

QCA-QRC resubmission draft to the QCA
22 July 30 August 2013

[Independent Trustee]

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.

[Industry Note: the costs of the Trustee in obtaining all consents, approvals etc should be borne by the Trustee, not out of the assets of the Trust]

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 Head-Lease 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 or a third party nominee. Where a third party nominee enters into the Umbrella Agreement, Aurizon, the Trustee and Industry will need to negotiate changes to the Transaction Documents to accommodate the 'Umbrella Counterparty' arrangement.
 - (e) [Industry note: While Industry's preference is that there should be no stapling of Preference Units and access rights, to allow Preference Units to be held by third party investors or 'related bodies corporate', Industry has agreed to a compromise position with Aurizon Network whereby stapling occurs during the construction phase and not afterwards. Industry proposed a concept of 'Umbrella Counterparty' to address the 'no stapling' principle. This is the entity that will enter into the Umbrella Agreement associated with the Preference Subscriber's Preference Units. Aurizon Network has agreed to the 'Umbrella Counterparty' concept, in principle, but considers that amendments beyond those proposed by Industry are necessary within the SUHD. On the basis that the high-level concept of 'Umbrella Counterparty' is agreed, the parties have agreed to determine those amendments at a later date.]
- (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 Head-Lease, 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 Sub-Lease).

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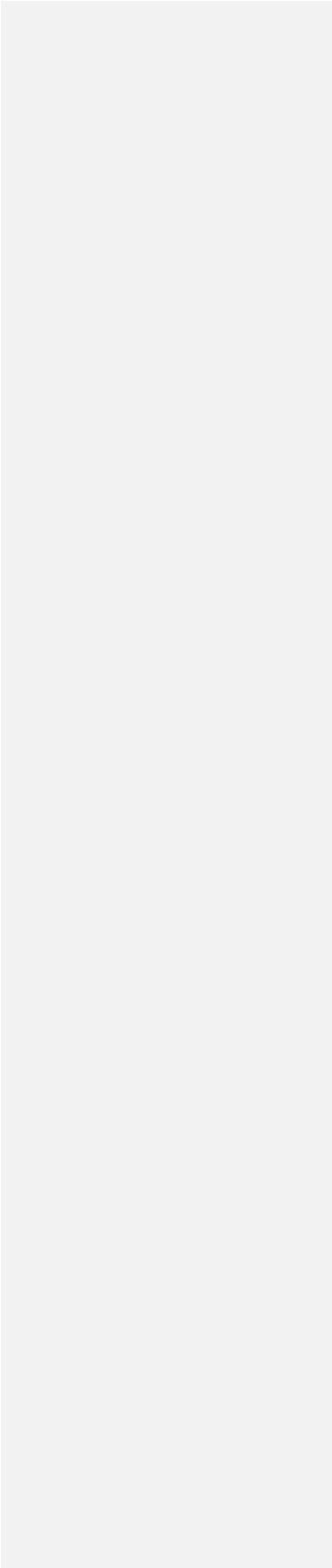
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Date

Parties

[Independent Trustee] [ACN] of [insert] (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 **14** (Preference Subscribers)

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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 (or, where applicable, procure entry 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 10** 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 confirm Aurizon Network's agreement to enter into the other Transaction Documents (other than the Trust Deed), subject to 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 Sub-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 Sub-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 Sub-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 66**.

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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 7.6(d)(iv)**.

Additional True-up Statement has the meaning given in **clause 8.3(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 17**) for each Affected Segment for that Reserve Decision or Reserve Power, and **Affected User** means any one of them.

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Affected User Notice has the meaning given in **clause 17.4(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 17**.

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Aggregate Sale Price means the amount calculated in accordance with **clause 7.6(i)(ii)**.

Allocated Option Units has the meaning given in **clause 7.6(c)(iv)**.

Allocation Principles means the principles set out in **schedule 22**.

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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 15.3(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 16.1(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 16.1(a)** and **16.1(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 13.2(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 13.6(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 9.7(b)(iii)**.

Bid has the meaning given in **clause 7.7(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 which~~ is not a Saturday, Sunday or public holiday in Brisbane, Queensland.

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 5**.

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.

Charge has the meaning given in **clause 11.4(a)**.

Chargee has the meaning given in **clause 11.4(a)**.

Chargor has the meaning given in **clause 11.4(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 3.6** 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 reasonably 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;~~

~~(e) 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)~~ 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)(b)~~ a loss 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)(c)~~ 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.

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

Credit Policy means the principles set out in **schedule 66**.

Creditworthiness Change Notice has the meaning given in **clause 9.7(a)**.

Current Amount has the meaning given in **clause 9.5(a)**.

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

Default Notice has the meaning given in **clause 7.3(a)**.

Defaulting Unit Holder has the meaning given in **clause 7.3(a)**.

Deleted Segment has the meaning given in **clause 4.6(b)(i)(C)**.

Disclosing Party has the meaning given in **clause 21.1(a)**.

Dispute has the meaning given in **clause 20.1(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 Sub-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 Sub-Lease, as applicable, in accordance with **clause 20.9**.

Dispute Notice has the meaning given in **clause 20.1(a)**.

Dispute Resolution Process means:

- (a) the dispute resolution process under **clause 20**; 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 Sub-Lease in accordance with **clause 20.9**, the dispute resolution process under the Project Management Agreement or the Extension Infrastructure Sub-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 4.3**, 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 4.3(a)(iv)(A)**;
- (b) for the purpose of **clause 4.9**, 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 4.9(b)(ii)(A)**; and

- (c) for the purpose of **clause 4.13**, 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 4.13(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 8.1(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 4.3(a)(iv)(B)**, **clause 4.9(b)(ii)(B)** and **clause 4.13(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 18.1**.

Expert has the meaning given in **clause 20.2(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 14**, as varied in accordance with **clause 4.6** and **clause 16.7(a)**.

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

Drafting note: The definition of Extension Infrastructure Head-Lease may need to be revised if there is more than one Extension Infrastructure Head-Lease (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).

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

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

Extinguishment Date has the meaning given in **clause 5.9**.

Failure to Pay Loan Call Notice has the meaning given in **clause 7.3(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 4.3(a)(iii)**.

First Round Non-Defaulting Subscriber has the meaning given in **clause 4.3(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.~~

Industry Note: The definition of "Gross Negligence" has been deleted from Aurizon's version of the Trust Deed submitted to the QCA on 22 July 2013. As this term is not used in the Subscription and Unit Holders Deed, it has been deleted.

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 14.7(a)**.

Incurred has the meaning given in **clause 15.1**.

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 14** for the Subscriber.

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Initial Call Notice has the meaning given in **clause 4.10(b)**.

Initial Call Statement means a statement given under **clause 4.15(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 4.11**, set out in **item 4.2 of schedule 14**, as varied in accordance with this Deed.

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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 11**, as varied in accordance with this Deed.

Initial Unit Call has the meaning given in **clause 4.15(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 FF**.

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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 20.3**).

Issuer has the meaning given in **clause 9.1(b)**.

Joint Venture means, in respect of a Preference Subscriber for which **clause 24** 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 24** 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 Sub-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 7.3(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 7.6(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.

Mandatory Reallocation Process means the process described in **clause 8.3**.

Matching Notice has the meaning given in **clause 8.3(e)**.

Matching Units has the meaning given in **clause 8.3(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 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 7.3(c)(iii)**.

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

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 7.6(a)**.

Option Notice has the meaning given in **clause 7.6(c)**.

Option Units has the meaning given in **clause 7.6(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 8.1(a)**.

Outstanding Amounts has the meaning given in **clause 12.2(a)**.

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

Partial Bid has the meaning given in **clause 7.7(b)**.

Participating Interest means, in respect of a Preference Subscriber for which **schedule 1** specifies that **clause 24** 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 7.6(c)(ii)**.

Per Option Unit Umbrella Agreement Rights has the meaning given in **clause 7.6(c)(vi)**.

