

AN's response to QCA Draft Decision

[Independent Trustee] 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

[Financier/Security Trustee]

[Facility Agent]

User Funding –
Financing Side
Deed [*insert Extension name*]

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Date

Parties

[Independent Trustee] [ACN] as trustee for the **[Name of Trust]** of **[insert]** (**Trustee**)

Aurizon Network Pty Ltd ABN 78 132 181 116 of Level 15, 175 Eagle 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 6, 123 Albert Street, Brisbane, Queensland (**Infrastructure Lessor**)

[Security Holder/Security Trustee] [ACN] of **[insert]** (**Secured Party**)

[Facility Agent] [ACN] of **[insert]** (**Facility Agent**)

Agreed terms

Background

- A. The Trustee wishes to procure the delivery and operation of the Extension.
- B. The Financiers have agreed to provide secured financial accommodation to the Trustee for the purpose of financing a proportion of the costs of the Extension.
- C. The Parties have agreed to enter into this Deed to regulate certain matters in respect of the Security.

1 Interpretation

1.1 Integrated Network Deed

In this Deed, except to the extent a term is defined in **clause 1.2** or otherwise expressed to the contrary, capitalised terms have the meaning given in the Integrated Network Deed.

1.2 Definitions

In this Deed:

Assets has the meaning given in the Trust Deed.

Authorised Officer means, in respect of a Party, a person with the right to act as the agent of that Party for the purposes of this Deed, including:

- (a) a director or company secretary of that Party and the Party's lawyer;

- (b) a person appointed by that Party as an authorised representative of that Party whose appointment is notified by the appointor to the other Parties in a notice which contains the specimen signature of the appointee; and
- (c) in respect of the Secured Party, any attorney, officer or properly authorised agent of the Secured Party or any person whose title or acting title includes the word “Manager”, “Director”, “Head”, “Managing Director”, “Vice President”, “Associate” or any cognate expression.

[Drafting note: Titles to be confirmed by Secured Party.]

Call has the meaning given in the Unit Holders Deed.

Cost has the meaning given in **clause 10.8(a)**.

Deed means this document.

Default means any breach or default by the Trustee in complying with its obligations under any Transaction Document or any other circumstance or event which entitles any Other Party to terminate or rescind a Transaction Document or treat a Transaction Document as repudiated.

Enforcing Party means the Secured Party or any receiver, receiver and manager, administrator, controller, agent, attorney or similar person appointed under a Security.

Facility Agreement means **[the Syndicated Facility Agreement dated on or about the date of this Deed between, among others, the Financiers, the Trustee and the Secured Party]**.

Facility Moneys means all debts and monetary liabilities of the Trustee **[and [any other obligors to be included]]** to any Finance Party under or in relation to the Facility Agreement or any related document (including without limitation any derivative or hedging agreement in respect of any interest or any other amount payable in connection with the Facility Agreement) in any capacity and irrespective of whether the debts or liabilities are present or future or actual, prospective, contingent or otherwise.

Financiers means the lenders under the Facility Agreement.

Finance Parties means the Financiers, the Facility Agent, the Secured Party **[and the beneficiaries of the Security Trust] [and [any other finance parties to be included]]**.

[Drafting note: Include the words “and the beneficiaries of the Security Trust” if the Secured Party is a security trustee.]

GST has the meaning given 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).

Insolvency Event has the meaning given in the Extension Infrastructure Head-Lease.

Integrated Network Deed means the deed entitled “*User Funding – Integrated Network Deed: [insert Extension name]*” between the Trustee,

Aurizon Network, the Land Lessor and the Infrastructure Lessor entered into on or about the date of this Deed.

Notice has the meaning given to it in **clause 12**.

Other Party means each of Aurizon Network, the Land Lessor and the Infrastructure Lessor.

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

Power means any right, power, authority, discretion or remedy, whether express or implied.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Revenue has the meaning given in **clause 10.8(b)**.

Security means **[each Security document to be specified]**.

[Drafting note: Include a comprehensive description of the Security documentation.]

