (other than a Permitted Lien) over its rights under this Agreement or the

Integrated Network Deed or its interest in all or any part of the Extension Infrastructure;

- (c) any Major Authorisation held by the Sublessee is suspended or cancelled and:
 - (i) is not re-instated; or
 - (ii) a new one is not issued or granted to the Sublessee, within a period of 120 days following the final completion of the exercise, or expiry, of all rights of review and appeal relating to the suspension or cancellation of the Major Authorisation (as the case may be);
- (d) without the prior written consent of the Lessor, not to be unreasonably withheld, or otherwise than as a result of a Force Majeure Event, substantially all of the Extension Infrastructure, the Leased Infrastructure and the Other Extension Infrastructure ceases to be used for the purpose of managing and operating a railway for a continuous period of 6 months after the Lessor has notified the Sublessee that it requires that cessation of use to be brought to an end; and
- (e) each of the following has occurred:
 - (i) the obligations of the Sublessee under **clauses 3.2(a) or 6.1** have been breached;
 - (ii) the Lessor has notified the Sublessee that the breach referred to in **clause 11.4(e)(i)** has occurred and has provided reasonable details of the circumstances constituting that breach to the Sublessee; and
 - (iii) the consequences of the breach have not been remedied or rectified (including by way of the payment or expenditure of all reasonable sums of money) within the later of:
 - (A) 6 months following the giving of the notice under **clause 11.4(e)(ii)**; or
 - (B) if the Sublessee provides written notice to the Lessor within 28 days of the giving of the notice under **clause 11.4(e)(ii)** that a period in excess of 6 months will be required in order to remedy or rectify the consequences of the breach, such longer period as is detailed in a plan for rectification or remedy of the breach, provided by the Sublessee to the Lessor within 3 months of the giving of the notice under **clause 11.4(e)(ii)**, which nominates a period not in excess of 12 months from the giving of the notice under **clause 11.4(e)(ii)**.

Each of the Lessee and the Sublessee must promptly notify the Lessor in writing upon becoming aware of the occurrence of any of the above events.

11.5 Termination of Sublease

If the Sublease terminates (for any reason) or expires, the Lessor may terminate this Agreement by notice to the other Parties.

11.6 Effect of termination

(a) If the Lessor terminates this Agreement under **clause 11.1, 11.4 or 11.5** or this Agreement is automatically terminated under **clause 11.2 or 11.3**:

(i) no amount will be payable by the Lessor to any other Party except as provided under **clause 12.2** and the Integrated Network Deed; and

(ii) each of the following applies with effect from that time:

(A) except as provided in clauses **[7.4(b)], [8.5(b)], [9.1(b)]** and **[9.2(b)]** of the Integrated Network Deed, the Extension Infrastructure is deemed to be "Infrastructure" (as defined in the Infrastructure Lease) for the purposes of the Infrastructure Lease and, except to the extent the Infrastructure Lease is terminated or has expired, is deemed to be leased by the Lessor under and in accordance with the Infrastructure Lease;

(B) if this Agreement is automatically terminated under **clause 11.2**, the Sublessee Additional Land is deemed to be "Additional Land" (as defined in the Infrastructure Lease) for the purposes of the Infrastructure Lease; and

(C) if this Agreement is automatically terminated under **clause 11.2**, the Sublessee Railway Assets are deemed to be "Railway Assets" (as defined in the Infrastructure Lease) for the purposes of the Infrastructure Lease,

including for the purposes of clauses 10.4, 14, 15 and 16 of the Infrastructure Lease, and even if this Agreement terminates on the same date as the Infrastructure Lease terminates or expires.

(b) If this Agreement is automatically terminated under **clause 11.2**:

(i) within **[#]** Business Days after the Lease End Date, the Lessee must transfer, or procure the transfer, to the Lessor or its nominee of all Lessee Railway Assets and Lessee Additional Land. Any dispute as to whether an asset, land or right is or is part of a Lessee Railway Asset or Lessee Additional Land may be referred by the Lessor or the Lessee to an independent expert for determination;

(ii) in consideration for the transfer to the Lessor or its nominee of the Lessee Railway Assets and the Lessee Additional Land, the Lessor must pay to the Lessee or its nominee, on the date of such transfer, the fair market value of those assets as at the Lease End

Date as agreed between the Lessor and the Lessee or, failing agreement, as determined by an independent expert;

- (iii) upon receipt of the amount payable by the Lessor to the Lessee under **clause 11.6(b)(ii)**, the Lessee must contemporaneously procure the release and discharge of all Security Interests over all or any of the transferor's right, title and interest in the Lessee Railway Assets and the Lessee Additional Land (other than Permitted Liens); and
 - (iv) the Lessee Additional Land and Lessee Railway Assets, once transferred to the Lessor, are deemed to be "Additional Land" and "Railway Assets" (respectively, as those terms are defined in the Infrastructure Lease) for the purpose of clause 10.4 of the Infrastructure Lease (if applicable).
- (c) If the Lessor terminates this Agreement under **clause 11.1, 11.4 or 11.5** or this Agreement is automatically terminated under **clause 11.3**, then within **[#]** Business Days after the Lease End Date, the Lessee must transfer, or procure the transfer, to the Sublessee of all Lessee Railway Assets and Lessee Additional Land free from all Security Interests (other than Permitted Liens). Any dispute as to whether an asset, land or right is or is part of a Lessee Railway Asset or Lessee Additional Land may be referred by the Lessor, Lessee or the Sublessee to an independent expert for determination.
- (d) Nothing in this **clause 11** prejudices in any way the Lessor's right to claim and recover damages for any breach of this Agreement by another Party.

11.7 No other termination

- (a) Except as provided in accordance with **clauses 11.1, 11.2, 11.3, 11.4 or 11.5**:
- (i) no Party may terminate or rescind or has any right to terminate or rescind or obtain any order with the effect of terminating or rescinding this Agreement; and
 - (ii) this Agreement will not terminate, be frustrated (whether at common law, by equity or by statute), be repudiated or taken to have been repudiated for any reason.
- (b) The Lessee may not surrender any part of its interest in this Agreement.
- (c) The Sublessee may not surrender any part of its interest in this Agreement.

12 Other provisions relating to termination

12.1 Removal of Extension Infrastructure

Upon termination of this Agreement under **clause 11.2(b)** and with the prior written consent of the State (given or withheld in the State's absolute discretion), the Lessee may remove such parts of the Extension Infrastructure as the Lessee and the State agree. At the time of removal of those parts, title to the assets comprising those parts is hereby transferred to the Lessee and the Lessee may deal with those assets as it thinks fit. The Lessor must procure the release and discharge of all Security Interests over all or any of its right, title and interest in any part of those assets prior to their transfer to the Lessee.

12.2 Compensation

To the extent that Extension Infrastructure is not removed or agreed to be removed in accordance with **clause 12.1**, the Lessor must pay to the Lessee or its nominee, not later than 60 Business Days after the termination of this Agreement under **clause 11.2(b)** (or such other date as they agree), an amount equal to the fair market value of that Extension Infrastructure as at the expiry of the Term as agreed between the Lessor and the Lessee or, failing agreement, as determined by an independent expert.

12.3 Work and Expenditure Program and Transition Program

- (a) This **clause 12.3** applies if the Lessor makes the election referred to in clause 13.1(b) of the Infrastructure Lease and gives written notice to the Sublessee that this **clause 12.3** applies.
- (b) No later than nine months after the Lessor gives the Sublessee a Notice under **clause 12.3(a)**, the Sublessee must provide to the Lessor a works and expenditure program for the balance of the Term (for the purposes of this **clause 12.3** it is assumed that the Term will end at the same time as the "Term" (as defined in the Infrastructure Lease) will expire as a result of the making of the election referred to in **clause 12.3(a)**) that takes into account the following matters:
 - (i) the extent to which the repair and maintenance obligations of the Sublessee under this Agreement have been satisfied as at the date of the program;
 - (ii) the condition in which the Extension Infrastructure is required to be returned at the end of the Term under clause 14.1 of the Infrastructure Lease by virtue of the application of **clause 11.6(a)(ii)(A)**; and
 - (iii) the need to adopt an allocation of expenditure, as between the Sublessee and the Lessor, on works related to the Extension Infrastructure, being works that have an effective life beyond the expiry of the Term, that has regard to:

- (A) the return on the expenditure which the Sublessee is entitled to (or could otherwise reasonably expect to) receive prior to the expiration of the Term; and
 - (B) the return on the expenditure which the Lessor will be entitled to (or could otherwise reasonably expect to) receive after the expiration of the Term.
- (c) If the Sublessee has not provided a works and expenditure program as required by **clause 12.3(b)**, or within one month of the Lessor receiving the works and expenditure program the Lessor and the Sublessee have not agreed the proposed works and allocation of expenditure, the matter must be referred to an independent expert appointed under the Infrastructure Lease or (if the Sublessee is not a lessee under the Infrastructure Lease) under **clause 17** of this Agreement. In determining the works to be carried out and the appropriate allocation of the expenditure in respect of those works as between the Sublessee and the Lessor, the independent expert must have regard to the matters set out in **clause 12.3(b)**.
- (d) The Sublessee and the Lessor must implement the works and expenditure program, and must bear their allocated expenditures on the works the subject of the program, as agreed or determined in accordance with this **clause 12.3**.
- (e) No later than 36 months prior to the expiration of the Term, the Sublessee must provide to the Lessor a transition plan that sets out the detailed actions to be taken by each of the Sublessee and the Lessor (and the Lessee in the case of the transfer of any Lessee Railway Assets and Lessee Additional Land), and the timing and process for the taking of those actions, in order to achieve an orderly and timely process for:
- (i) the return to the Lessor (or its nominee) of the Extension Infrastructure on that date;
 - (ii) the transfer to the Lessor (or its nominee) of the Railway Assets and Additional Land on that date; and
 - (iii) the taking of such other actions as are required by this Agreement in conjunction with or as a consequence of these matters,
- so as to enable the railway network of which the Extension Infrastructure forms a part to continue to be operated as part of a fully functioning railway network before, on and after that date with minimum disruption to, or deterioration in the quality of, the services provided to the users of that railway network.
- (f) If the Sublessee has not provided a transition plan as required by **clause 12.3(e)**, or within 6 months of the Lessor receiving the transition plan the Lessor and the Sublessee have not agreed the transition plan, the matter must be referred to an independent expert appointed under the Infrastructure Lease or (if the Sublessee is not a lessee under the

Infrastructure Lease) under **clause 17** of this Agreement. In determining the transition plan, the independent expert must have regard to the matters set out in **clause 12.3(e)**.

- (g) The Sublessee and the Lessor must meet:
- (i) to discuss and agree any changes to be made to the transition plan agreed by them or determined by an independent expert; and
 - (ii) to inform each other of their respective progress in respect of their implementation of that transition plan,
- from time to time as required by either of them on reasonable notice to the other until the completion of implementation of the transition plan (which may occur after the end of the Term).
- (h) From the time that is 12 months after the Lessor receives the transition plan:
- (i) the Sublessee (and the Lessee in the case of the transfer of any Lessee Railway Assets and Lessee Additional Land) must diligently pursue the implementation of, and do all things necessary or desirable to implement, the transition plan provided to the Lessor under **clause 12.3(e)** unless or until a transition plan has been agreed by the Lessor and the Sublessee or determined by an independent expert; and
 - (ii) the Sublessee (and the Lessee in the case of the transfer of any Lessee Railway Assets and Lessee Additional Land) and the Lessor must diligently pursue the implementation of, and do all things necessary or desirable to implement, the transition plan agreed by the Lessor and the Sublessee or determined by an independent expert once it has been so agreed or determined.
- (i) In implementing the transition plan in accordance with **clause 12.3(h)**, the Sublessee must provide the Lessor with:
- (i) such information as the Lessor reasonably requires; and
 - (ii) such access to the facilities and systems of the Sublessee, the employees and contractors of the Sublessee and its Related Bodies Corporate, the Extension Infrastructure, the Railway Assets, the Rail Land and the Additional Land as the Lessor reasonably requires,
- to enable the transfer of control of the railway network of which the Extension Infrastructure forms a part to the Lessor (or its nominee) to be achieved efficiently and with minimum disruption to, or deterioration in the quality of, the services provided to the users of that railway network.
- (j) Where a works and expenditure program or a transition plan is required to be provided by the Sublessee under provisions similar to this **clause 12.3** which are included in the Infrastructure Lease or an Other Extension Infrastructure Agreement, a works and expenditure program or

transition plan prepared under this **clause 12.3** may be combined with that other program or plan and must, in any event and to the extent reasonably required, take into account that other program or plan.

- (k) If the Lessor requires, the Sublessee must cooperate with any other party to the Infrastructure Lease or an Other Extension Infrastructure Agreement in preparing and implementing a works and expenditure program or a transition plan under this Agreement.

12.4 Actions during the Term

During the Term the Lessee and the Sublessee must:

- (a) use their best endeavours to enter into agreements and arrangements (other than contracts of employment) with other persons; and
- (b) enter into agreements and arrangements between themselves, on terms and conditions that will permit, where applicable, the Sublessee to comply with:
 - (c) the terms of clauses 14.1 and 15 of the Infrastructure Lease by virtue of the operation of **clause 11.6(a)(ii)(A)**; and
 - (d) the requirements of any deed referred to in **clause 15.2(f)(ii)**.

13 Termination of the Project Management Agreement

13.1 Application of this clause

This **clause 13** applies if the Project Management Agreement is terminated for any reason prior to the commissioning of the last part of the Extension to be commissioned and, as at the date of termination of the Project Management Agreement, Extension Infrastructure which has been commissioned under the Project Management Agreement is leased to the Lessee under this Agreement.

13.2 Exclusion of parts of Extension Infrastructure

- (a) The Lessee must promptly (and in any event within three Business Days of termination of the Project Management Agreement) notify the Lessor that the Project Management Agreement has been terminated and provide details of such parts of the Extension Infrastructure as have and have not been commissioned under the Project Management Agreement.
- (b) Within 20 Business Days after the termination of the Project Management Agreement, the Nominating Party may notify the Lessee that it no longer wishes all, or particular parts, of the Non-Available Extension Infrastructure to be subject to the lease under this Agreement.
- (c) A notice given under **clause 13.2(b)** must specify:

- (i) that the Nominating Party no longer wishes the whole of the Non-Available Extension Infrastructure to be subject to the lease under this Agreement; or
 - (ii) the particular parts of the Non-Available Extension Infrastructure which the Nominating Party no longer wishes to be subject to the lease under this Agreement.
- (d) On the date that the Nominating Party gives the Lessee a Notice under **clause 13.2(b)**:
- (i) the Non-Available Extension Infrastructure specified in the Notice given under **clause 13.2(b) (Redundant Extension Infrastructure)** will immediately cease being subject to the lease under this Agreement;
 - (ii) the Lessor hereby transfers ownership of Redundant Extension Infrastructure to the Lessee free from all Security Interests (other than Permitted Liens); and
 - (iii) for the avoidance of doubt, any Extension Infrastructure (other than the Redundant Extension Infrastructure) will continue to be subject to the lease under this Agreement.
- (e) If the Lessor is the Nominating Party and specifies in the Notice under **clause 13.2(b)** that it wishes the Redundant Extension Infrastructure to be removed, the Sublessee must, or must procure, as soon as reasonably practicable, the removal of the Redundant Extension Infrastructure at the Lessee's expense.
- (f) If the Nominating Party gives the Lessee a Notice under **clause 13.2(b)**, the Nominating Party must give a copy of such Notice to the other Party at the same time such Notice is given to the Lessee.