Per Option Unit Unpaid Loan Call Amount has the meaning given in **clause 7.6(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 Sub-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 7.1**;
 - (iii) from the Lessee under the Extension Infrastructure Sub-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 5.5(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 14** as amended under **clause 4.6(b)**, and **Preference Subscriber** means any one of them.

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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 17, schedule 44** or **schedule 55** (as applicable).

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Price Sensitive Information means any information in relation to:

~~(a)~~ the calculation of “Internal Costs” (as defined in the Project Management Agreement); or

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~~(b)~~ a Works Contract (including any terms of a Works Contract) which is:

~~(i)~~ ~~(a)~~ specified in, or determined under, the Procurement Methodology to be ‘Price Sensitive Information’ for the purpose of this definition; or

~~(e)~~ ~~(b)~~ 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 17.1**.

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Proceedings has the meaning given in **clause 20.7(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 BB**.

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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 16.1(a)** and **16.1(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 16.5**.

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 4.6**.

Recalculated Unit Holder's Proportion has the meaning given in **clause 8.5(a)**.

Recalculated Unit Holder's Proportion Statement has the meaning given in **clause 8.5(a)**.

Receipt Units has the meaning given in **clause 8.3(d)(i)**.

Recipient has the meaning given in **clause 21.1**.

Industry Note: Industry's position is that the Mandatory Reallocation Process in clause 8.3 should apply whenever there is a difference between the Unit Holder's Proportion on commencement and the Revised Unit Holder's Proportion as calculated once Construction is complete. There should be no materiality threshold. This would ensure that each Preference Unit Holder bears its proper share of the final costs. To reduce the drafting changes required, rather than remove the concept of 'Reconciliation Materiality Threshold' altogether, we have set it at zero.

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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 50% 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 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 17.1(a)**.

Reserve Power has the meaning giving in **clause 17.2(a)**.

Reviewed Amount has the meaning given in **clause 9.5(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 7.3(e)**.

Sale Notice has the meaning given in **clause 7.7(a)**.

Sale Offer has the meaning given in **clause 7.7(a)**.

Sale Proceeds has the meaning given in **clause 7.7(h)**.

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

Second Round Defaulting Subscriber has the meaning given in **clause 4.9(a)(ii)**.

Second Round Non-Defaulting Subscriber has the meaning given in **clause 4.9(b)(ii)(A)**.

Security Delivery Date has the meaning given in **clause 4.1(a)**.

Security Documentation means the security documents to be entered into by each Preference Subscriber in accordance with **clause 4.1** 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 14**, as varied in accordance with **clause 4.4**.

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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 7.3(c)**.

Shortfall Loans has the meaning given in **clause 7.3(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 23.3(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 Institute means The Tax Institute ACN 008 392 372.

Tax Law has the meaning given in the Trust Deed.

Tax Policy means the tax policy set out in **schedule 88**, as modified from time to time under **clause 16.2(c)** or **clause 16.2(d)**.

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Tax Policy Notice means a notice given by a Preference Unit Holder to the Trustee pursuant to **clause 16.3(a)**.

Tax Reviewer means an independent Tax expert appointed in accordance with **clause 16.3(b)**.

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

Third Round Defaulting Unit Holder has the meaning given in **clause 4.12(a)**.

Third Round Non-Defaulting Unit Holder has the meaning given in **clause 4.13(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 8.1(a)**.

Transaction Documents means:

- (a) this Deed;
- (b) the Trust Deed;
- (c) the Project Management Agreement;
- (d) the Extension Infrastructure Sub-Lease;
- (e) the Rail Corridor Agreement;

- (f) each Umbrella Agreement;
- (g) the Extension Infrastructure Head-Lease; 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 Head-Lease 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 8.3(g)(ii)**.

Transfer Units has the meaning given in **clause 8.3(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 8.2(a)**.

True-up Statement has the meaning given in **clause 8.3(g)(ii)**.

True-up Units for a Preference Unit Holder means the number of Preference Units calculated in accordance with **clause 8.3(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, properly and efficiently 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 'Studies Funding 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 17**.

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 DD** which ~~names relates to~~ that Preference Subscriber's ~~as a party~~ **Preference Units**; and

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- (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 7.6(g)** or **clause 7.6(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 5.4(a)** or **clause 5.5(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 3.3(a)**.

Unit Holder Reconciliation Statement has the meaning given in **clause 8.2(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 14** in respect of that Preference Unit Holder; or
 - (ii) subject to **paragraph (b)** of this definition, if **clause 4.5** applies, as recalculated in accordance with **clause 4.5**; 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 7.6(c)(iii)**.

~~**Wilful Default** has the meaning given in the Trust Deed.~~

Industry Note: The definition of “Wilful Default” has been deleted from Aurizon’s version of the Trust Deed submitted to the QCA on 22 July 2013. As this term is not used in the Subscription and Unit Holders Deed, it has been deleted.

Works has the meaning given in the Project Management Agreement.

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

Zero Value Date has the meaning given in the Extension Infrastructure Sub-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 its~~ 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

Industry Note: In our experience, professional trustees generally prefer to establish the relevant trust as the first step in a transaction (eg through the issue of a nominal number of units). This means that they limit the actions that they are required to take in their 'personal capacity' and thereby limit their personal exposure. As an independent professional trustee is used, we consider this clause is irrelevant.

1.8

- ~~(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 4.10 are performed by the Trustee in its personal capacity.~~
- ~~(b) — 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 4.10, except to the extent the Trustee has been guilty of fraud.~~

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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 23.1**, 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 after the Zero Value Date 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 and the Unit Holders have received all of their entitlements under the Trust Deed and this Deed (including under the process referred to in clause 2.5 if applicable);~~ or

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(ii) this Deed terminates under **clause 4.8, clause 4.9 or clause 4.12(c)**.

(b) Subject to **clause 23.1**, 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 4.3(a)**; or

(ii) transfers all of that Party's Units, 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.

Industry Note: Industry's preference would be for Preference Unit Holders to be able to require the Trustee to redeem their Preference Units on the Zero Value Date. If this position cannot be achieved, there should at least be an obligation on the Trustee to repay any outstanding Unit Holder Loans on the Zero Value Date if it chooses not to redeem the Preference Units

~~(e)~~

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(f) On the earlier of redemption of a Preference Unit Holder's Preference Units or the Zero Value Date, 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

Industry Note: Holders of Preference Units have no right to participate in a distribution of capital on the winding up of the Trust. All the assets of the Trust on a winding up will go to the Ordinary Unit Holder.

If the Trust is wound up after the Zero Value Date, this position is acceptable.

However, if the Trust is wound up before then (for example due to a change in law requiring it to be wound up), the Ordinary Unit Holder will receive a windfall if the Trust is wound up after the Preference Unit Holders have paid substantial calls but before they have received distributions to effectively 'pay back' that investment. The parties have agreed to include an obligation to negotiate a process to address the inequity. The following changes are designed to clarify how the negotiation process is intended to proceed.

2.5

(a) If:

(i) the Trust is wound up prior to the Zero Value Date; and

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(ii) the entitlements to distributions on winding up as between the Preference Unit Holders and the Ordinary Unit Holders do not equitably reflect their respective financial investment in the Trust (taking into account any distributions made since the establishment of the Trust),

~~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)(iii) a capital or lump sum payment by it that cannot be funded out of immediately available funds received from the proceeds of the winding up;~~ or

(iv) any material 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 Sub-Lease). To avoid doubt, the fact that – as a result of the process – the Ordinary Unit Holder will not be entitled to participate in the proceeds of the winding-up to the exclusion of the Preference Unit Holders is not to be taken as a ‘material disadvantage’.

Any dispute regarding whether a Party has complied with its obligations under this clause 2.5 is to be dealt with under clause 20.

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

3 Application and Application Price

3.1 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 14** 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

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- (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]**.

3.2 Acceptance of applications by Preference Subscribers

The Trustee accepts each Preference Subscriber's application and, subject to **clause 4**, 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.

3.3 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.

3.4 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.

