

[Independent Trustee]

Aurizon Network Pty Ltd

Preference Subscribers listed in Schedule 1

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

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

This document assumes that each Preference Unit Holder and Access Seeker has any necessary ACCC authorisation to participate in the Expansion Process under the Access Undertaking and to negotiate and otherwise perform its obligations and exercise its rights (including the sharing of information) under the Transaction Documents to which it will be a party.

The Transaction Documents are drafted on the assumption that there are two or more Preference Unit Holders.

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

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

- (a) On or before the Commencement Date, the Trustee and Aurizon Network will enter into the Trust Deed.
- (b) On the Commencement Date, the Trustee, Aurizon Network and each Preference Subscriber will enter into this Deed.
- (c) On the Commencement Date, the Trustee will issue units under this Deed.
- (d) By the End Date:
 - (i) each Access Seeker and Aurizon Network will enter into a separate Access Agreement Specific Terms Deed;
 - (ii) each Access Seeker will enter into the Extension Project Agreement;
 - (iii) the State of Queensland (represented by the department administering the *Transport Infrastructure Act 1994* (Qld)) and QTH will enter into the Integrated Network Deed [and the Financing Side Deed];
 - (iv) QTH will enter into the Extension Infrastructure Head-Lease; and
 - (v) the Trustee, the Preference Unit Holders and Aurizon Network will enter into the Extension Project Agreement and will enter into the documents listed at paragraphs (e) to [i] inclusive of the definition of Transaction Documents in the Extension Project Agreement.

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Date

Parties

[Independent Trustee] [ACN] of [insert] (Trustee)

Aurizon Network Pty Ltd ABN 78 132 181 116 of Level 17, 175 Eagle Street, Brisbane, Queensland (**Aurizon Network**)

Preference Subscribers listed in schedule 1 (Preference Subscribers)

Background

A The Trustee, Aurizon Network and the Preference Subscribers have entered into this Deed to set out their agreement in respect of certain aspects of the operation of the Trust.

B

Agreed terms

1 Interpretation

1.1 Extension Project Agreement

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

1.2 Definitions

In this Deed:

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

Additional True-up Statement has the meaning given in **clause 8.3(h)**.

Advance Payment has the meaning given to "advance payment" in the Construction Agreement.

Affected Segment means:

- (a) for a Reserve Decision or Reserve Power in respect of a variation to the Scope of Works, Contract Sum and/or the Date for Practical Completion constructed, or to be constructed, in whole or in part, in, over or under a Segment, that Segment; or

- (b) for any other Reserve Decision or Reserve Power the exercise of which the Trustee determines would materially and adversely affect the final Contract Sum for, or capacity of, a Separable Portion constructed, or to be constructed, in whole or in part, in, over or under a Segment, that Segment.

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

Affected User Notice has the meaning given in **clause 19.4(a)**.

Affected User’s Unit Holder’s Proportion means for an Affected User that proportion calculated in accordance with the calculation methodology in **item 4 of schedule 7**.

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

Application Price has the meaning given in the Trust Deed.

Assets has the meaning given in the Trust Deed.

Auditor means a person to be appointed as auditor in accordance with **clause 15.3(a)**.

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

Authorised Counterparties has the meaning given in **clause 16.1(b)**.

Available Cash Holding as at a date means the aggregate value of the investments of the Trust as contemplated under **clauses 16.1(a) and 16.1(b)**, **less** costs and expenses Incurred but not paid, as at that date.

Bank Account has the meaning given in **clause 13.2(b)**.

Bank Account Reconciliation Date means the date which is 30 Business Days after the Independent Certifier gives the Final Certificate to the Trustee under the Construction Agreement.

Bank Account Reconciliation Statement has the meaning given in **clause 13.6(b)**.

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

Bid has the meaning given in **clause 7.6(b)**.

Buffer Amount for a Month means the lesser of:

- (a) 5% of the Target Trust Capital Cost as at the last day of the previous Month; and
- (b) the amount equal to:
- (i) the Contract Sum; **less**

- (ii) the sum of the Pre-Funding Payment, the Advance Payment and all Progress Payments paid by the Trustee.