14 Force majeure

14.1 Force Majeure Event

A **Force Majeure Event** is a circumstance or event that is beyond the reasonable control of the Party claiming relief under this **clause 14 (Affected Party)**, including:

- (a) an act of God, lightning, storm, explosion, flood, landslide, bush fire or earthquake;
- (b) strikes or other industrial action, other than strikes or other industrial action involving only the employees of the Lessee, the Sublessee or a Related Body Corporate of either of them;
- (c) act of public enemy, war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion or epidemic; and
- (d) embargo, power shortage or water shortage,

the consequences of which could not have been prevented, overcome or remedied by the exercise by the Affected Party of a standard of care and diligence consistent with that of a prudent and competent person under the circumstances (including the expenditure of reasonable sums of money and the application of technology known to such a prudent and competent person). Each Party acknowledges and agrees that, in relation to a Force Majeure Event, the obligation to expend reasonable sums of money shall not require settlement of strikes or other industrial action by yielding to unreasonable demands made of it.

14.2 Claims for relief

- (a) If a Party is prevented in whole or in part from carrying out its obligations under this Agreement as a result of a Force Majeure Event, it must as soon as practicable notify the other Parties accordingly.
- (b) A Notice under this **clause 14.2** must:
 - (i) specify the relevant obligations and the extent to which the Affected Party cannot perform those obligations;
 - (ii) fully describe the Force Majeure Event;
 - (iii) estimate the time during which the Force Majeure Event will continue; and
 - (iv) specify the measures proposed to be adopted to remedy or minimise the effects of the Force Majeure Event.

14.3 Suspension of obligations

Following the giving of a Notice of a Force Majeure Event under **clause 14.2**, and while the Force Majeure Event continues, the obligations which cannot be performed because of the Force Majeure Event will be suspended other than any obligation to pay money, but only if the Affected Party has complied with its obligations under **clauses 14.2** and **14.4**.

14.4 Mitigation

The Affected Party must use all reasonable endeavours to remedy or minimise the effects of the Force Majeure Event to the extent reasonably practicable.

14.5 Effect on Term

The Term will not be extended by the period of the Force Majeure Event.

15 Security Interests and assignment

15.1 Security Interests

- (a) The Lessee must not, without the prior written consent of the Lessor, create or allow to subsist a Security Interest (other than a Permitted Lien) over any of its rights under this Agreement or over any of its right, title or interest in the Extension Infrastructure or any part of it.

- (b) The Sublessee must not, without the prior written consent of the Lessor (such consent not to be unreasonably withheld or delayed or given subject to unreasonable conditions), create or allow to subsist a Security Interest (other than a Permitted Lien) over any of its rights under this Agreement or over any of its right, title or interest in the Extension Infrastructure or any part of it.

15.2 Permitted assignments

- (a) Except as provided in this **clause 15.2** or the Integrated Network Deed, or with the prior written consent of the other Parties, no Party may assign or transfer all or any of its rights or obligations under this Agreement.
- (b) The Lessor may assign and transfer all (and not part only) of its rights and obligations under this Agreement to a person to whom it assigns or transfers at the same time all (but not part only) of its right, title and interest in the Extension Infrastructure and its rights and obligations under the Integrated Network Deed, being a person that is the State or is owned or controlled by the State, provided that such assignment is subject to the condition that, if the assignee (not being the State) ceases to be owned or controlled by the State, those rights and obligations must, on or prior to that cessation, be assigned and transferred to the State or a person that is owned or controlled by the State. Any such assignee must execute a deed under which the assignee undertakes to the Parties to be bound by the terms of this Agreement as if it were the Lessor.
- (c) The lessor under the Infrastructure Lease must not assign or transfer its rights and obligations under the Infrastructure Lease unless it assigns and transfers, at the same time to the same person, all of its rights and obligations under this Agreement.
- (d) Subject to **clause 15.2(e)**, except with the prior written consent of the Lessor (such consent not to be unreasonably withheld or delayed or given subject to unreasonable conditions), the Sublessee:
 - (i) may only assign and transfer all (and not part only) of its rights and obligations under this Agreement to a person to whom it assigns or transfers at the same time all (but not part only) of its rights and obligations under the Integrated Network Deed, each Other Extension Infrastructure Agreement and each Other Integrated Network Deed; and
 - (ii) must assign and transfer all of its rights and obligations under this Agreement to a person to whom it assigns or transfers any of its rights or obligations under the Integrated Network Deed, an Other Extension Infrastructure Agreement or an Other Integrated Network Deed.

Any such assignee must execute a deed under which the assignee undertakes to the Parties to be bound by the terms of this Agreement as if it were the Sublessee.

- (e) The Sublessee may assign and transfer to a person such of its rights and obligations under this Agreement as relate to part of the Extension Infrastructure if it assigns and transfers at the same time to that person such of its rights and obligations under:
- (i) if applicable, the Infrastructure Lease as relate to a part of the Leased Infrastructure; and
 - (ii) if applicable, an Other Extension Infrastructure Agreement as relate to a part of the Other Extension Infrastructure,

so that the relevant parts of the Extension Infrastructure, Leased Infrastructure (if applicable) and the Other Extension Infrastructure (if applicable) are, together, reasonably capable of being managed and operated, in accordance with all applicable Laws and the requirements of all applicable Authorisations, as a discrete part of a railway.

The Parties agree to give effect to an assignment and transfer under **clause 15.2(e)** by the Lessor and Lessee entering into an agreement, on the same terms and conditions of this agreement, with the assignee (as “Sublessee”) (**Transferee Extension Infrastructure Agreement**) under which the applicable part of the Extension Infrastructure will be taken to be “Extension Infrastructure” leased by the Lessor to the Lessee under, and for the purposes of, the Transferee Extension Infrastructure Agreement.

Upon the Lessor, Lessee and assignee entering into a Transferee Extension Infrastructure Agreement:

- (i) the “Extension Infrastructure” leased by the Lessor to the Lessee under the Transferee Extension Infrastructure Agreement will immediately cease being subject to the lease under this Agreement; and
 - (ii) the Transferee Extension Infrastructure Agreement will be deemed to be an Other Extension Infrastructure Agreement for the purposes of this Agreement.
- (f) Unless the Sublessee assigns and transfers all of its rights and obligations under this Agreement and all of its rights and obligations under the Infrastructure Lease at the same time and to the same person, the Sublessee must not assign or transfer any of its rights or obligations under the Infrastructure Lease unless, where required to do so by the Lessor:
- (i) the assignee has executed a deed in favour of the Lessor (on terms reasonably acceptable to the Lessor) under which the assignee agrees to be bound by the operation of **clause 11.6(a)(ii)** and to assume the obligations relating to the Extension Infrastructure, Railway Assets and Additional Land as will thereby be imposed on it under the Infrastructure Lease; and

- (ii) the Sublessee has executed a deed in favour of the Lessor and the assignee (on terms reasonably acceptable to the Lessor) under which the Sublessee agrees, on the termination of this Agreement:
 - (A) to perform, in favour of the assignee or (if this Agreement terminates on the same date as the Infrastructure Lease terminates or expires) the Lessor or its nominee, such obligations as would otherwise be imposed on the Sublessee in connection with the Extension Infrastructure, Railway Assets and Additional Land under clause 14.1(b), (c), (d), (f) and (g) of the Infrastructure Lease if the Sublessee was the lessee under the Infrastructure Lease, the favouree was the lessor under the Infrastructure Lease, the date of the assignment or transfer was the "Lease End Date" (as defined in the Infrastructure Lease), and the Extension Infrastructure, Railway Assets and Additional Land were respectively "Infrastructure", "Railway Assets" and "Additional Land" (as defined in the Infrastructure Lease); and
 - (B) to perform, in favour of the assignee or (if this Agreement terminates on the same date as the Infrastructure Lease terminates or expires) the Lessor or its nominee, such obligations as would otherwise be imposed on the Sublessee in connection with the Railway Assets and Additional Land under clause 15(b) and (c) of the Infrastructure Lease if the Sublessee was the lessee under the Infrastructure Lease, the favouree was the lessor under the Infrastructure Lease, the date of the assignment or transfer was the date that the lessee under the Infrastructure Lease is required to return and surrender the Leased Infrastructure under clause 14.1(a) of the Infrastructure Lease, and the Railway Assets and Additional Land were respectively "Railway Assets" and "Additional Land" (as defined in the Infrastructure Lease).
- (g) If the Railway Assets and Additional Land are transferred to the Lessor or its nominee in accordance with **clause 15.2(f)(ii)(B)**, clauses 15(d), (e) and 20 of the Infrastructure Lease apply as if the Sublessee was the lessee under the Infrastructure Lease, and the Railway Assets and Additional Land were respectively "Railway Assets" and "Additional Land" (as defined in the Infrastructure Lease).
- (h) Except with the prior written consent of each other Party, the Lessee:
 - (i) may only assign and transfer all (and not part only) of its rights and obligations under this Agreement to a person to whom it assigns or transfers at the same time all (but not part only) of its rights and obligations under the Integrated Network Deed, the Sublease and the Land Licence; and

- (ii) must assign and transfer all of its rights and obligations under this Agreement to a person to whom it assigns or transfers any of its rights or obligations under the Integrated Network Deed, the Sublease or the Land Licence.

Any such assignee must execute a deed under which the assignee undertakes to the Parties to be bound by the terms of this Agreement as if it were the Lessee.

- (i) An assignment or transfer under **clause 15.2(c), 15.2(d) or 15.2(e)** may only be made to a person who:
 - (i) has, or will obtain immediately following such assignment or transfer, all Authorisations necessary for the use of the Extension Infrastructure for the Permitted Use, or otherwise has, or will have immediately following such assignment or transfer, the benefit of such Authorisations where they are held by another person; and
 - (ii) has sufficient financial and technical resources available to it to enable it to perform the obligations that are assigned or transferred to it,

and if the assignment or transfer complies with all of the applicable Laws.

- (j) If the Lessee is the trustee of the Trust and is replaced by a new trustee of the Trust, the Lessee must, with effect upon the appointment of the new trustee of the Trust, assign and transfer all (and not part only) of its rights and obligations under this Agreement, the Integrated Network Deed, the Sublease and the Land Licence to the new trustee of the Trust.
- (k) On a valid assignment or transfer in accordance with the requirements of this **clause 15.2**, the Party making such assignment or transfer is released from all obligations under this Agreement to the extent those obligations are assigned or transferred in accordance with the relevant clause.

15.3 Subletting

- (a) Except as provided in **clause 3.2**, the Lessee must not sublease, or grant a licence in respect of, its interest in the Extension Infrastructure or any part of it.
- (b) Subject to **clauses 15.3(c) and 15.3(d)**, the Sublessee may sublease, or grant a licence in respect of, its interest in the Extension Infrastructure or any part of it to a person (the **Sub-sublessee**) if:
 - (i) the use of the Extension Infrastructure or that part of it (as the case may be) which is permitted under the sublease or licence is consistent with the Permitted Use;
 - (ii) the Sub-sublessee has, or will obtain immediately following the granting of such sublease or licence, all Authorisations necessary for the Sub-sublessee to use the Extension Infrastructure or that

- part of it for the use which is permitted under the sublease or licence or otherwise has, or will have immediately following the granting of such sublease or licence, the benefit of such Authorisations where they are held by another person;
- (iii) the sublease or licence prohibits the Sub-sublessee from creating or allowing to subsist a Security Interest (other than a Permitted Lien) over any of the Sub-sublessee's rights under the sublease or licence or over any of the Sub-sublessee's right, title or interest in the Extension Infrastructure or any part of it without the prior written consent of the Lessor (such consent not to be unreasonably withheld or delayed or given subject to unreasonable conditions);
 - (iv) the sublease or licence is granted in accordance with all applicable Laws;
 - (v) the sublease or licence expressly acknowledges the rights of the Lessor under this Agreement and that the rights of the Sub-sublessee under the sublease or licence are subject to and subordinate to the rights of the Lessor under this Agreement; and
 - (vi) under the sublease or licence the Sub-sublessee covenants not to do anything which would cause a breach of this Agreement on the part of the Lessee or Sublessee.
- (c) Despite any sublease or licence permitted or consented to by the Lessor under **clause 15.3(b)**, as between the Lessor and the Sublessee, the Sublessee continues to be bound to comply with all its obligations under this Agreement.
 - (d) The Sublessee must not, except with the Lessor's prior written consent, sublease, or grant a licence in respect of, its interest in any part of the Extension Infrastructure to a person where that person is or, if the sublease or licence is granted, that person will become, the holder of a Major Authorisation in respect of that part of the Extension Infrastructure in circumstances where another person holds at the same time a Major Authorisation in respect of that part of the Extension Infrastructure.

16 Taxes and costs

- (a) The Lessee and Sublessee must pay and indemnify and keep indemnified the Lessor against any liabilities for stamp, transaction, registration and similar taxes (including fines and penalties resulting from delay or omission to pay such taxes, where such delay or omission is a result of the action or inaction of the Lessee or Sublessee) which may be payable in relation to this Agreement or the performance or enforcement of this Agreement or any payment or receipt or other transaction contemplated by it (other than in respect of any assignment or transfer of any rights or obligations of the Lessor contemplated by **clause 15.2**).

The obligations of the Lessee and Sublessee under this **clause 16(a)** bind them separately and together.

- (b) The Lessee must reimburse the Lessor on demand for all costs and expenses reasonably incurred in relation to the actual or attempted enforcement of, or actual or attempted exercise or preservation of, any rights, powers or remedies under this Agreement against the Lessee including, in each case, reasonable legal costs and expenses on a full indemnity basis.
- (c) The Sublessee must reimburse the Lessor on demand for all costs and expenses reasonably incurred in relation to the actual or attempted enforcement of, or actual or attempted exercise or preservation of, any rights, powers or remedies under this Agreement against the Sublessee including, in each case, reasonable legal costs and expenses on a full indemnity basis.
- (d) The Lessee or Sublessee (as applicable) must reimburse the Lessor's reasonable costs (including reasonable legal costs) of or associated with:
 - (i) considering, granting or refusing to grant any consent or approval requested by the Lessee or the Sublessee under the Agreement; and
 - (ii) considering, doing or refusing to do anything at the request of the Lessee or the Sublessee.

17 Dispute resolution

17.1 Dispute resolution process

- (a) If a Party considers a dispute has arisen under this Agreement, that Party may give notice of the dispute to the other Parties.
- (b) Within five Business Days of the Notice being given under **clause 17.1(a)**, a representative of each Party must confer together at least once, without third party advisers, to attempt to resolve the dispute.
- (c) If the dispute is not resolved under **clause 17.1(b)** within 15 Business Days of the Notice of the dispute being given, then the representatives must confer together to agree a form of dispute resolution.
- (d) If either:
 - (i) no form of dispute resolution is agreed within 20 Business Days of the date on which the Notice is given under **clause 17.1(a)**; or
 - (ii) the dispute is not resolved within 40 Business Days of the date on which the Notice is given under **clause 17.1(a)**,then a Party may, by written notice, refer the dispute to arbitration. Arbitration is to be before a single arbitrator in accordance with the

Commercial Arbitration Act 1990 (Qld) and a Party may be represented by a member of the legal profession.

- (e) Costs will be at the discretion of the arbitrator.
- (f) This **clause 17** does not prevent a Party from seeking an injunction or declaration from the court in the case of urgency.
- (g) The existence of a dispute does not excuse a Party from performing its obligations under this Agreement in full, nor does it prevent a Party from terminating this Agreement due to the default of another Party where such termination is otherwise in accordance with this Agreement.

