
[NewCo Pty Ltd] as trustee for the [Name of Trust]

Aurizon Network Pty Ltd

User Funding – Extension Infrastructure Lease

[*insert Extension
name*]

Drafting note: *The parties will consider on a transaction-by-transaction basis whether changes to this Agreement are required for the purposes of the Personal Property and Securities Act 2009 (Cth).*

Drafting note: *If the SUFA transaction will involve the construction of infrastructure which will form part of the Central Queensland Coal Network (other than the two sections of the North Coast Line which form part of the Central Queensland Coal Network) then an Extension Infrastructure Agreement and Integrated Network Deed will be entered into with Queensland Treasury Holdings Pty Ltd (the infrastructure lessor in respect of the Central Queensland Coal Network (other than the two sections of the North Coast Line which form part of the Central Queensland Coal Network)). If the SUFA transaction will involve the construction of infrastructure which will form part of either of the two sections of the North Coast Line in respect of which Aurizon is railway manager, then an Extension Infrastructure Agreement and Integrated Network Deed will be*

entered into with Queensland Rail Limited (the infrastructure lessor in respect of those sections of the North Coast Line).

This template Extension Infrastructure Lease has been drafted on the basis that the infrastructure will form part of the Central Queensland Coal Network (other than the two sections of the North Coast Line which form part of the Central Queensland Coal Network) and will need to be amended if that is not the case.

Contents

1	Interpretation	1
1.1	Definitions	1
1.2	Interpretation	15
2	Term	17
2.1	Term	17
2.2	Total Extension Infrastructure has Zero Value	17
3	Subleased Extension Infrastructure	18
3.1	Sublease of Subleased Extension Infrastructure	18
3.2	Extension Infrastructure Agreement	18
3.3	Indemnity	19
3.4	Termination of Sublease	19
3.5	Compensation arrangement – Aurizon cause	20
3.6	Compensation arrangement – other cause	20
4	Leased Extension Infrastructure	21
4.1	Lease of Leased Extension Infrastructure	21
4.2	Use only for Permitted Purposes	22
4.3	Title	22
4.4	Exclusive use and possession	23
4.5	Obligation to operate and manage	24
4.6	Obligation to Repair and maintain	24
4.7	No obligation to replace	24
4.8	Modifications	24
4.9	Trustee Additional Infrastructure	25
4.10	Aurizon Additional Infrastructure	25
4.11	Removed Infrastructure	25
4.12	Termination of Project Management Agreement	25
4.13	Insurance	26
5	Total Extension Infrastructure	26
5.1	Non-discrimination	26
5.2	Provision of Records by Trustee	26
5.3	Keeping of Records by Aurizon	27
5.4	Lease continues	27
5.5	Outgoings	27
5.6	Replacement of Total Extension Infrastructure	28
6	Rectification of Defects	28
6.1	Rectification of Defects by Trustee	28
6.2	Rectification of Defects by Aurizon	28
7	Rail Corridor Agreement	29
7.1	Appointment as agent	29
7.2	Acting for benefit of Aurizon	29

8	Rent and other payments	30
8.1	Rent	30
8.2	Supporting information	30
8.3	Interest on overdue payments	30
8.4	Disputes	31
8.5	Correction of errors	31
8.6	Aurizon's right of set-off	32
8.7	Method of payment	32
9	Direction to pay	33
9.1	Direction to pay – Extension Access Agreement	33
9.2	Direction to pay – Nominated Access Agreements	34
9.3	Direction to Pay Account	35
9.4	Notice of directions to pay	36
9.5	Application of Total Direction to Pay Amount	36
9.6	Rent Shortfall Adjustment Amount	37
9.7	Late Payment Adjustment Amount	38
10	Calculation of Rent	39
10.1	Objective	39
10.2	Rent Calculation Methodology	39
10.3	Calculation of Rent	39
10.4	Variations to Rent Calculation Methodology	39
10.5	Good faith negotiations	40
10.6	Determination of Rent Calculation Methodology Dispute	40
11	Records and auditing	41
11.1	Keeping of records	41
11.2	Audit	41
11.3	Audit of Direction to Pay Account	43
12	Force majeure	43
13	Termination	43
13.1	Termination by Trustee for Insolvency Event	43
13.2	Termination by Trustee for non-payment	43
13.3	No other rights of termination	44
13.4	No prejudice as to right to damages	44
14	Limitation of liability	44
14.1	Limitation of Aurizon's liability	44
14.2	Trustee's limitation of liability	44
14.3	Exclusion of Consequential Loss	45
14.4	Scope of Claim, liability or loss	45
14.5	Claims against Aurizon	45
15	Trustee's risks	45
15.1	Acknowledgement	45
15.2	No liability	46

16	Disputes	46
	16.1 Notification of Disputes	46
	16.2 Discrimination Dispute	46
	16.3 Chief executive officer resolution	46
	16.4 Expert determination	47
	16.5 Parties to assist Expert	49
	16.6 Decision of Expert	49
	16.7 Costs	49
	16.8 Determination by court	49
	16.9 Discrimination Dispute	50
	16.10 Injunctive relief	50
	16.11 Disputes involving Unit Holders	50
	16.12 Time bar	51
17	Confidentiality	51
	17.1 Confidentiality obligations	51
	17.2 Disclosure of Confidential Information	51
	17.3 Conditions of disclosure	53
18	GST	53
	18.1 Construction	53
	18.2 Consideration GST exclusive	53
	18.3 Payment of GST	53
	18.4 Tax invoices	53
	18.5 Adjustment event	54
	18.6 Reimbursements	54
19	Assignment	55
	19.1 Assignment	55
	19.2 Assignment by Aurizon	55
	19.3 Assignment by Trustee	55
	19.4 Charging	55
20	Notices	56
	20.1 General	56
	20.2 How to give a Notice	56
	20.3 Particulars for giving of Notices	56
	20.4 Notices by post	56
	20.5 Notices by fax	56
	20.6 After hours Notices	56
	20.7 Process service	57
	20.8 Signature to Notice	57
21	Warranties	57
	21.1 Warranties	57
	21.2 Trustee warranties	57
	21.3 Reliance	57

22	General	58
22.1	Survival	58
22.2	Applicable law	58
22.3	Subcontracting	58
22.4	Waiver	58
22.5	Duty	58
22.6	Legal costs	59
22.7	Amendments to be in writing	59
22.8	Rights cumulative	59
22.9	Consents	59
22.10	Further assistance	59
22.11	Counterparts	59
22.12	Entire understanding	59
22.13	Relationship of Parties	60
22.14	Severability	60
22.15	Survival of representations and warranties	60
22.16	Enurement	60
22.17	Merger	60
22.18	Powers of attorney	60
Schedule 1 – Agreement details		61
Schedule 2 – Objective		62
Schedule 3 – Rent Calculation Methodology		68
Schedule 4 – Calculation of Direction to Pay Amount		72
Schedule 5 – Form of confidentiality agreement for engagement of Auditor		73
Schedule 6 – Form of Direction to Pay Undertaking		74

Date

Parties

[NewCo Pty Ltd] [ACN] as trustee for the **[Name of Trust]** of Level 14, Railcentre 1, 305 Edward Street, Brisbane, Queensland (**Trustee**)

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

Background

- A The Leased Extension Infrastructure (if any) will be owned by the Trustee.
 - B The Subleased Extension Infrastructure will be owned by the Extension Infrastructure Lessor and leased to the Trustee under the Extension Infrastructure Agreement.
 - C The Trustee agrees to lease the Leased Extension Infrastructure, and sublease the Subleased Extension Infrastructure, to Aurizon in accordance with the terms of this Agreement.
-

Agreed terms

1 Interpretation

1.1 Definitions

In this Agreement:

2010 Access Undertaking means the access undertaking prepared by Aurizon and approved by the Queensland Competition Authority pursuant to the *Queensland Competition Authority Act 1997* (Qld) which commenced on 1 October 2010, as at the date of this Agreement.

Access Charges for a Month means the access charges (however described) payable under an access agreement for the provision of access to Aurizon's Railway Network during that Month.

Access Legislation has the meaning given in the Unit Holders Deed.

Access Regulator has the meaning given in the Unit Holders Deed.

Access Undertaking has the meaning given in the Unit Holders Deed.

Agreement means this document, including the **schedules**.

Auditor has the meaning given in **clause 11.2(a)**.

Audits has the meaning given in **clause 11.2(a)**.

Aurizon Additional Infrastructure means any Infrastructure, part, accessory or equipment which is constructed, incorporated or installed in or attached to the Leased Extension Infrastructure or a Segment by or for:

- (a) Aurizon in the performance of its obligations under **clause 6.2**; or
- (b) Aurizon (or a third party authorised by Aurizon) in exercise of its rights under **clause 4.8**.

Aurizon Defect Rectification Costs has the meaning given in **clause 6.2(b)**.

Aurizon's Associates means any Personnel, licensee or invitee of Aurizon but does not include the Trustee or the Trustee's Associates, or any person other than those mentioned exercising any right of access to the Total Extension Infrastructure under any Law.

Authority means any government or any governmental, semi-governmental, regulatory, statutory or similar entity or authority.

Authority Approval means a consent, licence, permit, authorisation, lodgement, filing, agreement, certificate, permission, direction, declaration, authority, accreditation, approval or exemption issued by an Authority.

Available Date for a Segment means the "Available Date" for that Segment as defined in the Project Management Agreement.

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

Change in Law means the occurrence of any of the following after the Commencement Date:

- (a) the introduction or commencement of, repeal of, or a change in, applicable Legislation or a change in the common law or law of equity;
- (a) a change in the terms and conditions imposed under an Authority Approval after it has been given or the imposition of any new terms or conditions under such Authority Approval, in each case other than if caused by the default of a party under that Authority Approval;
- (b) the revocation or cancellation of an Authority Approval, other than if caused by the default of a party under that Authority Approval; or
- (c) the non-renewal or failure of an Authority to re-issue an Authority Approval or its renewal or re-issue on new terms that are materially different from the terms of such Authority Approval as at the Commencement Date, in each case other than if caused by the default of a party under that Authority Approval.

Charge has the meaning given in **clause 19.4(a)**.

Chargee has the meaning given in **clause 19.4(a)**.

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

Commencement Date means the date of this Agreement.

Confidential Information of a Disclosing Party means:

- (a) the terms of this Agreement; and
- (b) information disclosed by, or on behalf of, the Disclosing Party to the Recipient, under or in connection with this Agreement, which:
 - (i) is by its nature confidential or commercially sensitive;
 - (ii) is identified by the Disclosing Party as confidential or commercially sensitive;
 - (iii) the Recipient knows, or ought to know, is confidential or commercially sensitive; or
 - (iv) relates to the business, operations or financial affairs of the Disclosing Party or a Related Body Corporate of it (and where the Disclosing Party is the Trustee, any Unit Holder or a Related Body Corporate of a Unit Holder),

but does not include those terms of this Agreement, or any other information, which:

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

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

- (a) any special, indirect or consequential loss;
- (b) any economic loss in respect of any Claim in tort (including negligence);

(c) any loss of profits, loss of production, loss of revenue, loss of use, loss of contract, loss of opportunity, loss of reputation, loss of goodwill or wasted overheads whatsoever; and

(d) any loss arising out of any Claim by a third party,

but does not include:

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

(i) the cost of repairing, replacing or reinstating any real or personal property of any person (including a Party) that has been lost, damaged or destroyed; or

(ii) personal injury to or death of any person;

(f) in respect of any personal injury Claim, special loss or economic loss as those terms are used in the context of personal injury Claims; or

(g) the payment by Aurizon to the Trustee of the Rent in accordance with the terms of this Agreement.

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

Construction Period has the meaning given in the Project Management Agreement.

Customer Confidential Information means any information about an access holder, or an access holder's customer, or its business, operations or financial affairs, which, if disclosed by Aurizon to the Trustee, would give rise to a breach of an obligation or duty of confidence by Aurizon.

[Drafting note: The definition of "Customer Confidential Information" and clauses 11.2 and 16.4 are drafted on the assumption that Aurizon will be entitled to disclose Customer Confidential Information to an Auditor or an Expert. That definition and those clauses will need to be redrafted if that is not the case.]

Defect means any:

(a) defect, shrinkage, movement, error, omission, deficiency or other imperfection in the Total Extension Infrastructure in respect of, or arising from, any cause including design, materials or workmanship;

(b) aspect of the Works for the Extension which is not in accordance with any Works Contract;

(c) physical damage to the Total Extension Infrastructure resulting from any of the matters referred to in **paragraphs (a) and (b)** of this definition; or

(d) impact on the physical condition of, or ability to safely and efficiently use, the Railway Network (other than the Total Extension Infrastructure) resulting from any of the matters referred to in **paragraphs (a), (b) and (c)** of this definition.

Defects Rectification Period has the meaning given in the Project Management Agreement.

Defects Register has the meaning given in the Project Management Agreement.

Direction to Pay Account has the meaning given in **clause 9.3(a)**.

Direction to Pay Amount for:

- (a) an Extension Access Agreement for a Month means:
 - (i) the portion of the Access Charges for that Month payable under the Extension Access Agreement calculated in accordance with **schedule 4**; or
 - (ii) if **clause 9.1(b)** applies, the whole of the Access Charges for that Month payable under the Extension Access Agreement; and
- (b) a Nominated Access Agreement for a Month means the portion of the Access Charges for that Month payable under the Nominated Access Agreement which Aurizon directs the Nominated Access Agreement Customer to pay into the Direction to Pay Account under **clause 9.2**.

Direction to Pay Undertaking means an undertaking, in the form set out in **schedule 6**, given by the party to an access agreement that is required to pay access charges to Aurizon under the access agreement under which that party undertakes to Aurizon to pay the access charges payable under that access agreement to Aurizon by, if directed by Aurizon, paying the whole or part of those access charges into the Direction to Pay Account as directed by Aurizon.

Disclosee has the meaning given in **clause 17.3**.

Disclosing Party has the meaning given in **clause 17.1(a)**.

Discrimination Dispute has the meaning given in **clause 16.2(a)**.

Dispute has the meaning given in **clause 16.1(a)** and includes:

- (a) a matter referred to an Expert for determination under this Agreement; and
- (b) a "Dispute" (as defined in the Unit Holders Deed) if the Trustee joins Aurizon to the dispute resolution process under the Unit Holders Deed in accordance with **clause 16.11**.

Dispute Notice has the meaning given in **clause 16.1(a)**.

Dispute Resolution Process means:

- (a) the dispute resolution process under **clause 16**; and
- (b) if the Trustee joins Aurizon to the dispute resolution process under the Unit Holders Deed in accordance with **clause 16.11**, the dispute resolution process under the Unit Holders Deed.

DTP Audit has the meaning given in **clause 11.3(a)**.

DTP Auditor has the meaning given in **clause 11.3(a)**.

End Date means the earlier of:

- (a) the date on which the State Infrastructure Lease terminates (for any reason) or expires; and
- (b) the date which is 12 months after the Zero Value Date.

Excluded Extension Infrastructure has the meaning given in the Integrated Network Deed.

Expected Rent for a Month means the amount which Aurizon calculates, within five Business Days after the end of that Month, would be the Rent for that Month, applying the Rent Calculation Methodology, assuming for the purpose of such calculation that all applicable Access Charges for that Month are paid by the due date for payment:

- (a) **less**, if the Total Direction to Pay Amount for the previous Month exceeds the Expected Rent for the previous Month, the amount of the difference between the Total Direction to Pay Amount for the previous Month and the Expected Rent for the previous Month;
- (b) **plus** the amount of any Rent Shortfall Adjustment Amount which Aurizon calculated under **clause 9.6(a)** after Aurizon calculated the Expected Rent for the immediately preceding Month; and
- (c) **less** the amount of any Late Payment Adjustment Amount which Aurizon calculated under **clause 9.7(a)** after Aurizon calculated the Expected Rent for the immediately preceding Month.

Expert has the meaning given in **clause 16.3(b)**.

Extension has the meaning given in the Unit Holders Deed.

Extension Access Agreement means:

- (a) an access agreement entered into (or deemed to be entered into) under clause **[3]** of an Umbrella Agreement; and
- (b) any access agreement entered into as a consequence of:
 - (i) the renewal, replacement, transfer, assignment or novation, in whole or in part, of an access agreement referred to in **paragraph (a)** or this **paragraph (b)** of this definition; and
 - (ii) the transfer, in whole or in part, of the access rights under an access agreement referred to in **paragraph (a)** or this **paragraph (b)** of this definition,

despite the identity of the parties to such access agreement being different to the parties to an access agreement referred to in **paragraph (a)** or **paragraph (b)** of this definition.

Extension Access Agreement Customer means the party to an Extension Access Agreement that is required to pay access charges under the Extension Access Agreement to Aurizon.