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 security interest within the meaning of section 12(1) of the PPSA;
- (b) any thing which gives a creditor priority to other creditors with respect to any asset; and
- (c) 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.

Security Power means any Power conferred on any Enforcing Party by any Security or applicable law as limited by this Deed.

[Security Trust means the security trust established under the Security Trust Deed.]

[Security Trust Deed means **[Insert]**.]

[Drafting note: Include the definitions of Security Trust and Security Trust Deed if the Secured Party is a security trustee.]

Termination Notice has the meaning given in **clause 5.3(a)(i)**.

Zero Value Date has the meaning given in the Unit Holders Deed.

1.3 Interpretation

Unless expressed to the contrary in this Deed, the provisions of clause [1.2] of the Integrated Network Deed apply to this Deed.

1.4 [Secured Party's capacity]

[Insert].

[Drafting note: Complete this clause if the Secured Party is a security trustee. To be completed with the Secured Party's standard security trustee language.]

1.5 [Role of Facility Agent]

[Insert].

[Drafting note: To be completed with the Facility Agent's standard language.]

2 Condition precedent

This Deed (except for this **clause 2** and **clauses 1, 4, 9, 10, 11, 12, 13, 14** and **15**) is of no force or effect unless and until the Integrated Network Deed is in full force and effect.

3 Consent and Acknowledgement

3.1 By the Other Parties

Subject to **clause 8.1**, each Other Party consents to the creation and existence of the Security Interests over all the Assets under the Security and agrees that:

- (a) **no Default:** subject to **clause 3.3(a)**, neither the creation of the Security nor the exercise of any Security Powers under the Security will of itself contravene or constitute a Default under any Transaction Document or entitle any Other Party to exercise any Power (including of termination) under any Transaction Document;
- (b) **enforcement:** subject to **clause 3.3(a)**, at any time after commencement of enforcement of the Security any Enforcing Party may exercise or cause the exercise of all or any of the Powers, and perform or cause performance of all or any of the obligations, of the Trustee under or in relation to any Transaction Document as if it were the Trustee to the exclusion of the Trustee;
- (c) **not liable:** without limiting the liabilities of the Trustee (which continues to be responsible for the performance of its obligations under each Transaction Document), no Enforcing Party will be liable, or taken to have assumed liability, for any liability of the Trustee under a Transaction Document by reason only of a Security or the exercise in accordance with the Security and this Deed of any of the Trustee's Powers under that Transaction Document; and
- (d) **amendments:** subject to **clauses 11.6, 11.7** and **11.8**, the parties to the Security may at any time amend, novate, supplement or replace the Security, or any of them, without the consent of the Other Parties, provided that at all times each beneficiary to each Security is, itself or through its agent or a trustee, bound by this Deed.

3.2 By the Trustee

The Trustee:

- (a) agrees that it is bound by, and agrees to co-operate in the implementation of, this Deed;
- (b) consents to each Other Party and the Secured Party doing all such things as are required to be done by them to comply with this Deed; and
- (c) acknowledges that this Deed is only intended to benefit the each Other Party and the Secured Party.

3.3 By the Secured Party

- (a) The Secured Party agrees on behalf of itself and each other Enforcing Party that, except as expressly provided in this Deed, nothing in this Deed:
 - (i) authorises any Enforcing Party to do anything which the Trustee may not do under the Transaction Documents;
 - (ii) operates to grant any Enforcing Party any Powers greater than the Powers of the Trustee under the Transaction Documents;
 - (iii) authorises any Enforcing Party to do any act or thing without the consent of an Other Party where, under any Transaction Documents or otherwise, the Other Party's consent is required; or
 - (iv) detracts from an Other Party's rights under the Transaction Documents if the requirements of the Transaction Documents and this Deed have not been complied with.
- (b) The Secured Party agrees that the proceeds of any insurance which is required to be taken out by or for the benefit of the Trustee under a Transaction Document are required to be applied, if applicable, in accordance with the requirements of that Transaction Document.
- (c) The Secured Party agrees that if it enforces a Security but the Enforcing Party does not comply with any obligation under any Transaction Document, after the date on which it enforces the Security, in circumstances where the Trustee is obliged to comply with that obligation, each Other Party may terminate that Transaction Document if permitted in accordance with its terms.