3.5 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.

3.6 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 Subscriber (other than a Preference Subscriber which on the issue of Preference Units will be an Aurizon Preference Unit Holder).

4 Transaction commitment process

Industry Note: Industry's view is that the subscription process in clause 5 is unnecessarily complicated. In practice, we expect that subscribers will only execute this deed once they have received all approvals, have the required

security documentation in place and are ready to fund. Whilst Industry's preference would be to remove the complexity, we have not sought to make changes on the basis that the complexities are unlikely to be enlivened in practice. Similarly, whilst Industry's view is that the 'Early Termination Amount' is unnecessary and punitive, we have not sought to remove it as the provision is unlikely to be triggered.

4

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 4 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).

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4.1 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 an Aurizon 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 4.1**, the Trustee must promptly notify all other Parties of the receipt of that Security Documentation.

4.2 Preference Subscribers to provide Bank Guarantees

- (a) This **clause 4.2** only applies to a Preference Subscriber if an Initial Bank Guarantee Amount is specified in **item 4.2 of schedule 14** for that Preference Subscriber.
- (b) On or before the Security Delivery Date, each Preference Subscriber to which this **clause 4.2** 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.

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

- (a) If:
 - (i) a Preference Subscriber to which **clause 4.2** applies does not deliver to the Trustee a Bank Guarantee in accordance with **clause 4.2** by the Security Delivery Date; or
 - (ii) a Preference Subscriber does not deliver to the Trustee the executed Security Documentation in accordance with **clause 4.1** by the Security Delivery Date,then:
 - (iii) this Deed (other than this **clause 4.3** and the provisions which survive termination of this Deed under **clause 23.1**) 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.

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

where:

- ETA_{FRDS} = The Early Termination Amount payable by the First Round Defaulting Subscriber to the relevant First Round Non-Defaulting Subscriber
- ILC_{FRDS} = \$[insert]
- UHP_{FRDS} = The relevant First Round Non-Defaulting Subscriber's Unit Holder's Proportion as at the Commencement Date
- Total UHP_{FRDS} = 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 4.3(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 4.3(b)**, any interest accruing on that amount under **clause 4.14** and any other provisions of this Deed which survive termination under **clause 23.1**:
 - (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 4.3(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 4.1** or **clause 4.2** (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 4.3(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.

4.4 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 14** 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.

4.5 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 4.4** 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);

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- (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 revised number of 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 4.2** 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 4.5(b)(ii)**).

4.6 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 4.2** applies to the Preference Subscriber, revised Initial Bank Guarantee Amount,

and the revised Target Trust Capital Cost (if applicable), each as calculated under **clause 4.5**, including reasonable details of each calculation; and

- (b) attaching:
 - (i) a revised version of **schedule 14** (which will be taken to replace the then existing **schedule 14**), 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,

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Initial Loan Contribution and Initial Bank Guarantee Amount (if applicable), each as calculated under **clause 4.5**;

- (C) if **clause 4.4** applies, delete from **item 1 of schedule 14** each Segment (**Deleted Segment**) which has ceased to be a Segment in accordance with **clause 4.4**; and
 - (D) if **clause 4.4** applies, revise the description of the Extension in **item 1.1 of schedule 14** 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 4.4** applies, delete from **item 2 of schedule 7** each Deleted Segment which has ceased to be a Segment in accordance with **clause 4.4**; and
- (iii) if **clause 4.4** applies, a revised version of the form of the Project Management Agreement set out in **annexure BB** (which will be taken to replace the then existing **annexure BB**), 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.

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4.7 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 4.5** and **4.6**, 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 4.7(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 4.2** 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 4.2(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 4.2** 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 4.2(b)**).

4.8 Termination on withdrawal of First Round Non-Defaulting Subscriber

- (a) If **clause 4.7(a)** applies to a First Round Non-Defaulting Subscriber and that Preference Subscriber notifies the Trustee under, and within the time required by, **clause 4.7(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 4.8(a)**:

- (i) no Party will have any liability (other than those obligations and liabilities expressly referred to in **clause 23.1**) 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.

4.9 Termination for failure to provide increase in Bank Guarantee

- (a) If:
 - (i) **clause 4.7(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 4.7(b)(v)**,

then the Trustee must promptly terminate this Deed by notice to each other Party.

- (b) If this Deed terminates under **clause 4.9(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 4.5 and 4.6**

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 4.5 and 4.6**; 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 4.9(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 4.9(b)(iii)** and any interest accruing on that amount under **clause 4.14** and any other provisions of this Deed which survive termination under **clause 23.1**:
 - (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 4.9(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 4.7(b)(v)**; or
 - (2) the termination of this Deed under **clause 4.9(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 4.9(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.

4.10 Issue of Units

The Trustee must, within five Business Days after the Security Delivery Date or, if **clause 4.2** applies, the date on which the last additional or replacement Bank Guarantee that is required under **clause 4.7(b)(v)** is delivered to the Trustee within the period specified in **clause 4.7(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**).

4.11 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 4.10**.

4.12 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 4.11** 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 4.12(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 4.13** and **23.1**).

4.13 Termination for failure to pay Initial Loan Contribution

If this Deed terminates under **clause 4.12(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 4.5 and 4.6
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 4.5 and 4.6 ; 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 4.13(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 4.13(b)** and any interest accruing on that amount under **clause 4.14** and any other provisions of this Deed which survive termination under **clause 23.1**:
 - (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 4.12(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 4.12(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 4.13(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.

4.14 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.

4.15 Initial Unit Call and repayment of Initial Loan Contribution

- (a) Unless this Deed terminates under **clauses 4.8(a), 4.9(a) or 4.12(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 irrevocably 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.

4.16 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 Sub-Lease;
 - (v) the Extension Infrastructure Head-Lease; 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 4.16(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 Sub-Lease;
 - (v) the Extension Infrastructure Head-Lease; and
 - (vi) the Integrated Network Deed,immediately after the Trustee executes and delivers them to Aurizon Network under **clause 4.16(a)**.
- (c) For the avoidance of doubt, if this Deed terminates under **clauses 4.8(a), 4.9(a) or 4.12(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.

5 Loan Calls and Unit Calls after initial Calls

5.1 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 5.1(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.

5.2 Call Statements

Within seven Business Days after the start of each Month referred to in **clause 5.1(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.

5.3 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 5.2**, 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 5.3(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 5.3(a)**.

5.4 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 5.4(c)** if applicable.
- (b) Where the Trustee has issued Call Statements in accordance with **clause 5.4(a)**, the Trustee must, on the last Business Day of December or June as applicable, repay in accordance with **clause 6.2** each Preference Unit Holder's Capital Loan Balance as at the last day of the preceding Month, adjusted in accordance with **clause 5.4(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 5.4(a)** so that the aggregate of the Paid Up Amounts of all Preference Units equals 80% of the Target Trust Capital Cost.

5.5 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 5.5(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 5.5(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 5.5** does not preclude the Trustee from making subsequent Calls under **clause 5.6**.

- (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 6.2**.
- (h) For the avoidance of doubt, repayment of the Operating Loan Balances does not preclude the Trustee from making subsequent Calls under **clause 5.6**.

5.6 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 5.6** is subject to **clause 5.9**.

5.7 Call Statements

A Call Statement must contain the information set out in **schedule 33**.

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5.8 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.

5.9 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 5.5(e)(i)**; and

- (B) the date the Trustee gives the Call Statement under **clause 5.5(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.

5.10 Expenses after Preference Units Fully Paid

(a) If, after all Preference Units are deemed to be Fully Paid Units under **clause 5.9(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.

~~(a)~~(b) For the purpose of **clause 5.10(a)**, an expense will only be a proper expense if it has been (or will have been) properly, reasonably and efficiently incurred in accordance with accepted good industry practice.

~~(b)~~(c) For the avoidance of doubt, the obligation of a Preference Unit Holder to pay the Trustee under **clause 5.10(a)** is a contractual obligation and does not constitute a Call.