Extension Access Agreement Invoice for a Month means a tax invoice issued by Aurizon to an Extension Access Agreement Customer for the payment of Access Charges for that Month by the Extension Access Agreement Customer under the Extension Access Agreement.

Extension Infrastructure Agreement means the Agreement entitled “*User Funding – Extension Infrastructure Agreement: [insert Extension name]*” between *[insert name of Trustee]* as trustee of the *[insert name of Trust]*, Aurizon Network Pty Ltd (ABN 78 132 181 116) and Queensland Treasury Holdings Pty Ltd (ACN 011 027 295) entered into on or about the date of this Agreement.

Extension Infrastructure Lessor means the person that is the “Lessor” under the Extension Infrastructure Agreement.

Force Majeure Event in respect of Aurizon means any event or circumstance:

- (a) which is beyond the reasonable control of Aurizon; and
- (b) the effects of which could not, by the exercise of reasonable diligence by Aurizon, have been avoided;

and (to the extent it meets the above criteria) includes any of the following :

- (a) act of God;
- (b) law, rule, regulation or order of any government or governmental authority;
- (c) executive or administrative orders or acts of either general or particular application of any government or of any official acting under the authority of such government;
- (d) act of war (declared or undeclared);
- (e) public disorder;
- (f) riot, insurrection, rebellion, sabotage or act of terrorists;
- (g) fire, earthquake, tidal wave or other natural calamity;
- (h) drought, flood, storm, hail, lightning, inclement weather or other severe weather conditions;
- (i) explosion, breakdown or injury to or expropriation, confiscation or requisitioning of production, manufacturing, selling, transportation or delivery facilities;
- (j) quarantine or customs restrictions;
- (k) strike, boycott, lockout or other labour disturbance (whether national, state-wide or otherwise);
- (l) act (including a delay in performing an act) or omission of any Authority;
- (m) a Change in Law;

- (n) act or omission of the Trustee or any of the Trustee's officers, employees, agents or contractors;
- (o) any of the above events delaying a supplier or contractor to Aurizon in performing its obligations; and
- (p) other failure by a third party to perform its obligations, or a delay by a third party in performing its obligations.

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

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

Group means the Consolidated Group of which Aurizon is a member.

Infrastructure means "Railway Transport Infrastructure" (as defined in the Extension Infrastructure Agreement as at the Commencement Date).

Initial Rent Month means the Month during which Aurizon first earns access charges attributable to any part of the Total Extension Infrastructure.

Insolvency Event in respect of Aurizon means:

- (a) a liquidator is appointed to Aurizon and is not removed or withdrawn within 20 Business Days; or
- (b) Aurizon is deregistered under the *Corporations Act 2001* (Cth).

Integrated Network Deed means the deed entitled "*User Funding – Integrated Network Deed: [insert Extension name]*" between *[insert name of Trustee]* as trustee of the *[insert name of Trust]*, Aurizon Network Pty Ltd (ABN 78 132 181 116), the State of Queensland (represented by the Department administering the *Transport Infrastructure Act 1994* (Qld)) and Queensland Treasury Holdings Pty Ltd (ACN 011 027 295) entered into on or about the date of this Agreement.

Intellectual Property Rights includes both in Australia and throughout the world and for the duration of the rights:

- (a) any patents, utility models, copyrights, eligible layout rights, designs and other like rights;
- (b) any invention, discovery, trade secret, know-how, computer software and confidential information; and
- (c) any business, scientific, technical and product information, including proprietary information relating to the development of new products, whether registered, registrable or unregistered.

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

- (a) 2%; and
- (b) the Commonwealth Bank of Australia's reference rate being the "Corporate Overdraft Reference Rate" (monthly charging cycle) quoted by the Commonwealth Bank of Australia on its public website for the last trading day of the previous Month (or in the event that such a rate is not so quoted at or in respect of any relevant date, such other similar rate as is quoted by a major commercial bank as agreed by the Parties or, failing agreement, as determined by an Expert under **clause 16.4**).

Land Lease has the meaning given in the Extension Infrastructure Agreement.

Late Payment Adjustment Amount means an amount calculated in accordance with **clause 9.7(a)**.

Law has the meaning given in the Extension Infrastructure Agreement as at the Commencement Date.

Leased Extension Infrastructure means:

- (a) any:
 - (i) Infrastructure, part, accessory or equipment which is deemed to be Leased Extension Infrastructure under **clause 4.1(b)**;
 - (ii) Excluded Extension Infrastructure which is deemed to be Leased Extension Infrastructure under **clause 4.1(c)**;
 - (iii) Trustee Additional Infrastructure,
but does not include any:
 - (iv) Removed Infrastructure;
 - (v) Aurizon Additional Infrastructure;
 - (vi) Redundant Extension Infrastructure (from the date that Aurizon gives the Trustee a Notice under **clause 4.12(a)**);
 - (vii) "Extension Infrastructure" (as defined under the Extension Infrastructure Agreement) leased to the Trustee under the Extension Infrastructure Agreement; or
 - (viii) "Infrastructure" (as defined in the State Infrastructure Lease) leased to Aurizon under the State Infrastructure Lease.
- (b) in respect of a Segment, any Leased Extension Infrastructure (as defined in **paragraph (a)** of this definition) which is constructed, incorporated, installed in or attached to the Segment.

Legislation means statutes, ordinances, regulations, by-laws, proclamations and subordinate legislation of the Commonwealth, the State or an Authority.

Modifications mean, in respect of the Leased Extension Infrastructure, any removal or replacement of, or modifications, alterations, additions or changes

to, all or any part of the Leased Extension Infrastructure (other than by or for Aurizon in the performance of its obligations under **clause 4.6**).

Month means a calendar month.

Monthly Invoice has the meaning given under **clause 8.1(a)**.

Monthly Invoice Date for a Month means the date on which the last of the Relevant Access Charges for that Month are due and payable to Aurizon.

Moral Rights means the moral rights granted under the *Copyright Act 1968* (Cth), and any similar rights existing under foreign laws.

Moral Rights Consent means a waiver of Moral Rights to the extent permitted by law and an unconditional consent to any act or omission in relation to the Records by or on behalf of Aurizon, any person authorised by Aurizon or any licensee of copyright in the Records.

Nominated Access Agreement means:

- (a) an access agreement which is the subject of a Direction to Pay Undertaking; or
- (b) an access agreement which expressly requires the party to the access agreement that is required to pay the access charges under the access agreement to pay the whole or any part of any access charges payable under the access agreement to Aurizon and/or any other entities nominated by Aurizon, in the manner nominated by Aurizon, from time to time,

but does not include an Extension Access Agreement.

Nominated Access Agreement Customer means:

- (a) in respect of a Nominated Access Agreement referred to in **paragraph (a)** of the definition of “Nominated Access Agreement”, the party to a Nominated Access Agreement that gives a Direction to Pay Undertaking; and
- (b) in respect of a Nominated Access Agreement referred to in **paragraph (b)** of the definition of “Nominated Access Agreement”, the party to the Nominated Access Agreement that is required to pay the access charges under the Nominated Access Agreement.

Nominated Access Agreement Invoice for a Month means a tax invoice issued by Aurizon to a Nominated Access Agreement Customer for the payment of Access Charges for that Month by the Nominated Access Agreement Customer under the Nominated Access Agreement.

Non-Discrimination Provision means each of **clause 4.6(b)(iii)** and **4.13**.

Notice has the meaning given in **clause 20.1**.

Objective has the meaning given in **clause 10.1**.

Overpayment has the meaning given in **clause 9.5(b)(i)**.

Parties means collectively Aurizon and the Trustee, and **Party** means one of them.

Permitted Lien means:

- (a) a repairer's lien arising in the ordinary course of business; or
- (b) a lien or charge which arises by operation of Law for unpaid taxes, which, in either case, relates to a payment obligation that is:
- (c) not yet due for payment; or
- (d) due for payment but being contested in good faith and by appropriate proceedings that are being conducted diligently and do not involve a material risk of the foreclosure, sale, forfeiture or loss of, or material interference with, the Total Extension Infrastructure or any title to, use of or interest in the Total Extension Infrastructure (or any part of it).

Permitted Purpose means use of the Leased Extension Infrastructure:

- (a) for the purpose of Aurizon managing and operating a railway;
- (b) for purposes ancillary to Aurizon managing and operating a railway; and
- (c) for other lawful purposes (including, to the extent the Leased Extension Infrastructure is located on Rail Corridor Land, purposes that are consistent with the permitted use of that Rail Corridor Land under the Land Lease) provided that such use would not preclude or materially impede the Leased Extension Infrastructure being used to manage and operate a railway.

Personnel means, in respect of an entity, any officer, employee, agent or contractor of that entity and includes any officer, employee, subcontractor or agent of a contractor or subcontractor of that entity.

Preference Unit Holder has the meaning given in the Unit Holders Deed.

Proceedings has the meaning given in **clause 16.8(b)**.

Project Manager means the party which is the "Project Manager" under the Project Management Agreement.

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

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

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

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

RCTI has the meaning given in **clause 18.4(a)(i)**.

Recipient has the meaning given in **clause 17.1**.

Records means all present or future documents, drawings, specifications, reports, manuals, data and other information in any media whatsoever:

- (a) in the possession, or under the control, of the Trustee relating to the design, procurement, construction, testing, commissioning, defects rectification, operation, maintenance and repair of the Total Extension Infrastructure;
- (b) created by or for a “Replacement Project Manager” (as defined in the Project Management Agreement) relating to the design, procurement, construction, testing, commissioning and defects rectification of the Extension or the “Replacement Services” (as defined in the Project Management Agreement); or
- (c) in the possession, or under the control, of the Trustee in connection with any “Major Works Contract Dispute” (as defined under the Project Management Agreement) in respect of which the Trustee elects to assume responsibility for the conduct of under clause [8] of the Project Management Agreement.

Redundant Extension Infrastructure has the meaning given in clause 4.12(c)(i).

Reference Infrastructure means:

- (a) if there is a section of the Railway Network that is similar to the applicable part of the Leased Extension Infrastructure, that section of the Railway Network; or
- (b) if paragraph (a) of this definition does apply, a notional section of the Railway Network which is similar to the applicable part of the Leased Extension Infrastructure,

in each case, where the construction of such section was, or was notionally, funded by Aurizon.

Regulatory Asset Base has the meaning given in the Access Undertaking.

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth).

Relevant Access Charges for a Month means the Access Charges for that Month which are relevant to the calculation of the Rent for that Month.

Removed Infrastructure means any part of the Leased Extension Infrastructure which is permanently removed from the Leased Extension Infrastructure or a Segment by or for:

- (a) the Trustee in the performance of its obligations under **clause 6.1**;
- (b) Aurizon in the performance of its obligations under **clause 6.2** or **4.6**; or
- (c) Aurizon (or a third party authorised by Aurizon) in the exercise of its rights under **clause 4.8**.

Removed Obsolete Part has the meaning given in the Extension Infrastructure Agreement.

Rent for a Month means the amount calculated in accordance with the Rent Calculation Methodology for that Month:

- (a) **less**, if Aurizon adds any Rent Shortfall Adjustment Amount to the Expected Rent for that Month under paragraph (b) of the definition of Expected Rent, the Rent Reduction Amount which Aurizon calculated under **clause 9.6(b)** at the time it calculated such Rent Shortfall Adjustment Amount; and
- (b) **plus**, if Aurizon deducts any Late Payment Adjustment Amount from the Expected Rent for that Month under paragraph (c) of the definition of Expected Rent, the Rent Increase Amount which Aurizon calculated under **clause 9.7(b)** at the time it calculated such Late Payment Adjustment Amount.

Rent Calculation Methodology means the methodology set out in **schedule 3** as varied from time to time.

Rent Calculation Methodology Dispute has the meaning given in **clause 10.6(a)(i)**.

Rent Increase Amount means the amount calculated in accordance with **clause 9.7(b)**.

Rent Reduction Amount means the amount calculated in accordance with **clause 9.6(b)**.

Rent Shortfall Adjustment Amount means an amount calculated in accordance with **clause 9.6(a)**.

Repair means a repair for the purposes of the Tax Act.

Replaced Part has the meaning given in the Extension Infrastructure Agreement.

Security Interest means any mortgage, pledge, lien, charge, encumbrance or any security or preferential interest or arrangement of any kind. Security Interest includes:

- (a) any thing which gives a creditor priority to other creditors with respect to any asset; and
- (b) retention of title other than in the ordinary course of day-to-day trading and a deposit of money by way of security,

but it excludes a charge or lien arising in favour of a Governmental Agency by operation of statute unless there is default in payment of money secured by that charge or lien.

Segment has the meaning given in the Unit Holders Deed.

SIL Extension Infrastructure means "Extension Infrastructure" (as defined in the Extension Infrastructure Agreement) which:

- (a) is leased to the Trustee under the Extension Infrastructure Agreement immediately prior to the termination of the Extension Infrastructure Agreement; and
 - (b) under clause [11.6] of the Extension Infrastructure Agreement, is deemed to be “Infrastructure” (as defined in the State Infrastructure Lease) for the purpose of the State Infrastructure Lease,
- but, for the avoidance of doubt, does not include:
- (c) any Excluded Extension Infrastructure; and
 - (d) any “Extension Infrastructure” (as defined in the Extension Infrastructure Agreement) which the Trustee and the State agree may be removed by the Trustee under clause [12.1] of the Extension Infrastructure Agreement.

State means the State of Queensland.

State Infrastructure Lease means the lease entitled "*Infrastructure Lease*" between Queensland Treasury Holdings Pty Ltd (ACN 011 027 295) and Aurizon Network Pty Ltd (ABN 78 132 181 116) dated 30 June 2010.

Sublease means the sublease of the Subleased Extension Infrastructure by the Trustee to Aurizon under **clause 3.1(a)**.

Subleased Extension Infrastructure means the “Extension Infrastructure” (as defined in the Extension Infrastructure Agreement) that is leased, but only for so long as it is leased, by the Extension Infrastructure Lessor to the Trustee under the Extension Infrastructure Agreement.

Supplier has the meaning given in **clause 18.3**.

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

Term means the period commencing on the Commencement Date and ending on the End Date.

Total Direction to Pay Amount for a Month means the sum of the amounts which Aurizon has directed (or is taken to have directed) an Extension Access Agreement Customer or a Nominated Access Agreement Customer (if applicable) to pay into the Direction to Pay Account under **clauses 9.1** and **9.2** for that Month, as specified in the Notice given by Aurizon to the Trustee under **clause 9.4** for that Month.

Total Extension Infrastructure means:

- (a) Subleased Extension Infrastructure (from time to time); and
- (b) Leased Extension Infrastructure (from time to time).

Transaction Documents has the meaning given in the Unit Holders Deed.

Trust has the meaning given in the Trust Deed.

Trust Deed means the trust deed made by the Trustee entitled “*User Funding – Trust Deed of [Name of Trust]*”, as amended from time to time.

Trustee Additional Infrastructure means any Infrastructure, part, accessory or equipment which is constructed, incorporated, installed in or attached to the Leased Extension Infrastructure or a Segment by or for:

- (a) the Trustee in the performance of its obligations under **clause 6.1**; or
- (b) Aurizon in the performance of its obligations under **clause 4.6**.

Trustee Supplies has the meaning given in **clause 18.4(a)(i)**.

Trustee’s Associates means any Personnel, consultant, adviser, licensee or invitee of the Trustee but does not include Aurizon or Aurizon’s Associates or any person other than those mentioned exercising any right of access to the Total Extension Infrastructure under any Law.

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

Unit Holder has the meaning given in the Trust Deed.

Unit Holders Deed has the meaning given in the Trust Deed.

Variation Notice has the meaning given in **clause 10.4**.

Wilful Default means an intentional breach by Aurizon of the terms of this Agreement.

Works has the meaning given in the Project Management Agreement.

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

Zero Value means, in respect of the Total Extension Infrastructure:

- (a) if the Total Extension Infrastructure is then regulated, the Total Extension Infrastructure has no value in the Regulatory Asset Base; and
- (b) if the Total Extension Infrastructure is not then regulated, zero Rent has been payable to the Trustee for three consecutive Months.

Zero Value Date means:

- (a) if the Trustee does not give Aurizon a Dispute Notice referred to in **clause 2.2(c)**, the date which is 60 Business Days after the date that Aurizon gives the Trustee the Notice under **clause 2.2(b)**; or
- (b) if the Trustee gives Aurizon a Dispute Notice referred to in **clause 2.2(c)**, the date on which it is agreed or determined under the Dispute Resolution Process that the Total Extension Infrastructure has Zero Value.

1.2 Interpretation

Unless expressed to the contrary, in this Agreement:

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

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

2 Term

2.1 Term

This Agreement commences on the Commencement Date and, unless earlier terminated in accordance with this Agreement, continues until the End Date.