17.2 Independent expert

Where this Agreement expressly provides for a dispute to be resolved by or referred to an independent expert, or the Parties agree pursuant to **clause 17.1(c)** that a dispute is best resolved by an independent expert, then the Parties must submit to the following procedure in resolving the dispute:

- (a) the Parties will choose and appoint an independent expert;
- (b) in the case of a dispute relating to railway safety matters, the independent expert must be a person with appropriate experience nominated by the 'rail safety regulator' as that concept is defined under the *Transport (Rail Safety) Act 2010* (Qld);
- (c) in any other case, in the absence of agreement by the Parties as to the independent expert within five Business Days of notice of a dispute being given, the independent expert will be appointed on the application of a Party by (unless otherwise agreed) the chairperson or other senior office bearer of the time being of the Queensland Chapter of the Institute of Arbitrators and Mediators Australia;
- (d) the independent expert must make a determination or finding on the issue in dispute as soon as practicable and in any event within 15 Business Days after the dispute is referred to it, or such longer period as agreed by the Parties;
- (e) the independent expert must act as an expert and not as an arbitrator and may adopt such procedures as he or she thinks fit so as to provide an expeditious, cost effective and fair means of determining the dispute, subject to any provisions to the contrary in this Agreement;
- (f) the independent expert is not bound by the rules of evidence and may make his or her determination on the basis of information received or his or her own expertise;
- (g) the provisions of the *Commercial Arbitration Act 1990* (Qld) will not apply to the dispute resolution proceedings under this **clause 17.2**;
- (h) in the absence of manifest error material to the determination, the independent expert's determination will be final and binding on the Parties; and

- (i) the costs of the independent expert will be borne by the Parties equally or as the independent expert may otherwise determine and each Party will bear its own costs, including legal costs, relating to the independent expert's decision.

18 Confidentiality

18.1 General obligations

Each Party must keep confidential and not allow, make or cause any disclosure of or in relation to this Agreement without the prior written consent of each other Party, which consent may be given or withheld, or given with conditions, in each Party's sole discretion.

18.2 Exceptions

A Party's obligations in **clause 18.1** do not apply to disclosures to the extent that the disclosure is:

- (a) by that Party to its legal or other professional advisers, auditors or other consultants, or employees of that Party or that Party's Related Bodies Corporate or shareholders, to the extent those persons require the information for the purposes of this Agreement (or any transactions contemplated by it) or for the purpose of advising that Party in relation thereto;
- (b) of information which is at the time lawfully in the possession of the proposed recipient of the information;
- (c) required by law or by a lawful requirement of a Governmental Agency or recognised stock exchange having jurisdiction over that Party or its Related Bodies Corporate or where such disclosure is determined by the Lessee as reasonably required for administration of the Trust;
- (d) required in connection with legal proceedings, arbitration or expert determination relating to this Agreement or for the purpose of advising that Party in relation thereto;
- (e) of information which is at the time generally and publicly available other than as a result of breach of confidence by that Party;
- (f) necessary or commercially desirable to a bona fide proposed or prospective assignee or transferee, in which case that Party must, if requested by any other Party, procure that the proposed recipient of the information executes a confidentiality deed in favour of the other Party prior to the disclosure of that information;
- (g) necessary or commercially desirable to an existing or bona fide proposed or prospective financier, in which case that Party must, if requested by any other Party, procure that the proposed recipient of the information executes a confidentiality deed in favour of the other Party prior to the disclosure of that information;

- (h) by the Lessor to the State or any Minister of the Crown in right of the State or any of its agencies or instrumentalities; or
- (i) by the Lessee to a Preference Unit Holder or a financier or prospective financier of a Preference Unit Holder, provided that the Lessee first procures that the proposed recipient of the information executes a confidentiality deed in favour of the other Parties (on terms reasonably acceptable to them) prior to the disclosure of the information.

18.3 Continuing obligation

This **clause 18** will survive the termination of this Agreement.

19 Notices

Any notice, demand, consent or other communication (**Notice**) given or made under this Agreement:

- (a) except as otherwise specified in this Agreement, must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand or fax to the address or fax number below or the address or fax number last notified by the intended recipient to the sender:

(i) to the **Lessor**

Business address	Level 14 61 Mary Street BRISBANE QLD 4000
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Postal address	[insert]
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Facsimile No.	[insert]
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Attention:	[insert]
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(ii) to the **Lessee**

Business address	Level 5 192 Ann Street BRISBANE QLD 4000
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Postal address	GPO Box 456 BRISBANE QLD 4001
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Facsimile No.	07 3235 3930
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Attention:	[insert]
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(iii) to the **Sublessee**

Business address	Level 5 192 Ann Street
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BRISBANE QLD 4000
Postal address GPO Box 456
BRISBANE QLD 4001
Facsimile No. [insert]
Attention: Vice President, Commercial Development

- (c) will conclusively be taken to be duly given or made:
- (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to address in another country); and
 - (iii) in the case of a fax, on receipt by the sender of a transmission control report from the dispatching machine showing the relevant number of pages and the correct destination fax machine number or name of recipient and indicating the transmission has been made without error,

but if the result is that a Notice would be taken to be given or made on a day that is not a business day in the place to which the Notice is sent or is later than 4.00pm (local time) it will be taken to have been duly given at 9.00am on the next business day in that place.

20 General

20.1 Entire agreement

- (a) As between the Lessor and the other Parties:
- (i) this Agreement and the Integrated Network Deed together contain the entire understanding between them as to their subject matter; and
 - (ii) this Agreement and the Integrated Network Deed together set out the only conduct relied on by the Parties and supersede all prior agreements and understandings between the Parties in connection with their subject matter.
- (b) As between the Lessee and the Sublessee:
- (i) this Agreement, the Integrated Network Deed, the Sublease, the Land Licence and the Project Management Agreement together contain the entire understanding between them as to their subject matter; and
 - (ii) this Agreement, the Integrated Network Deed, the Sublease, the Land Licence and the Project Management Agreement together set out the only conduct relied on by them and supersede all prior

agreements and understandings between them in connection with their subject matter.

20.2 No waiver

No failure to exercise nor any delay in exercising any right, power or remedy under this Agreement by a Party operates as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the Party granting that waiver unless made in writing.

20.3 Rights cumulative

Subject to any express provision in this Agreement to the contrary, the rights, powers and remedies of a Party under this Agreement are cumulative and are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or by any other agreement.

20.4 Amendment

No amendment or variation of this Agreement is valid or binding on a Party unless made in writing and executed by all Parties.

20.5 Further assurance

Each Party must do everything (including executing agreements and documents) necessary or reasonably required by any other Party to give full effect to this Agreement and the transactions contemplated by it.

20.6 No merger

The rights and obligations of the Parties will not merge on the completion of any transaction contemplated by this Agreement. They will survive execution and delivery of any assignment or other document entered into for the purpose of implementing any such transaction.

20.7 Severability of provisions

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

20.8 Lessee's limitation of liability

- (a) The Parties acknowledge that the Lessee enters into this Agreement in its capacity only as trustee of the Trust, and in no other capacity (other than in respect of the warranties in relation to trustee capacity in **clause 23.2** which are given by the Lessee in its personal capacity).
- (b) A liability of the Lessee arising under or in connection with this Agreement is limited to and can be enforced against the Lessee in its capacity as trustee of the Trust only to the extent to which the Lessee is

entitled to be indemnified out of the Trust for the liability and the liability can be satisfied out of property of the Trust.

- (c) The limitation of liability in this **clause 20.8** will not apply to any liability of the Lessee in its capacity as trustee of the Trust to the extent that the liability is not satisfied out of the property of the Trust because there is a reduction in the Lessee's right of indemnity as a result of the Lessee committing fraud, "Gross Negligence" or "Wilful Default" (each as defined in the Trust Deed).
- (d) The Lessee must not amend the Trust Deed in any way that might reduce the scope of its entitlement to indemnity out of the Trust as specified in clause 17.3 of the Trust Deed as that provision stands at the date of the Trust Deed.

20.9 Consents

Except as expressly stated otherwise in this Agreement, a Party may conditionally or unconditionally give or withhold any consent to be given under this Agreement and is not obliged to give its reasons for doing so.

20.10 Counterparts

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

20.11 Relationship of Parties

This Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.

20.12 Survival of representations and warranties

All representations and warranties in this Agreement will survive the execution and delivery of this Agreement and the completion of the transactions contemplated by it.

20.13 Enurement

The provisions of this Agreement will, subject as otherwise provided in this Agreement, enure for the benefit of and be binding on the Parties and their respective successors and permitted novatees and assigns.

20.14 Powers of attorney

An attorney by executing this Agreement declares that he or she has received no notice of revocation of the power of attorney pursuant to which he or she executes this Agreement.

21 GST

21.1 GST to be added to amounts payable

If GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This **clause 21** does not apply to the extent that the Consideration for the Taxable Supply is expressly stated to be GST inclusive.

21.2 Liability net of GST

Any reference in the calculation of Consideration, or any indemnity, reimbursement or similar amount, to a cost, expense or other liability incurred by a Party, must exclude the amount of any Input Tax Credit entitlement of that Party in relation to the relevant cost, expense or other liability. A Party will be assumed to have an entitlement to a full Input Tax Credit unless it demonstrates otherwise prior to the date on which the Consideration must be provided.

21.3 Timing of payment of GST Amount

The GST Amount is payable on the earlier of:

- (a) the first date on which all or any part of the Consideration for the Taxable Supply is first provided; and
- (b) the date five Business Days after the date on which an Invoice is issued in relation to the Taxable Supply.

The GST Amount is not payable until a Tax Invoice is issued to the payer of the GST Amount.

21.4 Revenue exclusive of GST

Unless otherwise stated, any reference in this Agreement to price, value, sales, revenue or a similar amount (**Revenue**), is a reference to that Revenue exclusive of GST.

21.5 Cost exclusive of GST

Unless otherwise stated, any reference in this Agreement (other than in the calculation of Consideration) to cost, expense or other similar amount (**Cost**), is a reference to that Cost exclusive of GST.

21.6 Adjustment Event

If an Adjustment Event occurs in respect of a Taxable Supply described in this **clause 21**, an adjustment must be made to any amount paid pursuant to this **clause 21**. The supplier must issue an Adjustment Note for an Adjustment Event.

21.7 GST Group

If a Party is a member of a GST Group, references to GST which the Party must pay and to Input Tax Credits to which that Party is entitled, include GST

which the representative member of the GST Group must pay and Input Tax Credits to which the representative member of the group is entitled.

21.8 Non-monetary consideration

If a supply made under this Agreement is a Taxable Supply made for non-monetary consideration, then:

- (a) the Supplier must provide the Recipient with a Tax Invoice which states the GST inclusive market value of that non-monetary consideration; and
- (b) for the avoidance of doubt, any non-monetary consideration payable under or in connection with this Agreement is GST inclusive.

21.9 Definitions

- (a) Words or expressions used in this **clause 21** which are defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and related imposition Acts or, if not so defined, then which are defined in the *Consumer and Competition Act 2010* (Cth), have the same meaning in this **clause 21** unless expressly provided otherwise in **clause 1.1**.
- (b) **GST Amount**, in relation to a Taxable Supply, means the amount of GST payable in respect of that Taxable Supply.

22 Governing law and jurisdiction

- (a) This Agreement is governed by the laws of the State of Queensland.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Queensland and courts of appeal from them for determining any dispute concerning this Agreement. Each Party waives any right it has to object to an action being brought in those courts, to claim that the action has been brought in an inconvenient forum, or to claim that those courts do not have jurisdiction.
- (c) The Parties agree that none of them will institute or attempt to institute any proceedings in relation to any dispute or any matter or thing arising out of or in connection with this Agreement other than in a court in Queensland or, in respect of any proceedings in a Federal court, in the Brisbane registry of the relevant Federal court. A Party must not, without the consent of all other Parties, request that proceedings instituted in a Federal court in Queensland be heard outside Queensland.
- (d) Without preventing any other mode of service, any document in an action (including any writ of summons or other originating process or any third or other party notice) may be served on a Party by being delivered to that Party in accordance with **clause 19**.

23 Warranties

23.1 Warranties

- (a) Each Party warrants that:
 - (i) it is a corporation validly existing under the laws applicable to it; and
 - (ii) it is able to pay its debts as and when they fall due.
- (b) Each Party warrants that:
 - (i) it has the power to enter into and perform this Agreement and has obtained all necessary consents to enable it to do so;
 - (ii) its obligations under this Agreement are enforceable in accordance with their terms;
 - (iii) no litigation, arbitration or administrative proceeding has been commenced before, and no judgment or award has been given or made by, any court, arbitrator, other tribunal or Governmental Agency against it which would have a material adverse effect on its ability to observe its obligations under this Agreement; and
 - (iv) it is not in breach or default under any agreement to which it is a party to an extent or in a manner which would have a material adverse effect on its ability to perform its obligations under this Agreement.

23.2 Lessee warranties

The Lessee warrants that:

- (a) it has full power and authority to enter into this Agreement and to perform the Lessee's obligations under this Agreement and the Trust Deed;
- (b) it is the sole trustee of the Trust and no action has been taken to remove or replace the Lessee as trustee of the Trust; and
- (c) it has the right to be fully indemnified out of the assets of the Trust in respect of all its obligations under this Agreement, and the Lessee has not done or omitted to do anything that would result in its right of indemnity being restricted or limited in any way.

23.3 Reliance

- (a) Each Party acknowledges that each other Party has entered into this Agreement in reliance upon the warranties contained in **clause 23.1**.
- (b) The Lessee acknowledges that the other Parties have entered into this Agreement also in reliance upon the warranties contained in **clause 23.2**.

Schedule 1

Extension

[Drafting note: Description of Extension to be inserted on a transaction-by-transaction basis.]

Schedule 2

Insurances

[Drafting note: Insurance arrangements to be inserted on a transaction-by-transaction basis.]

Schedule 3

Form of Guarantee

[Drafting note: *Form of Guarantee to be inserted on a transaction-by-transaction basis.*]

Executed as an agreement.

Executed by Queensland Treasury Holdings Pty Ltd)
in accordance with)
section 127 of the *Corporations Act*
2001 (Cth):

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Date: / /

Executed by [NewCo Pty Ltd] as)
trustee for the **[Name of Trust]** in)
accordance with section 127 of the
Corporations Act 2001 (Cth):

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Date: / /

Executed by Aurizon Network Pty Ltd)
in accordance with section 127 of)
the *Corporations Act 2001* (Cth):

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Date: / /

[NewCo Pty Ltd] as trustee for the [Name of Trust]

Aurizon Network Pty Ltd

The State of Queensland (represented by the
Department administering the *Transport
Infrastructure Act 1994* (Qld))

Queensland Treasury Holdings Pty Ltd

User Funding – Integrated Network Deed

[*insert Extension
name*]

General drafting note:

This template Integrated Network Deed (**CQCN IND**) is relevant to SUFA transactions involving the construction of Extension Infrastructure which will form part of the Central Queensland Coal Network (other than the two sections of the North Coast Line which form part of the Central Queensland Coal Network). DTMR is the Land Lessor, and Queensland Treasury Holdings Pty Ltd is the infrastructure lessor, in respect of the Central Queensland Coal Network (other than the two sections of the North Coast Line which form part of the Central Queensland Coal Network).