3.4 By the Land Lessor

- (a) The Trustee affirms for the benefit of the Land Lessor, and the Land Lessor accepts:
 - (i) the covenant from the Trustee in clause [6(b)(ii)A] of the Rail Corridor Agreement; and
 - (ii) the acknowledgement in clause [6(b)(ii)B] of the Rail Corridor Agreement.

- (b) Subject always to the requirements of clause [20.3(b)] of the Land Lease, the Land Lessor consents to the grant of the licence by Aurizon Network to the Trustee under the Rail Corridor Agreement.

4 Representations and warranties

4.1 Representations and warranties by all Parties

Each Party represents and warrants that:

- (a) other than the Land Lessor, 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.

4.2 Representations and warranties by Trustee

The Trustee represents and 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 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.

4.3 [Additional representations and warranties by Secured Party

The Secured Party (both in its own right and as trustee of the Security Trust) represents and warrants that:

- (a) it has full legal capacity and power under the Security Trust Deed to enter into this Deed and to carry out the transactions that this Deed contemplates, as trustee of the Security Trust, including without

limitation the discharge of each Security contemplated by **clause 8.5** and the discharge and release contemplated by **clause 8.6**; and

- (b) all action that is necessary under the Security Trust Deed or at law to:
- (i) authorise its entry into this Deed and its carrying out the transactions that this Deed contemplates, including without limitation the discharge of Security contemplated by **clause 8.5** and the discharge and release contemplated by **clause 8.6**;
 - (ii) ensure that this Deed is legal, valid and binding on it as trustee of the Security Trust and admissible in evidence against it in that capacity; and
 - (iii) enable it to properly carry on the business of the Security Trust, has been taken.

[Drafting note: *Include this clause if the Secured Party is a security trustee.***]**

4.4 Additional representations and warranties by Facility Agent

The Facility Agent (in its own right and as agent of each Finance Party) represents and warrants that:

- (a) it has full power and authority to enter into this Deed and to perform and effect the Facility Agent's obligations under this Deed, including without limitation in respect of the discharge and release contemplated by **clause 8.6**; and
- (b) it has obtained any authorisations, consents and instructions from the Finance Parties and any other persons required in connection with this Deed and the transactions that this Deed contemplates, including without limitation in respect of the discharge and release contemplated by **clause 8.6**.

4.5 Reliance

Each Party acknowledges that each other Party has entered into this Deed in reliance upon the warranties contained in **clause 4**.

5 Default

5.1 Notification by Other Parties

- (a) Each Other Party must promptly notify the Secured Party of any Default as soon as it becomes aware of that Default. The notice must include details of the basis on which the Other Party is claiming that the Default occurred.
- (b) Each Other Party must promptly give the Secured Party copies of all documents issued by it to the Trustee under a Transaction Document that in any way relate to, or arise out of, any matter described in **clause 5.1(a)**.

- (c) Each Other Party will not have any liability to any other Party for any loss suffered or damage incurred by any other Party or otherwise in relation to any breach of any obligations under this **clause 5.1**.

5.2 Secured Party's cure rights

- (a) On becoming aware of any Default, an Enforcing Party may take steps to remedy, or procure the remedy of, that Default. Any remedy of a Default by or on behalf an Enforcing Party will be taken to cure the Default for the purposes of the Transaction Documents.
- (b) To the extent reasonably requested by an Enforcing Party for the purpose of exercising its Powers under this Deed, each applicable Other Party must:
 - (i) provide that Enforcing Party with any information relevant to the Default in its possession (including, at the Other Party's discretion, an indication of the steps that could be taken to remedy that Default); and
 - (ii) hold discussions with the Enforcing Party in good faith with a view to the Trustee, Secured Party or Enforcing Party achieving a remedy of the Default.