2.2 Total Extension Infrastructure has Zero Value

- (a) Not more than seven months, but not less than six months, prior to the date that Aurizon estimates, acting reasonably, that the Total Extension Infrastructure will have Zero Value, Aurizon must give the Trustee a Notice specifying the date on which Aurizon estimates, acting reasonably, that the Total Extension Infrastructure will have Zero Value.
- (b) Promptly after Aurizon determines, acting reasonably, that the Total Extension Infrastructure has Zero Value, Aurizon must give the Trustee a Notice specifying that the Total Extension Infrastructure has Zero Value.
- (c) Within 60 Business Days after Aurizon gives the Trustee the Notice under **clause 2.2(b)**, the Trustee may give Aurizon a Dispute Notice which Disputes that the Total Extension Infrastructure has Zero Value.
- (d) If:
 - (i) the Trustee gives Aurizon a Dispute Notice referred to in **clause 2.2(c)**; and
 - (ii) the Dispute is not resolved in accordance with **clause 16.2**, the Dispute must be referred to an Expert to determine whether or not the Total Extension Infrastructure has Zero Value.
- (e) If the Trustee does not give Aurizon a Dispute Notice referred to in **clause 2.2(c)** within the time referred to in **clause 2.2(c)**, then:
 - (i) the Trustee must not give Aurizon a Dispute Notice Disputing that the Total Extension Infrastructure has Zero Value; and
 - (ii) any such Dispute Notice which is given by the Trustee will be of no force or effect.

3 Subleased Extension Infrastructure

3.1 Sublease of Subleased Extension Infrastructure

- (a) In consideration for the grant of the sublease under this **clause 3**, Aurizon must pay the Trustee the sum of \$1.00 but only if demanded in writing by the Trustee.
- (b) The Trustee subleases each part of the Subleased Extension Infrastructure to Aurizon immediately upon the leasing of that part of the Subleased Extension Infrastructure to the Trustee under the Extension Infrastructure Agreement for so long as that part of the Subleased Extension Infrastructure is leased to the Trustee under the Extension Infrastructure Agreement.
- (c) The Trustee and Aurizon acknowledge:
 - (i) the rights of the Extension Infrastructure Lessor under the Extension Infrastructure Agreement and the Integrated Network Deed; and
 - (ii) that their rights under the Sublease are subject and subordinate to the rights of the Extension Infrastructure Lessor under the Extension Infrastructure Agreement and the Integrated Network Deed.

3.2 Extension Infrastructure Agreement

- (a) The Trustee must comply with its obligations under the Extension Infrastructure Agreement.
- (b) The Trustee:
 - (i) irrevocably nominates Aurizon as the Trustee's nominee for the purpose of clause **[6.5(a)]** of the Extension Infrastructure Agreement during the term of this Agreement; and
 - (ii) must promptly notify the Extension Infrastructure Lessor that the Trustee has nominated Aurizon as the Trustee's nominee for the purpose of clause **[6.5(a)]** of the Extension Infrastructure Agreement during the term of this Agreement.
- (c) The Trustee must not exercise its right under clause **[6.5(b)]** of the Extension Infrastructure Agreement without the prior written consent of Aurizon.
- (d) The Trustee:
 - (i) irrevocably nominates Aurizon as the Trustee's nominee for the purpose of clause **[6.5(c)]** of the Extension Infrastructure Agreement during the term of this Agreement; and
 - (ii) must promptly notify the Extension Infrastructure Lessor that the Trustee has nominated Aurizon as the Trustee's nominee for the purpose of clause **[6.5(c)]** of the Extension Infrastructure Agreement during the term of this Agreement.

- (e) The Trustee must pay Aurizon's costs and expenses of permanently removing any Removed Obsolete Part promptly upon demand.
- (f) The Trustee must promptly notify Aurizon in writing upon becoming aware of any matter which Aurizon is required to notify to the Extension Infrastructure Lessor under clause [7.5] of the Extension Infrastructure Agreement.
- (g) If Aurizon gives a Notice to the Extension Infrastructure Lessor under clause [7.5] of the Extension Infrastructure Agreement, Aurizon must, at the same time as it gives that Notice to the Extension Infrastructure Lessor, give a copy of that Notice to the Trustee.
- (h) If Aurizon gives the asset register to the Extension Infrastructure Lessor under clause [7.6] of the Extension Infrastructure Agreement, Aurizon must, at the same time as it gives the asset register to the Extension Infrastructure Lessor, give a copy of the asset register to the Trustee.
- (i) The Trustee, as between the Parties, is liable for and must pay all amounts payable by the Parties under:
 - (i) clause 16(a) of the Extension Infrastructure Agreement; or
 - (ii) clause 21 of the Integrated Network Deed.
- (j) If Aurizon pays any amount referred to in **clause 3.2(i)**, the Trustee must pay that amount to Aurizon promptly on demand.

3.3 Indemnity

- (a) The Trustee indemnifies Aurizon against any amounts which are paid or payable by Aurizon to the Extension Infrastructure Lessor under clause [10.2] of the Extension Infrastructure Agreement in respect of any "Losses" (as defined in the Extension Infrastructure Agreement) of every kind that may be incurred or sustained, whether directly or indirectly, by the Extension Infrastructure Lessor in respect of or arising from or in any way connected with any matter referred to in clauses [10.2(a)(i)] to [(vii)] of the Extension Infrastructure Agreement to the extent that the relevant matter was caused, or contributed to (to the extent of the contribution), by any act, omission, negligence or failure on the part of the Trustee or a Trustee's Associate.
- (b) It is not necessary for Aurizon to incur any expense or make any payment before enforcing a right of indemnity under this **clause 3.3**.
- (c) The indemnity under this **clause 3.3** is a continuing obligation separate and independent of the Trustee's other obligations.

3.4 Termination of Sublease

- (a) The Sublease automatically terminates, without the need for either Party to notify the other Party, at the same time as the Extension Infrastructure Agreement terminates (for any reason).

- (b) For the avoidance of doubt, the terms of this Agreement, other than **clause 3.1(a)**, continue in full force and effect despite the termination of the Sublease under this **clause 3.4**.

3.5 Compensation arrangement – Aurizon cause

- (a) This **clause 3.5** applies if the Extension Infrastructure Lessor exercises its right to terminate the Extension Infrastructure Agreement under:
 - (i) clause **[11.4]** of the Extension Infrastructure Agreement due to the occurrence of any event or circumstance specified in clause **[11.4]** of the Extension Infrastructure Agreement which was caused by an act or omission of Aurizon; or
 - (ii) clause **[11.5]** of the Extension Infrastructure Agreement due to the Trustee exercising its right of termination under **clause 13.1** or **13.2** of this Agreement.
- (b) If this **clause 3.5** applies:
 - (i) despite the SIL Extension Infrastructure ceasing to be Subleased Extension Infrastructure subleased to Aurizon under this **clause 3**, all of the terms of this Agreement (other than this **clause 3**) will continue to apply as if the SIL Extension Infrastructure was Subleased Extension Infrastructure subleased by the Trustee to Aurizon under this **clause 3**; and
 - (ii) the Parties acknowledge and agree that the amount of the Rent payable each Month to the Trustee by operation of **clause 3.5(b)(i)** will not be rent payable for the sublease of the SIL Extension Infrastructure but, rather, will be a compensation amount payable by Aurizon to the Trustee as a consequence of the early termination of the Extension Infrastructure Agreement due to Aurizon's cause.

3.6 Compensation arrangement – other cause

- (a) This **clause 3.6** applies if the Extension Infrastructure Lessor exercises its right to terminate the Extension Infrastructure Agreement under:
 - (i) clause **[11.1]** of the Extension Infrastructure Agreement; or
 - (ii) clause **[11.4]** of the Extension Infrastructure Agreement (other than for a reason as specified in **clause 3.5(a)(i)**).
- (b) If this **clause 3.6** applies, then the Parties must negotiate in good faith to endeavour to agree the terms of an arrangement under which Aurizon will pay amounts to the Trustee to compensate the Trustee for the SIL Extension Infrastructure ceasing to be Subleased Extension Infrastructure subleased to Aurizon under this **clause 3**, provided that in no circumstances will Aurizon be required to agree to an arrangement which results in:
 - (i) a capital or lump sum payment by it; or

- (ii) the Group (or, if Aurizon is not a member of a Consolidated Group, Aurizon) being financially worse-off (taking into account the overall "Tax" (as defined in the Unit Holders Deed), accounting and other financial consequences for the Group (or, if Aurizon is not a member of a Consolidated Group, Aurizon) of the arrangement) than it would have been if the SIL Extension Infrastructure continued to be Subleased Extension Infrastructure subleased to Aurizon under this **clause 3**.

4 Leased Extension Infrastructure

4.1 Lease of Leased Extension Infrastructure

- (a) The Trustee must ensure that each part of the Infrastructure which is constructed, and each part, accessory and equipment that is incorporated or installed in, or attached to, the Infrastructure, comprising the Extension, is owned wholly by the Trustee free from all Security Interests (other than Permitted Liens) from the time on which that part of the Infrastructure, part, accessory or equipment is constructed, incorporated, installed or attached.
- (b) With effect upon the date on which a part of the Infrastructure, part, accessory or equipment referred to in **clause 4.1(a)** is constructed, incorporated, installed or attached, such Infrastructure, part, accessory or equipment is deemed to be Leased Extension Infrastructure and is leased by the Trustee to Aurizon under this Agreement until:
 - (i) the time at which such Infrastructure, part, accessory or equipment is transferred by the Trustee to the Extension Infrastructure Lessor under clause **[3.1(b)]** of the Extension Infrastructure Agreement (at which time, such Infrastructure, part, accessory or equipment will cease to be Leased Extension Infrastructure and will ceased to be leased to Aurizon under this Agreement); or
 - (ii) otherwise, the end of the Term.
- (c) With effect upon the date on which the Extension Infrastructure Lessor transfers ownership of any Excluded Extension Infrastructure to the Trustee under the Integrated Network Deed, the Excluded Extension Infrastructure is deemed to be Leased Extension Infrastructure and is leased by the Trustee to Aurizon under this Agreement until the end of the Term.
- (d) The Parties acknowledge and agree that:
 - (i) as between the Parties, the Leased Extension Infrastructure is owned by the Trustee;
 - (ii) the Leased Extension Infrastructure is leased under this Agreement separately from the land on, under or above which it is situated;

- (iii) nothing in this Agreement grants to Aurizon any right or interest in or to the land on, under or above which the Leased Extension Infrastructure is situated regardless of whether or not any part of it is affixed to the land; and
- (iv) nothing in this Agreement grants to the owner of the land on, under or above which the Leased Extension Infrastructure is situated any right or interest in the Leased Extension Infrastructure regardless of whether or not any part of it is affixed to the land.

4.2 Use only for Permitted Purposes

- (a) Aurizon must only use the Leased Extension Infrastructure for a Permitted Purpose.
- (b) For the avoidance of doubt, Aurizon may authorise other persons to access and use all or part of the Leased Extension Infrastructure.
- (c) Aurizon must:
 - (i) obtain, maintain and comply with all Authority Approvals; and
 - (ii) otherwise comply with all Legislation,that are required to be obtained, maintained or complied with (as applicable) in order for Aurizon to lawfully use the Leased Extension Infrastructure for any Permitted Purpose for which Aurizon uses the Leased Extension Infrastructure.
- (d) The Trustee must:
 - (i) not unreasonably withhold or delay the giving of, and must not impose any conditions upon, any consent that is required from the Trustee for Aurizon to comply with its obligations under **clause 4.2(c)**; and
 - (ii) promptly, upon written request by Aurizon, do all things reasonably required by Aurizon (including executing documents) to enable Aurizon to comply with its obligations under **clause 4.2(c)**.

4.3 Title

- (a) Aurizon acknowledges that it has no rights in relation to the Leased Extension Infrastructure other than its rights as lessee under this Agreement.
- (b) The Trustee must promptly, upon written request by Aurizon, exercise any of its rights and entitlements in, or in relation to, the Leased Extension Infrastructure to assist Aurizon to the extent necessary to enable Aurizon to use the Leased Extension Infrastructure for any Permitted Purpose where Aurizon is unable to act itself by reason of the Trustee's interest in, or in relation to, the Leased Extension Infrastructure.

4.4 Exclusive use and possession

- (a) Subject to **clause 4.4(b)**, Aurizon will have exclusive use and possession of the Leased Extension Infrastructure and may peaceably possess and enjoy the Leased Extension Infrastructure for the Term without any interruption or disturbance from the Trustee (or any other person lawfully claiming by, from or under the Trustee) subject only to any interruption or disturbance which results from the exercise by the Trustee of its rights under this Agreement or any rights conferred on the Trustee by Legislation.
- (b) Subject to **clause 4.4(c)**, Aurizon permits the Trustee and the Trustee's Associates to access and use the Leased Extension Infrastructure for the purpose of:
 - (i) carrying out the Works for the Extension; and
 - (ii) performing the Trustee's obligations under **clause 6.1**.
- (c) The Trustee must, and must ensure the Trustee's Associates:
 - (i) only access and use the Leased Extension Infrastructure at times permitted by Aurizon and only for the purposes referred to in **clause 4.4(b)**; and
 - (ii) comply with all reasonable requirements of Aurizon in connection with the Trustee and the Trustee's Associates accessing and using the Leased Extension Infrastructure in connection with the purpose referred to in **clause 4.4(b)**.
- (d) Subject to **clause 4.4(e)**, Aurizon permits the Trustee and the Trustee's Associates, at reasonable times and having given Aurizon reasonable notice, access any Leased Extension Infrastructure for purpose of inspecting the Leased Extension Infrastructure.
- (e) When exercising its rights under **clause 4.4(c)**, the Trustee and the Trustee's Associates:
 - (i) must not interfere with Aurizon's operations or business;
 - (ii) will be subject to the same limitations upon and conditions of access as apply to any third party visitor to the place where the relevant Leased Extension Infrastructure is located; and
 - (iii) must comply with all safety requirements and other reasonable directions of Aurizon in relation to such access.
- (f) The Trustee must, and must ensure that the Trustee's Associates, only access and use the Leased Extension Infrastructure for the purposes referred to in **clauses 4.4(b)** and **4.4(d)**.
- (g) The Trustee must promptly upon demand pay all costs and expenses reasonably incurred by Aurizon in facilitating and supervising access to and use of the Total Extension Infrastructure for the purpose referred to in **clause 4.4(b)** and **4.4(d)**.

- (h) The Trustee must ensure that the Trustee's Associates do not do anything in relation to the Leased Extension Infrastructure which, if done by the Trustee, would be a breach of this Agreement by the Trustee.

4.5 Obligation to operate and manage

- (a) This **clause 4.5** does not apply in respect of any Leased Extension Infrastructure for a Segment until the Available Date for that Segment.
- (b) Aurizon must operate and manage the Leased Extension Infrastructure in accordance with all applicable Legislation and the requirements of all relevant Authority Approvals (including the Access Undertaking).
- (c) Aurizon must ensure that Aurizon's Associates do not do anything in respect of the Leased Extension Infrastructure which, if done by Aurizon, would be a breach of this Agreement by Aurizon.

4.6 Obligation to Repair and maintain

- (a) This **clause 4.6** does not apply in respect of any Leased Extension Infrastructure for a Segment until the Available Date for that Segment.
- (b) Subject to **clauses 6** and **4.7**, Aurizon must, at its cost, Repair and maintain the Leased Extension Infrastructure:
 - (i) in accordance with all applicable Legislation;
 - (ii) in accordance with the requirements of all relevant Authority Approvals (including the Access Undertaking); and
 - (iii) to a standard that is not materially lower than the standard to which Aurizon would Repair and maintain the Reference Infrastructure in the same or similar circumstances.
- (c) Aurizon must, at its cost, replace any part of the Leased Extension Infrastructure that is lost or destroyed.

4.7 No obligation to replace

Except as required under **clause 4.6(c)**, nothing in this Agreement requires Aurizon to replace any part of the Leased Extension Infrastructure (including, for the avoidance of doubt, any part of the Leased Extension Infrastructure which is obsolete or life expired).

4.8 Modifications

- (a) This **clause 4.8** does not apply in respect of any Leased Extension Infrastructure for a Segment until the earlier of:
 - (i) the Available Date for that Segment; or
 - (ii) the date of termination of the Project Management Agreement (for any reason).
- (b) Aurizon may:
 - (i) make any Modifications to the Leased Extension Infrastructure; or

- (ii) authorise third parties to make any Modifications to the Leased Extension Infrastructure.
- (c) Aurizon must maintain reasonable details of all Modifications made, or authorised to be made, to the Leased Extension Infrastructure under **clause 4.8(b)**.