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6 Payments of Calls and repayments of Loans

6.1 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.

6.2 Payment of Unit Calls

- (a) Each Preference Unit Holder irrevocably 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 6.2(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 6.2(a)**, then that Preference Unit Holder remains liable to pay the balance of the Unit Call and **clause 7** applies.

6.3 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.

7 Failure to pay Calls

7.1 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 7.1** (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.

7.2 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 7**, gives a notice to the Preference Unit Holder under this **clause 7.2(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.

7.3 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 7.3(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 7.6**; 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 7.6** 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 7.6** prior to the commencement of the process set out in **clause 7.7**.
- (e) Even if Shortfall Loans are advanced to the Trustee in accordance with **clause 7.3(c)(iii)**, if:
 - (i) the Trustee has first complied with **clause 7.6**; and
 - (ii) the Option Assets have not been transferred to Non-Defaulting Unit Holders in accordance with **clause 7.6**,

then the Trustee may, without the consent of the Defaulting Unit Holder, in accordance with **clause 7.7**:

- (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 or its nominee (which must, during the Construction Period, be a Related Body Corporate of that 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 7.3(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**).

7.4 Shortfall Loans

Industry Note: A Unit Holder which has made a Shortfall Loan should be entitled to recover the amount loaned from the proceeds of the option process in clause 7.6 (assuming that those proceeds are sufficient). This may make shortfall loans more attractive in some circumstances.

7.4

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A Shortfall Loan made by a Non-Defaulting Unit Holder in accordance with **clause 7.3(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 7.7** and the Shortfall Loans are taken to be Unit Holder Loans advanced by the purchaser which are repayable in accordance with this Deed. Nothing in this clause limits the rights of a Non-Defaulting Unit Holder to recover amounts under the process described in **clause 7.6(n)**.

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7.5 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 7.3(c)(iii)** which, in aggregate, equal the Shortfall;
 - (iii) the Trustee has not completed a transfer of the Option Assets in accordance with **clause 7.6**; and
 - (iv) the Trustee has not completed a sale of the Sale Assets or accepted one or more Bids to purchase the Sale Assets in accordance with **clause 7.7**,

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:

Industry Note: Aurizon's proposed clause 7.5(a)(vi) is unacceptable. It effectively imposes an uncapped contractual liability to pay on Non-Defaulting Preference Unit Holders.

The maximum amount that Preference Unit Holders should be liable to pay under the SUFA arrangement is set out in clause 5.9. The maximum amount already includes a sizeable buffer. Further, assuming that an appropriate Trustee limitation of liability clause is included in the relevant contracts as required in the Procurement Methodology, the Trustee's liability for payment of costs relating to suspension will be limited to its right to be indemnified out of the Trust assets.

If - due to suspension costs or other matters – the maximum amount is not enough to complete the Works, there is a process for agreeing to provide further funds under clause 10.1. This process, rather than an unlimited contractual obligation to pay, should be used where additional funds are required.

~~(v)(A)~~ continue to make Loan Calls, including to cover ~~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 any liability the costs and expenses incurred by the Trustee as a result 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

~~(A)(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) ~~continue to make Loan Calls, including to cover any liability incurred by the Trustee as a result of~~ ~~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

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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 7.5(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 or otherwise from the Defaulting Unit Holder's default. Without limitation, this includes amounts payable by a Non-Defaulting Unit Holder under **clause 7.5(a)(v)(A)** or **clause 7.5(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 except to the extent that the Loss arises out of the Trustee's own fraud, wilful default, gross negligence or breach of trust.
- (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 7.5(a)**, then the Trustee may subsequently 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.

7.6 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 7.6** 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 7.6**.
- (c) If a Defaulting Unit Holder has lost its right to participate in the Extension in accordance with **clause 7.3(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**);
- (vii) the price payable per Option Unit for the Option Unit and its associated Option Assets, being the sum of the Paid Up Amount per Option Unit, the Per Option Unit Loan Amount and the Per Option Unit Unpaid Loan Call Amount; and
- (viii) a statement confirming that the Non-Defaulting Unit Holder has an option under this **clause 7.6** 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 7.6**,

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 7.6(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 7.6(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 7.6(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 7.6** will cease to apply, and the Trustee may sell the Option Units in accordance with **clause 7.7**.
- (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 7.6(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 7.6(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 7.6(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 7.6(d)** of:
 - (i) the allocations effected under **clause 7.6(g)** or **clause 7.6(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 7.6(g) or clause 7.6(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 7.6(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 7.6(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 7.6(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 7.1** in respect of the unpaid Loan Calls of the Defaulting Unit Holder; and
 - (iii) the total of the amounts of Shortfall Loans (if any) paid by all Non-Defaulting Unit Holders under ~~clauses Error! Reference source not found. and Error! Reference source not found.~~**7.4**.

- (n) Promptly after the Trustee makes the determinations referred to in **clause 7.6(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 7.6(l)(iv)** in the following manner:
- (i) firstly, towards the payment of the amounts referred to in **clause 7.6(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 7.6(n)(i)**, towards the payment of the amounts referred to in **clause 7.6(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 7.6(n)(i) and 7.6(n)(ii)**, by reimbursing to Non-Defaulting Unit Holders who ~~paid made Shortfall Loans the amounts referred to in clause 7.6(m)(iii)~~ the amounts that they each paid (provided that if the balance remaining is less than the amount referred to in **clause 7.6(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 7.57.5(a)(v)(A) and 7.5(a)(vi)(A)** bears to the amount referred to in **clause 7.6(m)(iii)**); and
 - (iv) finally, to the extent there is any balance remaining after the application of **clauses 7.6(n)(i), 7.6(n)(ii) and 7.6(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 7.6(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 7.6(l)**, the Trustee will effect the transfer of the Option Assets under the power of attorney granted to it under **clause 7.6(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 7.6(l)**; or

- (B) if applicable, fails to provide an additional or replacement Bank Guarantee in accordance with **clause 7.6(l)(v)**; or
- (ii) the process described in this **clause 7.6** 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 7.6** is abandoned;
 - (iv) must return to each Non-Defaulting Unit Holder any moneys paid by it to the Trustee under this **clause 7.6**; and
 - (v) may commence the process described in **clause 7.7**.
- (r) Upon completion of the sale and purchase of all of the Option Assets in accordance with **clause 7.6(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 9.3**, return that Bank Guarantee to the Defaulting Unit Holder.

7.7 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 7.3(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 or groups of 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.
 - A bid may be made by 2 or more entities and may contemplate that the Preference Units and the rights/obligations under the relevant Umbrella Agreement may be held by different people.
- (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 7.3(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 4.1**.
- (e) Any party eligible under **clause 7.7(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 7.7(d)** are received by the Trustee within the period referred to in **clause 7.7(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 7.7(d)(i)**; and
 - (B) the amount determined under **clause 7.7(d)(ii)**; and
 - (ii) providing to the Trustee the Security Documentation and, if applicable, Bank Guarantee in accordance with **clause 7.7(d)(iv)**.
- (h) On receipt of the consideration received from the sale of the Sale Assets and the amount determined under **clause 7.7(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 7.7(h)(i)**, towards the payment of unpaid Loan Calls of the Defaulting Unit Holder together with any interest which has accrued under **clause 7.1** 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 7.7(h)(i)** and **7.7(h)(ii)**, the Trustee must reimburse to each Non-Defaulting Unit Holder the amounts they have paid under **clause 7.5(a)(v)(A)** or **7.5(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 7.5(a)(v)(A)** and **7.5(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 7.5(a)(v)(A)** and **7.5(a)(vi)(A)** bears to the total of the amounts paid by all Non-Defaulting Unit Holders under **clauses 7.5(a)(v)(A)** and **7.5(a)(vi)(A)**);~~

~~(iv)~~(iii) ~~fourthly~~thirdly, to the extent there is any balance remaining after the application of **clauses 7.7(h)(i)**, ~~and 7.7(h)(ii)~~ **and 7.7(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:

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- (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 7.3(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

~~(iv)~~(iv) finally, to the extent that there is any balance remaining after the application of **clauses 7.7(h)(i), 7.7(h)(ii), 0 and 7.7(h)(iii)**, 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 7.7(h)(ii), 0, 7.7(h)(iii) or 7.7(h)(iv)** 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 7.7(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 11.1** 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 7.7(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 9.3**, return that Bank Guarantee to the Defaulting Unit Holder.