5.3 Termination by an Other Party

- (a) Subject to **clause 5.3(b)**, despite anything in a Transaction Document, an Other Party may only exercise any Powers to terminate a Transaction Document which, but for this **clause 5.3**, it would be entitled to exercise as a result of a Default if:
 - (i) the Other Party has given notice to the Secured Party (a Termination Notice) setting out details of the Default and stating the Other Party's intention to exercise its Powers to terminate the Transaction Document; and
 - (ii) any of the following applies:
 - (A) if the Default is capable of remedy, that Default has not been remedied or the consequences of that Default have not been rectified to the reasonable satisfaction of the Other Party (whether by the Trustee, the Secured Party, an Enforcing Party or any other person) within the period after the date of the Termination Notice specified below:
 - (1) **non-payment of moneys**: in the case of a Default in the payment of money, ten Business Days (or any longer period agreed in writing by the Other Party); or
 - (2) **other remediable defaults**: in the case of any other Default that can be remedied, [twenty] Business Days (or any longer period applicable under the Transaction Documents or otherwise agreed in writing by the Other Party, that agreement not to be unreasonably withheld

so long as the remedy of that Default is being diligently pursued by the Enforcing Party to the reasonable satisfaction of the Other Party);

- (B) if the Default is not capable of remedy, an Enforcing Party does not:
 - (1) rectify the consequences of that Default to the reasonable satisfaction of the Other Party; or
 - (2) where the Default is the occurrence of an Insolvency Event in relation to the Trustee, enter into possession of the Trustee's rights under the Transaction Documents and commence and continue to perform its obligations under the Transaction Documents,

within twenty Business Days after the date of the Termination Notice; or
- (C) the Secured Party notifies the Other Party that it elects not to take any steps to remedy the Default.

- (b) **Clause 5.3(a)** does not apply and is of no force or effect in relation to any Default that first occurs after the Secured Party has given a notice under **clause 6(b)** and commenced exercising any Security Powers.

6 Notifications by Secured Party

- (a) The Secured Party must, at approximately the same time as the notice is given to the Trustee, provide to each Other Party a copy of any notice issued by it or another Finance Party to the Trustee under the Facility Agreement, any Security [or the Security Trust Deed] as to the existence of a breach of, or a default under, any of those documents or of any circumstance which, with the giving of a further notice or passage of time or both, may lead to such a breach or default.
- (b) The Secured Party must:
 - (i) immediately prior to commencement of enforcement of any Security, confirm in writing to the Other Parties that all the requirements referred to in **clause 8.1** continue to be satisfied; and
 - (ii) promptly advise each Other Party of any action taken or proposed to be taken to exercise its Powers under any Security.
- (c) The Secured Party must advise each Other Party of the discharge of the Security.

7 Further Security

Any further security over the Assets from the Trustee in favour of an Enforcing Party will be taken to be part of the Security and governed by this Deed.

8 Security consent, enforcement and related matters

8.1 Conditions to the Trustee's consent

The consent of each Other Party referred to in **clause 3.1** is of no force or effect unless each of the following is and remains satisfied:

- (a) the Security must be over all the Assets;
- (b) the obligations secured by the Security must be limited to obligations of the Trustee under or in respect of the Facility Agreement or any [Finance Document] (as defined in the Facility Agreement); and **[Drafting Note: To be finalised when the Facility Agreement is finalised.]**
- (c) the only Powers that can be exercised by an Enforcing Party in respect of enforcement of any Security are those set out in **clause 8.2**.