Call means a Loan Call or a Unit Call.

Call Amount means a Unit Call Amount or Loan Contribution.

Call Statement means a statement the Trustee is required to give to each Preference Unit Holder setting out details of Loan Calls and Unit Calls in accordance with **clause 5**.

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

Charge has the meaning given in **clause 11.4**.

Chargee has the meaning given in **clause 11.4**.

Chargor has the meaning given in **clause 11.4**.

Commencement Date means the date of this Deed.

Confidentiality Obligations means the obligations each Party has in respect of Confidential Information set out in the Extension Project Agreement.

Consequential Loss has the meaning given in the Extension Project Agreement except that for the purposes of this Deed it does not include the payment by the Trustee to a Unit Holder of any amount which represents the Unit Holder's share of any Distributable Amount or Distributable Sum (as applicable).

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

Contract Sum has the meaning given to "contract sum" in the Construction Agreement.

Construction Agreement Guarantee means a bank guarantee (or bank guarantees) (if applicable) required to be given by a Preference Unit Holder under this Deed for the purpose of enabling the Trustee to provide Security to Aurizon Network.

Construction Agreement Guarantee Issuer has the meaning given in **clause 9.7(b)**.

Construction Costs means all costs, expenses and liabilities Incurred by the Trustee under the Construction Agreement and clause **[14]** of the Extension Project Agreement, but does not include the GST component of any costs, expenses or liabilities Incurred by the Trustee which would be Construction Costs under this definition to the extent that the Trustee (or the representative member of the GST group of which the Trustee is part) is entitled to claim an input tax credit in respect of such costs, expenses or liabilities.

Construction Period means the period commencing on the date of the Construction Agreement and ending on the last day of the Month in which the Final Date of Practical Completion occurs.

Cost has the meaning given in **clause 23.5(h)(i)**.

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

Date for Practical Completion has the meaning given to the "date for practical completion" in the Construction Agreement.

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

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

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

Disputing Action has the meaning given in **clause 17.2(b)(ii)**.

Distributable Amount has the meaning given in the Trust Deed.

Distributable Income has the meaning given in the Trust Deed.

Distributable Sum has the meaning given in the Trust Deed.

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

Distribution Period has the meaning given in the Trust Deed.

Eligible Investor has the meaning given in the Trust Deed.

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

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

Estimated Final Trust Costs Statement has the meaning given in **clause 8.1(a)**.

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

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

Event of Default has the meaning given in **clause 20.1**.

Extension means the new rail infrastructure, and/or modifications and/or upgrades of and/or additions to existing rail infrastructure, generally described in **item 1.1 of schedule 1**, as varied in accordance with **clause 16.5(a)**.

Extension Project Agreement means, subject to **clause 1.7**, the document set out in **annexure A**.

Extension Structure means the arrangements contemplated by the Extension Project Agreement, this Deed, the Trust Deed, the Rail Corridor Agreement, the Extension Infrastructure Sub-Lease, the Extension Infrastructure Head-Lease, the Integrated Network Deed, the Specific Security Agreement and the Financing Side Deed.

Extension Structure Tax Benefit has the meaning given in **clause 17.1(d)**.

Extension Structure Tax Cost means an amount calculated in accordance with **clause 17.1(c)**.

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

Facility Moneys means all debts and other monetary liabilities of the Trustee to any Financier in relation to any Finance in any capacity and irrespective of whether the debts or liabilities are present or future or actual, prospective contingent or otherwise.

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

Final Certificate has the meaning given to "final certificate" in the Construction Agreement.

Final Date of Practical Completion means the final "date of practical completion" (as defined in the Construction Agreement) to occur under the Construction Agreement.

Final Redemption Date means the date falling two years after the Zero Value Date.

Finance has the meaning given in **clause 16.6**.

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

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

(b) provide security or additional or replacement security,

each in accordance with the terms of the Transaction Documents.

Financial Year has the meaning given in the Trust Deed.

Financier has the meaning given in **clause 16.6**.

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

General Provisions means those provisions set out in clause [15] of the Extension Project Agreement.