7.8 Indemnity to Trustee

Industry Note: Clause 7.8 currently provides that if the Trustee reasonably believes that it has complied with the sale process under clause 7.7 and its duties under law (including under section 420A of the Corporations Act), it is entitled to be indemnified by the Preference Unit Holders against any losses it incurs. The Trustee must then repay any amount paid under the indemnity with interest if it is ultimately determined that the Trustee did not comply with the sale process or its duties.

Aurizon's position is that the Trustee should be entitled to repay any such amount out of the Assets of the Trust. This means that the Preference Unit Holders would (via their interest in the Trust) effectively be recovering from themselves money

that they should not have been required to pay in the first place. This is not a repayment.

Industry's view is that that Trustee's liability to repay these amounts should be in its personal capacity. It should not be indemnified from the Assets of the Trust. The Preference Unit Holders have no control over the Trustee's compliance (or otherwise) with its statutory and other obligations in relation to the sale process. This is a matter within the control of the Trustee. It is accordingly inappropriate that they be required to pay for any failure (whether via a direct indemnity or indirectly via the Trust assets).

7.8

- (a) Subject to compliance by the Trustee with **clause 7.7** 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-relation to the sale process contemplated under **clause 7.7**, 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 under this clause 7.8.
- (b) Each Preference Unit Holder's liability under the indemnity in **clause 7.8(a)** is limited to its Unit Holder's Proportion of such Loss and/or Consequential Loss.

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7.9 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 7.6** 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 7.7**,

and for the avoidance of doubt:

- (c) the Trustee may continue to make Loan Calls under **clause 5.1**;
- (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.

8 Estimated Final Trust Costs and Mandatory Reallocation Process

8.1 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 8.1(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. If the Trustee is required to provide the Independent Expert with any Price Sensitive Information under this clause, the Independent Expert must agree in favour of Aurizon Network to keep the Price Sensitive Information confidential.
- (d) The Estimated Final Trust Costs Statement given by the Independent Engineer to the Trustee under **clause 8.1(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.

8.2 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 8.2(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.

8.3 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 8.3, 8.4 and 8.5** 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 8.3** (other than this **clause 8.3(b)**), **8.4** and **8.5** do not apply.
- (c) To secure the rights of the Preference Unit Holders under **clause 8**, 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 8.3**, 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 Receipts 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 8.3(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 8.3(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 8.3(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 8.3(l)(ii)(B)**, then the Trustee must effect the transfer under the power of attorney granted to it under **clause 8.3(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 8.3(l)(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 8.3(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 8.3(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 8.3(n)**, any notice given by a transferor to the Trustee under **clause 8.3(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 11.1** does not apply to a transfer of a Preference Unit made under this **clause 8.3**.
- (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.

8.4 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 8.4** 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.

8.5 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 8.5(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 8.3(l)**, 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.

8.6 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.

9 Requirements for and use of Bank Guarantees

9.1 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 11.6** (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).

9.2 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.

9.3 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.

9.4 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 9.1** in exchange for the existing Bank Guarantee.
- (b) If a Preference Unit Holder fails to provide a replacement Bank Guarantee as required by **clause 9.4(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 9** 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 9**.

9.5 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 9.5(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 9.5(a)** or **clause 9.5(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 9.5(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.

9.6 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 9.3**, 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.

9.7 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 9.7(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 4**) 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 7.6 and 7.7** 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 7.7**.

10 Funding adjustments

10.1 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.

10.2 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 10.1(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 10.1(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).

Industry Note: Each Preference Unit Holder's liability to pay under the SUFA arrangement should be capped at its maximum amount under clause 5.9. It should not be liable to the Trustee (or its creditors) to pay any greater amount. Further, each Works Contract should contain a trustee limitation of liability provision, limiting the Trustee's liability under the Works Contract to the amount that it is entitled to recover out of the assets of the Trust. The only time that it might be appropriate for Preference Unit Holders to provide an additional indemnity to the Trustee is where – with their approval – the Trustee enters into a Works Contract that does not contain a trustee limitation of liability provision. Industry's changes are designed to reflect this position.

- (iii)
- (b) If the Trustee directs the Project Manager (or the Replacement Project Manager if one has been appointed under the Project Management

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Agreement) to permanently cease to carry out the Works for the Extension under **clause 10.2(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 any such breach of a Works Contract provided that:
 - (A) the particular Works Contract does not contain a provision limiting the liability of the Trustee to the assets of the Trust;
 - (B) entry into the Works Contract without such a limitation of liability provision was expressly permitted under the Procurement Methodology; andthe Loss did not arise out of the Trustee's breach of trust, gross negligence, wilful default or fraud; and
- ~~(ii)~~(iii) acknowledges that it has no Claim against the Trustee for any Loss (including Consequential Loss) arising from such breach except to the extent that the Loss arose out of the Trustee's breach of trust, gross negligence, wilful default, fraud or failure to include an appropriate limitation of liability provision in the Works Contract as required by the Procurement Methodology.
- (c) Any Loan Calls made for the purposes of **clause 10.2(a)(ii)** are made in accordance with **clause 5.1**.

11 Transfers and other dealings with Units

11.1 Transfers by Preference Unit Holders

- (a) Subject to **clause 8.3(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 complies with all requirements in respect of the transfer set out in each Transaction Document, including **clause 11.1(b)**
- (b) Without limiting **clause 11.1(a)** a transfer of Preference Units by a Preference Unit Holder must satisfy the following conditions:
 - (i) if 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; and~~

~~(D)~~(C) _____ 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;

(ii) if 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; and

(iii) in any case, 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.~~

(c) If a Preference Unit Holder other than an Aurizon Preference Unit Holder proposes to transfer all or some of its Preference Units to a proposed transferee who is not a Related Body Corporate of the Preference Unit Holder, then:

(i) the Preference Unit Holder must give the Ordinary Unit Holder a reasonable opportunity to make an offer to acquire the relevant Preference Units; and

(ii) if the Ordinary Unit Holder does make an offer to acquire the relevant Preference Units from the Preference Unit Holder, then the Preference Unit Holder cannot sell the relevant Preference Units to someone other than the Ordinary Unit Holder (**Third Party Buyer**) if the terms offered by the Third Party Buyer are less favourable to the Preference Unit Holder than the terms offered by the Ordinary Unit Holder (as determined by the Preference Unit Holder in its discretion).

11.2 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. Notwithstanding any other provision of this agreement, the Ordinary Unit Holder must bear all costs and duties payable in respect of the transfer.

- (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 **11.2(a)**, the Trustee must register the transfer of the Ordinary Unit to the acquiring entity; and
 - (ii) in the case of **clauses 11.2(a) or 11.2(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 11.2**.

11.3 Sale of Units

If:

- (a) the Trustee sells a Preference Unit Holder's Units in accordance with **clause 7.7**, then **clause 11.1** 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 7.6** then **clause 11.1** applies to the transfer of such Preference Units.

11.4 Charging

- (a) Subject to **clause 11.4(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 7.6** or sale under **clause 7.7**) 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 14.5**;
 - (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 11**, 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 11.4(b)(v)**.

11.5 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 11**.

11.6 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 11.6(a)(i)**.
- (b) The Trustee must not otherwise assign or novate its rights, obligations or liabilities under this Deed.

12 Usual payment arrangements and set offs

12.1 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 6.2, 8.3(n)** or **12.4** or as provided in **clause 12.2**), 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.

12.2 Trustee's right of set off

- (a) Subject to **clause 12.3**, 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.