8.2 Powers on enforcement of Security

Notwithstanding any provision of any Security or any other document or the terms of appointment of any Enforcing Party (but subject to any express exclusion in any such appointment), an Enforcing Party has the following Powers only in respect of enforcement of the Security:

- (a) **income and bank accounts:** to do anything to obtain income or revenue from any of the Assets including operating any bank account which forms part of the Assets or opening and operating a new bank account;
- (b) **access to the Assets:** to have access to any of the Assets, the premises at which the business of the Trustee is conducted and any of the administrative services of the business of the Trustee;
- (c) **employ or discharge:** to employ or discharge any person as an employee, contractor (other than Aurizon Network), agent, or professional advisor for any of the purposes of this Deed;
- (d) **delegate:** to delegate to any person any Security Power of the Enforcing Party;
- (e) **perform or enforce documents:** to observe, perform, enforce, exercise or refrain from exercising any right, power, authority, discretion or remedy of the Trustee under, or otherwise obtain the benefit of any revenue or income derived, or to be derived, under:
 - (i) any document, agreement or right which attaches to or forms part of the Assets; and

- (ii) any document or agreement entered into in exercise of any Security Power by the Enforcing Party;
- (f) **receipts**: to give effectual receipts for all moneys and other assets which may come into the hands of the Enforcing Party;
- (g) **take proceedings**: to commence, discontinue, prosecute, defend, settle or compromise in its name or the name or on behalf of the Trustee, any proceedings necessary to obtain income or revenue from any of the Assets;
- (h) **execute documents**: to enter into and execute any document or agreement in the name of the Enforcing Party or the name or on behalf of the Trustee including bills of exchange, cheques or promissory notes for any of the purposes of this Deed;
- (i) **collect calls**: to collect or enforce payment of any called but unpaid capital or calls (including any Calls) in respect of the Trustee or the Trust whether or not the calls were made by the Enforcing Party;
- (j) **rights under the Trust Deed**: to exercise the rights of the Enforcing Party granted to its benefit under clause [15] of the Trust Deed;
- (k) **incidental power**: to do anything necessary or incidental to the exercise of any Security Power of the Enforcing Party; and
- (l) **consent of Other Parties**: to exercise any other right or power with the prior written consent of each Other Party.

8.3 Limitation and exclusion

The Parties irrevocably agree that, notwithstanding any provision of any Security or any other document:

- (a) the Powers of any Enforcing Party cannot be greater than those set out in **clause 8.2**;
- (b) all other Powers of an Enforcing Party on or following enforcement of a Security (including any power of sale or other dealing) are expressly excluded;
- (c) without limiting this **clause 8.3**, the Powers of any Enforcing Party do not entitle the Enforcing Party to assign, novate or transfer any rights or obligations of the Trustee under any Transaction Document; and
- (d) the trustee of the Trust may only be replaced in accordance with the Trust Deed.

8.4 Terms of Transaction Documents

In exercising its Powers on enforcement of any Security, an Enforcing Party will be entitled to exercise and enforce all or any rights, powers, authorities, discretions and remedies, and perform any obligations, of the Trustee under the Transaction Documents, as if it were a party in place, and to the exclusion, of the Trustee, but in doing so will have no greater rights or powers under a Transaction Document than those of the Trustee.

8.5 Discharge of all Security

Notwithstanding any provision of any Security or any other document and regardless of whether any Facility Moneys are outstanding, owed or may become owing at the relevant time, the Secured Party must discharge each Security on the earliest to occur of the following dates (such earliest date being the **Discharge Date**):

- (a) the date on which the Facility Moneys have been finally paid;
- (b) the Zero Value Date; and
- (c) the date on which the last Preference Unit is redeemed or repurchased by the Trustee.

8.6 Forgiveness of Facility Moneys

- (a) This **clause 8.6** applies if on the Discharge Date any Facility Moneys are outstanding, owed or may become owing contingently or otherwise.
- (b) Each of the Secured Party and the Facility Agent (on behalf of itself and each other Finance Party) agrees that, effective on and from the Discharge Date, the Trustee is unconditionally and irrevocably released and discharged from all obligations to pay and/or repay any Facility Moneys.

8.7 Secured Party to ensure compliance by other Enforcing Party

The Secured Party must ensure that each Enforcing Party complies with all obligations expressed in this Deed to apply to any Enforcing Party.

9 Confidentiality

9.1 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.