4.9 Trustee Additional Infrastructure

- (a) The Trustee and Aurizon (as applicable) must ensure that any Trustee Additional Infrastructure is owned wholly by the Trustee free from all Security Interests (other than Permitted Liens) from the time on which it is constructed, incorporated, installed or attached.
- (b) With effect upon the date on which any Trustee Additional Infrastructure is constructed, incorporated, installed or attached, the Trustee Additional Infrastructure is deemed to form part of the Leased Extension Infrastructure and is leased by the Trustee to Aurizon under this Agreement.
- (c) As between the Trustee and Aurizon, title to the Trustee Additional Infrastructure remains with the Trustee.

4.10 Aurizon Additional Infrastructure

Despite any Aurizon Additional Infrastructure being constructed, incorporated or installed in or attached to the Leased Extension Infrastructure or a Segment:

- (a) Aurizon Additional Infrastructure does not form part of the Leased Extension Infrastructure; and
- (b) as between the Trustee and Aurizon, title to Aurizon Additional Infrastructure remains with Aurizon.

4.11 Removed Infrastructure

- (a) Removed Infrastructure will cease being part of the Leased Extension Infrastructure from the time it is permanently removed from the Leased Extension Infrastructure or a Segment.
- (b) The Trustee must transfer title to Removed Infrastructure to Aurizon or its nominee for nil consideration and free from all Security Interests (other than Permitted Liens) except in the case of any Removed Infrastructure which is:
 - (i) removed by or for the Trustee in the performance of its obligations under **clause 6.1**; or
 - (ii) removed by or for Aurizon and not replaced.

4.12 Termination of Project Management Agreement

- (a) If the Project Management Agreement terminates during the Construction Period, then within 20 Business Days after the termination of the Project Management Agreement, Aurizon may notify the Trustee that it no longer wishes the whole, or particular parts, of the Leased Extension Infrastructure to be subject to the lease under this **clause 4**.

- (b) A Notice given under **clause 4.12(a)** must specify:
 - (i) that Aurizon no longer wishes the whole of the Leased Extension Infrastructure to be subject to the lease under this **clause 4**; or
 - (ii) the particular parts of the Leased Extension Infrastructure which Aurizon no longer wishes to be subject to the lease under this **clause 4**.
- (c) On the date that Aurizon gives the Trustee a Notice under **clause 4.12(a)**:
 - (i) the Leased Extension Infrastructure specified in the Notice given under **clause 4.12(a) (Redundant Extension Infrastructure)** will immediately cease being subject to the lease under this **clause 4**; and
 - (ii) for the avoidance of doubt, the Leased Extension Infrastructure (other than the Redundant Extension Infrastructure) will continue to be subject to the lease under this **clause 4**.

4.13 Insurance

Aurizon must effect and maintain insurance policies and/or adopt internal 'self-insurance strategies' in respect of:

- (a) the replacement and reinstatement of the Leased Extension Infrastructure; and
- (b) public liability risks in connection with the Leased Extension Infrastructure,

which provide a level of cover that is not materially lower than the level of cover provided under the insurance policies and/or internal 'self-insurance strategies' that Aurizon would effect, maintain and/or adopt in respect of:

- (c) the replacement and reinstatement of Reference Infrastructure; and
- (d) public liability risks in connection with Reference Infrastructure.

5 Total Extension Infrastructure

5.1 Non-discrimination

- (a) Aurizon must not take any action in respect of the Total Extension Infrastructure where such action is for the sole purpose (and no other purpose) of reducing the Rent payable by it under this Agreement.
- (b) Nothing in this **clause 5.1** imposes any restriction or limitation on the making of any submissions or representations by Aurizon to the Access Regulator and the content of such submissions or representations.

5.2 Provision of Records by Trustee

- (a) The Trustee must, promptly upon written request by Aurizon from time to time, deliver to Aurizon, in the format reasonably required by Aurizon, a copy of any Records requested by Aurizon.

- (b) The Trustee must grant to Aurizon, or procure that Aurizon is granted, a non-exclusive licence to exercise the Intellectual Property Rights in any Records (including the right to sub-licence) delivered to Aurizon under **clause 5.2(a)**.
- (c) To the extent that the Trustee has Moral Rights in any Records delivered to Aurizon under **clause 5.2(a)**, the Trustee must give a Moral Rights Consent.
- (d) To the extent that a person other than the Trustee or Aurizon has Moral Rights in any Records delivered to Aurizon under **clause 5.2(a)**, the Trustee must:
 - (i) use reasonable endeavours to obtain a Moral Rights Consent from that person on request from Aurizon; and
 - (ii) once obtained, promptly deliver the Moral Rights Consent to Aurizon.
- (e) The Trustee warrants that:
 - (i) it has the right to grant the rights granted to Aurizon under this **clause 5.2**; and
 - (ii) the Records delivered to Aurizon under **clause 5.2(a)**, and the acts of Aurizon or any person authorised by Aurizon in relation to those Records, do not infringe the Intellectual Property Rights or Moral Rights of any person.

5.3 Keeping of Records by Aurizon

- (a) Aurizon must keep and maintain reasonable records relating to the operation, management, repair, maintenance, Modification and use and condition of the Total Extension Infrastructure.
- (b) Aurizon must, promptly upon written request by the Trustee from time to time, deliver to the Trustee, in the format Aurizon generally keeps records of that nature, a copy of any record kept and maintained by Aurizon under **clause 5.3(a)**.

5.4 Lease continues

For the avoidance of doubt, unless this Agreement is earlier terminated in accordance with the terms of this Agreement, this Agreement will continue for the Term despite there ceasing to be any Total Extension Infrastructure subleased or leased (as applicable) under this Agreement prior to the end of the Term.

5.5 Outgoings

- (a) Despite the Extension Infrastructure Agreement:
 - (i) during the Construction Period, the Trustee must pay all charges, taxes and rates which are payable in respect of the Total Extension Infrastructure or services provided for the Total Extension Infrastructure.

- (ii) after the end of the Construction Period, Aurizon must pay all charges, taxes and rates which are payable in respect of the Total Extension Infrastructure or services provided for the Total Extension Infrastructure, except for taxes on the revenues or capital gains of the Trustee.
- (b) For the avoidance of doubt, Aurizon is not responsible under this Agreement to pay any charges, taxes and rates which are payable in respect of land.

5.6 Replacement of Total Extension Infrastructure

If Aurizon replaces any part of the Total Extension Infrastructure which is a “depreciating asset” (as defined in the Tax Act) (the **original depreciating asset**) that is “lost or destroyed” (as referred to in item 8 of section 40-300(2) of the Tax Act), the Trustee must choose under section 40-365 of the Tax Act to exclude all of any amount that would otherwise be included in the Trustee’s assessable income as a result of a “balancing adjustment event” (as defined in the Tax Act) occurring because the original depreciating asset is “lost or destroyed” (as referred to in item 8 of section 40-300(2) of the Tax Act).

6 Rectification of Defects

6.1 Rectification of Defects by Trustee

- (a) The Trustee must, at its cost, procure the rectification of any Defects promptly after they are recorded (or required to be recorded) in the Defects Register.
- (b) Aurizon acknowledges that the Trustee has appointed the Project Manager under the Project Management Agreement as the Trustee’s disclosed agent to perform the Trustee’s obligations under this **clause 6.1**.

6.2 Rectification of Defects by Aurizon

- (a) After the end of the Defects Rectification Period, Aurizon must rectify, or procure the rectification of, all Defects other than Defects which are recorded (or required to be recorded) in the Defects Register.
- (b) As between the Trustee and Aurizon, Aurizon will be responsible for the costs of rectifying, or procuring the rectification of, Defects under **clause 6.2(a) (Aurizon Defect Rectification Costs)**.
- (c) The Trustee acknowledges that Aurizon may seek to include Aurizon Defect Rectification Costs in the Regulatory Asset Base as part of the capital cost of the Total Extension Infrastructure.
- (d) The Trustee acknowledges that Aurizon may procure the rectification of Defects under **clause 6.2(a)** by exercising any rights which Aurizon has in relation to the rectification of such Defects under Works Contracts.

[Drafting note: Works Contracts may contain provisions which give Aurizon direct rights against Works Contractors in relation to the rectification of Defects.]

7 Rail Corridor Agreement

7.1 Appointment as agent

On and from the date on which the Project Management Agreement terminates in accordance with its terms, and provided the Rail Corridor Agreement has not terminated in accordance with its terms, the Trustee:

- (a) appoints Aurizon as the disclosed agent of the Trustee for the purpose of performing the Trustee's obligations, and exercising the Trustee's rights (other than the Trustee's rights under clauses [3.1] and [3.2] of the Rail Corridor Agreement and its rights in respect of "Disputes" (as defined in the Rail Corridor Agreement) under clause [20] of the Rail Corridor Agreement), under the Rail Corridor Agreement, other than to the extent such obligations and rights must, by operation of law, be personally performed or exercised by the Trustee; and
- (b) must not, other than through Aurizon acting as the Trustee's disclosed agent under this Agreement, perform the Trustee's obligations, or exercise the Trustee's rights (other than the Trustee's rights under clauses [3.1] and [3.2] of the Rail Corridor Agreement and its rights in respect of "Disputes" (as defined in the Rail Corridor Agreement) under clause [20] of the Rail Corridor Agreement), under the Rail Corridor Agreement, unless:
 - (i) such obligations and rights must, by operation of law, be personally performed or exercised by the Trustee;
 - (ii) requested to do so in writing by Aurizon; or
 - (iii) expressly required or permitted to do so under this Agreement.

7.2 Acting for benefit of Aurizon

Despite any fiduciary obligations which would, but for the operation of this Agreement, arise as a consequence of Aurizon acting as disclosed agent for the Trustee under the Rail Corridor Agreement, the Trustee:

- (a) irrevocably consents to Aurizon, when acting as disclosed agent for the Trustee under the Rail Corridor Agreement, doing acts and making omissions which may:
 - (i) be in the interest of, or advantage, Aurizon or any Related Body Corporate of it; and
 - (ii) not be in the interest of, or disadvantage, the Trustee; and
- (b) agrees Aurizon will have no obligation to fully disclose to it the interest, advantage or disadvantage prior to the relevant act or omission, provided that:
- (c) Aurizon is not expressly prohibited from doing the relevant act or making the relevant omission under this Agreement; and

- (d) the relevant act is done or relevant omission is made by Aurizon acting in good faith having regard to Aurizon's (or any of its Related Body Corporate's):
 - (i) legitimate interests as:
 - (A) "Aurizon" under this Agreement;
 - (B) "Project Manager" under the Project Management Agreement;
 - (C) "Landholder" under the Rail Corridor Agreement;
 - (D) lessee or sublessee under a land or infrastructure lease or sublease in respect of the Railway Network (or any part of it);
 - (E) operator and manager of the Railway Network;
 - (F) access provider under access agreements in respect of the Railway Network; and
 - (G) the accredited railway manager of the Railway Network; and
 - (ii) rights and obligations under Legislation (including the *Transport (Rail Safety) Act 2010* (Qld) and the *Work Health and Safety Act 2011* (Qld)).

8 Rent and other payments

8.1 Rent

- (a) Within seven Business Days after the Monthly Invoice Date for the Initial Rent Month and each subsequent Month during the Term, Aurizon must give the Trustee a RCTI (**Monthly Invoice**) specifying the Rent for that Month.
- (b) Within ten Business Days after Aurizon gives the Trustee a Monthly Invoice for a Month, Aurizon must pay the total invoice amount specified in the Monthly Invoice for that Month to the Trustee.

8.2 Supporting information

- (a) Subject to **clause 8.2(b)**, each Monthly Invoice given by Aurizon to the Trustee under **clause 8.1** must be accompanied by reasonable details of the calculation of the Rent for the Month specified in the Monthly Invoice.
- (b) Nothing in this Agreement obliges Aurizon to disclose any Customer Confidential Information to the Trustee.

8.3 Interest on overdue payments

- (a) If, for any reason, a Party does not pay an amount payable under this Agreement on or before the due date for payment, it must pay interest to the other Party.

- (b) Interest will accrue on the outstanding amount from the due date for payment until that amount, together with the interest on that amount, has been paid.
- (c) Interest will be calculated at the Interest Rate, and any interest accrued but unpaid at the end of each Month will be capitalised and will thereafter itself bear interest.

8.4 Disputes

- (a) If the Trustee Disputes the amount of the Rent for a Month specified in a Monthly Invoice, the Trustee may give Aurizon a Dispute Notice under **clause 16.1(a)**.
- (b) Upon resolution of a Dispute referred to in **clause 8.4(a)**, if the amount of the Rent payable under the relevant Monthly Invoice as agreed or determined under the Dispute Resolution Process is:
 - (i) more than the amount that was paid by Aurizon under the Monthly Invoice, then, within five Business Days after the date of the resolution of the Dispute, Aurizon must:
 - (A) give the Trustee a further RCTI or adjustment note (as applicable) for the amount of the difference, together with interest on that amount calculated in accordance with **clause 8.3** (provided that, for the purpose of calculating that interest, the due date for payment is deemed to be the due date for payment of the Monthly Invoice under **clause 8.1(b)**); and
 - (B) pay the amount referred to in **clause 8.4(b)(i)(A)** to the Trustee; or
 - (ii) less than the amount that was paid by Aurizon under the Monthly Invoice, then:
 - (A) within five Business Days after the date of the resolution of the Dispute, Aurizon must give the Trustee an adjustment note for the amount of the difference, together with interest on that amount calculated in accordance with **clause 8.3** (provided that, for the purpose of calculating that interest, the amount of the difference will be deemed to be a payment due and payable by the Trustee to Aurizon and the due date for payment will be deemed to be the date when the amount payable under the Monthly Invoice was paid by Aurizon); and
 - (B) within ten Business Days after receipt of the adjustment note from Aurizon under **clause 8.4(b)(ii)(A)**, the Trustee must pay the amount referred to in **clause 8.4(b)(ii)(A)** to Aurizon.

8.5 Correction of errors

- (a) If, at any time:

- (i) the Trustee discovers an error in the Monthly Invoice resulting in an underpayment or overpayment, then the Trustee must promptly notify Aurizon of this error; and
 - (ii) Aurizon discovers an error in the Monthly Invoice resulting in an underpayment or overpayment, then Aurizon must promptly notify the Trustee of this error.
- (b) Despite Aurizon's payment of a Monthly Invoice, if, at any time, an error (resulting in an underpayment or overpayment) is discovered and notified to the other Party in accordance with **clause 8.5(a)**, then:
- (i) if the error results in an underpayment, Aurizon must, within five Business Days after the date the error is verified by Aurizon:
 - (A) give the Trustee a further RCTI or adjustment note (as applicable) for the amount of the underpayment, together with interest on that amount calculated in accordance with **clause 8.3** (provided that, for the purpose of calculating that interest, the due date for payment is deemed to be the date when the amount of the underpayment would have been due and payable but for the error); and
 - (B) pay the amount referred to in **clause 8.5(b)(i)(A)** to the Trustee; or
 - (ii) if the error results in an overpayment:
 - (A) within five Business Days after the date the error is verified by Aurizon, Aurizon may give the Trustee an adjustment note for the amount of the overpayment to Aurizon, together with interest on that amount calculated in accordance with **clause 8.3** (provided that, for the purpose of calculating that interest, the amount of the overpayment will be deemed to be a payment due and payable by the Trustee to Aurizon and the due date for payment will be deemed to be the date when the overpayment was paid by Aurizon); and
 - (B) within ten Business Days after receipt of the adjustment note from Aurizon under **clause 8.5(b)(ii)(A)**, the Trustee must pay the amount referred to in **clause 8.5(b)(ii)(A)** to Aurizon.

8.6 Aurizon's right of set-off

Aurizon may deduct from any amounts which are due and payable by Aurizon to the Trustee under this Agreement any amounts which are due and payable by the Trustee to Aurizon under this Agreement or any other Transaction Document.

8.7 Method of payment

All payments to be made under or in connection with this Agreement must be paid in Australian currency, without set-off or deduction (subject to **clause 8.6**), by:

- (a) electronic payment to an account nominated by the Party entitled to receive the payment; or
- (b) such other method as the Party entitled to receive the payment may reasonably require from time to time.