GST has the meaning given in the GST Law.

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

Head Company means the head company of any Consolidated Group of which Aurizon Network is a subsidiary member.

Income Statement has the meaning given in **clause 14.6(a)**.

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

Indemnified Entity has the meaning given in **clause 17.1(b)**.

Independent Certifier has the meaning given in the Construction Agreement.

Initial Bank Guarantee Amount for a Preference Subscriber means the amount, if any, set out in **item 2.2** of **schedule 1** for the Subscriber.

Initial Call Statement means a statement given under **clause 4.13(a)(i)**.

Initial Construction Agreement Guarantee Amount for a Preference Subscriber means the amount set out in **item 2.3** of **schedule 1** for the Subscriber.

Initial Loan Contribution for a Preference Unit Holder means the amount payable as the first instalment of that Preference Unit Holder's Unit Holder Loan under **clause 4.4**, set out in **item 2.2** of **schedule 1**.

Initial Subscription Amount for a Preference Subscriber means the aggregate amount of the first instalment payable by that Preference Subscriber in respect of the Application Price for the issue of each Preference Unit to the Preference Subscriber, set out in **item 2.2** of **schedule 1**

Initial Unit Call has the meaning given in **clause 4.13(a)(ii)**.

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

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

Joint Venture means, in respect of a Preference Subscriber for which **clause 22** is specified in **schedule 1** to apply, the unincorporated joint venture specified in **schedule 1** in respect of that Preference Subscriber.

Joint Venture Participants means, in respect of a Preference Subscriber for which **clause 22** is specified in **schedule 1** to apply, the joint venture participants specified in **schedule 1** for the Joint Venture for that Preference Subscriber, and **Joint Venture Participant** means any one of those joint venture participants.

Lessee has the meaning given in the Extension Infrastructure Sub-Lease.

Liquidity Requirement for a Month means the sum of:

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

Liquidity Target for a Month means the sum of:

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

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

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

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

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

Loan Contribution for a Preference Unit Holder means:

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

as applicable.

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

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

Matching Units has the meaning given in **clause 8.3(e)**, and are Preference Units which are the subject of a Matching Notice.

Material Adverse Change means:

- (a) any change to Tax Law which compromises the performance of the Trust or the value of returns to Unit Holders;
- (b) any act, event or circumstance as a result of which the Trustee would be taxed in the same or similar manner as a company;
- (c) a change to the interpretation of any Tax Law (whether by any court or the relevant Government Agency) which compromises the performance of the Trust or the value of returns to Unit Holders;
- (d) a change to any law which may result in adverse financial outcomes for a Unit Holder under this Deed;
- (e) a restriction on the capacity of any of the Unit Holders continuing their investment in the Trust; or
- (f) a change or restriction of any other kind (other than a decision of an Access Regulator) which, in the Trustee's opinion, is likely to compromise the performance of the Trust or the value of returns to Unit Holders.

Month means a calendar month.

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

Non-Defaulting Unit Holders has the meaning given in **clause 7.3(c)(ii)**.

Notice has the meaning given in **clause 23.3**.

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

Ordinary Unit has the meaning given in the Trust Deed.

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

Original Preference Units for a Preference Unit Holder means the number of Preference Units on issue to that Preference Unit Holder as at the date the Estimated Final Trust Costs Statement is given by the Trustee to the Preference Unit Holders under **clause 8.1(a)**.

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

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

Partial Bid has the meaning given in **clause 7.6(b)**.

Participating Interest means, in respect of a Preference Subscriber for which **schedule 1** specifies that **clause 22** applies, the participating interest specified in **schedule 1** for each Joint Venture Participant in the Joint Venture for that Preference Subscriber.

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

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

PBR Costs means the total costs and expenses incurred by Aurizon Network in connection with preparing and applying for the private binding ruling contemplated in Condition Precedent number **[3]** in clause **[2.1]** of the Extension Project Agreement less the amount of any such costs and expenses which have already been paid to Aurizon Network.