9.2 Exceptions

A Party's obligations in **clause 9.1** 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:
 - (i) a Preference Unit Holder;
 - (ii) an Access Seeker;
 - (iii) an advisor of a Unit Holder or an Access Seeker; or
 - (iv) a financier or prospective financier of a Preference Unit Holder, an Access Seeker or the Trustee,

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; or
- (j) to an Other Funder or a prospective Other Funder or their advisors (provided that the Aurizon Network first procures that the prospective Other Funder or their advisors execute 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).

10 GST

10.1 Construction

In this **clause 10**:

- (a) unless there is a contrary indication, 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:
 - (i) notional GST payable by, and notional input tax credit entitlements of the Commonwealth, a State or a Territory (including a government, government body, authority, agency or instrumentality of the Commonwealth, a State or a Territory); and
 - (ii) 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.

10.2 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.

10.3 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 of the supply will pay to the Supplier an amount equal to the GST payable on the supply.

10.4 Timing of GST payment

The amount referred to in **clause 10.3** must be paid in addition to and at the same time and in the same manner (without any set-off or deduction) that the consideration for the supply is to be provided under this Deed.

10.5 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient of a taxable supply before the Supplier is entitled to payment of an amount under **clause 10.3**, and the recipient can withhold payment of the amount until the Supplier provides a tax invoice or an adjustment note, as appropriate.

10.6 Adjustment event

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 10.3** 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.

10.7 Reimbursements

Where a party is required under this Deed to pay for, reimburse or contribute to any expense, loss, liability or outgoing of another party or indemnify another party in relation to such an expense, loss, liability or outgoing, the amount required to be paid, reimbursed or contributed by the first party will be the sum of:

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

10.8 Calculations based on other amounts

If an amount of consideration payable or to be provided under or in connection with this Deed is to be calculated by reference to:

- (a) any expense, loss, liability or outgoing suffered or incurred by another person (**Cost**), that reference will be to the amount of that Cost excluding the amount of any input tax credit entitlement of that person relating to the Cost suffered or incurred; and
- (b) any price, value, sales, proceeds, revenue or similar amount (**Revenue**), that reference will be to that Revenue determined by deducting from it an amount equal to the GST payable on the supply for which it is consideration.

11 Assignment

11.1 Assignment

Subject to the other provisions of this **clause 11**, 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.

11.2 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.

11.3 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 Head-Lease 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.

11.4 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 defined in the Unit Holders Agreement) 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), 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 Head-Lease, any Other Extension Infrastructure Head-Lease, 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 (including accrued 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 defined in the Unit Holders Agreement);
 - (ii) assign or transfer any of Aurizon Network's rights and obligations under any Sublease, any 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 Head-Lease, any Other Extension Infrastructure Head-Lease, 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 defined in the Unit Holders Agreement) 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 the "Extension Project Agreement"), 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 Head-Lease, any Other Extension Infrastructure Head-Lease, 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 (including accrued obligations), of Aurizon Network under this Deed as if it were Aurizon Network.
- (c) If Aurizon Network, with the consent of the Infrastructure Lessor under clause [15.2(e)] of the Extension Infrastructure Head-Lease, proposes to assign or transfer Aurizon Network's rights and obligations under the Extension Infrastructure Head-Lease in so far as they relate to part only of the Extension Infrastructure, the Parties must, promptly after being requested to do so by Aurizon Network, enter into a deed (**Transferee Financing Side Deed**) with the assignee of such rights and obligations under the Extension Infrastructure Head-Lease on the same terms and conditions as this Deed (except that the assignee will be the party which is "Aurizon Network" under such Transferee Financing Side Deed and the "Integrated Network Deed" will be the Transferee Integrated Network Deed entered into under clause [16.4(c)] of the Integrated Network Deed in connection with such assignment or transfer) with effect on and from the date of such assignment or transfer.
- (d) Upon a Transferee Financing Side Deed taking effect, the agreement giving effect to such assignment or transfer of Aurizon Network's rights and obligations under the Extension Infrastructure Head-Lease as relate to part of the Extension Infrastructure (**Transferee Extension Infrastructure Head-Lease**) will be deemed to be the "Extension Infrastructure Head-Lease" for the purposes of the Transferee Financing Side Deed.