9 Direction to pay

9.1 Direction to pay – Extension Access Agreement

- (a) At the time that Aurizon gives an Extension Access Agreement Customer an Extension Access Agreement Invoice for a Month, Aurizon must, by notice to the Extension Access Agreement Customer (such notice to be copied to the Trustee), direct the Extension Access Agreement Customer to pay by the due date for payment under the Extension Access Agreement:
 - (i) into the Direction to Pay Account – the Direction to Pay Amount for the Extension Access Agreement for that Month; and
 - (ii) to Aurizon (in the manner required under the Extension Access Agreement) – the remaining amount of the Access Charges, if any, which are payable under the Extension Access Agreement Invoice for the Month after subtracting the amount referred to in **clause 9.1(a)(i)**.
- (b) If:
 - (i) at the time that Aurizon gives an Extension Access Agreement Customer an Extension Access Agreement Invoice for a Month, Aurizon does not give the Extension Access Agreement Customer a direction to pay under **clause 9.1(a)**;
 - (ii) within five Business Days after receiving the Extension Access Agreement Invoice, the Extension Access Agreement Customer notifies Aurizon that it has not been given a direction to pay under **clause 9.1(a)**; and
 - (iii) within five Business Days after the Extension Access Agreement Customer gives Aurizon a Notice referred to in **clause 9.1(b)(ii)**, Aurizon does not give the Extension Access Agreement Customer a direction to pay under **clause 9.1(a)**,then, despite the Extension Access Agreement Customer not being given a direction to pay under **clause 9.1(a)**:
 - (iv) the Direction to Pay Amount for the Extension Access Agreement for that Month will be taken to be the whole of the amount of the Access Charges payable under the Extension Access Agreement Invoice for that Month; and

- (v) the Extension Access Agreement Customer will be taken to have been given a direction to pay the Direction to Pay Amount for that Month into the Direction to Pay Account under **clause 9.1(a)**.

9.2 Direction to pay – Nominated Access Agreements

- (a) The Trustee may procure access agreement customers to give Aurizon a Direction to Pay Undertaking.
- (b) The Parties acknowledge and agree that Aurizon will treat a Direction to Pay Undertaking as being in force and binding upon the Nominated Access Agreement Customer unless and until the Nominated Access Agreement Customer notifies Aurizon that it revokes the Direction to Pay Undertaking.
- (c) If:
 - (i) the sum of the Direction to Pay Amounts for all Extension Access Agreements for a Month is less than the Expected Rent for the Month; and
 - (ii) the difference between the sum of the Direction to Pay Amounts for all Extension Access Agreements for the Month and the Expected Rent for the Month is greater than the sum of the amount of the Access Charges payable under Nominated Access Agreement Invoices for the Month,

then, at the time that Aurizon gives each Nominated Access Agreement Customer its Nominated Access Agreement Invoice for the Month, Aurizon must, by notice to each Nominated Access Agreement Customer, direct each Nominated Access Agreement Customer to pay the whole of the amount of the Access Charges payable under its Nominated Access Agreement Invoice for the Month into the Direction to Pay Account by the due date for payment under the Nominated Access Agreement.

- (d) If:
 - (i) the sum of the Direction to Pay Amounts for all Extension Access Agreements for a Month is less than the Expected Rent for the Month; and
 - (ii) the difference between sum of the Direction to Pay Amounts for all Extension Access Agreements for that Month and the Expected Rent for the Month is less than the sum of the amounts of the Access Charges payable under Nominated Access Agreement Invoices for that Month,

then, at the time that Aurizon gives the Nominated Access Agreement Customers their Nominated Access Agreement Invoices for that Month, Aurizon must, by notice to one or more Nominated Access Agreement Customers, direct one or more Nominated Access Agreement

Customers to pay by the due date for payment under the applicable Nominated Access Agreement:

- (iii) into the Direction to Pay Account – the whole or part of the amount of the Access Charges payable under the Nominated Access Agreement Customer's Nominated Access Agreement Invoice for that Month; and
- (iv) to Aurizon (in the manner required under the Nominated Extension Access Agreement) – the remaining amount of the Access Charges, if any, which are payable under the Nominated Access Agreement Invoice for that Month after subtracting the amount referred to in **clause 9.2(d)(iii)**,

so that, in total, Aurizon has directed one or more Nominated Access Agreement Customers to pay into the Direction to Pay Account the difference between the sum of the Direction to Pay Amounts for all Extension Access Agreements for that Month and the Expected Rent for that Month.

- (e) Despite this **clause 9.2**, Aurizon is not required to give a direction to pay to a Nominated Access Agreement Customer under this **clause 9.2** if, and to the extent that, Aurizon is under an obligation to direct the Nominated Access Agreement Customer to pay the access charges payable under the Nominated Access Agreement to a third party.

9.3 Direction to Pay Account

- (a) Prior to the Initial Rent Month, the Trustee must establish, and maintain during the remainder of the Term, a separate bank account (**Direction to Pay Account**), in the name of the Trustee, for the purpose of receiving payments which Aurizon directs Extension Access Agreement Customers and Nominated Access Agreement Customers to pay under this **clause 9**.
- (b) The Trustee must:
 - (i) not deposit funds into the Direction to Pay Account; and
 - (ii) use reasonable endeavours to ensure that the only funds (excluding interest earned on funds in the Direction to Pay Account) deposited into the Direction to Pay Account are amounts which Aurizon directs Extension Access Agreement Customers and Nominated Access Agreement Customers to pay into the Direction to Pay Account under this **clause 9**.
- (c) Promptly after:
 - (i) the due date for payment of a Direction to Pay Amount for a Month for an Extension Access Agreement or Nominated Access Agreement (as notified by Aurizon to the Trustee under **clause 9.4**); and

- (ii) if the Direction to Pay Amount referred to in **clause 9.3(c)(i)** is not paid (in whole or in part) into the Direction to Pay Account by the due date for payment but is subsequently paid (in whole or in part) into the Direction to Pay Account – the date of such late payment, the Trustee must give Aurizon a Notice specifying:
 - (iii) the amount (if any) paid into the Direction to Pay Account by the Extension Access Agreement Customer or Nominated Access Agreement Customer for that Extension Access Agreement or Nominated Access Agreement; and
 - (iv) if applicable, the date of payment of that amount into the Direction to Pay Account.

9.4 Notice of directions to pay

Promptly after Aurizon gives all of the directions to pay for a Month to Extension Access Agreement Customers and Nominated Access Agreement Customers (if applicable) under **clauses 9.1** and **9.2**, Aurizon must give the Trustee a Notice specifying:

- (a) the Total Direction to Pay Amount for the Month;
- (b) each of the Extension Access Agreement Customers and Nominated Access Agreement Customers (if applicable) to which Aurizon has given a direction to pay;
- (c) the Direction to Pay Amounts that Aurizon directed such Extension Access Agreement Customer and Nominated Access Agreement Customer (if applicable) to pay into the Direction to Pay Account for that Month; and
- (d) the due date for payment of such Direction to Pay Amounts for that Month.

9.5 Application of Total Direction to Pay Amount

- (a) The Total Direction to Pay Amount for a Month will be taken to have been paid by Aurizon to the Trustee by the due date for payment of the Monthly Invoice for that Month for the purpose of **clause 8.1(b)** (regardless of whether or not an Extension Access Agreement Customer or Nominated Access Agreement Customer actually paid the applicable Direction to Pay Amount for that Month into the Direction to Pay Account as directed by Aurizon by the due date for payment).
- (b) If the Expected Rent for a Month exceeds the Rent for the Month, then the Trustee must:
 - (i) issue a credit note to Aurizon for the amount by which the Expected Rent for the Month exceeds the Rent for the Month (**Overpayment**); and
 - (ii) apply the Overpayment, plus interest on the Overpayment calculated in accordance with **clause 8.3** as if the Overpayment

was an outstanding amount for the period from the due date of the Monthly Invoice for the Month until the date that the Overpayment (or relevant part of it) is credited against Rent payable under a further Monthly Invoice, as a credit in favour of Aurizon against Rent payable under the Monthly Invoice for the next Month (and, if necessary, under Monthly Invoices for subsequent Months until the Overpayment plus interest has been fully credited in favour of Aurizon against Rent payable by Aurizon).

9.6 Rent Shortfall Adjustment Amount

If an Extension Access Agreement Customer or Nominated Access Agreement Customer does not pay the whole or part of the Direction to Pay Amount for a Month (**relevant Month**) into the Direction to Pay Account as directed under **clause 9.1** and **9.2** within three months after the due date for payment of such Direction to Pay Amount, then, promptly after the end of that three month period, Aurizon must calculate:

- (a) the Rent Shortfall Adjustment Amount in accordance with the following formula:

$$RSAA = R_i - (R_o - S)$$

where:

RSAA = The Rent Shortfall Adjustment Amount

R_i = The Rent for the relevant Month (calculated in accordance with the Rent Calculation Methodology using the same inputs as originally used to calculate the Rent for the relevant Month subject only to the non-payment of "S" (as defined in the formula in this **clause 9.6(a)**) being taken into account for the purpose of such recalculation)

R_o = The Rent for the relevant Month as invoiced in the Monthly Invoice for the relevant Month

S = The amount of the Direction to Pay Amount which the relevant Extension Access Agreement Customer or Nominated Access Agreement Customer (as applicable) did not pay into the Direction to Pay Account within three months after the due date for the payment of such Direction to Pay Amount into the Direction to Pay Account

- (b) the Rent Reduction Amount in accordance with the following formula:

$$RRA = S - RSAA$$

where:

RRA = The Rent Reduction Amount

S = The amount of "S" (as defined in the formula in **clause**

9.6(a)

RSAA = The Rent Shortfall Adjustment Amount calculated in accordance with **clause 9.6(a)** as a consequence of the non-payment of "S" (as defined in the formula in **clause 9.6(a)**)

9.7 Late Payment Adjustment Amount

If Aurizon is required to calculate a Rent Shortfall Adjustment Amount under **clause 9.6** and, after the end of the three month period referred to in **clause 9.6**, the relevant Extension Access Agreement Customer or Nominated Access Agreement Customer pays the whole or part of the Direction to Pay Amount for the relevant Month referred to in **clause 9.6** into the Direction to Pay Account, then, promptly after such payment, Aurizon must calculate:

- (a) the Late Payment Adjustment Amount in accordance with the following formula:

$$LPAA = LPA/S \times RSAA$$

where:

LPAA = The Late Payment Adjustment Amount

LPA = The amount of the Direction to Pay Amount which the relevant Extension Access Agreement Customer or Nominated Access Agreement Customer (as applicable) paid into the Direction to Pay Account later than three months after the due date for the payment of such Direction to Pay Amount into the Direction to Pay Account

S = The amount of the Direction to Pay Amount which the relevant Extension Access Agreement Customer or Nominated Access Agreement Customer (as applicable) did not pay into the Direction to Pay Account within three months after the due date for the payment of such Direction to Pay Amount into the Direction to Pay Account

RSAA = The Rent Shortfall Adjustment Amount calculated in accordance with **clause 9.6(a)** as a consequence of the non-payment of "S" (as defined in the formula in this **clause 9.7(a)**)

- (b) the Rent Increase Amount in accordance with the following formula:

$$RIA = LPA/S \times RRA$$

where:

RIA = The Rent Increase Amount

LPA = The amount of the Direction to Pay Amount which the

relevant Extension Access Agreement Customer or Nominated Access Agreement Customer (as applicable) paid into the Direction to Pay Account later than three months after the due date for the payment of such Direction to Pay Amount into the Direction to Pay Account

S = The amount of "S" (as defined in the formula in **clause 9.7(a)**)

RRA = The Rent Reduction Amount calculated in accordance with **clause 9.6(b)** as a consequence of the non-payment of "S" (as defined in the formula in **clause 9.7(a)**)

10 Calculation of Rent

10.1 Objective

The Parties agree that the amount of the Rent for a Month payable by Aurizon to the Trustee under this Agreement is intended to be calculated so as to achieve the objective set out in **schedule 2 (Objective)**.

10.2 Rent Calculation Methodology

The Parties acknowledge and agree that the Rent Calculation Methodology as at the Commencement Date achieves the Objective as at the Commencement Date.

10.3 Calculation of Rent

- (a) The Rent for a Month will be the amount calculated in accordance with the Rent Calculation Methodology (as varied from time to time under this **clause 10**).
- (b) For the purpose of calculating the Rent for a Month, any Direction to Pay Amount for the Month which Aurizon has directed an Extension Access Agreement Customer or Nominated Access Agreement Customer to pay into the Direction to Pay Account under **clause 9.1** and **9.2** will be taken to have been paid by the Extension Access Agreement Customer or Nominated Access Agreement Customer (as applicable) into the Direction to Pay Account by the due date for payment (regardless of whether or not the amount was actually paid into the Direction to Pay Account as directed by the due date for payment).

10.4 Variations to Rent Calculation Methodology

If, at any time, a Party considers, acting reasonably, that the Rent Calculation Methodology at that time fails, or will in the future fail, to achieve the Objective for any reason, then that Party may give a Notice (**Variation Notice**) to the other Party:

- (a) specifying how the Rent Calculation Methodology fails, or will in the future fail, to achieve the Objective;

- (b) requesting that the Rent Calculation Methodology be varied, to the extent necessary, so that the Rent Calculation Methodology achieves, or will in the future achieve, the Objective; and
- (c) setting out the Party's proposed variations to the Rent Calculation Methodology.

10.5 Good faith negotiations

- (a) If a Party gives a Variation Notice, the Parties must promptly (and in any event within ten Business Days) negotiate in good faith to endeavour to agree in writing the variations to the Rent Calculation Methodology, to the extent necessary, so that the Rent Calculation Methodology achieves, or will in the future achieve, the Objective.
- (b) For the purposes of the negotiations referred to in **clause 10.5(a)**, the Parties must:
 - (i) act fairly, reasonably and honestly;
 - (ii) work together and cooperate with each other; and
 - (iii) meet regularly with each other or as otherwise reasonably required by either of them.

10.6 Determination of Rent Calculation Methodology Dispute

- (a) If, within one month after a Party gives a Variation Notice to the other Party, the Parties have not agreed on variations to the Rent Calculation Methodology:
 - (i) a Dispute (**Rent Calculation Methodology Dispute**) will be taken to exist between the Parties; and
 - (ii) either Party may refer the Rent Calculation Methodology Dispute to an Expert for determination under **clause 16.4**.
- (b) If a Party refers the Rent Calculation Methodology Dispute to an Expert for determination under **clause 16.4** then, subject to **clause 10.6(c)**, the Parties must jointly appoint the Access Regulator as the Expert to determine the Rent Calculation Methodology Dispute.
- (c) If:
 - (i) the Access Regulator does not accept the appointment as the Expert to determine the Rent Calculation Methodology Dispute; or
 - (ii) the Parties agree to have the Rent Calculation Methodology Dispute determined by an Expert other than the Access Regulator,then the Rent Calculation Methodology Dispute will be determined by another Expert appointed in accordance with **clause 16.4**.
- (d) If a Rent Calculation Methodology Dispute is referred to an Expert other than the Access Regulator for determination, the Expert must apply the principles which it considers, acting reasonably, would be applied by the

Access Regulator if it were appointed as the Expert to determine the Rent Calculation Methodology Dispute.

- (e) Unless otherwise agreed between the Parties, in determining a Rent Calculation Methodology Dispute, the Expert (whether or not the Access Regulator) must determine:
 - (i) the extent to which the Rent Calculation Methodology fails, or will in the future fail, to achieve the Objective; and
 - (ii) the variations to the Rent Calculation Methodology (if any) required so that the Rent Calculation Methodology (once varied) will achieve the Objective.
- (f) If the Expert determines any variations to the Rent Calculation Methodology in accordance with **clause 10.6(e)**, the Rent Calculation Methodology will be taken to be varied as determined by the Expert:
 - (i) if the Rent Calculation Methodology Dispute is about the Rent Calculation Methodology failing to achieve the Objective in the future – on the date that the Rent Calculation Methodology would, but for the variations, fail to achieve the Objective in the future; or
 - (ii) otherwise – on the date that the Expert notifies in the Expert's determination that the variation to the Rent Calculation Methodology takes effect.

11 Records and auditing

11.1 Keeping of records

- (a) Aurizon must maintain full and complete records of all information which may be reasonably required by the Trustee to verify the determination of the Rent (including the regulatory value of the Total Extension Infrastructure in its Regulatory Asset Base by asset type and by location on a basis that shows the Total Extension Infrastructure separately from other assets of the same asset type and location).
- (b) Aurizon must preserve and maintain the records referred to in **clause 11.1(a)** for a period of not less than five years following the end of the year in which the records ceased being necessary to enable calculation of the amounts payable to the Trustee under this Agreement.

11.2 Audit

- (a) The Trustee may appoint an independent auditor nominated by it and approved by Aurizon (**Auditor**) to carry out audits in order to verify the amounts included in Monthly Invoices and the determination of Rent under this Agreement (**Audits**).
- (b) Aurizon must approve any Auditor proposed by the Trustee unless Aurizon is of the opinion that the proposed Auditor has previously breached the terms of any confidentiality undertaking which has previously been given by the proposed Auditor to Aurizon.