If a SUFA transaction will involve the construction of Extension Infrastructure which will form part of either of the two sections of the North Coast Line in respect of which Aurizon Network is railway manager, an Integrated Network Deed for the North Coast Line (**NCL IND**) will be required. DTMR is the land lessor, and Queensland Rail Limited is the infrastructure lessor, in respect of those sections of the North Coast Line.

If a SUFA transaction will involve the construction of Extension Infrastructure which will form part of the Central Queensland Coal Network (other than the two sections of the North Coast Line which form part of the Central Queensland Coal Network) only, the relevant parties will enter into a CQCN IND.

If a SUFA transaction will involve the construction of Extension Infrastructure which will form part of the Aurizon Network-controlled sections of the North Coast Line only, the relevant parties will enter into an NCL IND.

If a SUFA transaction will involve the construction of Extension Infrastructure which will form part of both the Central Queensland Coal Network (other than the two sections of the North Coast Line which form part of the Central Queensland Coal Network) and the Aurizon Network-controlled sections of the North Coast Line, the relevant parties will enter into both a CQCN IND and an NCL IND.

The entry into of an Integrated Network Deed is in the absolute discretion of DTMR and Queensland Treasury Holdings Pty Ltd or Queensland Rail Limited (as applicable) on a transaction-by-transaction basis.

This Deed has been drafted on the basis that the Extension will be solely constructed on land that is the subject of a rail corridor sublease from the State of Queensland to Aurizon Network Pty Ltd that is granted under section 240 of the *Transport Infrastructure Act 1994* (Qld) and is dated 1 July 1995. It will need to be modified to the extent that the Extension is to be constructed on land that is not subject to this sublease. The State of Queensland is not under any obligation to, and makes no representation that it will, acquire, or facilitate the acquisition of, any interest in land for the construction of any Extension.

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Date

Parties

[NewCo Pty Ltd] [ACN] as trustee for the **[Name of Trust]** of Level 14, Railcentre 1, 305 Edward Street, Brisbane, Queensland (**Trustee**)

Aurizon Network Pty Ltd ABN 78 132 181 116 of Level 14, Railcentre 1, 305 Edward Street, Brisbane, Queensland (**Aurizon Network**)

The State of Queensland (represented by the Department administering the *Transport Infrastructure Act 1994 (Qld)*) of Level 11, 85 George Street, Brisbane, Queensland (**Land Lessor**)

Queensland Treasury Holdings Pty Ltd ABN 52 011 027 295 of Level 14, 61 Mary Street, Brisbane, Queensland (**Infrastructure Lessor**)

Background

- A The Trustee wishes to procure the delivery and operation of the Extension.
 - B The Extension Infrastructure will be constructed on land leased by the Land Lessor to Aurizon Network under the Land Lease.
 - C The construction of the Extension Infrastructure will require modifications and/or additions to parts of the infrastructure leased by the Infrastructure Lessor to Aurizon Network under the Infrastructure Lease.
 - D The Extension Infrastructure will be owned by the Infrastructure Lessor and leased to the Trustee under the Extension Infrastructure Agreement.
 - E The Trustee will sublease the Extension Infrastructure to Aurizon Network in accordance with the requirements of the Extension Infrastructure Agreement.
 - F This Deed regulates the rights of the Parties in respect of the Extension Infrastructure and related assets.
-

Agreed terms

1 Interpretation

1.1 Definitions

In this Deed:

Business Day means a day other than Saturday, Sunday or a public holiday in Brisbane.

Claim includes any claim, demand, liability, cost, expense, damage, loss, proceeding, suit, litigation, investigation, audit, action or cause of action, whether judicial, administrative, investigative or otherwise, and whether arising in contract, tort, under statute or otherwise, of whatever nature, known or unknown, liquidated or unliquidated.

Compensation Amount means the fair market value of, collectively, all of the assets referred to in **clause 8.7(a)**:

- (a) as notified by the Infrastructure Lessor to Aurizon Network, the Trustee and each Other Funder (if any) under **clause 8.7(a)**; or
- (b) if applicable, as otherwise agreed by Aurizon Network, the Trustee, each Other Funder (if any) and the Infrastructure Lessor or as determined by an independent expert in accordance with the procedure referred to in **clause 8.7(b)**.

Consequential Loss means, subject to **paragraphs (e)** and **(f)** of this definition:

- (a) any special, indirect or consequential loss;
- (b) any economic loss in respect of any Claim in tort;
- (c) any loss of profits, loss of production, loss of revenue, loss of use, loss of contract, loss of opportunity, loss of reputation, loss of goodwill or wasted overheads whatsoever; and
- (d) any loss arising out of any Claim by a third party,

but does not include:

- (e) a loss (including a loss arising out of a Claim by a third party) in respect of:
 - (i) the cost of repairing, replacing or reinstating any real or personal property of any person (including a Party) that has been lost, damaged or destroyed; or
 - (ii) personal injury to or death of any person; or
- (f) in respect of any personal injury Claim, special loss or economic loss as those terms are used in the context of personal injury Claims.

Deed means this deed, including the **schedules**.

Disposal Amount means the amount which, but for **clause 7.8**, the Infrastructure Lessor would have been required to pay to Aurizon Network (or as it directs) under the Infrastructure Lease Disposal Clause.

Dispute has the meaning given in **clause 13.1(a)** and includes:

- (a) a matter referred to an Expert for determination under this Deed; and
- (b) a dispute which is the subject of the dispute resolution process under an Other Integrated Network Deed, if the Trustee is joined to that dispute resolution process in accordance with **clause 13.10**.

Dispute Notice has the meaning given in **clause 13.2**.

Dispute Resolution Process means:

- (a) the dispute resolution process under **clause 13**; and
- (b) if the Trustee is joined to the dispute resolution process under an Other Integrated Network Deed in accordance with **clause 13.10**, the dispute resolution process under the Other Integrated Network Deed.

Excluded Extension Infrastructure has the meaning given in **clauses 7.4(a), 8.5(a), 9.1(a) and 9.2(a)** (as applicable).

Expert has the meaning given in **clause 13.3(b)**.

Expiry Date means the date of the expiration of the "Term" (as defined in the Infrastructure Lease) of the Infrastructure Lease.

Extension has the meaning given in the Extension Infrastructure Agreement.

Extension Infrastructure has the meaning given in the Extension Infrastructure Agreement.

Extension Infrastructure Agreement means the agreement entitled "*User Funding – Extension Infrastructure Agreement: [insert Extension name]*" between Queensland Treasury Holdings Pty Ltd (ACN 011 027 295), *[insert name of Trustee]* as trustee of the *[insert name of Trust]* and Aurizon Network Pty Ltd (ABN 78 132 181 116) entered into on or about the date of this Deed.

Governmental Agency means a government or a governmental, semi-governmental or judicial entity or authority including the Commissioner of Taxation and the Australian Taxation Office. It also includes a self-regulatory organisation established under statute or a stock exchange.

Guarantee has the meaning given in the Extension Infrastructure Agreement.

Guarantor has the meaning given in the Extension Infrastructure Agreement.

Infrastructure Lease means the lease entitled "*Infrastructure Lease*" between Queensland Treasury Holdings Pty Ltd (ACN 011 027 295) and Aurizon Network Pty Ltd (ABN 78 132 181 116) dated 30 June 2010.

Infrastructure Lease Disposal Clause has the meaning given in **clause 7.5(a)**.

Infrastructure Lease Dispute Clause has the meaning given in **clause 8.6(a)**.

Infrastructure Lease End Date means the date on which the lease of the infrastructure under the Infrastructure Lease comes to an end for any reason.

Initial Unit Call Amount has the meaning given in the Unit Holders Deed.

Interest Rate means, for any day in a Month, the annual interest rate that is the sum of:

- (a) 2%; and
- (b) the Commonwealth Bank of Australia's reference rate being the "Corporate Overdraft Reference Rate" (monthly charging cycle) quoted by the Commonwealth Bank of Australia on its public website for the last

trading day of the previous Month (or in the event that such a rate is not so quoted at or in respect of any relevant date, such other similar rate as is quoted by a major commercial bank as agreed by the Parties or, failing agreement, as determined by an Expert under **clause 13.4**).

Land Lease means the lease of land between the State of Queensland (represented by the Department of Transport and Main Roads), as sublessor, and Aurizon Network Pty Ltd (ABN 78 132 181 116), as sublessee, dated 1 July 1995.

Land Licence has the meaning given in the Extension Infrastructure Agreement (and, for the avoidance of doubt, includes the Rail Corridor Agreement).

Law means:

- (a) any statute, regulation or subordinate legislation of the Commonwealth of Australia, the State of Queensland or local or other government in force in the State of Queensland;
- (b) the common law and principles of equity as applied from time to time in the State of Queensland; and
- (c) any code, ruling, guideline, policy or other instrument that is legally binding on the persons to which it applies.

Month means a calendar month.

Notice has the meaning given in **clause 17**.

Other Extension Infrastructure has the meaning given in the Extension Infrastructure Agreement.

Other Extension Infrastructure Agreement has the meaning given in the Extension Infrastructure Agreement.

Other Funder means a person that leases Other Extension Infrastructure from the Infrastructure Lessor under an Other Extension Infrastructure Agreement.

Other Integrated Network Deed means a deed, other than this Deed, between (among others) the State Parties and Aurizon Network which contains an acknowledgement and agreement in the form of **clause 1.4**.

Parties means collectively Aurizon Network, the Trustee, the Infrastructure Lessor and the Land Lessor, and **Party** means one of them.

Percentage Share means, in respect of each of Aurizon Network, the Trustee and each Other Funder (if any):

- (a) for the purpose of **clause 7**, the percentage calculated in accordance with **item 1** of **schedule 3**:
 - (i) as notified by Aurizon Network to the Trustee and each Other Funder (if any) under **clause 7.7(a)**; or
 - (ii) if applicable, as agreed or determined under the Dispute Resolution Process; and

- (b) for the purpose of **clause 8**, the percentage calculated in accordance with **item 2** of **schedule 3**:
 - (i) as notified by Aurizon Network to the Trustee and each Other Funder (if any) under **clause 8.8(a)**; or
 - (ii) if applicable, as agreed or determined under the Dispute Resolution Process.

Permitted Lien means:

- (a) a repairer's lien arising in the ordinary course of business; or
- (b) a lien or charge which arises by operation of Law for unpaid taxes, which, in either case, relates to a payment obligation that is:
 - (c) not yet due for payment; or
 - (d) due for payment but being contested in good faith and by appropriate proceedings that are being conducted diligently and do not involve a material risk of the foreclosure, sale, forfeiture or loss of, or material interference with, the Excluded Extension Infrastructure or any title to, use of or interest in the Excluded Extension Infrastructure (or any part of it).

Preference Unit has the meaning given in the Unit Holders Deed.

Preference Unit Holder has the meaning given in the Unit Holders Deed.

Rail Corridor Agreement means an agreement entitled "*User Funding – Rail Corridor Agreement: [insert Extension name]*" between Aurizon Network Pty Ltd (ABN 78 132 181 116) and *[insert name of Trustee]* as trustee of the *[insert name of Trust]*, substantially in the form shown in **schedule 1**.

Rail Corridor Land means land that, immediately prior to the termination or expiry of the Land Lease, was leased pursuant to the Land Lease.

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth).

Security Interest means any mortgage, pledge, lien, charge, encumbrance or any security or preferential interest or arrangement of any kind. Security Interest includes:

- (a) any thing which gives a creditor priority to other creditors with respect to any asset; and
- (b) retention of title other than in the ordinary course of day-to-day trading and a deposit of money by way of security,

but it excludes a charge or lien arising in favour of a Governmental Agency by operation of statute unless there is default in payment of money secured by that charge or lien.

Share means, in respect of each of Aurizon Network, the Trustee and each Other Funder (if any):

- (a) for the purpose of **clause 7**, the dollar amount that is calculated by multiplying the Percentage Share for the relevant person by the Disposal Amount; and
- (b) for the purpose of **clause 8**, the dollar amount that is calculated by multiplying the Percentage Share for the relevant person by the Compensation Amount.

State means the State of Queensland but does not include any State bodies which are separate legal entities.

State Parties means collectively the Land Lessor and the Infrastructure Lessor, and **State Party** means one of them.

Sublease has the meaning given in the Extension Infrastructure Agreement.

Taxable Supply has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) excluding the reference to section 84-5 of that Act.

Transaction Documents has the meaning given in the Unit Holders Deed.

Transferee Integrated Network Deed has the meaning given in **clause 16.4(c)**.

Trust means the trust constituted under the Trust Deed.

Trust Deed means the trust deed between **[insert name of Trustee]** and Aurizon Network (as ordinary subscriber) entitled "*User Funding – Trust Deed of [Name of Trust]*" dated **[insert date]**.

Unit Holders Deed has the meaning given in the Trust Deed.

1.2 Interpretation

The following rules apply unless the context requires otherwise:

- (a) headings are for convenience only and do not affect the interpretation of this Deed;
- (b) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (c) "includes" means includes without limitation;
- (d) no rule of construction will apply to the disadvantage of one Party on the basis that that Party put forward the documents comprising this Deed;
- (e) words in the singular include the plural and vice versa;
- (f) words importing one gender will include every gender;
- (g) references to clauses and schedules are references to clauses of, and schedules to, this Deed;
- (h) a requirement for a Party to obtain the consent or approval of another Party requires the first Party to obtain the consent or approval in writing; and
- (i) a reference to:

- (i) a person includes any company, partnership, joint venture, trust, unincorporated association, corporation or other body corporate and a government or statutory body or authority;
- (ii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified, consolidated, re-enacted or replaced;
- (iii) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
- (iv) a right includes a benefit, remedy, discretion and power;
- (v) time is to local time in Brisbane;
- (vi) \$ or dollars is a reference to Australian currency;
- (vii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
- (viii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmission; and
- (ix) a Party includes that Party's successors according to law and permitted assigns and any person to whom it novates its rights and obligations.

1.3 Survival

In addition to this **clause 1.3**, the following clauses survive the termination of this Deed: **clauses [#]** and **[#]**.

[Drafting note: The completion of this clause is important as many principal provisions of this Deed are only relevant following termination of the Extension Infrastructure Agreement. Which, in turn, causes this Deed to terminate.]

1.4 Acknowledgement

The Parties acknowledge and agree that this Deed is an "Other Integrated Network Deed" (as defined in an Other Integrated Network Deed).

2 Condition precedent

- (a) This Deed (except for this **clause 2** and **clauses [#]** and **[#]**) is of no force or effect unless and until:
 - (i) Aurizon Network delivers to the Infrastructure Lessor an original copy of the Guarantee duly executed by the Guarantor; and
 - (ii) the Trustee applies the Initial Unit Call Amount Amount for each Preference Unit Holder in paying up Preference Units under the Unit Holders Deed.

- (b) Aurizon Network must notify the other Parties promptly, and in any event within two Business Days, of the condition precedent in **clause 2(a)(i)** being satisfied.
- (c) The Trustee must notify the other Parties promptly, and in any event within two Business Days, of the condition precedent in **clause 2(a)(ii)** being satisfied.

3 Term

This Deed commences on the date of this Deed and continues until the termination of the Extension Infrastructure Agreement in accordance with **clause 11** of the Extension Infrastructure Agreement.