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

- (a) lease rental payments received under the Extension Infrastructure Sub-Lease; **plus**
- (b) interest or other returns on any investment of the Trust; **plus**
- (c) amounts received by the Trust:
 - (i) calculated on the basis of the Interest Rate or any other interest rate prescribed under a Transaction Document;

- (ii) from a Unit Holder under **clause 7.1**;
 - (iii) from the Lessee under the Extension Infrastructure Sub-Lease; or
 - (iv) from any other person under a Transaction Document; **less**
- (d) after the Trustee gives each Preference Unit Holder a Call Statement referred to in **clause 5.5(g)**, operating expenses of the Trust (determined without taking into account amounts by way of depreciation, amortisation and other non-cash items),

provided that:

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

Preference Subscribers means the parties listed as “Preference Subscribers” in **item 2 of schedule 1**, and **Preference Subscriber** means any one of them.

Preference Unit has the meaning given in the Trust Deed.

Preference Unit Holder means any person who from time to time is registered in the Register as the holder of a Preference Unit or Preference Units, including persons jointly registered, notwithstanding that any such person may not be in existence or may not come within this definition at the date of this Deed.

Preference Unit Holder Representative has the meaning given in **clause 17.2(h)(ii)**.

Pre-Funding Payment has the meaning given to "pre-funding payment" in the Construction Agreement.

Prescribed Majority means, in respect of a Reserve Decision or Reserve Power, a Special Majority or Unanimous Agreement as set out in **clause 17**, **schedule 4** or **schedule 5** (as applicable).

Price Sensitive Information has the meaning given in the Extension Project Agreement.

Projected Cash Holdings for a period means the aggregate value of the investments of the Trust under **clauses 16.1(a)** and **16.1(b)**, as at the start of the period **plus**:

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

that the Trustee anticipates will be received during the period.

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

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

is greater than the Projected Cash Holdings for that period.

Progress Payment has the meaning given to "progress payment" in the Construction Agreement.

PUH Engineer means the engineer appointed by the applicable Preference Unit Holders under **clause 16.4**.

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

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

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

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

Register has the meaning given in the Trust Deed.

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

Reserve Decision has the meaning given in **clause 19.1(a)**.

Reserve Power has the meaning giving in **clause 19.2(a)**.

Revenue has the meaning given in **clause 23.5(h)(ii)**.

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

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

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

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

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

Ruling means a private binding ruling as contemplated by item [2] or item [3] of clause [2.1] (as the case may be) of the Extension Project Agreement.

Sale Assets has the meaning given in **clause 7.3(d)**.

Sale Notice has the meaning given in **clause 7.6(a)**.

Sale Offer has the meaning given in **clause 7.6(a)**.

Sale Proceeds has the meaning given in **clause 7.6(h)**.

Scope of Works has the meaning given to "WUC" in the Construction Agreement.

Security has the meaning given to "security" in the Construction Agreement.

Security Documentation means the security documents to be entered into by each Preference Subscriber in accordance with **clause 4.2** in the form set out in **schedule 9**.

Segments means the sections of railway corridor described as such in **item 1** of **schedule 1**, as varied in accordance with **clause 16.5**.

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

- (a) *capacity is required by either:*
 - (i) *one Access Seeker; or*
 - (ii) *two or more Access Seekers in fixed percentages as between one another within that portion; and*
- (b) *Works are required, whether within or outside the area of that Segment, to provide that capacity.]*

Separable Portion has the meaning given to "separable portion" in the Construction Agreement.

Shortfall has the meaning given in **clause 7.3(c)**.

Shortfall Loans has the meaning given in **clause 7.3(c)**.

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

State Party means each of the State and QTH.

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

Subscription Agreement has the meaning given in the Trust Deed.

Supplier has the meaning given in **clause 23.5(c)**.

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

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

Tax Adjustment Notice has the meaning given to that expression in **clause 17.2(b)(i)**.

Tax Claim Notice has the meaning given to that expression in **clause 17.2(a)**.

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

Tax Dispute Notice means a notice given by a Preference Unit Holder to an Indemnified Entity in relation to a Disputing Action pursuant to **clause 17.2(b)(ii)**.

Tax Expert means an independent Tax expert appointed in accordance with **clause 17.7**.