- (c) The costs and expenses of an Auditor must be borne solely by the Trustee.
- (d) Prior to the Auditor undertaking its first Audit, the Trustee must ensure that the Auditor provides Aurizon with a signed confidentiality undertaking from the Auditor in favour of Aurizon in the form shown in **schedule 5** or in a form otherwise acceptable to Aurizon (acting reasonably).
- (e) Upon at least ten Business Days prior written request given by the Trustee (not more than once each year of this Agreement), Aurizon must:
 - (i) give the Auditor reasonable access during normal business hours to the books, accounts and records of Aurizon relevant to an Audit; and
 - (ii) otherwise provide reasonable assistance and co-operation to the Auditor in relation to the conduct of the Audit.
- (f) The Parties acknowledge and agree that, except to the extent otherwise provided in the confidentiality undertaking referred to in **clause 11.2(d)**, the Auditor will only be entitled to disclose to the Trustee:
 - (i) whether or not the Auditor verified the amounts included in Monthly Invoices and the determination of Rent under this Agreement; and
 - (ii) if the Auditor is unable to verify any amount included in a Monthly Invoice and/or the determination of Rent under this Agreement, the nature and extent of the Auditor's inability to verify the amount included in the Monthly Invoice and/or the determination of Rent under this Agreement.
- (g) The Parties acknowledge and agree that the confidentiality undertaking referred to in **clause 11.2(d)** will:
 - (i) not prevent the Auditor from disclosing the result of its Audit (other than Customer Confidential Information) to the Trustee;
 - (ii) subject to **clause 11.2(g)(iii)**, require the Auditor to keep all Customer Confidential Information confidential (including from the Trustee); and
 - (iii) permit the Auditor to disclose Customer Confidential Information to an Expert (but not the Trustee) to the extent that the Expert requires access to the Customer Confidential Information for the purpose of resolving a Dispute under the Dispute Resolution Process about any amount included in a Monthly Invoice and/or the determination of Rent under this Agreement provided that the Expert has first signed a confidentiality undertaking in favour of Aurizon under which the Expert undertakes to keep the Customer Confidential Information confidential (including from the Trustee).

11.3 Audit of Direction to Pay Account

- (a) Aurizon may appoint an independent auditor nominated by it and approved by the Trustee (such approval not to be unreasonably withheld or delayed) (**DTP Auditor**) to carry out audits in order to verify amounts paid into the Direction to Pay Account (**DTP Audits**).
- (b) The costs and expenses of a DTP Auditor will be borne solely by the Trustee and the Trustee must reimburse Aurizon for any such costs and expenses incurred by Aurizon.
- (c) Upon at least ten Business Days prior written request given by Aurizon (not more than once each year of this Agreement), the Trustee must:
 - (i) give the DTP Auditor reasonable access during normal business hours to the books, accounts, bank statements and records of the Trustee relevant to an DTP Audit; and
 - (ii) otherwise provide reasonable assistance and cooperation to the DTP Auditor in relation to the conduct of the DTP Audit.

12 Force majeure

- (a) If Aurizon is prevented or hindered by a Force Majeure Event from fully or partly performing any obligation (except for the payment of money) under this Agreement, then Aurizon will be excused from performing that obligation for the period that Aurizon is so prevented or hindered.
- (b) Upon the occurrence of any Force Majeure Event which prevents or hinders Aurizon from fully or partly performing any obligation under this Agreement, Aurizon must:
 - (i) give notice of the event to the Trustee as soon as reasonably practicable;
 - (ii) use all reasonable endeavors to mitigate the effect of the Force Majeure Event upon the performance of its obligations under this Agreement; and
 - (iii) resume full performance of its obligations under this Agreement as soon as reasonably practicable, and notify the Trustee when it does so.

13 Termination

13.1 Termination by Trustee for Insolvency Event

The Trustee may immediately terminate this Agreement by notice to Aurizon if an Insolvency Event occurs in respect of Aurizon.

13.2 Termination by Trustee for non-payment

The Trustee may immediately terminate this Agreement by notice to Aurizon if Aurizon does not pay any money which is due for payment to the Trustee

under a Monthly Invoice by the due date for payment and Aurizon does not pay that money, together with interest under **clause 8.3**, within a further period of 12 months after the Trustee gives a Notice to Aurizon requesting payment of that money.

13.3 No other rights of termination

- (a) Except as provided in **clause 13.1** and **13.2** and despite any rule of law or equity to the contrary:
 - (i) neither Party may terminate, rescind or treat as repudiated, or obtain any order with the effect of terminating or rescinding, this Agreement; and
 - (ii) this Agreement will not terminate, be frustrated (whether at common law, by equity or by statute), be repudiated or taken to have been repudiated for any reason.
- (b) Neither the Trustee nor Aurizon may surrender any part of its interest in this Agreement.

13.4 No prejudice as to right to damages

Subject to **clause 14**, nothing in this **clause 13** prejudices in any way a Party's right to Claim and recover damages for any breach of this Agreement by the other Party.

14 Limitation of liability

14.1 Limitation of Aurizon's liability

Except to the extent:

- (a) that Aurizon has committed fraud, Gross Negligence or Wilful Default; or
- (b) otherwise prohibited by law,

Aurizon's liability in respect of a Claim arising out of, or in any way related to, this Agreement (excluding a Claim in respect of the non-payment by Aurizon of an amount that it is expressly required to pay under the terms of this Agreement) is limited to, and will in no event exceed, the total amount of \$1.00.

14.2 Trustee's limitation of liability

- (a) Aurizon acknowledges that the Trustee enters into this Agreement only as trustee of the Trust, and in no other capacity (other than in respect of the warranties in relation to trustee capacity in **clause 21.2** which are given by the Trustee in its personal capacity).
- (b) A liability of the Trustee arising under or in connection with this Agreement is limited to and can be enforced against the Trustee only to the extent to which the Trustee is entitled to be indemnified out of the Trust for the liability and the liability can be satisfied out of property of the Trust.

- (c) The limitation of liability in this **clause 14.2** will not apply to any liability of the Trustee to the extent that the liability is not satisfied out of the property of the Trust because there is a reduction in the Trustee's right of indemnity as a result of the Trustee committing fraud, "Gross Negligence" or "Wilful Default" (each as defined in the Trust Deed).

14.3 Exclusion of Consequential Loss

- (a) Subject to **clause 14.3(b)**, despite any other provision of this Agreement, neither Party will be liable to the other for any Consequential Loss suffered by or Claimed against that other Party.
- (b) **Clause 14.3(a)** does not apply to the indemnity in **clause 3.3**.

14.4 Scope of Claim, liability or loss

For the avoidance of doubt, references in this **clause 14** to a Claim, liability or loss include:

- (a) a Claim for, or liability or loss arising from, breach of contract, tort (including negligence), breach of equitable duty, breach of statutory duty, breach of the *Competition and Consumer Act 2010* (Cth) or otherwise; and
- (b) a Claim, liability or loss arising out of the performance or non-performance of any obligation under this Agreement, or arising out of a termination of this Agreement for any reason (including breach, repudiation or otherwise).

14.5 Claims against Aurizon

The Trustee will not have, and must not make, any Claim against Aurizon in relation to or arising out of the entry into or the performance or non-performance of this Agreement, or give a Dispute Notice to Aurizon in respect of such a Claim under **clause 16**, unless the Trustee first provides Aurizon with a Notice of the purported Claim and allows Aurizon a reasonable period to rectify the relevant default and Aurizon fails to rectify that default within that reasonable period.

15 Trustee's risks

15.1 Acknowledgement

The Trustee acknowledges and accepts, each as a material term of this Agreement and to induce Aurizon to enter this Agreement, that:

- (a) its right to the payment of Rent under this Agreement and the quantum of the Rent payable under this Agreement is determined (in part) by Aurizon's revenue from each mainline system of which the Total Extension Infrastructure forms part;
- (b) Aurizon's revenue from each of those systems is dependent on various known and unknown risks, uncertainties and other factors (some of which are within, and some of which are beyond, Aurizon's control); and

- (c) those risks, uncertainties and other factors may cause Aurizon's actual revenue, and the actual payments to the Trustee under this Agreement, to differ from that expected by Aurizon or the Trustee.

15.2 No liability

Aurizon will have no liability to the Trustee, and the Trustee will not make any Claim against Aurizon, arising out of or in connection with the size, timing or nature of Aurizon's revenue from each mainline system of which the Total Extension Infrastructure forms part or the size or timing of the Rent payments to the Trustee under this Agreement.

16 Disputes

16.1 Notification of Disputes

- (a) If any Claim, dispute or question (**Dispute**) arises between the Parties under this Agreement, any Party may give to the other Party a Notice in writing (**Dispute Notice**) specifying reasonable details of the Dispute and referring it for resolution in accordance with this **clause 16**.
- (b) Unless otherwise expressly provided to the contrary in this Agreement, a Dispute must be resolved in accordance with this **clause 16**.

16.2 Discrimination Dispute

- (a) This **clause 16.2** applies if the Trustee Disputes that Aurizon has complied with a Non-Discrimination Provision when exercising a right, power or discretion under this Agreement (**Discrimination Dispute**).
- (b) Within ten Business Days after the giving of a Dispute Notice in respect of a Discrimination Dispute, Aurizon must give to the Trustee a Notice specifying whether or not Aurizon considers that it has complied with the relevant Non-Discrimination Provision providing reasonable details of the Landholder's reasons for forming that opinion.
- (c) If Aurizon specifies in a Notice given under **clause 16.2(b)** that it considers that it has not complied with the relevant Non-Discrimination Provision, Aurizon must, within ten Business Days after the giving of that Notice, re-exercise the relevant right, power or discretion in a manner that complies with the relevant Non-Discrimination Provision (in which case, the relevant Discrimination Dispute will be taken to be resolved).
- (d) If Aurizon specifies in a Notice given under **clause 16.2(b)** that it considers that it has complied with the relevant Non-Discrimination Provision, then within ten Business Days after the giving of that Notice, the Trustee may refer the Discrimination Dispute to the chief executive officer of Aurizon (or his or her nominee) and the chief executive officer of the Trustee (or his or her nominee) for the purposes of this **clause 16.2(d)** for resolution.

16.3 Chief executive officer resolution

- (a) Within ten Business Days after the giving of a Dispute Notice (or in the case of a Discrimination Dispute, if the Discrimination Dispute is not

resolved within ten Business Days after referral under **clause 16.2(d)**), any Dispute must be referred in the first instance to the chief executive officer of Aurizon (or his or her nominee) and the chief executive officer of the Trustee (or his or her nominee) for the purposes of this **clause 16.3** for resolution.

- (b) If the Dispute is not resolved within ten Business Days after the referral under **clause 16.2(a)** or in the event that either chief executive officer appoints a nominee that is unacceptable to the other Party, then the relevant Dispute:
 - (i) must, where this Agreement expressly requires referral to an expert; and
 - (ii) may, by agreement of the Parties in any other case, be referred for resolution by an expert (**Expert**) in accordance with **clause 16.4**.

16.4 Expert determination

Where any matter is referred to an Expert under **clause 16.3** or otherwise in accordance with the terms of this Agreement then the following provisions of this **clause 16.4** will apply:

- (a) an Expert must be appointed by agreement between the Parties, or in default of such appointment within ten Business Days of the requirement or right (as applicable) to refer the matter to an Expert, then that person is to be nominated at either Party's request by:
 - (i) where the Parties agree the Dispute is purely of a technical nature, the President (for the time being) of Engineers Australia – Queensland Division;
 - (ii) where the Parties agree the Dispute is purely of a financial or accounting nature, the President (for the time being) of The Institute of Chartered Accountants in Australia – Queensland Branch; and
 - (iii) in any other case, the President (for the time being) of the Queensland Law Society, Inc;
- (b) if the Expert is to be nominated by a person referred to in **clause 16.4(a)** and that person declines to nominate a person as the Expert but provides a list of people that could be appointed as the Expert:
 - (i) the first person specified in that list will be taken to be nominated as the Expert;
 - (ii) if the first person specified in that list does not accept the appointment as the Expert, the next person specified in that list will be taken to be the first person specified in that list and will be nominated as the Expert; and

- (iii) the process specified in **clause 16.4(b)(ii)** will apply to the next and each subsequent person specified in that list until a person that is taken to be nominated as the Expert accepts the appointment as the Expert;
- (c) subject to **clause 16.4(b)**, if the Expert is to be nominated by a person referred to in **clause 16.4(a)** and the person nominated as the Expert does not accept the appointment as the Expert, then an alternative person is to be nominated as the Expert at either Party's request by the same person referred to in **clause 16.4(a)**;
- (d) if the Expert is to be nominated by a person referred to in **clause 16.4(a)** the Parties must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of that person (including providing relevant indemnities and paying any charges or fees (which charges or fees will be borne equally by the Parties)) that must be satisfied or complied with as a condition of that person agreeing to nominate an Expert;
- (e) the Parties must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of an agreed or nominated Expert (including providing relevant indemnities and paying any charges or fees (which charges or fees will be borne equally by the Parties)) that must be satisfied or complied with as a condition of that person accepting the appointment as an Expert; and
- (f) the Expert must:
 - (i) have appropriate qualifications and practical experience having regard to the nature of the Dispute;
 - (ii) have no interest or duty which conflicts or may conflict with his or her function as Expert, he or she being required to fully disclose any such interest or duty by notice to the Parties before his or her appointment;
 - (iii) not be, or have been in the last five years, an employee of the Trustee, Aurizon or a Preference Unit Holder or a Related Body Corporate of the Trustee, Aurizon or a Preference Unit Holder;
 - (iv) not be permitted to act until he or she has given notice to the Parties that he or she is willing and able to accept the appointment;
 - (v) have regard to the provisions of this Agreement and consider all submissions (including oral submissions by either Party provided that such oral submissions are made in the presence of the other Party), supporting documentation, information and data with respect to the matter submitted by the Parties;
 - (vi) provide both Parties with a copy of his or her determination in the form of a report setting out reasonable details of the reasons for the Expert's determination within a reasonable time after his or her appointment;

- (vii) be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties (including, if required by a Party, by entering into a confidentiality agreement in favour of the Parties); and
- (viii) be deemed to be and act as an expert and not an arbitrator and the law relating to arbitration (including, without limitation, the *Commercial Arbitration Act 1990 (Qld)*) will not apply to him or her or the determination or the procedures by which he or she may reach a determination.

16.5 Parties to assist Expert

The Parties must do everything reasonably requested by the Expert to assist the Expert in determining the Dispute, including producing information and materials requested by the Expert and attending any hearing convened by the Expert.

16.6 Decision of Expert

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

16.7 Costs

- (a) The costs of the Expert and any advisers engaged by the Expert will be borne equally by the Parties to the Dispute.
- (b) Each Party to the Dispute will bear its own legal costs and the costs of any advisers to it in respect of the Dispute Resolution Process under this **clause 16**.

16.8 Determination by court

- (a) If any Dispute is not otherwise resolved in accordance with this **clause 16**, then the Dispute may be referred to one of the courts of the State having jurisdiction, and sitting in Brisbane.
- (b) Each Party irrevocably and unconditionally:
 - (i) agrees that the courts of the State, and any courts which have jurisdiction to hear appeals from any of those courts, are to have exclusive jurisdiction to settle Disputes which may arise out of or in connection with this Agreement and that accordingly any suit, action or proceeding (**Proceedings**) arising out of or in connection with this Agreement may be brought in, and only in, such courts;
 - (ii) waives any objection which it may have now or hereafter to the laying of the venue of any Proceedings in such courts and any Claim that any such Proceedings have been brought in an inconvenient forum; and
 - (iii) agrees that a final judgment in any Proceedings brought in such courts will be final and binding upon such Party and may be enforced in the courts of any other jurisdiction.

16.9 Discrimination Dispute

- (a) This **clause 16.9** applies in respect of a Discrimination Dispute.
- (b) If a Discrimination Dispute is not resolved in accordance with **clause 16.3** the Discrimination Dispute must be referred to an Expert to determine whether or not Aurizon complied with the relevant Non-Discrimination Provision.
- (c) If it is agreed or determined through the Dispute resolution process that Aurizon failed to comply with the relevant Non-Discrimination Provision, Aurizon must, as soon as reasonably practicable after such agreement or determination (and, in any event, within ten Business Days), exercise the relevant right, power or discretion in a manner that complies with the relevant Non-Discrimination Provision (having regard to the agreement or determination, as applicable).
- (d) Despite a Discrimination Dispute, the exercise of the relevant right, power or discretion by Aurizon which is the subject of the Discrimination Dispute is taken to be valid unless and until:
 - (i) it is agreed or determined through the Dispute resolution process under this **clause 16** that Aurizon failed to comply with the Non-Discrimination Provision; and
 - (ii) Aurizon has, in accordance with **clause 16.9(c)**, exercised the relevant right, power or discretion in a manner that complies with the relevant Non-Discrimination Provision.