4 Consent by State Parties

- (a) Each State Party consents to each of Aurizon Network and the Trustee:
 - (i) entering into the Rail Corridor Agreement; and
 - (ii) exercising their respective rights, and performing their respective obligations, under the Rail Corridor Agreement.
- (b) Each State Party agrees that Aurizon Network will not be taken to have breached any provision of the Land Lease or the Infrastructure Lease arising out of:
 - (i) Aurizon Network and the Trustee entering into the Rail Corridor Agreement; or
 - (ii) each of Aurizon Network and the Trustee exercising their respective rights, and performing their respective obligations, under the Rail Corridor Agreement.

5 Restrictions on Trustee

The Trustee must not, without the Infrastructure Lessor's prior written approval, terminate, rescind or repudiate, or obtain any order with the effect of terminating or rescinding, the Sublease or any Land Licence that is entered into by the Trustee and Aurizon Network.

6 Extension Infrastructure

6.1 Assets prior to transfer

The Parties agree that:

- (a) the "Railway Transport Infrastructure" (as defined in the Extension Infrastructure Agreement), and all parts, accessories and equipment that are incorporated or installed in, or attached to, such "Railway Transport Infrastructure" (as defined in the Extension Infrastructure Agreement), comprising the Extension, prior to the Trustee transferring ownership of

such assets to the Infrastructure Lessor under clause [3.1(b)] of the Extension Infrastructure Agreement;

- (b) all parts, accessories and equipment that are incorporated or installed in, or attached to, the Extension Infrastructure, and any replacements, modifications, alterations, additions or changes that are made to the Extension Infrastructure, prior to the Trustee transferring ownership of such assets to the Infrastructure Lessor under clause [3.1(c)] of the Extension Infrastructure Agreement; and
- (c) all parts, accessories and equipment that are incorporated or installed in, or attached to, the Extension Infrastructure, and any replacements, modifications, alterations, additions or changes that are made to the Extension Infrastructure, prior to Aurizon Network transferring ownership of such assets to the Infrastructure Lessor under clause [3.1(d)] of the Extension Infrastructure Agreement,

and each part of such assets:

- (d) do not form part of, or attach to, the land on, under or above which they are situated regardless of whether or not any part of them is a fixture;
- (e) are excluded from any lease of the land on, under or above which they are situated;
- (f) are to be treated as personal property of, as applicable, the Trustee or Aurizon Network and not as a fixture; and
- (g) are owned by, as applicable, the Trustee or Aurizon Network and ownership of them does not vest in the owner of the land on, under or above which they are situated.

6.2 Extension Infrastructure

The Parties agree that the Extension Infrastructure and each part of it:

- (a) does not form part of, or attach to, the land on, under or above which it is situated regardless of whether or not any part of it is affixed to the land;
- (b) is excluded from any lease of the land on, under or above which it is situated;
- (c) is to be treated as personal property of the Infrastructure Lessor (or any transferee of the Extension Infrastructure from the Infrastructure Lessor) and not as a fixture; and
- (d) is owned by the Infrastructure Lessor (or any transferee of the Extension Infrastructure from the Infrastructure Lessor) and ownership of it does not vest in the owner of the land on, under or above which it is situated.

6.3 Excluded Extension Infrastructure

The Parties agree that the Excluded Extension Infrastructure and each part of it:

- (a) does not form part of, or attach to, the land on, under or above which it is situated regardless of whether or not any part of it is affixed to the land;

- (b) is excluded from any lease of the land on, under or above which it is situated;
- (c) is to be treated as personal property of, as applicable, the Trustee or Aurizon Network (or any transferee of the Excluded Extension Infrastructure from, as applicable, the Trustee or Aurizon Network) and not as a fixture;
- (d) is owned by, as applicable, the Trustee or Aurizon Network (or any transferee of the Excluded Extension Infrastructure from, as applicable, the Trustee or Aurizon Network) and ownership of it does not vest in the owner of the land on, under or above which it is situated; and
- (e) may, subject to any restrictions on transfer or disposal imposed under this Deed, the Trust Deed or a Transaction Document, be transferred or disposed of by, as applicable, the Trustee or Aurizon Network (or any transferee of the Excluded Extension Infrastructure from the Trustee or Aurizon Network) separately from the land on, under or above which it is situated.

6.4 Extension Infrastructure not “Infrastructure”

Except as otherwise provided in the Extension Infrastructure Agreement or this Deed, Aurizon Network and the Infrastructure Lessor agree that, despite the terms of the Infrastructure Lease, no part of the Extension Infrastructure or the Excluded Extension Infrastructure will be, for the purposes of the Infrastructure Lease:

- (a) owned by Aurizon Network and transferred to the Infrastructure Lessor under the Infrastructure Lease;
- (b) owned by the Infrastructure Lessor and leased to Aurizon Network under the Infrastructure Lease; or
- (c) taken to be “Infrastructure” (as defined in the Infrastructure Lease).

6.5 Extension Infrastructure not “Railway Assets”

Except as otherwise provided in the Extension Infrastructure Agreement or this Deed, Aurizon Network and the Infrastructure Lessor agree that, despite the terms of the Infrastructure Lease, the Extension Infrastructure or any Excluded Extension Infrastructure will not be taken to be “Railway Assets” (as defined in the Infrastructure Lease) for the purposes of the Infrastructure Lease.

7 Early termination of Infrastructure Lease where Trust not terminated

7.1 Application

- (a) This **clause 7** (other than this **clause 7.1** and **clause 7.5**) applies if (and only if):
 - (i) the Infrastructure Lease End Date occurs prior to the Expiry Date;

- (ii) immediately prior to the Infrastructure Lease End Date, the Trustee is the lessee of the Extension Infrastructure under the Extension Infrastructure Agreement; and
 - (iii) as at the Infrastructure Lease End Date, the Trust has not been terminated.
- (b) This **clause 7.1** and **clause 7.5** apply on and from the date of this Deed.

7.2 References to Extension Infrastructure

- (a) For the purpose of **clause 7.4**, a reference to Extension Infrastructure is a reference to that part of the “Infrastructure” (as defined in the Infrastructure Lease) that was Extension Infrastructure leased to the Trustee under the Extension Infrastructure Agreement immediately prior to the Infrastructure Lease End Date.
- (b) For the purpose of this **clause 7** (other than **clause 7.4**) and **schedule 3**, a reference to Extension Infrastructure is a reference to that part of the “Infrastructure” (as defined in the Infrastructure Lease) that was Extension Infrastructure leased to the Trustee under the Extension Infrastructure Agreement immediately prior to the Infrastructure Lease End Date other than, if the Infrastructure Lessor exercises its right of election under **clause 7.4(a)**, the Excluded Extension Infrastructure.

7.3 Notification of Infrastructure Lease End Date

Promptly after the Infrastructure Lease End Date, Aurizon Network must notify the Trustee of the Infrastructure Lease End Date.

7.4 Excluded Extension Infrastructure

- (a) Prior to the Infrastructure Lessor first offering, or inviting an offer, to dispose of any assets under the Infrastructure Lease Disposal Clause, the Infrastructure Lessor may give a Notice to Aurizon Network and the Trustee nominating parts of the Extension Infrastructure (**Excluded Extension Infrastructure**) which the Infrastructure Lessor elects (in its absolute discretion) to transfer to the Trustee.
- (b) With effect on the date the Infrastructure Lessor gives a Notice to Aurizon Network and the Trustee under **clause 7.4(a)**:
 - (i) the Infrastructure Lessor hereby transfers to the Trustee all of the Infrastructure Lessor’s right, title and interest in the Excluded Extension Infrastructure free from all Security Interests (other than Permitted Liens); and
 - (ii) despite clause 11.6(a)(ii)(A) of the Extension Infrastructure Agreement, the Excluded Extension Infrastructure will cease to be “Infrastructure” (as defined in the Infrastructure Lease) for the purpose of the Infrastructure Lease.

7.5 Infrastructure Lease Disposal Clause

- (a) The Infrastructure Lessor and Aurizon Network each warrant to the Trustee that, as at the date of this Deed, the Infrastructure Lease

contains a clause (**Infrastructure Lease Disposal Clause**) on the terms set out in **part 1 of schedule 2**.

- (b) While the Trust continues in existence, and for so long as the Trustee is the lessee of the Extension Infrastructure under the Extension Infrastructure Agreement, the Infrastructure Lessor and Aurizon Network agree not to vary the Infrastructure Lease Disposal Clause without the Trustee's prior written consent (which consent must not be unreasonably withheld or delayed).

7.6 Disposal process

Subject to **clause 7.8**, the Infrastructure Lessor agrees to comply with the Infrastructure Lease Disposal Clause.

7.7 Determination of Percentage Shares

- (a) As soon as reasonably practicable after the Infrastructure Lease End Date, Aurizon Network must give the Trustee and each Other Funder (if any) a Notice:
 - (i) specifying the percentages which Aurizon Network determines to be Aurizon Network's, the Trustee's and each Other Funder's Percentage Share; and
 - (ii) providing reasonable details of the calculation of Aurizon Network's, the Trustee's and each Other Funder's Percentage Share.
- (b) Within 30 Business Days after Aurizon Network gives a Notice referred to in **clause 7.7(a)** to the Trustee, the Trustee may give Aurizon Network a Dispute Notice which disputes the percentage which Aurizon Network determines to be the Trustee's Percentage Share as specified in such Notice and provides reasonable details of the basis for such Dispute.
- (c) If the Dispute referred to in **clause 7.7(b)** is not resolved in accordance with **clause 13.3**, the Trustee may refer the Dispute to an Expert to determine under **clause 13.4** Aurizon Network's, the Trustee's and each Other Funder's Percentage Share.
- (d) If the Trustee does not give Aurizon Network a Dispute Notice referred to in **clause 7.7(b)** within the time referred to in **clause 7.7(b)**, then:
 - (i) the Trustee must not give Aurizon Network a Dispute Notice which disputes Aurizon Network's, the Trustee's or an Other Funder's Percentage Share;
 - (ii) any such Dispute Notice which is given by the Trustee will be taken to be of no effect; and
 - (iii) the Trustee will not have, and must not make, any Claim against Aurizon Network in respect of such a Dispute.

7.8 Payment of Shares

- (a) The Infrastructure Lessor and Aurizon Network agree that if this **clause 7** applies, the Infrastructure Lessor's obligation to pay the Disposal

Amount to Aurizon Network (or as it directs) under the Infrastructure Lease Disposal Clause will be replaced by the Infrastructure Lessor's obligations under this **clause 7.8**.

- (b) Despite the terms of the Infrastructure Lease Disposal Clause:
 - (i) the Infrastructure Lessor and Aurizon Network agree that Aurizon Network, the Trustee and each Other Funder (if any) are each entitled to be paid their Share by the Infrastructure Lessor in accordance with this **clause 7.8**; and
 - (ii) the Infrastructure Lessor agrees to pay (or procure payment of) Aurizon Network's, the Trustee's and each Other Funder's (if any) Share to them in accordance with this **clause 7.8**.
- (c) As soon as reasonably practicable after a disposal is effected under the Infrastructure Lease Disposal Clause, the Infrastructure Lessor must notify Aurizon Network, the Trustee and each Other Funder (if any) of the Disposal Amount.
- (d) As soon as reasonably practicable after the Disposal Amount is notified to Aurizon Network under **clause 7.8(c)**, Aurizon Network must give a Notice to the Infrastructure Lessor (and a copy of such Notice to the Trustee and each Other Funder (if any)) notifying the Infrastructure Lessor of Aurizon Network's, the Trustee's and each Other Funder's (if any) Share.
- (e) Within 60 Business Days after Aurizon Network gives the Infrastructure Lessor a Notice under **clause 7.8(c)**, the Infrastructure Lessor must pay (or procure payment of):
 - (i) the Trustee's Share to the Trustee;
 - (ii) Aurizon Network's Share to Aurizon Network; and
 - (iii) each Other Funder's Share to each Other Funder (if any),in each case, as notified by Aurizon Network in the Notice given under **clause 7.8(d)**.
- (f) The Trustee agrees that it will have no recourse against the Infrastructure Lessor for any "Losses" (as defined in the Infrastructure Lease) that are referred to in clause 10.4(f) of the Infrastructure Lease.

8 Expiry of Infrastructure Lease where Trust not terminated

8.1 Application

- (a) Subject to **clause 8.1(b)**, this **clause 8** commences to apply one year prior to the Expiry Date.
- (b) If this **clause 8** commences to apply under **clause 8.1(a)** and, prior to the Expiry Date:
 - (i) the Trust is terminated; or

- (ii) the Infrastructure Lease End Date occurs and the Trust has not been terminated as at the Infrastructure Lease End Date,

then this **clause 8** will immediately cease to apply, and will be of no further force or effect, on and from the date of the occurrence of such event.

8.2 References to Extension Infrastructure and Other Extension Infrastructure

- (a) For the purpose of **clause 8.5**, a reference to Extension Infrastructure is a reference to the Extension Infrastructure leased to the Trustee under the Extension Infrastructure Agreement immediately prior to the Expiry Date.
- (b) For the purpose of this **clause 8** (other than **clause 8.4** and **8.5**) and **schedule 3**, a reference to Extension Infrastructure is a reference to that part of the “Infrastructure” (as defined in the Infrastructure Lease) as at the Expiry Date that was Extension Infrastructure leased to the Trustee under the Extension Infrastructure Agreement immediately prior to the Expiry Date (and, for the avoidance of doubt, does not include any Excluded Extension Infrastructure or any Extension Infrastructure which the Trustee and the State agree may be removed by the Trustee under clause **[12.1]** of the Extension Infrastructure Agreement).
- (c) For the purpose of this **clause 8** and **schedule 3**, a reference to Other Extension Infrastructure is a reference to that part of the “Infrastructure” (as defined in the Infrastructure Lease) as at the Expiry Date that was Other Extension Infrastructure leased to an Other Funder under an Other Extension Infrastructure Agreement immediately prior to the Expiry Date (and, for the avoidance of doubt, does not include any “Excluded Extension Infrastructure” (as defined in an Other Extension Infrastructure Agreement)) or any “Extension Infrastructure” (as defined in an Other Extension Infrastructure Agreement) which an Other Funder and the State agree may be removed by the Other Funder under a provision of the Other Extension Infrastructure Agreement which corresponds with clause **[12.1]** of the Extension Infrastructure Agreement).

8.3 Notification of Expiry Date

Aurizon Network must notify the Trustee of the Expiry Date at least one year prior to the Expiry Date.

8.4 Register

Not more than seven months, but not less than six months, prior to the Expiry Date, Aurizon Network must provide to the Infrastructure Lessor a register of the Extension Infrastructure.

8.5 Excluded Extension Infrastructure

- (a) Not more than six months prior to the Expiry Date, the Infrastructure Lessor may give a Notice to Aurizon Network and the Trustee nominating parts of the Extension Infrastructure (**Excluded Extension**

Infrastructure) which the Infrastructure Lessor elects (in its absolute discretion) to transfer to the Trustee on the Expiry Date.

- (b) With effect on the Expiry Date:
 - (i) the Infrastructure Lessor hereby transfers to the Trustee all of the Infrastructure Lessor's right, title and interest in the Excluded Extension Infrastructure free from all Security Interests (other than Permitted Liens); and
 - (ii) despite clause 11.6(a)(ii)(A) of the Extension Infrastructure Agreement, the Excluded Extension Infrastructure will not be deemed to be "Infrastructure" (as defined in the Infrastructure Lease) for the purpose of the Infrastructure Lease.