Tax Indemnity means the indemnity provided in **clause 17.1**.

Tax Indemnity Amount for a Preference Unit Holder means the total amount payable by that Preference Unit Holder under **clause 17**.

Tax Institute means The Tax Institute ACN 008 392 372.

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

Tax Loss means a tax loss of an Indemnified Entity (calculated in accordance with section 36-10 of the Tax Act) and includes a carry forward loss referred to in section 36-15(7) of the Tax Act.

Tax Policy means the tax policy set out in **schedule 8**, as modified from time to time under **clause 16.2(c)** or **clause 16.2(d)**.

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

Tax Relief means any refund, credit, offset, relief, allowance, deduction, rebate, recoupment, compensation, penalty, damages, restitution, right to repayment or other benefit or saving in relation to Tax, but does not include a Tax Loss.

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

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

Total Original Preference Units means the total number of Preference Units on issue to all Preference Unit Holders as at the date the Estimated Final Trust Costs Statement is given by the Trustee to the Preference Unit Holders under **clause 8.1(a)**.

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

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

Transfer Settlement Date means the date which is ten Business Days after the True-up Statement is given by the Trustee to each Preference Unit Holder under **clause 8.3(g)(ii)**.

Transfer Units has the meaning given in **clause 8.3(d)(ii)**.

True-up Date means the last day of the Month following the Month in which a Unit Holder Reconciliation Statement was given by the Trustee to all Preference Unit Holders under **clause 8.2(a)**.

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

True-up Units for a Preference Unit Holder means the number of Preference Units calculated in accordance with **clause 8.3(g)(i)**.

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

Trust has the meaning given in the Trust Deed.

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

- (a) all costs and expenses payable out of the Assets, or reimbursable to the Trustee, under the Trust Deed; and
- (b) all liabilities for which the Trustee is entitled to an indemnity out of the Assets,

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

Trust Capital Costs means:

- (a) Trust Costs that the Trustee determines are capital expenditure; and

(b) any PBR Costs.

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

Trust Costs means Construction Costs and Trust Administration Costs.

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

(a) *there will no expenditure on the early stages of the Extension's development, such as preliminary works or procurement of long lead items (**Early Works**) until all SUFA documents for that transaction have full force and effect; or*

(b) *for any Early Works, expenditure will be addressed under a commercial arrangement which is separate from the SUFA documentation for the relevant extension.*

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

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

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

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

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

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

Unit has the meaning given in the Trust Deed.

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

Unit Call Amount for a Preference Unit Holder means the Initial Unit Call Amount for that Preference Unit Holder and, subsequent to the payment of the Initial Unit Call Amount by that Preference Unit Holder, an amount calculated under **clause 5.4(a)** or **clause 5.5(g)(i)** for that Preference Unit Holder.

Unit Holder has the meaning given in the Trust Deed.

Unit Holder Loans has the meaning given in **clause 3.3(a)**.

Unit Holder Reconciliation Statement has the meaning given in **clause 8.2(a)(ii)**.

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

- (a) subject to **paragraph (b)** of this definition, the proportion as set out in **item 2.2 of schedule 1** in respect of that Preference Unit Holder; and
- (b) at any time after Preference Units have been issued to a Preference Unit Holder, the proportion which the number of Preference Units held by that Preference Unit Holder bears to the total number of Preference Units on issue to all Preference Unit Holders, at that time.

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

1.3 **Interpretation**

Unless expressed to the contrary, the provisions of clause **1.2** of the Extension Project Agreement apply to this Deed.

1.4 **This Deed overrides Trust Deed**

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

1.5 **References to Aurizon Network**

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

1.6 **References to Subscriber**

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

1.7 **References to documents**

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

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

1.8 **Subscription Agreement**

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

1.9 **Trustee actions prior to the issue of the Units**

- (a) The obligations of the Trustee which are to be performed by the Trustee prior to the issue of the Units in accordance with **clause 4.1** are performed by the Trustee in its personal capacity.
- (b) Despite any other provision of this Deed, the Trustee's liability does not extend to Consequential Loss suffered by a Subscriber or any other person in relation to any act or omission arising out of, or in any way related to, the Trustee acting in its personal capacity prior to the issue of the Units in accordance with **clause 4.1**, except to the extent the Trustee has been guilty of fraud.