16.10 Injunctive relief

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

16.11 Disputes involving Unit Holders

If:

- (a) a Dispute which arises under this Agreement, or the outcome or consequences of that Dispute, may be relevant to the Trustee and/or one or more Unit Holders under the Unit Holders Deed; or
- (b) a “Dispute” (as defined under the Unit Holders Deed) which arises under the Unit Holders Deed, or the outcome or consequences of that Dispute, may be relevant to the Trustee and/or Aurizon under this Agreement,

then:

- (c) as applicable:
 - (i) Aurizon and/or the Trustee may join all (for the avoidance of doubt, not only some) of the Unit Holders to the dispute resolution process under this Agreement; or
 - (ii) the Trustee may join Aurizon to the dispute resolution process under the Unit Holders Deed; and

- (d) Aurizon, the Trustee and each Unit Holder joined to participate in the dispute resolution process under this Agreement or the Unit Holders Deed (as applicable) will be bound by the outcome of the resolution of the Dispute irrespective of whether or not Aurizon, the Trustee and the Unit Holder (as applicable) choose to actively participate in the dispute resolution process.

16.12 Time bar

If a Party does not give a Dispute Notice under **clause 16.1(a)** in respect of a Dispute within 12 Months after the date the Party became aware, or ought reasonably to have become aware, of the occurrence of the event or circumstance giving rise to the Dispute:

- (a) the Party must not give the other Party such a Dispute Notice;
- (b) any such Dispute Notice which is given by the Party will be taken to be of no effect; and
- (c) the Party will not have, and must not make, any Claim against the other Party in respect of the Dispute.

17 Confidentiality

17.1 Confidentiality obligations

A Party (**Recipient**):

- (a) may use Confidential Information of the other Party (**Disclosing Party**) only for the purposes of this Agreement or another Transaction Document; and
- (b) must keep confidential all Confidential Information of a Disclosing Party except for disclosures permitted under **clause 17.2**.

17.2 Disclosure of Confidential Information

A Recipient may disclose Confidential Information of a Disclosing Party:

- (a) to any person, where the Disclosing Party has consented in writing to such disclosure (such consent not to be unreasonably withheld or delayed, and may be given subject to reasonable conditions, such as the signing of an appropriate confidentiality undertaking);
- (b) to the extent necessary to progress negotiations with any other person relevant to matters contemplated in this Agreement who executes a confidentiality undertaking in favour of the Disclosing Party on terms reasonably acceptable to it;
- (c) to the extent necessary to effect the administration or enforcement of this Agreement, or further negotiations pursuant to this Agreement, by employees, professional advisers (including legal advisers) and consultants of the Recipient;
- (d) to any Related Body Corporate of the Recipient to the extent necessary for reporting purposes within a relevant group of companies, governance

- and oversight of the relevant group of companies and obtaining any approval or consent (whether or not directly from that Related Body Corporate) in relation to the Recipient entering into this Agreement;
- (e) to potential purchasers, assignees or transferees of the shares in the Recipient or a Related Body Corporate of it or of the rights or obligations of the Recipient under this Agreement and the other Transaction Documents who execute a confidentiality undertaking in favour of the Disclosing Party on terms reasonably acceptable to it;
 - (f) to a bank or other financial institution (and its professional advisers and any security trustee or agent for it) in connection with and for the purpose of any loan or other financial accommodation sought to be arranged by, or provided to, the Recipient or a Related Body Corporate of it;
 - (g) to legal, accounting and financial or other advisers or consultants to the Recipient or a Related Body Corporate of it:
 - (i) whose duties in relation to the Recipient or the Related Body Corporate require the disclosure;
 - (ii) who are under a duty of confidentiality to the Recipient; and
 - (iii) who have been advised of the confidential nature of the Confidential Information;
 - (h) to any officers or employees of the Recipient or a Related Body Corporate of the Recipient who:
 - (i) have a need to know for the purposes of this Agreement or another Transaction Document (and only to the extent that each has a need to know); and
 - (ii) before disclosure, have been directed by the Recipient to keep confidential all Confidential Information of the Disclosing Party;
 - (i) if, and to the extent, the Recipient is required to do so by law (other than by section 275 of the *Personal Property Securities Act 2009* (Cth)), any taxation authority or by any rules or regulations of a recognised stock exchange (including where the disclosure is to a Related Body Corporate of the Recipient that is responsible for making such disclosures for the relevant group of companies and for the purpose of such a Related Body Corporate determining whether, and the extent to which, such a disclosure is required to be made);
 - (j) to any Governmental Agency to the extent required by law or where such disclosure is determined by the Trustee to be reasonably required for the administration of the Trust;
 - (k) if disclosure is lawfully required by the Access Regulator or in accordance with the Access Undertaking;
 - (l) to an Auditor or Expert under this Agreement or an "Expert" (as defined in the Unit Holders Deed) under the Unit Holders Deed;

- (m) to a Unit Holder or a Related Body Corporate of a Unit Holder; or
- (n) to advisors of the Unit Holders:
 - (i) whose duties in relation to the Unit Holder require that disclosure;
 - (ii) who are under a duty of confidentiality to the Recipient; and
 - (iii) who have been advised of the confidential nature of the Confidential Information.

17.3 Conditions of disclosure

If a Recipient discloses Confidential Information of a Disclosing Party to a person under **clause 17.2 (Disclosee)**, the Recipient must:

- (a) ensure that the Disclosee is aware that the Confidential Information is confidential information of the Disclosing Party; and
- (b) use reasonable endeavours to ensure that the Disclosee does not improperly disclose or improperly use the Confidential Information.

18 GST

18.1 Construction

In this **clause 18**:

- (a) words and expressions which are not defined in this Agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law;
- (b) **GST Law** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
- (c) references to GST payable and input tax credit entitlement include GST payable by, and the input tax credit entitlement of, the representative member for a GST group of which the entity is a member.

18.2 Consideration GST exclusive

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

18.3 Payment of GST

If GST is payable on any supply made by a Party (or any entity through which that Party acts) (**Supplier**) under or in connection with this Agreement, unless the consideration is expressly stated to be inclusive of GST, the recipient will pay to the Supplier an additional amount equal to the GST payable on the supply. Subject to **clause 18.4**, the recipient will pay the amount referred to in this **clause 18.3** in addition to and at the same time that the consideration for the supply is to be provided under this Agreement.

18.4 Tax invoices

- (a) (**Supplies by the Trustee**) The Parties agree that:

- (i) Aurizon will issue a recipient created tax invoice (**RCTI**) in respect of any taxable supply which the Trustee makes to Aurizon under or in connection with this Agreement (**Trustee Supplies**);
 - (ii) the Trustee will not issue tax invoices in respect of the Trustee Supplies;
 - (iii) the Trustee is registered for GST as at the date of this Agreement and must notify Aurizon if it ceases to be registered;
 - (iv) Aurizon is registered for GST as at the date of this Agreement and must notify the Trustee if it ceases to be registered;
 - (v) Aurizon will issue an adjustment note to the Trustee for any adjustment events that arise in relation to a supply for which a RCTI has been issued;
 - (vi) each RCTI to be issued in accordance with this Agreement is a tax invoice belonging to the class of invoices that the Commissioner of Taxation has determined in writing may be issued by the recipient of a taxable supply; and
 - (vii) the agreement in this **clause 18.4(a)** will terminate immediately if Aurizon or the Trustee cease to satisfy any of the requirements under the GST Law for issuing a RCTI.
- (b) (**Supplies by Aurizon**) Aurizon must deliver a tax invoice or an adjustment note to the Trustee before Aurizon is entitled to payment of an amount on account of GST under **clause 18.3** in respect of the supplies it makes to the Trustee. The Trustee can withhold payment of the amount on account of GST until Aurizon provides a tax invoice or an adjustment note, as appropriate.

18.5 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Agreement, the amount payable by the recipient under **clause 18.3** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier, or by the Supplier to the recipient, as the case requires.

18.6 Reimbursements

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

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

19 Assignment

19.1 Assignment

Subject to **clauses 19.2, 19.3 and 19.4**, a Party must not assign, transfer, mortgage, charge, make the subject of a trust or otherwise deal with or encumber all or any of its rights or liabilities under this Agreement (or procure or permit any of those things) without the prior consent of the other Party.

19.2 Assignment by Aurizon

- (a) If an entity will acquire all of Aurizon's interest in the parts of the Railway Network which include the Segments, Aurizon must transfer all of its rights and liabilities under this Agreement to that entity at the time that the entity acquires Aurizon's interest in the relevant parts of the Railway Network.
- (b) If an entity will acquire a portion of all of Aurizon's interest in part of the Railway Network which include the Segments, Aurizon must transfer the same proportion of all of its rights and liabilities under this Agreement to that entity at the time that the entity acquires the portion of Aurizon's interest in the relevant part of the Railway Network.
- (c) The Trustee must, promptly upon demand by Aurizon, execute a deed of assignment or novation in a form acceptable to Aurizon (acting reasonably) to give effect to the transfer of any rights or liabilities of Aurizon required under this **clause 19.2**.

19.3 Assignment by Trustee

- (a) If the Trustee is replaced by a new trustee of the Trust, the Trustee must, with effect upon the appointment of the new trustee of the Trust, assign its rights and liabilities under this Agreement to the new trustee of the Trust.
- (b) The Trustee must not otherwise assign its rights and liabilities under this Agreement.

19.4 Charging

- (a) Aurizon may mortgage, charge or encumber (**Charge**) all or any of its rights and obligations under this Agreement in whole or in part, in favour of any financier, mortgagee or chargee (**Chargee**), provided that Aurizon, the Chargee and the Trustee execute any reasonable form of covenant, including terms to the effect that the Trustee acknowledges the existence of the Charge, and that the Chargee must comply with the provisions of this Agreement, including this **clause 19**, in the exercise of its rights under the Charge.
- (b) Aurizon must not Charge the Leased Extension Infrastructure or any part of the Leased Extension Infrastructure.

20 Notices

20.1 General

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

20.2 How to give a Notice

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

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

20.3 Particulars for giving of Notices

- (a) Each Party's particulars for the giving of Notices are initially the particulars set out in **item 1 of schedule 1**.
- (b) Each Party may change its particulars for the giving of Notices by notice to the other Party.
- (c) A Notice given to a Party which is signed is evidence that the Notice has been signed by a person duly authorised by the sender and that Party is entitled to rely on that Notice without further inquiry or investigation.

20.4 Notices by post

Subject to **clause 20.6**, a Notice is given if posted:

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

20.5 Notices by fax

Subject to **clause 20.6**, a Notice is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

20.6 After hours Notices

If a Notice is given:

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

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

20.7 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this Agreement may be served by any method contemplated by this **clause 20** or in accordance with any applicable law.

20.8 Signature to Notice

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

21 Warranties

21.1 Warranties

Each Party warrants that:

- (a) it is a corporation validly existing under the laws applicable to it;
- (b) it is able to pay its debts as and when they fall due;
- (c) it has the power to enter into and perform this Agreement and has obtained all necessary consents to enable it to do so;
- (d) its obligations under this Agreement are enforceable in accordance with their terms;
- (e) no litigation, arbitration or administrative proceeding has been commenced before, and no judgment or award has been given or made by, any court, arbitrator, other tribunal or Governmental Agency against it which would have a material adverse effect on its ability to observe its obligations under this Agreement; and
- (f) it is not in breach or default under any agreement to which it is a party to an extent or in a manner which would have a material adverse effect on its ability to perform its obligations under this Agreement.

21.2 Trustee warranties

The Trustee warrants that:

- (a) it has full power and authority to enter into this Agreement and to perform the Trustee's obligations under this Agreement and the Trust Deed;
- (b) it is the sole trustee of the Trust and no action has been taken to remove or replace the Trustee; and
- (c) it has the right to be fully indemnified out of the assets of the Trust in respect of all its obligations under this Agreement, and the Trustee has not done or omitted to do anything that would result in its right of indemnity being restricted or limited in any way.

21.3 Reliance

- (a) Each Party acknowledges that the other Party has entered (or will enter) into this Agreement in reliance upon the warranties contained in **clause 21.1**.

- (b) The Trustee acknowledges that Aurizon has entered (or will enter) into this Agreement in reliance upon the warranties contained in **clause 21.2**.

22 General

22.1 Survival

This **clause 22** and **clauses 17** and **[#]** survive the termination of this Agreement.

22.2 Applicable law

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

22.3 Subcontracting

- (a) For the avoidance of doubt, Aurizon may delegate or subcontract the performance of all or any of its obligations under this Agreement to a third party (including a Related Body Corporate of it).
- (b) The subcontracting or delegation of an obligation, as applicable, under **clause 22.3(a)** does not relieve Aurizon of any liability or obligation under this Agreement in respect of the obligation which has been subcontracted or delegated (as applicable) and Aurizon will be liable to the Trustee for the acts and omissions of the subcontractor or delegate, as applicable, their employees and agents involved in undertaking those obligations as if they were the acts or omissions of Aurizon.

22.4 Waiver

- (a) Waiver of any right arising from a breach of this Agreement or any right arising from a default under this Agreement must be in writing and signed by the Party granting the waiver.
- (b) A single or partial exercise or waiver by a Party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (c) A failure or delay in exercise, or partial exercise, of a right arising from a breach of this Agreement does not result in a waiver of that right.

22.5 Duty

- (a) As between the Parties, the Trustee is liable for and must pay all duty (including any fine or penalty except where it arises from default by Aurizon) on or relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it.
- (b) If Aurizon pays any duty (including any fine or penalty) which the Trustee is liable to pay under **clause 22.5(a)**, the Trustee must pay that amount to Aurizon on demand.

22.6 Legal costs

Except as expressly stated otherwise in this Agreement, each Party must pay its own legal costs and expenses of the drafting, negotiating and execution of this Agreement.

22.7 Amendments to be in writing

Except where this Agreement expressly provides a process for amendment or variation, an amendment or variation of this Agreement will only be effective if it is in writing and executed by both Parties to this Agreement.

22.8 Rights cumulative

Except as expressly stated otherwise in this Agreement, the rights of a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

22.9 Consents

Except as expressly stated otherwise in this Agreement, a Party may conditionally or unconditionally give or withhold any consent to be given under this Agreement and is not obliged to give its reasons for doing so.

22.10 Further assistance

Each Party must promptly sign, execute and complete all additional documents which may be necessary and do whatever else is reasonably required to effect, perfect, or complete the provisions of this Agreement and to perform its obligations under it.

22.11 Counterparts

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

22.12 Entire understanding

- (a) This Agreement and the other Transaction Documents together contain the entire understanding between the Parties as to the subject matter of this Agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement are merged in and superseded by this Agreement and the other Transaction Documents and are of no effect. Neither Party is liable to the other Party in respect of those matters.
- (c) No oral explanation or information provided by a Party to the other Party:
 - (i) affects the meaning or interpretation of this Agreement; or
 - (ii) constitutes any collateral agreement, warranty or understanding between the Parties.

22.13 Relationship of Parties

Except to the extent expressly provided in this Agreement, this Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.

22.14 Severability

- (a) Subject to **clause 22.14(b)**, if a provision of this Agreement is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this Agreement.
- (b) **Clause 22.14(a)** does not apply if severing the provision:
 - (i) materially alters the:
 - (A) scope and nature of this Agreement; or
 - (B) relative commercial or financial positions of the Parties; or
 - (ii) would be contrary to public policy.

22.15 Survival of representations and warranties

All representations and warranties in this Agreement will survive the execution and delivery of this Agreement and the completion of the transactions contemplated by it.

22.16 Enurement

The provisions of this Agreement will, subject as otherwise provided in this Agreement, enure for the benefit of and be binding on the Parties and their respective successors and permitted novatees and assigns.

22.17 Merger

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

22.18 Powers of attorney

An attorney by executing this Agreement declares that he or she has received no notice of revocation of the power of attorney pursuant to which he or she executes this Agreement.

Schedule 1

Agreement details

1 Particulars for Notices

1.1 Trustee

Business address	Level 5 192 Ann Street BRISBANE QLD 4000
Postal address	GPO Box 456 BRISBANE QLD 4001
Facsimile No.	[insert]
Attention:	[insert]

1.2 Aurizon

Business address	Level 5 192 Ann Street BRISBANE QLD 4000
Postal address	GPO Box 456 BRISBANE QLD 4001
Facsimile No.	[insert]
Attention:	Vice President, Commercial Development

Schedule 2

Objective (clause 10.1)

1 Objective during regulatory period

1.1 Application

This **item 1** of **schedule 2** applies while the Railway Network is regulated under Access Legislation.

1.2 Definitions

In this **item 1** of **schedule 2**:

Access Agreement means an agreement, in or substantially in the form of any standard access agreement of Aurizon approved by the Access Regulator, between Aurizon and a third party that grants that third party a right to access the System for the operation of train services (and, for the avoidance of doubt, does not include any agreement or arrangement in relation to Aurizon facilitating, constructing, funding, providing or otherwise undertaking any extension, enhancement, expansion, augmentation, duplication or replacement of any part of the Railway Network).

Adjustments has the meaning given in **item 1.3** of this **schedule 2**.