8.6 Infrastructure Lease Dispute Clause

- (a) The Infrastructure Lessor and Aurizon Network each warrant to the Trustee that, as at the date of this Deed, the Infrastructure Lease contains a clause (**Infrastructure Lease Dispute Clause**) on the terms set out in **part 2 of schedule 2**.
- (b) While the Trust continues in existence, and for so long as the Trustee is the lessee of the Extension Infrastructure under the Extension Infrastructure Agreement, the Infrastructure Lessor and Aurizon Network agree not to vary the Infrastructure Lease Dispute Clause without the Trustee's prior written consent (which consent must not be unreasonably withheld or delayed).

8.7 Determination of Compensation Amount

- (a) Promptly after the Expiry Date, the Infrastructure Lessor must notify Aurizon Network, the Trustee and each Other Funder (if any) of the amount which the Infrastructure Lessor determines to be the fair market value of, collectively:
 - (i) the "Infrastructure" (as defined in the Infrastructure Lease) immediately prior to the Expiry Date, excluding any "Infrastructure" which is removed or agreed to be removed in accordance with clause 16.1 of the Infrastructure Lease (which, for the avoidance of doubt, does not include any Extension Infrastructure or Other Extension Infrastructure (if any) as at the Expiry Date referred to in **clauses 8.7(a)(ii)** and **8.7(a)(iii)**);
 - (ii) the Extension Infrastructure as at the Expiry Date; and
 - (iii) the Other Extension Infrastructure (if any) as at the Expiry Date.
- (b) If, within 30 Business Days after the Infrastructure Lessor gives a Notice referred to in **clause 8.7(a)** to Aurizon Network and the Trustee, Aurizon Network and/or the Trustee gives a written Notice to the Infrastructure Lessor which disputes the amount specified in such Notice, then any Party that gives that Notice may refer the dispute to an independent expert under the Infrastructure Lease Dispute Clause, for which purpose the procedure set out in the Infrastructure Lease Dispute Clause applies

as if references to the parties to the Infrastructure Lease were instead references to the Infrastructure Lessor, the Trustee, Aurizon Network and each Other Funder (if any).

- (c) If:
- (i) Aurizon Network and/or an Other Funder gives a notice to the Infrastructure Lessor under a provision of an Other Integrated Network Deed which corresponds to **clause 8.7(b)** which disputes the amount specified in a notice given by the Infrastructure Lessor under a provision of an Other Integrated Network Deed which corresponds to **clause 8.7(a)**; and
 - (ii) Aurizon Network or the Other Funder (as applicable) exercises its right under a provision of the Other Integrated Network Deed which corresponds to **clause 8.7(b)** to refer the dispute to an independent expert under the Infrastructure Lease Dispute Clause,

then the procedure set out in the Infrastructure Lease Dispute Clause applies as if references to the parties to the Infrastructure Lease were instead references to the Infrastructure Lessor, the Trustee, Aurizon Network, the applicable Other Funder and each Other Funder (if any).

- (d) If:
- (i) Aurizon Network or the Trustee refers a dispute, under **clause 8.7(b)**, to an independent expert under the Infrastructure Lease Dispute Clause; and/or
 - (ii) Aurizon Network or an Other Funder refers a dispute, under a provision of an Other Integrated Network Deed which corresponds to **clause 8.7(b)**, to an independent expert under the Infrastructure Lease Dispute Clause,

then the Infrastructure Lessor, Aurizon Network, the Trustee and each Other Funder (if any) will be bound by the outcome of the resolution of the dispute under the procedure set out in the Infrastructure Lease Dispute Clause irrespective of whether or not they choose to actively participate in the dispute resolution process.

- (e) If Aurizon Network or the Trustee does not give the Infrastructure Lessor a written notice referred to in **clause 8.7(b)** within the time referred to in **clause 8.7(b)**, then:
- (i) Aurizon Network and the Trustee must not, and are not entitled to, dispute the fair market value that is set out in the notice given by the Infrastructure Lessor under **clause 8.7(a)**; and
 - (ii) Aurizon Network and the Trustee will not have, and must not make, any Claim against the Infrastructure Lessor in respect of its determination of that fair market value.

8.8 Determination of Percentage Shares

- (a) Promptly after the Expiry Date, Aurizon Network must give the Trustee and each Other Funder (if any) a Notice specifying the percentages which Aurizon Network determines to be Aurizon Network's, the Trustee's and each Other Funder's Percentage Share.
- (b) The Notice referred to in **clause 8.8(a)** must include reasonable details of the calculation of Aurizon Network's, the Trustee's and each Other Funder's (if any) Percentage Share.
- (c) Within 30 Business Days after Aurizon Network gives a Notice referred to in **clause 8.8(a)** to the Trustee, the Trustee may give Aurizon Network a Dispute Notice which disputes the amount which Aurizon Network determines to be the Trustee's Percentage Share as specified in such Notice and provides reasonable details of the basis for such Dispute.
- (d) If the Dispute referred to in **clause 8.8(c)** is not resolved in accordance with **clause 13.3**, the Trustee may refer the Dispute to an Expert to determine under **clause 13.4** Aurizon Network's, the Trustee's and each Other Funder's (if any) Percentage Share.
- (e) If the Trustee does not give Aurizon Network a Dispute Notice referred to in **clause 8.8(c)** within the time referred to in **clause 8.8(c)**, then:
 - (i) the Trustee must not give Aurizon Network a Dispute Notice which disputes Aurizon Network's, the Trustee's or an Other Funder's Percentage Share;
 - (ii) any such Dispute Notice which is given by the Trustee will be taken to be of no effect; and
 - (iii) the Trustee will not have, and must not make, any Claim against Aurizon Network in respect of such a Dispute.

8.9 Payment of Shares

- (a) The Infrastructure Lessor and Aurizon Network agree that if this **clause 8** applies, the Infrastructure Lessor's obligation to Aurizon Network under clause 16.2 of the Infrastructure Lease will be satisfied by the Infrastructure Lessor performing its obligation under this **clause 8.9**.
- (b) The Infrastructure Lessor and the Trustee agree that if this **clause 8** applies, the Infrastructure Lessor's obligation to the Trustee under clause **[12.2]** of the Extension Infrastructure Agreement will be satisfied by the Infrastructure Lessor performing its obligation under this **clause 8.9**.
- (c) Despite the terms of the Infrastructure Lease and the Extension Infrastructure Agreement:
 - (i) the Infrastructure Lessor, Aurizon Network and the Trustee each agree that Aurizon Network, the Trustee and each Other Funder (if any) are each entitled to be paid their Share by the Infrastructure Lessor in accordance with this **clause 8.9**; and

- (ii) the Infrastructure Lessor agrees to pay Aurizon Network's, the Trustee's and each Other Funder's (if any) Share to them in accordance with this **clause 8.9**.
- (d) Aurizon Network must give a Notice to the Infrastructure Lessor (and a copy of such Notice to the Trustee and each Other Funder (if any)) notifying the Infrastructure Lessor of Aurizon Network's, the Trustee's and each Other Funder's (if any) Share not less than 30 Business Days, but not more than 40 Business Days, after:
 - (i) the Compensation Amount:
 - (A) is notified by the Infrastructure Lessor under **clause 8.7(a)**;
or
 - (B) if applicable, is agreed or determined in accordance with the procedure referred to in **clause 8.7(b)**; and
 - (ii) Aurizon Network's, the Trustee's and each Other Funder's (if any) Percentage Share:
 - (A) is notified by Aurizon Network under **clause 8.8(a)**; or
 - (B) if applicable, is agreed or determined in accordance with the Dispute Resolution Process.
- (e) Within 60 Business Days after Aurizon Network gives the Infrastructure Lessor a Notice under **clause 8.9(d)**, the Infrastructure Lessor must pay (or procure payment of):
 - (i) the Trustee's Share to the Trustee;
 - (ii) Aurizon Network's Share to Aurizon Network; and
 - (iii) each Other Funder's Share to each Other Funder (if any),
 in each case, as notified by Aurizon Network in the Notice given under **clause 8.9(d)**.

9 Excluded Extension Infrastructure

9.1 Termination of Extension Infrastructure Agreement under clause 11.1, 11.3 or 11.4

- (a) If the Infrastructure Lessor exercises its right to terminate the Extension Infrastructure Agreement under clause 11.1, 11.3 or 11.4 of the Extension Infrastructure Agreement, the Infrastructure Lessor may, in the Notice of termination given to Aurizon Network and the Trustee under clause 11.1, 11.3 or 11.4 (as the case may be) of the Extension Infrastructure Agreement, nominate parts of the Extension Infrastructure (**Excluded Extension Infrastructure**) which the Infrastructure Lessor elects (in its absolute discretion) to transfer to the Trustee (in the case of termination under clauses 11.1 or 11.4 of the Extension Infrastructure Agreement) or to Aurizon Network (in the case of termination under clause 11.3 of the Extension Infrastructure Agreement).

- (b) With effect on the date of termination of the Extension Infrastructure Agreement under clause 11.1, 11.3 or 11.4 of the Extension Infrastructure Agreement:
 - (i) the Infrastructure Lessor hereby transfers to the Trustee (in the case of termination under clauses 11.1 or 11.4 of the Extension Infrastructure Agreement) or to Aurizon Network (in the case of termination under clause 11.3 of the Extension Infrastructure Agreement) all of the Infrastructure Lessor's right, title and interest in the Excluded Extension Infrastructure free from all Security Interests (other than Permitted Liens); and
 - (ii) despite clause 11.6(a)(ii)(A) of the Extension Infrastructure Agreement, the Excluded Extension Infrastructure will not be deemed to be "Infrastructure" (as defined in the Infrastructure Lease) for the purpose of the Infrastructure Lease.

9.2 Termination under clause 11.5

- (a) If the Extension Infrastructure Agreement automatically terminates under clause 11.5 of the Extension Infrastructure Agreement, the Infrastructure Lessor may by notice given to Aurizon Network and the Trustee within 20 Business Days after the termination of the Extension Infrastructure Agreement, nominate parts of the Extension Infrastructure (**Excluded Extension Infrastructure**) which the Infrastructure Lessor elects (in its absolute discretion) to transfer to the Trustee.
- (b) With effect on the date the Infrastructure Lessor gives a Notice to Aurizon Network and the Trustee under **clause 9.2(a)**:
 - (i) the Infrastructure Lessor hereby transfers to the Trustee all of the Infrastructure Lessor's right, title and interest in the Excluded Extension Infrastructure free from all Security Interests (other than Permitted Liens); and
 - (ii) despite clause 11.6(a)(ii)(A) of the Extension Infrastructure Agreement, the Excluded Extension Infrastructure will cease to be "Infrastructure" (as defined in the Infrastructure Lease) for the purpose of the Infrastructure Lease.

9.3 Exercise of right of election

- (a) In exercising its right of election under **clause 7.4(a), 8.5(a), 9.1(a) or 9.2(a)** to nominate parts of the Extension Infrastructure which is to be transferred to the Trustee or Aurizon Network (as applicable), the Infrastructure Lessor may only nominate parts of the Extension Infrastructure if, as a consequence of the exercise of that right of election, the "Infrastructure" (as defined under the Infrastructure Lease) remaining after the transfer of the Excluded Extension Infrastructure as a consequence of the exercise of that right of election will not (in the Infrastructure Lessor's absolute discretion) cease to be reasonably capable of being operated as a fully functioning railway network.
- (b) The Trustee and Aurizon Network:

- (i) must not give the Infrastructure Lessor a Dispute Notice which disputes the Extension Infrastructure nominated by the Infrastructure Lessor in the exercise of its right of election under **clause 7.4(a), 8.5(a), 9.1(a) or 9.2(a)**;
- (ii) any such Dispute Notice which is given by the Trustee or Aurizon Network will be taken to be of no effect; and
- (iii) will not have, and must not make, any Claim against the Infrastructure Lessor in respect of the Extension Infrastructure nominated by the Infrastructure Lessor in the exercise of its right of election under **clause 7.4(a), 8.5(a), 9.1(a) or 9.2(a)**.

9.4 Excluded Extension Infrastructure land use rights

- (a) If the Infrastructure Lessor exercises its right of election under **clause 7.4(a) or 8.5(a)**, then the Infrastructure Lessor will seek to facilitate the Trustee in its endeavours to procure from the State the grant of proprietary or contractual rights in, over or in respect of Rail Corridor Land on, under or above which the Excluded Extension Infrastructure is situated which are reasonably required to enable:
 - (i) the Excluded Extension Infrastructure to be operated by the Trustee; and
 - (ii) access to, and the management, operation, repair, maintenance, alteration, modification, change and replacement of, the Excluded Extension Infrastructure by the Trustee,
 to, or for the benefit of, the Trustee which is:
 - (iii) for nominal consideration;
 - (iv) for a term which commences on, or as soon as reasonably practicable after, the Infrastructure Lease End Date and ceases on the earlier of:
 - (A) the end of the "Term" as defined under the Infrastructure Lease, excluding any extension of that Term which had not commenced as at the Infrastructure Lease End Date; and
 - (B) if:
 - (1) third party access to the Excluded Extension Infrastructure is regulated under State or Commonwealth legislation, the last day of the period during which regulated returns on the Excluded Extension Infrastructure may be earned; or
 - (2) third party access to the Excluded Extension Infrastructure is not regulated under State or Commonwealth legislation, the expiry of the economic life of the Excluded Extension Infrastructure,
 as determined in each case by the Infrastructure Lessor following consultation with the Trustee; and

- (v) on other commercial terms which are consistent with standard practices for the provision of land use rights by the State for rail transport infrastructure corridors as at the time of the granting of those rights.
- (b) The Trustee acknowledges that the Infrastructure Lessor is not in a position to ensure or procure that the State provides proprietary or contractual rights of the kind referred to above.

10 Other Integrated Network Deed

The State Parties and Aurizon Network:

- (a) warrant that each Other Integrated Network Deed entered into as at the date of this Deed contains; and
- (b) agree that each Other Integrated Network Deed entered into after the date of this Deed will contain,

provisions which are of substantially the same effect as this **clause 10** and **clauses 7, 8, 9** and **13** and **schedule 3**.

11 Payments under this Deed

11.1 Interest on overdue payments

- (a) If, for any reason, a Party does not pay an amount payable under or in connection with this Deed on or before the due date for payment, it must pay interest to the other Party (who is entitled to receive the payment).
- (b) Interest will accrue on the outstanding amount from the due date for payment until that amount, together with the interest thereon, has been paid.
- (c) Interest will be calculated at the Interest Rate, and any interest accrued but unpaid at the end of each Month will be capitalised and will thereafter itself bear interest.

11.2 Method of payment

All payments to be made under or in connection with this Deed must be paid in Australian currency, without set-off or deduction, by:

- (a) electronic payment to an account nominated by the Party entitled to receive the payment; or
- (b) such other method as the Party entitled to receive the payment may reasonably require from time to time.

12 No rights of termination

- (a) Despite any rule of law or equity to the contrary, no Party may terminate, rescind or treat as repudiated, or obtain any order with the effect of terminating or rescinding, this Deed.
- (b) Nothing in this **clause 12** prejudices in any way a Party's right to claim and recover damages for any breach of this Deed by another Party.

13 Disputes

13.1 Application

- (a) This **clause 13** applies to any Claim, dispute or question that arises under or in respect of **clause 7.7(b)** or **8.8(c) (Dispute)**, in which case, the Parties to the Dispute will be taken to be the Trustee and Aurizon Network.
- (b) Unless otherwise expressly provided to the contrary in this Deed, a Dispute must be resolved in accordance with this **clause 13**.