11.5 Assignment by Trustee

If the Trustee is replaced by a new trustee of the Trust:

- (a) the Trustee 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 (including accrued obligations) under this Deed to the new trustee of the Trust; and

- (b) the new trustee of the Trust must provide to each other Party a duly executed deed, in a form reasonably required by the other Parties, under which the new trustee of the Trust undertakes to each other Party to assume the rights, and be bound by the obligations (including accrued obligations), of the Trustee under this Deed as if it were the Trustee.

11.6 [Assignment by Secured Party]

- (b) [Each Party (other than the Secured Party) acknowledges and agrees that the Secured Party may assign its rights and novate or otherwise transfer its obligations under this Deed to any replacement security trustee that is appointed under the Security Trust Deed.]
- (c) [Each Party (other than the Secured Party) agrees that it will enter in to a novation deed with any replacement security trustee that is appointed under the Security Trust Deed (in a form reasonably acceptable to the Secured Party, the replacement security trustee and that Party), provided that the costs of each Other Party in respect of such deed are met.]

[Drafting note: The above clause be included if the Secured Party is a security trustee.]

11.7 Replacement of the Facility Agent

If the Facility Agent is replaced as facility agent under the Facility Agreement, then the Facility Agent must at the time of such replacement assign, novate or otherwise transfer its rights and obligations under this Deed to the replacement facility agent in a manner reasonably acceptable to the Other Parties.

11.8 Further assurances

Each Party agrees to promptly execute all documents and do all things that any other Party from time to time reasonably requires of it to effect, perfect or complete the provisions of this Deed and any transaction contemplated by it.

12 Notices

Any notice, demand, consent or other communication (for the purposes of this **clause 12**, a **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 [insert]
 - Postal address [insert]

- Facsimile No. [insert]
Attention: [insert]
- (ii) to **Aurizon Network**
- Business address Level 17
175 Eagle Street
BRISBANE QLD 4000
- Postal address GPO Box 456
BRISBANE QLD 4001
- Facsimile No. [insert]
Attention: Vice President, Commercial
Development
- (iii) to the **Infrastructure Lessor**
- Business address Level 6
123 Albert Street
BRISBANE QLD 4000
- Postal address [insert]
Facsimile No. [insert]
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
- (v) to the **Secured Party**
- Business address [insert]
Postal address [insert]
Facsimile No. [insert]
Attention: [insert]
- (vi) to the **Facility Agent**

Business address	[insert]
Postal address	[insert]
Facsimile No.	[insert]
Attention:	[insert]

- (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.

13 General

13.1 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.

13.2 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.

13.3 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.

13.4 Amendment

No amendment or variation of this Deed is valid or binding on a Party unless made in writing and executed by all Parties.

13.5 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.

13.6 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.

13.7 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.

13.8 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 4.2** 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 13.8** 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 and to the extent that, the Trustee has committed:
 - (i) fraud;
 - (ii) Gross Negligence (as defined in the Trust Deed); or
 - (iii) a Wilful Default (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 [17.2] of the Trust Deed nor the definitions of "Gross Negligence" or "Wilful Default" (as each is defined in the Trust Deed) as

those provisions stand at the date of the Trust Deed (such provisions being set out in schedule 4 of the Integrated Network Deed).

13.9 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.

13.10 Counterparts

This Deed may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

13.11 Relationship of Parties

This Deed is not intended to create a partnership, joint venture or agency relationship between the Parties.

13.12 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.

13.13 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.

13.14 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.

13.15 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.

13.16 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.

14 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 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 12**.

15 Duty

The Trustee must pay and indemnify and keep indemnified the other 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, operation 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 11**).

Execution

Executed as a deed

Executed by **[Independent Trustee]**)
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 **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: / /

Executed by **[Secured Party]** 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 **[Facility Agent]** 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: / /