1.10 **Trustee opinions and estimates**

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

2 **Duration of agreement**

2.1 **Commencement and termination**

- (a) The terms of this Deed commence on the Commencement Date and, subject to **clause 23.6**, continue until:
 - (i) the occurrence of any of the following events:
 - (A) this Deed is terminated by mutual agreement of all of the Parties;
 - (B) the Extension Project Agreement has not been executed by all of the parties to it on or before the End Date;

- (C) the Extension Project Agreement is terminated in accordance with clause **2.5** of the Extension Project Agreement;
 - (D) all of the Preference Units are redeemed in accordance with the Trust Deed and this Deed;
 - (E) the Trust is wound up under the Trust Deed after the Zero Value Date and the Unit Holders have received all of their entitlements under the Trust Deed; or
 - (F) the Trust is wound up prior to the Zero Value Date and the Unit Holders have received all of their entitlements under the Trust Deed and this Deed (including under the process referred to in **clause 2.5** if applicable); or
- (ii) this Deed terminates under **clauses 4.7, 4.8, 4.9 or 4.10**.
- (b) Subject to **clause 23.6**, this Deed terminates in respect of a Party which transfers all of that Party's Units, on that Party ceasing to be a registered holder of any Units.

2.2 Preference Units terms of issue – redemption

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

2.3 Termination without prejudice to rights

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

2.4 **Material Adverse Change**

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

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

- (a) If:
 - (i) the Trust is wound up prior to the Zero Value Date; and
 - (ii) the entitlements to distributions on winding up as between the Preference Unit Holders and the Ordinary Unit Holders do not equitably reflect their respective financial investment in the Trust (taking into account any distributions made since the establishment of the Trust),then the Parties must negotiate in good faith to agree a process to address this matter, provided that in no circumstances can any Party be required to agree a process which results in:
 - (iii) a capital or lump sum payment by it that cannot be funded out of immediately available funds received from the proceeds of the winding up; or
 - (iv) any disadvantage (financial, Tax or otherwise) to Aurizon Network, the Head Company or the Ordinary Unit Holder (after taking into account any amount payable to the Trustee under an arrangement referred to in clause [\[3.6\]](#) of the Extension Infrastructure Sub-Lease). To avoid doubt, the fact that the Ordinary Unit Holder will not be entitled to participate in the proceeds of the winding-up

to the exclusion of the Preference Unit Holders as a result of the process is not a 'disadvantage'.

- (b) Any dispute regarding whether a Party has complied with its obligations under this **clause 2.5** is to be dealt in accordance with the Dispute Resolution Process.

2.6 **Final Redemption Date**

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

- (a) expressly referred to in **clause 23.6**; or
- (b) arising from any breach of this Deed or any Claim otherwise arising prior to the Final Redemption Date.

3 **Application and Application Price**

3.1 **Application by Preference Subscribers**

Each Preference Subscriber irrevocably:

- (a) applies for the number of Preference Units set out in respect of that Preference Subscriber in **item 2.2** of **schedule 1** as applicable at the time the Trustee issues the Units;
- (b) agrees to pay the Application Price for each of those Preference Units by instalments in accordance with the Trust Deed and this Deed; and
- (c) acknowledges that the Preference Units to be issued to it will be issued as Partly Paid Units at an Application Price of **[\$1.00]**.

3.2 **Acceptance of applications by Preference Subscribers**

The Trustee accepts each Preference Subscriber's application and, subject to **clause 4**, must issue Partly Paid Units to each Preference Subscriber in accordance with the Trust Deed and this Deed, provided that the Preference Subscriber pays the Preference Subscriber's Initial Subscription Amount not later than the Commencement Date.