13.2 Dispute Notice

If a Dispute arises, any Party to the Dispute may give to each other Party to the Dispute a notice in writing (**Dispute Notice**) specifying the Dispute and referring it for resolution in accordance with this **clause 13**.

13.3 Senior executive resolution

- (a) Within ten Business Days after the giving of a Dispute Notice, the Dispute must be referred in the first instance to the chief executive officer of each Party to the Dispute (or his or her nominee) for the purposes of this **clause 13.3** for resolution.
- (b) If the Dispute is not resolved within ten Business Days after the referral under **clause 13.3(a)**, or in the event that a chief executive officer appoints a nominee that is unacceptable to any other Party to the Dispute, then the Dispute:
 - (i) must, where this Deed expressly requires or permits referral to an expert; and
 - (ii) may, by agreement of the Parties to the Dispute in any other case, be referred for resolution by an expert (**Expert**) in accordance with **clause 13.4**.

13.4 Expert determination

Where any matter is referred to an Expert pursuant to **clause 13.3** then the following provisions of this **clause 13.4** will apply:

- (a) an Expert must be appointed by agreement between the Parties to the Dispute, or in default of such appointment within ten Business Days of the requirement or right (as applicable) to refer the matter to an Expert,

then that person is to be nominated at the request of any Party to the Dispute by:

- (i) where the Parties to the Dispute agree the Dispute is purely of a financial or accounting nature, the President (for the time being) of The Institute of Chartered Accountants in Australia – Queensland Branch; and
 - (ii) in any other case, the President (for the time being) of the Queensland Law Society, Inc;
- (b) if the Expert is to be nominated by a person referred to in **clause 13.4(a)** and that person declines to nominate a person as the Expert but provides a list of people that could be appointed as the Expert:
- (i) the first person specified in that list will be taken to be nominated as the Expert;
 - (ii) if the first person specified in that list does not accept the appointment as the Expert, the next person specified in that list will be taken to be the first person specified in that list and will be nominated as the Expert; and
 - (iii) the process specified in **clause 13.4(b)(ii)** will apply to the next and each subsequent person specified in that list until a person that is taken to be nominated as the Expert accepts the appointment as the Expert;
- (c) subject to **clause 13.4(b)**, if the Expert is to be nominated by a person referred to in **clause 13.4(a)** and the person nominated as the Expert does not accept the appointment as the Expert, then an alternative person is to be nominated as the Expert at the request of any Party to the Dispute by the same person referred to in **clause 13.4(a)**;
- (d) if the Expert is to be nominated by a person referred to in **clause 13.4(a)**, the Parties to the Dispute must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of that person (including providing relevant indemnities and paying any charges or fees (which charges or fees will be borne equally by the Parties to the Dispute)) that must be satisfied or complied with as a condition of that person agreeing to nominate an Expert;
- (e) the Parties to the Dispute must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of an agreed or nominated Expert (including providing relevant indemnities and paying any charges or fees (which charges or fees will be borne equally by the Parties to the Dispute)) that must be satisfied or complied with as a condition of that person accepting the appointment as an Expert; and
- (f) the Expert must:
- (i) have appropriate qualifications and practical experience having regard to the nature of the Dispute;

- (ii) have no interest or duty which conflicts or may conflict with his or her function as Expert, he or she being required to fully disclose any such interest or duty by written notice to the Parties to the Dispute before his or her appointment;
- (iii) not be, or have been in the last five years, an employee of a Party or a Preference Unit Holder or a Related Body Corporate of a Party or a Preference Unit Holder;
- (iv) not be permitted to act until he or she has given written notice to the Parties to the Dispute that he or she is willing and able to accept the appointment;
- (v) have regard to the provisions of this Deed and consider all submissions (including oral submissions by a Party to the Dispute provided that such oral submissions are made in the presence of the other Parties to the Dispute), supporting documentation, information and data with respect to the matter submitted by the Parties to the Dispute;
- (vi) provide the Parties to the Dispute with a copy of his or her determination in the form of a report setting out reasonable details of the reasons for the Expert's determination within a reasonable time after his or her appointment;
- (vii) be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties (including, if required by a Party, by entering into a confidentiality agreement in favour of the Parties); and
- (viii) be deemed to be and act as an expert and not an arbitrator and the law relating to arbitration (including, without limitation, the *Commercial Arbitration Act 1990* (Qld)), will not apply to him or her or the determination or the procedures by which he or she may reach a determination.

13.5 Parties to assist Expert

The Parties to a Dispute must do everything reasonably requested by the Expert to assist the Expert in determining the Dispute, including producing information and materials requested by the Expert and attending any hearing convened by the Expert.

13.6 Decision of Expert

In the absence of manifest error, the decision of the Expert is final and binding upon the Parties to the Dispute.

13.7 Costs

- (a) The costs of the Expert and any advisers engaged by the Expert will be borne equally by the Parties to the Dispute.

- (b) Each Party to the Dispute will bear its own legal costs and the costs of any advisers to it in respect of the Dispute Resolution Process under this **clause 13**.

13.8 Determination by Court

If any Dispute is not otherwise resolved in accordance with this **clause 13**, then the Dispute may, subject to **clause 20**, be referred by a Party to the Dispute to a court.

13.9 Injunctive relief

Nothing in this Deed will prevent a Party from seeking urgent injunctive relief from a court.

13.10 Disputes involving Aurizon Network, Trustee and Other Funders

If:

- (a) a Dispute arises under, or in respect of, **clause 7.7(b)** or **8.8(c)**; or
- (b) a “Dispute” (as defined under an Other Integrated Network Deed) arises under, or in respect of, a corresponding provision of the Other Integrated Network Deed (also a Dispute for the purposes of this **clause 13.10**),

then:

- (c) as applicable:
 - (i) Aurizon Network or the Trustee must join all (for the avoidance of doubt, not only some) of the Other Funders to the Dispute Resolution Process under this Deed; or
 - (ii) Aurizon Network or an Other Funder may join the Trustee and all Other Funders (for the avoidance of doubt, not only some) to the Dispute Resolution Process under the Other Funder’s Other Integrated Network Deed;
- (d) Aurizon Network, the Trustee and all Other Funders will be bound by, and must comply with, the Dispute Resolution Process under this Deed or the Other Integrated Network Deed (as applicable) as if they were parties (if they are not already parties) to this Deed or the Other Integrated Network Deed (as applicable); and
- (e) Aurizon Network, the Trustee and all Other Funders will be bound by the outcome of the resolution of the Dispute irrespective of whether or not they choose to actively participate in the Dispute Resolution Process (whether under this Deed or an Other Integrated Network Deed).

14 Confidentiality

14.1 General obligations

Each Party must keep confidential and not allow, make or cause any disclosure of or in relation to this Deed without the prior written consent of

each other Party, which consent may be given or withheld, or given with conditions, in each other Party's sole discretion.

14.2 Exceptions

A Party's obligations in **clause 14.1** do not apply to disclosures to the extent that the disclosure is:

- (a) by that Party to its legal or other professional advisers, auditors or other consultants, or employees of that Party or that Party's Related Bodies Corporate or shareholders, to the extent that those persons require the information for the purposes of this Deed (or any transactions contemplated by it) or for the purpose of advising that Party in relation thereto;
- (b) of information which is at the time lawfully in the possession of the proposed recipient of the information;
- (c) required by law or by a lawful requirement of any Governmental Agency or recognised stock exchange having jurisdiction over that Party or its Related Bodies Corporate or where such disclosure is determined by the Trustee as reasonably required for administration of the Trust;
- (d) required in connection with legal proceedings, arbitration or expert determination relating to this Deed or for the purpose of advising that Party in relation thereto;
- (e) of information which is at the time generally and publicly available other than as a result of breach of confidence by that Party;
- (f) necessary or commercially desirable to a bona fide proposed or prospective assignee or transferee, in which case that Party must, if requested by any other Party, procure that the proposed recipient of the information executes a confidentiality deed in favour of the other Party prior to the disclosure of that information;
- (g) necessary or commercially desirable to an existing or bona fide proposed or prospective financier of Aurizon Network or a State Party, in which case that Party must, if requested by any other Party, procure that the proposed recipient of the information executes a confidentiality deed in favour of the other Party prior to the disclosure of that information;
- (h) by a State Party to the other State Party, the State or any Minister of the Crown in right of the State or any of its agencies or instrumentalities; or
- (i) by the Trustee to a Preference Unit Holder or a financier or prospective financier of a Preference Unit Holder, provided that the Trustee first procures that the proposed recipient of the information executes a confidentiality deed in favour of the State Parties and Aurizon Network (on terms reasonably acceptable to them) prior to the disclosure of the information; and
- (j) to an Other Funder or a prospective Other Funder (provided that the Aurizon Network first procures that the prospective Other Funder executes a confidentiality deed in favour of the State Parties, the Trustee

and Aurizon Network (on terms reasonably acceptable to them) prior to the disclosure of the information).

15 GST

15.1 GST to be added to amounts payable

If GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This **clause 15** does not apply to the extent that the Consideration for the Taxable Supply is expressly stated to be GST inclusive.

15.2 Liability net of GST

Any reference in the calculation of Consideration, or any indemnity, reimbursement or similar amount, to a cost, expense or other liability incurred by a Party, must exclude the amount of any Input Tax Credit entitlement of that Party in relation to the relevant cost, expense or other liability. A Party will be assumed to have an entitlement to a full Input Tax Credit unless it demonstrates otherwise prior to the date on which the Consideration must be provided.

15.3 Timing of payment of GST Amount

The GST Amount is payable on the earlier of:

- (a) the first date on which all or any part of the Consideration for the Taxable Supply is first provided; and
- (b) the date five Business Days after the date on which an Invoice is issued in relation to the Taxable Supply.

The GST Amount is not payable until a Tax Invoice is issued to the payer of the GST Amount.

15.4 Revenue exclusive of GST

Unless otherwise stated, any reference in this Deed to price, value, sales, revenue or a similar amount (**Revenue**), is a reference to that Revenue exclusive of GST.

15.5 Cost exclusive of GST

Unless otherwise stated, any reference in this Deed (other than in the calculation of Consideration) to cost, expense or other similar amount (**Cost**), is a reference to that Cost exclusive of GST.

15.6 Adjustment Event

If an Adjustment Event occurs in respect of a Taxable Supply described in this **clause 15**, an adjustment must be made to any amount paid pursuant to this **clause 15**. The supplier must issue an Adjustment Note for an Adjustment Event.

15.7 GST Group

If a Party is a member of a GST Group, references to GST which the Party must pay and to Input Tax Credits to which that Party is entitled, include GST which the representative member of the GST Group must pay and Input Tax Credits to which the representative member of the group is entitled.

15.8 Non-monetary consideration

If a supply made under this Deed is a Taxable Supply made for non-monetary consideration, then:

- (a) the Supplier must provide the Recipient with a Tax Invoice which states the GST inclusive market value of that non-monetary consideration; and
- (b) for the avoidance of doubt, any non-monetary consideration payable under or in connection with this Deed is GST inclusive.

15.9 Definitions

- (a) Words or expressions used in this **clause 15** which are defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and related imposition Acts or, if not so defined, then which are defined in the *Consumer and Competition Act 2010* (Cth), have the same meaning in this **clause 15** unless expressly provided otherwise in **clause 1.1**.
- (b) **GST Amount**, in relation to a Taxable Supply, means the amount of GST payable in respect of that Taxable Supply.

16 Assignment

16.1 Assignment

Subject to **clauses 16.2, 16.3, 16.4** and **16.5**, a Party must not assign, transfer, mortgage, charge, make the subject of a trust or otherwise deal with or encumber all or any of its rights or obligations under this Deed (or procure or permit any of those things) without the prior written consent of each other Party.

16.2 Assignment by Land Lessor

- (a) The Land Lessor may assign and transfer all (and not part only) of its rights and obligations under this Deed to a person to whom it assigns or transfers at the same time all (but not part only) of its right, title and interest in the Rail Corridor Land and its rights and obligations under the Land Lease, being a person that is the State or is owned or controlled by the State, provided that such assignment is subject to the condition that, if the assignee (not being the State) ceases to be owned or controlled by the State, those rights and obligations must, on or prior to that cessation, be assigned and transferred to the State or a person that is owned or controlled by the State. Any such assignee must execute a deed under which the assignee undertakes to the Parties to be bound by the terms of this Deed (including in respect of any accrued obligations) as if it were the Land Lessor.

- (b) The Land Lessor must not assign or transfer its rights and obligations under the Land Lease unless it assigns and transfers, at the same time and to the same person, all of its rights and obligations under this Deed.

16.3 Assignment by Infrastructure Lessor

- (a) The Infrastructure Lessor may assign and transfer all (and not part only) of its rights and obligations under this Deed to a person to whom it assigns or transfers at the same time all (but not part only) of its right, title and interest in the Extension Infrastructure and the “Infrastructure” (as defined under the Infrastructure Lease) and its rights and obligations under the Extension Infrastructure Agreement and the Infrastructure Lease, being a person that is the State or is owned or controlled by the State, provided that such assignment is subject to the condition that, if the assignee (not being the State) ceases to be owned or controlled by the State, those rights and obligations must, on or prior to that cessation, be assigned and transferred to the State or a person that is owned or controlled by the State. Any such assignee must execute a deed under which the assignee undertakes to the Parties to be bound by the terms of this Deed (including in respect of any accrued obligations) as if it were the Infrastructure Lessor.
- (b) The Infrastructure Lessor must not assign or transfer its rights and obligations under the Infrastructure Lease unless it assigns and transfers, at the same time and to the same person, all of its rights and obligations under this Deed.