Capital Value means:

- (a) in respect of a System, the capital value, under the relevant regulated pricing regime, of the assets comprising the System including any depreciation and appreciation of that capital value; and
- (b) in respect of the System Total Extension Infrastructure, the capital value, under the relevant regulated pricing regime, of the assets comprising the System Total Extension Infrastructure including any depreciation and appreciation of that capital value.

Excluded Revenue means:

- (a) in respect of the Extension Pre-Tax Allowable Revenue and the System Pre-Tax Allowable Revenue, any revenue which, under the relevant regulated pricing regime, may be earned in relation to operation or maintenance (including OPRA), and any other revenue component not based on the Capital Value of the System or the System Total Extension Infrastructure (as applicable); and
- (b) in respect of the System Capital Revenue, any revenue which, under the relevant regulated pricing regime, is received in relation to operation or maintenance (including OPRA), and any other revenue component not

based on the Capital Value of the System.

Extension Pre-Tax Allowable Revenue means, for a System, the pre-tax amount of revenue from the relevant Pricing Component that the relevant regulated pricing regime specifies may be earned under Access Agreements from train services that use the System Total Extension Infrastructure and that is calculated based on the Capital Value of the System Total Extension Infrastructure, as relied on by the Access Regulator for approval of that pre-tax amount of revenue (and, for the avoidance of doubt, excludes all Excluded Revenue).

OPRA means, for a System, the operational and performance risk allowance approved by the Access Regulator in respect of any relevant commercial or regulatory risk borne by Aurizon in connection with the operation and maintenance of that System.

Pricing Component means a pricing component relating to parts of the Rail Network that differs from pricing components relating to other parts of the Rail Network based on differences in cost and utilisation, as approved by the Access Regulator. For example, under the 2010 Access Undertaking:

- (a) the component of the Reference Tariff (or access charges derived from the Reference Tariff) calculated based on AT₅ is a Pricing Component; and
- (b) the component of the Reference Tariff (or access charges derived from the Reference Tariff) calculated based on AT₂, AT₃ and AT₄ is another Pricing Component.

In this definition, AT₂, AT₃, AT₄, AT₅ and Reference Tariff have the meaning given to those terms in the 2010 Access Undertaking.

SEI Capital Revenue means, for a System, the SEI Proportion multiplied by the System Capital Revenue, subject to **item 1.3(b)** of this **item 1** of **schedule 2**.

SEI Proportion means, for a System, the proportion which the Extension Pre-Tax Allowable Revenue bears to the System Pre-Tax Allowable Revenue.

System means, as applicable, each relevant part of the Railway Network to which a Pricing Component applies. For example, under the 2010 Access Undertaking:

- (a) the relevant parts of the Railway Network in an Individual Coal System for which a component of the Reference Tariff (or access charges derived from the Reference Tariff) calculated based on AT₅ applies is a System; and
- (b) the relevant parts of the Railway Network in that Individual Coal System for which a component of the Reference Tariff (or access charges derived from the Reference Tariff) calculated based on AT₂, AT₃ and AT₄ applies is another System.

In this definition, Individual Coal System, AT₂, AT₃, AT₄, AT₅ and Reference Tariff, have the meaning given to those terms in the 2010 Access Undertaking.

System Capital Revenue means, for a System, the revenue from the relevant Pricing Component received by Aurizon under Access Agreements for the provision of access to the System for the operation of train services (including revenue payable where trains were entitled to operate but did not operate – that is, take or pay revenue) for the same type of train services as those taken into account for the purpose of calculating the System Pre-Tax Allowable Revenue less all Excluded Revenue and adjusted to reflect any increase or decrease to the System Pre-tax Allowable Revenue associated with incentives or other efficiency sharing mechanisms.

System Total Extension Infrastructure means, for a System:

- (a) the Total Extension Infrastructure which forms part of the System (from time to time);
- (b) any Removed Infrastructure which forms part of the System and which has a value in the Regulatory Asset Base; and
- (c) any Replaced Part or Removed Obsolete Part which forms part of the System and which has a value in the Regulatory Asset Base.

System Pre-Tax Allowable Revenue means, for a System, the pre-tax amount of revenue from the relevant Pricing Component that the relevant regulated pricing regime specifies may be earned under Access Agreements from train services that use the System and that is calculated based on the Capital Value of the System, as relied on by the Access Regulator for approval of that pre-tax amount of revenue (and, for the avoidance of doubt, includes the Extension Pre-Tax Allowable Revenue but excludes all Excluded Revenue).

1.3 Objective

- (a) The mutual objective of the Parties is that the Rent payable by Aurizon to the Lessor under this Agreement for a Month will be the sum of the SEI Capital Revenue for each System for that Month.
- (b) However, if the calculation of the relevant System Capital Revenue includes:
 - (i) charges, adjustments, off-sets, refunds or any other positive or negative amounts that are payable in respect of access;
 - (ii) adjusted access charges that were increased or decreased in relation to an under or over recovery of revenue from that System; or
 - (iii) any other adjustment,in respect of a time prior to the relevant Month (**Adjustments**), then the SEI Capital Revenue must be adjusted so that each Adjustment is applied in proportion to the SEI Proportion that would have applied at the time in respect of which that Adjustment relates.

2 Objective following regulatory period

2.1 Application

This **item 2** of **schedule 2** applies after the Railway Network ceases to be regulated under Access Legislation.

2.2 Definitions

Capital Revenue means, in respect of a Section:

- (a) actual access revenue, where access is provided as a separate commercial service;
- (b) Notional Access Revenue where access is provided as part of a CITS; or
- (c) a combination of both actual access revenue and Notional Access Revenue,

as applicable for that Section less Aurizon's operating and maintenance expenditure for that Section.

CITS means a commercially integrated transportation service for which the provider incurs both below-rail costs and Other Transportation Costs, and charges its customer an integrated fee for transportation services rendered to it.

CITS Provider means Aurizon or any Related Body Corporate of it that provides CITS to a customer.

Determined Other Transportation Costs means the determined quantum of Other Transportation Costs that the CITS Provider would have avoided had it not provided the Other Transportation Elements, including:

- (a) operating costs of providing the Other Transportation Elements;
- (b) administrative costs related to the provision of the Other Transportation Elements; and
- (c) an appropriate allowance for the capital costs of providing the Other Transportation Elements, which allowance must reflect the opportunity costs of the CITS Provider's relevant assets where they exist or otherwise the acquisition cost of the relevant assets (which may not be new assets), comprising both depreciation and return on assets.

End Regulation Date means the date on which this **item 2** of **schedule 2** commenced to apply.

Final Regulatory Regime means the Access Legislation and Access Undertaking that applied to Aurizon immediately prior to the End Regulation Date.

Notional Access Revenue means, in respect of the CITS provision relating to a Section, the lesser of:

- (a) the access revenue that would have been allowable to Aurizon in respect of that Section at the time of provision of the CITS had the Final

Regulatory Regime continued to apply beyond the End Regulation Date, and

- (b) the revenue received by the CITS Provider for the provision of the CITS less the relevant Determined Other Transportation Costs, both being in respect of that Section.

Other Transportation Costs means costs other than below-rail costs incurred by the CITS Provider in providing CITS.

Other Transportation Elements means all elements of the CITS (service) other than the below-rail element.

Section has the meaning given in **item 2.3** of this **schedule 2**.

2.3 Objective

Pricing of access

Where Aurizon provides a customer with access between any two points of rail infrastructure and Total Extension Infrastructure constitute any part of the rail infrastructure over which the access is provided (the rail infrastructure between those two points being a **Section**), the access agreement or CITS agreement as applicable between Aurizon and the customer must feature:

- (a) a no more favourable pricing regime (from the customer's perspective) for the provision of access or CITS as applicable in respect of Total Extension Infrastructure within that Section; than
- (b) the pricing regime applicable to the provision of access or CITS as applicable in respect of other assets within that Section,

due to the Total Extension Infrastructure ownership.

For the avoidance of doubt, Aurizon may adopt

- (i) in an access agreement, pricing in respect of a Section below the maximum amount that would have been allowed had the Final Regulatory Regime continued to apply beyond the End Regulation Date; and
- (ii) in a CITS agreement, pricing in respect of a Section as Aurizon sees fit.

Revenue sharing

Aurizon will pay to the Trustee the percentage of Capital Revenue attributable to each Section on the basis that would have applied at the time that Aurizon earned that Capital Revenue had the Final Regulatory Regime continued to apply beyond the End Regulation Date.

[Drafting note: A special dispute resolution process for a Dispute in respect of item 2 of schedule 2 (to be absolutely clear, this special arrangement is required only for a post regulatory dispute) is to be included. The special dispute resolution process will involve expert determination by a panel of three Experts, with one nominee by the Trustee, another nominee by the Lessee and the third by agreement or failing that by an independent party. Panel decisions require any two panel members to agree. Each

*Expert must of meet the standards set out in **clause 16.4(f)**, as modified to reflect decision by a panel of experts rather than a single expert.]*

Schedule 3

Rent Calculation Methodology (clause 10.2)

Determination of Rent for each Month

For each mainline system upgraded by Aurizon, the Rent for each Month due to the Trustee in respect of any Month during the period from the Initial Rent Month until the end of the Term shall be:

$$\begin{aligned} & [AID_t * (AT_{2-4} \text{ Distribution Pool})] + \\ & [AID_{(t-2)} * AT_{2-4} RAA_{(t-2)}] + \\ & [AIE_t * AT_5 \text{ Distribution Pool}] + \\ & [AIE_{(t-2)} * AT_5 RAA_{(t-2)}] + \\ & \sum_{n=1}^{n=q} (AID_{(t-n)} * AC_{AT 2-4(t-n)} + AIE_{(t-n)} * AC_{AT 5(t-n)}) \end{aligned}$$

The Rent for each Month shall be subject to adjustment for:

- (a) invoicing corrections for prior months that fall within the period from the Initial Rent Month until the end of the Term; and
- (b) bad debts in prior months that fall within the period from the Initial Rent Month until the end of the Term.

Definitions

AC_{AT2-4(t-n)} means an amount that is one twelfth of the annual Adjustment Charge in relation to AT₂₋₄ for the relevant mainline system as set by the Access Regulator for the Year n years prior intended to be adjusted in this year.

AC_{AT5(t-n)} means an amount that is one twelfth of the annual Adjustment Charge in relation to AT₅ for the relevant mainline system as set by the Access Regulator for the Year n years prior intended to be adjusted in this year.

Adjustment Charge has the meaning given to it in the 2010 Access Undertaking.

Applicable Interest – Diesel (or AID) means the greater of:

- (c) zero, and
- (d) $(X - Y) / (Z - T)$

where:

X = the capital component of the System Allowable Revenue Amount for AT₂₋₄ attributable to the System Total Extension Infrastructure;

Y = OPRA in relation to non-electric, to the extent it is included in X;

Z = the capital component of the System Allowable Revenue Amount (including the portion due to the Total Extension Infrastructure) for AT₂₋₄; and

T = OPRA, to the extent it is included in Z,

expressed as a decimal for any part or full Year that falls within the period from the Initial Rent Month until the end of the Term, and shall be calculated at the commencement of that Year.

Applicable Interest – Electric (or AIE) means the greater of:

- (a) zero, and
- (b) $(P - Q) / (R - S)$

where:

P = the capital component of the System Allowable Revenue Amount for AT₅ attributable to the [System] Extension Infrastructure;

Q = OPRA in relation to electric, to the extent it is included in P;

R = the capital component of the System Allowable Revenue Amount (including the portion due to the Total Extension Infrastructure) for AT₅; and

S = OPRA, to the extent it is included in R,

expressed as a decimal for any part or full Year that falls within the period from the Initial Rent Month until the end of the Term, and shall be calculated at the commencement of that Year.

AT₂₋₄ has the meaning given to it in the 2010 Access Undertaking.

AT₂₋₄ Distribution Pool means AT₂₋₄ Received Amount less

- (a) any AT₂₋₄ RAA;
- (b) any AC_{AT2-4(t-n)};
- (c) any approved non-electric operating costs for the relevant mainline system for the month; and
- (d) OPRA to the extent it is included in AT₂₋₄ Received Amount

AT₂₋₄ Received Amount means, in respect of a month:

- (a) the amount received by Aurizon as payment for invoices provided by Aurizon in respect of AT₂₋₄ for that month for the relevant mainline system (noting that any Direction to Pay Amount will be deemed to be received, other than in the calculation of R_i in accordance with **clause 9.6**); **plus**
- (b) the amount received by Aurizon as payment for invoices provided by Aurizon in respect of AT₂₋₄ for any previous month for the relevant mainline system, not yet included in AT₂₋₄ Received Amount for any previous month.

AT₂₋₄ RAA means one twelfth of the annual AT₂₋₄ Revenue Adjustment Amount for the relevant mainline system that is set by the Access Regulator, to the extent that the amount applies in respect of the Month for which the Rent is to be calculated.

AT₂₋₄ Revenue Adjustment Amount has the meaning given to it in the 2010 Access Undertaking.

AT₅ has the meaning given to it in the 2010 Access Undertaking.

AT₅ Distribution Pool means AT₅ Received Amount less

- (a) any AT_5 RAA;
- (b) any $AC_{AT_5(t-n)}$;
- (c) any approved electric operating costs for the relevant mainline system for the month; and
- (d) OPRA to the extent it is included in AT_5 Received Amount

AT_5 Received Amount means, in respect of a month:

- (a) the amount received by Aurizon as payment for invoices provided by Aurizon in respect of AT_5 for that month for the relevant mainline system (noting that any Direction to Pay Amount will be deemed to be received, other than in the calculation of R_i in accordance with **clause 9.6**); **plus**
- (b) the amount received by Aurizon as payment for invoices provided by Aurizon in respect of AT_5 for any previous month for the relevant mainline system not yet included in the AT_5 Received Amount for any previous month.

AT_5 RAA means an AT_5 Revenue Adjustment Amount that is set by the Access Regulator, to the extent that the amount applies in respect of the Month for which the Rent is to be calculated.

AT_5 Revenue Adjustment Amount has the meaning given to it in the 2010 Access Undertaking.

OPRA has the meaning given in **schedule 2**.

' q ' means the maximum number of years previous to t to which an Adjustment Charge applying in respect of t related.

Regulatory Asset Base has the meaning given to it in the 2010 Access Undertaking.

Revenue Adjustment Amount has the meaning given to it in the 2010 Access Undertaking.

System Allowable Revenue has the meaning given to it in the 2010 Access Undertaking.

System Allowable Revenue Amount means

- (a) if during that Year the Access Regulator does not approve a variation to/of the System Allowable Revenue for that Year, the System Allowable Revenue for that Year; or
- (b) if during that Year the Access Regulator approves a variation to/of the System Allowable Revenue for that Year, the System Allowable Revenue as varied and approved by the Access Regulator as from the effective date of that approved variation.

System Total Extension Infrastructure means, for a System:

- (a) the Total Extension Infrastructure which forms part of the System (from time to time);
- (b) any Removed Infrastructure which forms part of the System and which has a value in the Regulatory Asset Base; and
- (c) any Replaced Part or Removed Obsolete Part which forms part of the System and which has a value in the Regulatory Asset Base.

't' means, in relation to the AID or the AIE as applicable, the Year that includes the month in respect of which the current Rent for the Month is determined.

't-n' means, in relation to the AID (or the AIE), each Year, that is n years prior to t and to which the $AC_{AT2-4(t-n)}$ (or the $AC_{AT5(t-n)}$) applies for adjustment in t.

't-2' means, in relation to the AID, the AIE, the $AT_{2-4}RAA$ or the AT_5RAA as applicable, the Year 2 years prior to the Year that includes the Month in respect of which the Rent is determined.

Year has the meaning given to it in the 2010 Access Undertaking.

Schedule 4

Calculation of Direction to Pay Amount (clauses 1.1 and 9.1)

The Direction to Pay Amount for each Extension Access Agreement for the Month is the amount calculated in accordance with the following formula:

$$DPA_{EAA} = AC_{EAA} \times \text{the lesser of } Z \text{ and } 1$$

where:

DPA_{EAA}	=	The Direction to Pay Amount for the relevant Extension Access Agreement for the relevant Month
AC_{EAA}	=	The Access Charges for the Month payable to Aurizon under the relevant Extension Access Agreement for the relevant Month
ER	=	The Expected Rent for the relevant Month
Z	=	ER / AC_{EAA}

Schedule 5

Form of confidentiality agreement for engagement of Auditor
(clause 11.2)

[Drafting note: *Form of confidentiality agreement for engagement of Auditor to be included in this schedule 5.*]

Schedule 6

Form of Direction to Pay Undertaking (clause 1.1)

[Drafting note: *Form of direction to pay to be included in this schedule 6.*]

Executed as an agreement.

Executed by [NewCo Pty Ltd] as)
trustee for the **[Name of Trust]** in)
accordance with section 127 of the
Corporations Act 2001 (Cth):

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

Date: / /

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

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

Date: / /