12.3 Exercise of Trustee's right of set off

- (a) If the Trustee exercises the Trustee's right of deduction under **clause 12.2** 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 12.2** in respect of a Preference Unit Holder to the extent that:
 - (i) if **clause 13** 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.

12.4 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 12.4(a) or 12.4(b)** shall constitute payment of that Tax Indemnity Amount by the Preference Unit Holder (or, if applicable, payment by 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) to the extent of the amount deducted.

13 Alternative payment arrangements

13.1 Application of alternative payment arrangements

This **clause 13** 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 9.4**; 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.

13.2 Trustee entitled to draw on Bank Guarantee

The Trustee must promptly (and in any event within 15 Business Days) after this **clause 13** commences in accordance with **clause 13.1** in respect of a Preference Unit Holder:

- (a) where **clause 13.1(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 13.2(a)**, or paid by the Issuer under **clause 13.1(b)**, into the Bank Account.

13.3 Drawing and depositing funds

Where this **clause 13** applies in respect of a Preference Unit Holder in accordance with **clause 13.1**:

- (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 13.3(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 13.3(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 7.1**) 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 13.3(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 12.2**, 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.

13.4 Funds in Bank Account not Assets

- (a) The Trustee acknowledges that all amounts deposited in a Bank Account under **clauses 13.2(c)** or **13.3(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 13.4(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 13.2, 13.3** and **13.6**; and
 - (ii) draw amounts from the Bank Account (including any interest earnings on amounts in the Bank Account) as permitted under **clauses 13.3** and **13.6**.

13.5 Statement of Bank Account

Within 15 Business Days after the end of each Month after this **clause 13** 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.

13.6 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 13.3**.
- (b) Within 15 Business Days after the Bank Account Reconciliation Date, the Trustee must give to each Preference Unit Holder to which this **clause 13** 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 13.6(b)(i)** and **13.6(b)(ii)** less the amount specified in **clause 13.6(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.

14 Income Distributions for Preference Units

14.1 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 14**.
- (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.

14.2 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.

14.3 Preference Income

Subject to **clauses 14.4 and 14.5**, 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.

14.4 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 14.5** and clause 12.5 of the Trust Deed, if the Preference Income is positive in any Month, then the Trustee must, subject to **clause 14.5**, 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.

14.5 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 14.5(a)**.

14.6 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'.

14.7 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.

15 Allocation of costs, records and auditing

15.1 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, 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.

15.2 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 15.2(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.

15.3 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 **15.3** 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) 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.
- (d) 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.
- (e) Subject to **clause 15.3(f)**, 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).
- (f) 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.
- (g) Subject to **clause 15.3(h)**, the Trustee and each Preference Unit Holder are entitled to a copy of the Auditor's report.
- (h) 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 15.3(e)**.

15.4 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**.

16 Trust administration

16.1 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 16.1(b)**, then the Trustee must hold those cash amounts in a bank account at the Trustee's cash management bank.
- (b) Subject to **clauses 16.1(c)** and **16.1(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 an 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 16.1(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 16.1(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 16.1(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.

16.2 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 16.2(c)** if the modification is first submitted to and approved by the Ordinary Unit Holder and a Special Majority of the Preference Unit Holders.

16.3 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)** provided 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 16.2(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 16.3(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 16.2(a)** and in so acting must:
 - (i) invite and consider any submissions made by Preference Unit Holders and the Trustee in writing;
 - (ii) consider any advice obtained by the Trustee from external taxation advisers; and
 - (iii) determine whether, in his or her view, the Trustee has administered the Trust as required by **clause 16.2(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 16.3(c)(iii)** that the Trustee has not administered the Trust as required by **clause 16.2(a)**, the Trustee must administer the Trust in such a manner so as to comply with **clause 16.2(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.

16.4 Trustee's appointment of Aurizon Network

- (a) The Preference Unit Holders acknowledge that the Trustee will appoint Aurizon Network as the Trustee's agent in accordance with the terms of the Project Management Agreement and the Rail Corridor Agreement.
- (b) The Preference Unit Holders consent to and ratify the Trustee's appointment of Aurizon Network under **clause 16.4(a)**.
- (c) 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 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.

16.5 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 Network under the Extension Infrastructure Sub-Lease;
 - (iii) the Landholder under the Rail Corridor Agreement;
 - (iv) a party to the Extension Infrastructure Head-Lease under the Extension Infrastructure Head-Lease; 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 16.5(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 21**.
- (e) Subject to the PUH Engineer executing each of the relevant confidentiality agreements contemplated under **clause 16.5(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 Sub-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 Sub-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 Sub-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 Sub-Lease or Rail Corridor Agreement. Such notice must include (to the extent reasonably possible) reasonable details of the breach.

16.6 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.

16.7 Variations to Scope of Works

The Trustee:

- (a) may vary the description of the Extension in **item 1.1 of schedule 14** 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 16.7(a)**.

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17 Reserve Decisions and Reserve Powers

17.1 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 44 (Reserve Decision)**, unless the Reserve Decision is first submitted to and approved by:
 - (i) the Prescribed Majority of:
 - (A) if **schedule 44** 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 44** specifies that an Aurizon Preference Unit Holder can participate in respect of the Reserve Decision but

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clause 17.1(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 44** specifies that the approval of the Ordinary Unit Holder is required in respect of the Reserve Decision, the Ordinary Unit Holder.

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(b) Where the Trustee is required to exercise any Reserve Power as directed under **clause 17.2**, the exercise of such Reserve Power in accordance with the direction will not constitute a Reserve Decision for the purpose of this **clause 17.1** and **schedule 44**.

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17.2 Reserve Powers

(a) The Preference Unit Holders may, subject to **clauses 17.2(b)** and **17.2(c)**, direct the Trustee how to exercise any right, power or discretion of the Trustee under the Extension Infrastructure Sub-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 17.2(a)**:

(i) subject to **clause 17.2(b)(ii)**, if a Reserve Power is not listed in **schedule 55**, 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;

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(ii) if:

(A) a Reserve Power is not listed in **schedule 55** and arises under the Project Management Agreement; and

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(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 55**, a direction to exercise that Reserve Power must be approved and given by the Prescribed Majority of:
 - (A) if **schedule 55** 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 55** specifies that an Aurizon Preference Unit Holder can participate in respect of the Reserve Power but **clause 17.2(b)(iii)(A)** does not apply, all Preference Unit Holders (including each Aurizon Preference Unit Holder).
- (c) A direction under **clause 17.2(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 17.2(a)**;
 - (iii) must be given by fax in accordance with the requirements of **clause 22** 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 17.2(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 17.2(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

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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 17.2** and has exercised a specific right, power or discretion under the Extension Infrastructure Sub-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 17.2**, then any notice subsequently given by the Preference Unit Holders under this **clause 17.2** 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 17.2**.

17.3 Aurizon Preference Unit Holder entitled to information

- (a) Subject to **clause 17.3(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.

17.4 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 17 (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 17.4(b) and 17.4(c)** is, in the absence of manifest error, final and binding on the Parties and the Trustee may, in complying with clauses **17.1** and **17.2**, rely on that determination.
- (e) Subject to **clause 17.4(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 17.4(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.

18 Default by Preference Unit Holder

18.1 Events of Default

Industry Note: If an insolvency-style event occurs in respect of a Preference Unit Holder, its rights to vote and receive information can be suspended. Industry's view is that the same consequences should apply if an insolvency-style event occurs in respect of the Ordinary Unit Holder.

Aurizon was concerned that the Preference Unit Holders might take advantage of a suspension of voting rights to pass resolutions which would fundamentally alter the commercial and financial position to Aurizon's disadvantage. This is not the intention. Industry is simply concerned to ensure that any such insolvency event would not prevent (or unduly delay) any necessary actions being taken, approvals given or decisions made.

Industry has suggested the wording in clause 19.2(d) to attempt to deal with Aurizon's concerns. At this stage, we do not know why that wording is unacceptable to Aurizon.