16.4 Assignment by Aurizon Network

- (a) Aurizon Network may assign and transfer all (and not part only) of its rights and obligations under this Deed to another person provided that:
 - (i) Aurizon Network also assigns and transfers at the same time to the proposed transferee:
 - (A) if Aurizon Network is an “Ordinary Unit Holder”, its “Ordinary Unit” (each as defined in the Unit Holders Deed) in accordance with the requirements of the Unit Holders Deed;
 - (B) all of Aurizon Network’s rights and obligations under the Sublease, the Land Licence and the other Transaction Documents (other than, if Aurizon Network is a Preference Unit Holder, Aurizon Network’s Preference Units and its rights and obligations as a Preference Unit Holder under the Unit Holders Deed), in accordance with the requirements of the Transaction Documents;
 - (C) all of Aurizon Network’s rights and obligations under the Land Lease, in accordance with the requirements of the Land Lease;
 - (D) all of Aurizon Network’s rights and obligations under the Infrastructure Lease, in accordance with the requirements of the Infrastructure Lease; and

- (E) all of Aurizon Network's rights and obligations under the Extension Infrastructure Agreement, any Other Extension Infrastructure Agreement, any Other Integrated Network Deed and any "Sublease" and any "Land Licence" (as defined in an Other Integrated Network Deed); and
 - (ii) the proposed transferee has provided to each other Party a duly executed deed, in a form reasonably required by the other Parties, under which the proposed transferee undertakes to each other Party to assume the rights, and be bound by the obligations, of Aurizon Network under this Deed as if it were Aurizon Network.
- (b) Aurizon Network must not:
- (i) if Aurizon Network is an "Ordinary Unit Holder", transfer its "Ordinary Unit" (each as defined in the Unit Holders Deed);
 - (ii) assign or transfer any of Aurizon Network's rights and obligations under any Sublease, the Land Licence or the other Transaction Documents (other than, if Aurizon Network is a Preference Unit Holder, Aurizon Network's Preference Units and its rights and obligations as a Preference Unit Holder under the Unit Holders Deed);
 - (iii) assign or transfer any of Aurizon Network's rights and obligations under the Land Lease;
 - (iv) assign or transfer any of Aurizon Network's rights and obligations under the Infrastructure Lease; or
 - (v) assign or transfer any of Aurizon Network's rights and obligations under the Extension Infrastructure Agreement, any Other Extension Infrastructure Agreement, any Other Integrated Network Deed or any "Sublease" or "Land Licence" (as defined in an Other Integrated Network Deed),
- to a proposed transferee unless:
- (vi) Aurizon Network also assigns and transfers at the same time to the proposed transferee:
 - (A) if Aurizon Network is an "Ordinary Unit Holder", its "Ordinary Unit" (each as defined in the Unit Holders Deed) in accordance with the requirements of the Unit Holders Deed;
 - (B) all of Aurizon Network's rights and obligations under any Sublease, any Land Licence and the other Transaction Documents (other than, if Aurizon Network is a Preference Unit Holder, Aurizon Network's Preference Units and its rights and obligations as a Preference Unit Holder under the Unit Holders Deed and as a "Unit Holder" under its "Umbrella Agreement" (each as defined in the Unit Holders Deed)), in accordance with the requirements of the Transaction Documents;

- (C) all of Aurizon Network's rights and obligations under the Land Lease, in accordance with the requirements of the Land Lease;
 - (D) all of Aurizon Network's rights and obligations under the Infrastructure Lease, in accordance with the requirements of the Infrastructure Lease;
 - (E) all of Aurizon Network's rights and obligations under this Deed; and
 - (F) all of Aurizon Network's rights and obligations under the Extension Infrastructure Agreement, any Other Extension Infrastructure Agreement, any Other Integrated Network Deed and any "Sublease" and any "Land Licence" (as defined in an Other Integrated Network Deed); and
- (vii) the proposed transferee has provided to each other Party a duly executed deed, in a form reasonably required by the other Parties, under which the proposed transferee undertakes to each other Party to assume the rights, and be bound by the obligations, of Aurizon Network under this Deed as if it were Aurizon Network.
- (c) If the Infrastructure Lessor, the Trustee and an assignee from Aurizon Network enter into a "Transferee Extension Infrastructure Agreement" (as defined in the Extension Infrastructure Agreement) under clause **[15.2(f)]** of the Extension Infrastructure Agreement, the Parties will be deemed to have entered into a deed on the same terms and conditions as this Deed (**Transferee Integrated Network Deed**) with effect on and from the date that such "Transferee Extension Infrastructure Agreement" (as defined in the Extension Infrastructure Agreement) is entered into.
- (d) Upon a Transferee Integrated Network Deed taking effect:
- (i) The "Transferee Extension Infrastructure Agreement" (as defined in the Extension Infrastructure Agreement) will be deemed to be the "Extension Infrastructure Agreement" for the purposes of the Transferee Integrated Network Deed; and
 - (ii) the Transferee Integrated Network Deed will be deemed to be an Other Integrated Network Deed for the purposes of this Deed; and
 - (iii) the "Transferee Extension Infrastructure Agreement" (as defined in the Extension Infrastructure Agreement) will be deemed to be an Other Extension Infrastructure Agreement for the purposes of this Deed.
- (e) Upon a "Transferee Integrated Network Deed" (as defined in an Other Integrated Network Deed) taking effect under a provision of the Other Integrated Network Deed which corresponds with **clause 16.4(c)**:
- (i) the "Transferee Integrated Network Deed" (as defined in the Other Integrated Network Deed) will be deemed to be an Other Integrated Network Deed for the purpose of this Deed;

- (ii) the agreement which is deemed to be the “Extension Infrastructure Agreement” for the purposes of the “Transferee Integrated Network Deed” (as defined in the Other Integrated Network Deed) will be deemed to be an Other Extension Infrastructure Agreement for the purposes of this Deed.

16.5 Assignment by Trustee

- (a) If the Trustee is replaced by a new trustee of the Trust, the Trustee must, with effect upon the appointment of the new trustee of the Trust, assign and transfer all (and not part only) its rights and obligations under this Deed, the Extension Infrastructure Agreement, the Sublease and the Land Licence and any other Transaction Document to the new trustee of the Trust.
- (b) The Trustee must not otherwise assign or transfer any of its rights and obligations under this Deed.

17 Notices

Any notice, demand, consent or other communication (**Notice**) given or made under this Deed:

- (a) except as otherwise specified in this Deed, must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand or fax to the address or fax number below or the address or fax number last notified by the intended recipient to the sender:

- (i) to the **Trustee**

Business address	Level 5 192 Ann Street BRISBANE QLD 4000
Postal address	GPO Box 456 BRISBANE QLD 4001
Facsimile No.	[insert]
Attention:	[insert]

- (ii) to **Aurizon Network**

Business address	Level 5 192 Ann Street BRISBANE QLD 4000
Postal address	GPO Box 456 BRISBANE QLD 4001

Facsimile No. 07 3235 3930
Attention: Vice President, Commercial
Development

(iii) to the **Infrastructure Lessor**

Business address Level 14
61 Mary Street
BRISBANE QLD 4000

Postal address [insert]

Facsimile No. 07 3842 474

Attention: [insert]

(iv) to the **Land Lessor**

Business address [insert]

Postal address GPO Box 1549
BRISBANE QLD 4001

Facsimile No. 07 3306 7122

Attention: Director General, Department of
Transport and Main Roads

- (c) will conclusively be taken to be duly given or made:
- (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to address in another country); and
 - (iii) in the case of a fax, on receipt by the sender of a transmission control report from the dispatching machine showing the relevant number of pages and the correct destination fax machine number or name of recipient and indicating the transmission has been made without error,

but if the result is that a Notice would be taken to be given or made on a day that is not a business day in the place to which the Notice is sent or is later than 4.00pm (local time) it will be taken to have been duly given at 9.00am on the next business day in that place.

18 Warranties

18.1 Warranties

- (a) Each Party (other than the Land Lessor) warrants that:

- (i) it is a corporation validly existing under the laws applicable to it; and
 - (ii) it is able to pay its debts as and when they fall due.
- (b) Each Party warrants that:
- (i) it has the power to enter into and perform this Deed and has obtained all necessary consents to enable it to do so;
 - (ii) its obligations under this Deed are enforceable in accordance with their terms;
 - (iii) no litigation, arbitration or administrative proceeding has been commenced before, and no judgment or award has been given or made by, any court, arbitrator, other tribunal or Governmental Agency against it which would have a material adverse effect on its ability to observe its obligations under this Deed; and
 - (iv) it is not in breach or default under any agreement to which it is a party to an extent or in a manner which would have a material adverse effect on its ability to perform its obligations under this Deed.

18.2 Trustee warranties

The Trustee warrants that:

- (a) it has full power and authority to enter into this Deed and to perform the Trustee's obligations under this Deed and the Trust Deed;
- (b) it is the sole trustee of the Trust and no action has been taken to remove or replace the Trustee as trustee of the Trust; and
- (c) it has the right to be fully indemnified out of the assets of the Trust in respect of all its obligations under this Deed, and the Trustee has not done or omitted to do anything that would result in its right of indemnity being restricted or limited in any way.

18.3 Reliance

- (a) Each Party acknowledges that each other Party has entered into this Deed in reliance upon the warranties contained in **clause 18.1**.
- (b) The Trustee acknowledges that the other Parties have entered into this Deed also in reliance upon the warranties contained in **clause 18.2**.

19 General

19.1 Entire agreement

- (a) This Deed contains the entire understanding between the Parties as to its subject matter.
- (b) This Deed sets out the only conduct relied on by the Parties and supersedes all prior agreements and undertakings between the Parties in connection with its subject matter.

19.2 No waiver

No failure to exercise nor any delay in exercising any right, power or remedy under this Deed by a Party operates as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the Party granting that waiver unless made in writing.

19.3 Rights cumulative

Subject to any express provision in this Deed to the contrary, the rights, powers and remedies of a Party under this Deed are cumulative and are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or by any other agreement.

19.4 Amendment

No amendment or variation of this Deed is valid or binding on a Party unless made in writing and executed by all Parties.

19.5 Further assurance

Each Party must do everything (including executing agreements and documents) necessary or reasonably required by any other Party to give full effect to this Deed and the transactions contemplated by it.

19.6 No merger

The rights and obligations of the Parties will not merge on the completion of any transaction contemplated by this Deed. They will survive execution and delivery of any assignment or other document entered into for the purpose of implementing any such transaction.

19.7 Severability of provisions

Any provision of this Deed that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Deed nor affect the validity or enforceability of that provision in any other jurisdiction.

19.8 Trustee's limitation of liability

- (a) The Parties acknowledge that the Trustee enters into this Deed in its capacity only as trustee of the Trust, and in no other capacity (other than in respect of the warranties in relation to trustee capacity in **clause 18.2** which are given by the Trustee in its personal capacity).
- (b) A liability of the Trustee arising under or in connection with this Deed is limited to and can be enforced against the Trustee in its capacity as trustee of the Trust only to the extent to which the Trustee is entitled to be indemnified out of the Trust for the liability and the liability can be satisfied out of property of the Trust.
- (c) The limitation of liability in this **clause 19.8** will not apply to any liability of the Trustee in its capacity as trustee of the Trust to the extent that the

liability is not satisfied out of the property of the Trust because there is a reduction in the Trustee's right of indemnity as a result the Trustee committing fraud, "Gross Negligence" or "Wilful Default" (each as defined in the Trust Deed).

- (d) The Trustee must not amend the Trust Deed in any way that might reduce the scope of its entitlement to indemnity out of the Trust as specified in clause 17.3 of the Trust Deed as that provision stands at the date of the Trust Deed.

19.9 Consents

Except as expressly stated otherwise in this Agreement, a Party may conditionally or unconditionally give or withhold any consent to be given under this Deed and is not obliged to give its reasons for doing so.

19.10 Counterparts

This Deed may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

19.11 Relationship of Parties

This Deed is not intended to create a partnership, joint venture or agency relationship between the Parties.

19.12 Survival of representations and warranties

All representations and warranties in this Deed will survive the execution and delivery of this Deed and the completion of the transactions contemplated by it.

19.13 Enurement

The provisions of this Deed will, subject as otherwise provided in this Deed, enure for the benefit of and be binding on the Parties and their respective successors and permitted novatees and assigns.

19.14 Powers of attorney

An attorney by executing this Deed declares that he or she has received no notice of revocation of the power of attorney pursuant to which he or she executes this Deed.

19.15 Legal costs

- (a) Aurizon Network and the Trustee must each pay their own legal costs and expenses of the drafting, negotiating and execution of this Deed.
- (b) The Trustee must pay and, if paid by a State Party, reimburse the State Party for, its reasonable legal costs and expenses of the drafting, negotiating and execution of this Deed.

19.16 Consequential Loss

Despite any provision of this Deed, no Party will be liable to any other Party for any Consequential Loss suffered by or Claimed against that other Party.

20 Governing law and jurisdiction

- (a) This Deed is governed by the laws of the State of Queensland.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Queensland and courts of appeal from them for determining any dispute concerning this Deed. Each Party waives any right it has to object to an action being brought in those courts, to claim that the action has been brought in an inconvenient forum, or to claim that those courts do not have jurisdiction.
- (c) The Parties agree that none of them will institute or attempt to institute any proceedings in relation to any dispute or any matter or thing arising out of or in connection with this Deed other than in a court in Queensland or, in respect of any proceedings in a Federal court, in the Brisbane registry of the relevant Federal court. A Party must not, without the consent of all other Parties, request that proceedings instituted in a Federal court in Queensland be heard outside Queensland.
- (d) Without preventing any other mode of service, any document in an action (including any writ of summons or other originating process or any third or other party notice) may be served on a Party by being delivered to that Party in accordance with **clause 17**.

21 Duty

The Trustee and Aurizon Network must pay and indemnify and keep indemnified the State Parties against any liabilities for stamp, transaction, registration and similar taxes (including fines and penalties resulting from delay or omission to pay such taxes, where such delay or omission is a result of the action or inaction of the Trustee or Aurizon Network) which may be payable in relation to this Deed or the performance or enforcement of this Deed or any payment or receipt or other transaction contemplated by it (other than in respect of any assignment or transfer of the rights or obligations of the Land Lessor or Infrastructure Lessor contemplated by **clause 16**). The obligation of the Trustee and Aurizon Network under this **clause 21** binds them separately and together.

Executed as a deed.

Executed by NewCo Pty Ltd as trustee)
for the **[Name of Trust]**:)

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Date: / /

Executed by Aurizon Network Pty Ltd:)
)

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Date: / /

Executed by Queensland Treasury Holdings Pty Ltd:)
)

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Date: / /

Executed on behalf of the **State of Queensland** represented by the **Department administering the Transport Infrastructure Act 1994 (Qld)** by a person duly authorised to act in that behalf, in the presence of:

.....
Witness

.....
Authorised Person

.....
Name of Witness (print)

.....
Name of Authorised Person (print)

.....
Position of Authorised Person (print)

Date: / /

Schedule 1

Rail Corridor Agreement

[Drafting note: *The form of the Rail Corridor Agreement to be included on a transaction-by-transaction basis.*]

Schedule 2

Infrastructure Lease Disposal and Dispute Clauses

1 Infrastructure Lease Disposal Clause

[Drafting note: Extract of clause to be inserted.]

2 Infrastructure Lease Dispute Clause

[Drafting note: Extract of clause to be inserted.]

Schedule 3

Share calculation methodology

1 Calculation of Percentage Shares of Disposal Amount

[Drafting note: Percentage Share for Sharing Party of the Disposal Amount will be calculated in accordance with the following methodology.

Sharing Party means each of Aurizon, the Trustee and each Other Funder.

The **Percentage Share** of each Sharing Party shall be

(a) the 'Discounted Value' (as defined below) of the cashflows that would have related to that Sharing Party under the SUFA documentation that relates to it had no early termination event occurred and had the 'Reference Case' (also as defined below) occurred, divided by

(b) the aggregate of the amounts in item (a) for all Sharing Parties, as determined on a fair and reasonable basis.

Discounted Value means the discounted value on the basis of the Reference Discount Rate as determined at the Reference Point.

Reference Case means the case of expected (future) pre-tax cashflows, which shall comprise revenues and operational & maintenance expenses and replacement capital outgoings only, that would arise from the conduct of 'business as usual' commencing from the 'Reference Point' (as defined below) and ending when such revenue and O&M expenses are expected to end (that is, this case represents what would have happened in the absence of the early termination event), subject to the overriding assumption that no augmentation of the Railway Network would occur. In the development of the Reference Case there should only be regard to the state of affairs known as at the date of the Reference Point.

Reference Discount Rate means the discount rate equal to the 'central case' rate of return (on a pre-tax basis) for comparable net income streams from comparable infrastructure assets (on an ungeared basis) applied in good valuation practice of Australian infrastructure assets on the basis of a transfer of ownership of such net income streams within markets where there are willing buyers and willing sellers. The Reference Discount Rate shall be determined as at the Reference Point.

Reference Point means the date on which the Infrastructure Lease terminates.]

2 Calculation of Percentage Shares of Compensation Amount

[Drafting note: The Percentage Share for each Sharing Party of the Compensation Amount will be the proportion of the aggregate market value that relates to the assets that were funded by the applicable Sharing Party and are in place as at the date on which the Infrastructure Lease expires, as determined on a fair and reasonable basis. **Sharing Party** means each of Aurizon, the Trustee and each Other Funder.]