18.1

An event of default occurs in relation to a **Preference** Unit Holder (**Event of Default**) if:

- (a) the Unit Holder is a Preference Unit Holder and that Preference Unit Holder breaches any material provision of this Deed, other than an

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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 the~~ Unit Holder has:

- (i) ~~an petition application made 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 ~~or dissolution (other than for the purposes of reconstruction or amalgamation whilst solvent) and the application is not dismissed, the order is not set aside, the resolution is not withdrawn (as applicable) within 30 days;~~
- (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 ~~threatened~~ 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 ~~where the appointment is not stayed, withdrawn or dismissed within 30 days;~~ 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.

18.2 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 its Preference~~ Units are suspended as set out in **clause 18.2(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 18.2(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) **subject to clause 18.2(d)** that Preference Unit Holder is not entitled to vote under this Deed or the Trust Deed.
- (c) If an event specified in **clause 18.1(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'.

(d) If:

- (i) a resolution is proposed on which the Ordinary Unit Holder would have been entitled to vote if clause **clause 18.2(b)(ii)** did not apply (**Relevant Resolution**); and
- (ii) the Relevant Resolution, if passed, would change the commercial and financial outcomes of the agreement set out in this Deed in conjunction with the Trust Deed and the other Transaction Documents in a manner which would result in material harmful.

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foreseeable and avoidable consequences for the Ordinary Unit Holder.

the Ordinary Unit Holder will be entitled to vote as though **clause 18.2(b)(ii)** did not apply.

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18.3 Under-utilisation of access rights

Industry Note: Industry does not accept that a Preference Unit Holder's voting entitlements should be affected by changes to Nominated Access Rights under its Umbrella Agreement.

18.3

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(a) For the purposes of this **clause 18.3**:

(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 4** 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 4**; **less**

(B) the number of any Preference Units referred to in **clause 18.3(a)(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 18.3(a)(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 18.3**, 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.~~

19 Warranties and acknowledgements

19.1 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.

19.2 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, and holds all necessary approvals and licences, to enter into this Deed and to perform the Trustee's obligations under this Deed and the Trust Deed.

19.3 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) 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
- (h) at the date of this Deed and at all times while the Subscriber is a Unit Holder, the Subscriber is a Qualified Investor.

19.4 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.

19.5 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.

19.6 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.

19.7 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.

19.8 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 19.8(b)**.

20 Disputes and Dispute Resolution Process

20.1 Notification of Disputes

- (a) If any claim, dispute or question (**Dispute**) arises under this Deed between any two or more of the Parties, 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 20**.
- (b) Unless otherwise expressly provided to the contrary in this Deed, a Dispute must be resolved in accordance with this **clause 20**.
- (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.

20.2 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 20.2** for resolution.
- (b) If the Dispute is not resolved within ten Business Days after the referral under **clause 20.2(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 20.3**.

20.3 Expert determination

Where any matter is referred to an Expert pursuant to **clause 20.2** or otherwise in accordance with the terms of this Deed then the following provisions of this **clause 20.3** 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 20.3(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 nominated as the Expert; and
 - (iii) the process specified in **clause 20.3(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 20.3(b)**, if the Expert is to be nominated by a person referred to in **clause 20.3(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 20.3(a)**;
- (d) if the Expert is to be nominated by a person referred to in **clause 20.3(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.

20.4 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.

20.5 Decision of Expert

In the absence of manifest error, the decision of the Expert is final and binding upon all Parties.

20.6 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 20**.
- (c) Any costs borne by the Trustee under this **clause 20** 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.

20.7 Determination by court

- (a) If any Dispute is not otherwise resolved in accordance with this **clause 20**, 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.

20.8 Injunctive relief

Nothing in this Deed will prevent a Party from seeking urgent injunctive relief from a court.

20.9 Disputes involving Unit Holders

If:

- (a) a "Dispute" (as defined in the Project Management Agreement or the Extension Infrastructure Sub-Lease) which arises under the Project Management Agreement or the Extension Infrastructure Sub-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 Sub-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 Sub-Lease; or
 - (ii) each of the Trustee and Aurizon Network, in their capacities as parties to the Project Management Agreement or Extension Infrastructure Sub-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 Confidentiality

21.1 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 21.2**.

21.2 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 or the Other Transaction Documents 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 21**;
- (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.

21.3 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.

22 Notices

22.1 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.

22.2 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 22.6**; or
- (e) sent by fax to the Party's current fax number for Notices.

22.3 Particulars for delivery of Notices

- (a) Each Party's particulars for the giving of Notices are initially the particulars set out in **schedule 14**.
- (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.

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22.4 Notices by post

Subject to **clause 22.7**, 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.

22.5 Notices by fax

Subject to **clause 22.7**, 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.

22.6 Notices by email

- (a) The Trustee may give a Notice under **clause 16.5** by email.
- (b) Subject to **clause 22.7**, 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 16.5** may be given by email.

22.7 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.

22.8 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 22** (other than **clause 22.2(d)**) or in accordance with any applicable law.

22.9 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.

22.10 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.

23 General

23.1 Survival

This **clause 23**, **clause 2.5**, **clause 5.3**, **clause 4.9**, **clause 5.13**, **clause 4.14**, **clause 21**, **clause [X]** and **clause [X]** survive the termination of this Deed.

Drafting Note: The clauses to survive termination are to be considered on a transaction-by-transaction basis.

23.2 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 the 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.

23.3 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 23.3(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 23.3(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 23.3(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.

23.4 Applicable law

(a) This Deed will be governed by and construed in accordance with the laws applicable in the State of Queensland.

(b) Each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in Queensland and courts of appeal from them in respect of any proceedings arising out of or in connection with this Deed. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

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23.5 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.

23.6 Duty

(a) Subject to clause **23.6(b)** and to any other express provision of this Deed to the contrary, 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 8.3(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 23.6(a)** or **23.6(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.

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Industry Note: Consideration should be given to obtaining stamp duty relief for SUFA projects.

(e)

23.7 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) Any legal costs borne by the Trustee under this **clause 23.7** will not be Trust Costs.

23.8 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.

23.9 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.

23.10 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.

23.11 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.

23.12 Counterparts

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

23.13 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.

23.14 Entire understanding

- (a) This Deed and the other Transaction Documents together contain the entire understanding between the Parties as to the subject matter of this Deed.
- (b) 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

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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 Deed; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the Parties.

23.15 Relationship of Parties

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

23.16 Severability

- (a) Subject to **clause 23.16(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 23.16(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.

23.17 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.

23.18 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.

23.19 Merger

The obligations contained in this Deed will continue until satisfied in full.

23.20 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.

23.21 Indemnity

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

24 Unincorporated joint ventures

24.1 Warranty and undertaking

Each Preference Subscriber warrants that its Preference Units, and the rights ~~granted to under it under the its~~ 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**.

24.2 Joint Venture Participants' liability

- (a) If **schedule 1** specifies that this **clause 24.2** applies in respect of that Preference Subscriber, then this **clause 24.2** 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 the 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 24.2(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 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 24.2(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 [insert]

Postal address [insert]
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]</p> <p>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 1.32 and divided by the Application Price. Industry Note: A 30% buffer for cost overruns is unacceptable. It would require Industry to seek approval for an inflated estimate. Industry proposes instead a 20% buffer for cost over-runs</p> <p>Unit Holder's Proportion [insert]</p> <p>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]</p> <p>Drafting Note: A dollar amount, which will be of nominal size, will be inserted here. For</p>		

Item	General description	Preference Subscriber 1	Preference Subscriber #	Preference Subscriber #						
		<p>example that amount could be \$1 X 10-6/Unit.</p> <p>Initial Loan Contribution</p> <p>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> <p>Initial Bank Guarantee Amount</p> <p>[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"> <thead> <tr> <th>Joint Venture Participants</th> <th>Name</th> <th>Percentage interest</th> </tr> </thead> <tbody> <tr> <td></td> <td>[insert]</td> <td>[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>								

Item	General description	Preference Subscriber 1	Preference Subscriber #	Preference Subscriber #
		Facsimile No. [insert] Email address [insert] Attention [insert]		

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 8.1)

(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.

-For the purposes of item (b) of this schedule 2, each cost allocation must be performed on the basis of the Target Cost for each Segment as at the time of that cost allocation. Any change to the Target Cost for any Segment does not affect cost allocation conducted prior to, and only applies to a cost allocation conducted after, that change to the Target Cost.

Schedule 3

Call Statements (Clause 6.7)

Call Statements 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 33**):

- (a) the Preference Unit Holder's:
 - (i) Loan Balance;

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- (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 5.4(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 33**):

- (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.

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Schedule 4

Reserve Decisions (Clauses 1.1 and 17.1)

The following powers and discretions of the Trustee are **Reserve Decisions** for the purposes of **clause 17.1**:

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	Yes
(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	Yes
(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	Yes

Item	Summary description	Prescribed Majority*	Approval of Ordinary Unit Holder required? Yes / No	Aurizon Preference Unit Holder participation? Yes / No
(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 Unit Holder's Deed. (c) In respect of the Project Management Agreement, Yes 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, and otherwise 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 9.5 of this Deed.	Special Majority	Yes	Yes

Item	Summary description	Prescribed Majority*	Approval of Ordinary Unit Holder required? Yes / No	Aurizon Preference Unit Holder participation? Yes / No
(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 Unit Holder's Deed. (c) In respect of the Project Management Agreement, Yes 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, and otherwise No.
(g)	assignment or novation of any rights or obligations of the Trustee under a Transaction Document	Unanimous Agreement	Yes	Yes
(h)	transfer of all or any part of the Trustee's title to the "Leased Extension Infrastructure" (as defined in the Extension Infrastructure Sub-Lease) except for any transfers expressly permitted or required under the Extension Infrastructure Sub-Lease	Unanimous Agreement	Yes	No

Item	Summary description	Prescribed Majority*	Approval of Ordinary Unit Holder required? Yes / No	Aurizon Preference Unit Holder participation? 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
(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

Item	Summary description	Prescribed Majority*	Approval of Ordinary Unit Holder required? Yes / No	Aurizon Preference Unit Holder participation? Yes / No
(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
(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
(n)	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 Unit Holder's Deed. (c) In respect of the Project Management Agreement, Yes 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, and otherwise No.

Item	Summary description	Prescribed Majority*	Approval of Ordinary Unit Holder required? Yes / No	Aurizon Preference Unit Holder participation? Yes / No
(o)	Trustee electing to form a Consolidated Group	Unanimous Agreement	Yes	Yes
<u>(q)</u>	<u>executing any Works Contract that does not contain a trustee limitation of liability provision as required under the Procurement Methodology.</u>	<u>Special Majority</u>	<u>No</u>	<u>Yes.</u>
<u>(r)</u>	<u>giving consent under clause 4.2(b) of the Project Management Agreement.</u>	<u>Special Majority</u>	<u>No</u>	<p><u>(a) Subject to (b) and (c), No</u></p> <p><u>(b) Yes, 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</u></p> <p><u>(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</u></p>

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Sub-Sub/Plain, h4 sub sub heading, 4, a, h41, h42, h411, h43, h412, h44, h413, h45, h414, h46, h415, h47, h416, h48, h417, h49, h418, h421, h4111, h431, h4121, h441, h4131, h451, h4141, h461, h4151, h422, h4112, h432, h4122, h442, h4132, H-4, i, Indent: Left: 0.05 cm, First line: 0 cm, Tab stops: Not at 0.8 cm

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Item	Summary description	Prescribed Majority*	Approval of Ordinary Unit Holder required? Yes / No	Aurizon Preference Unit Holder participation? Yes / No
(s)	<u>giving consent under clause 6.2(a) of the Project Management Agreement.</u>	<u>Special Majority</u>	<u>No</u>	<u>(a) Subject to (b) and (c), No</u> <u>(b) Yes, 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</u> <u>(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</u>
(t)	<u>giving written approval under clause 28.3(a) of the Project Management Agreement.</u>	<u>Special Majority</u>	<u>No</u>	<u>(a) Subject to (b) and (c), No</u> <u>(b) Yes, 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</u> <u>(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</u>

Item	Summary description	Prescribed Majority*	Approval of Ordinary Unit Holder required? Yes / No	Aurizon Preference Unit Holder participation? Yes / No
<u>(u)</u>	<u>making an election in relation to 'Excluded Extension Infrastructure' under clause 7.4, 8.5, 9.1 or 9.2 of the Integrated Network Deed.</u>	<u>Special Majority</u>	<u>No</u>	<u>(a) Subject to (b), No</u> <u>(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</u>
<u>(v)</u>	<u>giving a direction under clause 19.1 or 19.2 of the Project Management Agreement</u>	<u>Special Majority</u>	<u>No</u>	<u>(a) Subject to (b) and (c), No</u> <u>(b) Yes, 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</u> <u>(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</u>
<u>(w)</u>	<u>nominating or agreeing an expert for the purposes of item 2 of schedule 2 to the Extension Infrastructure Lease</u>	<u>Special Majority</u>	<u>No</u>	<u>(a) Subject to (b), No</u> <u>(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</u>

Item	Summary description	Prescribed Majority*	Approval of Ordinary Unit Holder required? Yes / No	Aurizon Preference Unit Holder participation? Yes / No
(x)	<u>consenting to a variation of the Infrastructure Lease Disposal Clause (as that term is defined in the Integrated Network Deed).</u>	<u>Special Majority</u>	<u>No</u>	(a) <u>Subject to (b), No</u> (b) <u>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</u>

* 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 17.2)

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, 7.7(d)(iv), 9.7 and 11.1)

1 Definitions

In this **schedule 6**:

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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 9.7** 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 7.2(c)**.

Schedule 7

UHP Calculation Methodology and Revised UHP Calculation Methodology (Clauses 1.1, 4.5 and 8.1(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 4.5**, 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 4.5 (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 4.4)
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 4.5 (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 4.4)

4 Revised UHP Calculation Methodology

For the purpose of **clause 8.2**, 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
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- 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.

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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 88**.

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

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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 88**, 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 88**.

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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 88**, a Preference Unit Holder may request in writing that the Trustee provide copies of the records contemplated by **clause 3.8** of this **schedule 88 (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:

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- (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 88**, 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 88** 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 88** still applies to such Tax Records Notices.

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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 88**, call a meeting of the Preference Unit Holders to discuss the Material Tax Matter or the change in

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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 88**.
- (c) This **clause 3.10** of this **schedule 88** does not apply to any election by the Trustee referred to in **clause 3.5** of this **schedule 88** to have Division 230 of the ITAA97 to apply to its financial arrangements

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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 88**, 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 88**, 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 88**.

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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.

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.

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.

1 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).

2 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; and
 - (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.

- (vii) the Preference Subscriber to promptly pay all taxes (other than contested taxes) in respect of the Secured Property;
 - (viii) 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
 - (ix) 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.

3 Specific Security Agreement (SSA)

Industry Note: Industry's preferred position is that outside of the Construction Period that Preference Units not be stapled to access rights. Nevertheless it agrees that – where a Preference Unit Holder fails to make the required payments - the corresponding access rights are also liable to be sold. The principles applying to the SSA and Priority Deed in these circumstances may require amendment to reflect this.

- (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 rights 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:
 - (A) 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;
 - (B) 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;
 - (C) confirmation that there are no agreements in force which otherwise restrict the transfer of any Unit Holder Loans and the Umbrella Agreement on enforcement;
 - (D) confirmation as to the legality, validity and enforceability of the Umbrella Agreement and Unit Holder Loans against its counterparties; and
 - (E) 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); and
- (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.

4 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.

5 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

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 10 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 11

Monthly reports (clause 16.4)

- (a) 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.
- (b) 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 [Independent Trustee] 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 Sub-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 Head-Lease

Drafting Note: The Extension Infrastructure Head-Lease 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 Network 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.