3.3 **Unit Holder Loans**

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

3.4 **Application by Aurizon Network**

Aurizon Network (as ordinary subscriber) irrevocably:

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

3.5 **Acceptance of application by Aurizon Network**

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

4 **Transaction commitment process**

*[Drafting note: The arrangement for the transition from entry into this Deed to the funding of the Trust (**Transition**) is relatively simple, on the basis that this is a template document.*

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

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

4.1 **Issue of Units**

On the Commencement Date the Trustee must simultaneously issue the Ordinary Unit to Aurizon Network and all Preference Units to the Preference Subscribers, and apply the Initial Subscription Amount paid by each Preference Subscriber in paying up that Preference Subscriber's Preference Units, by the same amount for each Preference Unit.

4.2 **Preference Subscribers to provide Security Documentation**

- (a) For the purposes of securing the performance of its obligations under the Transaction Documents, each Preference Unit Holder must execute and deliver to the Trustee, on or before the End Date, the Security Documentation creating in favour of the Trustee a charge over:
 - (i) all present and future Preference Units of that Preference Unit Holder; and
 - (ii) the Loan Balance of that Preference Subscriber from time to time.

- (b) Each Preference Unit Holder must, as soon as practicable (but in any event no later than five Business Days) after the execution of the Security Documentation:
 - (i) register the Security Documentation, or file or record such other notices or documents relating to the Security Documentation in each jurisdiction where such registration, filing or recording may be required, to perfect the security created by the Security Documentation and to protect further the rights of the Trustee under the Security Documentation; and
 - (ii) provide evidence of such filing, registration and/or recording to the Trustee.

4.3 Preference Subscribers to provide Bank Guarantees

On or before the End Date, each Preference Unit Holder must deliver to the Trustee a Bank Guarantee for that Preference Unit Holder's Initial Bank Guarantee Amount.

4.4 Preference Subscribers to provide Construction Agreement Guarantees

On or before the date that is five Business Days after the Condition Precedent Satisfaction Date, each Preference Unit Holder must deliver to the Trustee four Construction Agreement Guarantees, each for an amount equal to 25% of that Preference Unit Holder's Initial Construction Agreement Guarantee Amount.

4.5 Initial Loan Contribution Call

- (a) The Trustee must, at least **[ten]** Business Days prior to the End Date, Call from each Preference Unit Holder the Initial Loan Contribution in respect of that Preference Unit Holder, by notice.
- (b) Each Preference Unit Holder must pay that Preference Unit Holder's Initial Loan Contribution by the End Date.

4.6 Execution of Transaction Documents

- (a) Between the day immediately after the Commencement Date and the date falling one Month after the Commencement Date, the Trustee must:
 - (i) execute:
 - (A) the Extension Project Agreement;
 - (B) each Access Agreement Specific Terms Deed;
 - (C) the Specific Security Agreement;
 - (D) the Construction Agreement;
 - (E) the Rail Corridor Agreement;
 - (F) the Extension Infrastructure Sub-Lease;
 - (G) the Extension Infrastructure Head-Lease;

- (H) the Integrated Network Deed; and
 - (I) [the Financing Side Deed; and]
- (ii) following execution, deliver to:
- (A) Aurizon Network, each document referred to in this **clause 4.6(a)**;
 - (B) each Preference Unit Holder, the Extension Project Agreement;
 - (C) each Access Seeker, the Extension Project Agreement and the Access Agreement Specific Terms Deed to which the Access Seeker is Party;
 - (D) [each Financing Party, the Financing Side Deed];
 - (E) each State Party, the Integrated Network Deed [and the Financing Side Deed]; and
 - (F) QTH, the Extension Infrastructure Head-Lease.
- (b) Between the day immediately after the Commencement Date and the date falling one Month after the Commencement Date, Aurizon Network must:
- (i) execute:
- (A) the Extension Project Agreement;
 - (B) each Access Agreement Specific Terms Deed;
 - (C) the Specific Security Agreement;
 - (D) the Construction Agreement;
 - (E) the Rail Corridor Agreement;
 - (F) the Extension Infrastructure Sub-Lease;
 - (G) the Extension Infrastructure Head-Lease;
 - (H) the Integrated Network Deed;
 - (I) [the Financing Side Deed; and]
- (ii) following execution, deliver to:
- (A) the Trustee, each document referred to in this **clause 4.6(b)**;
 - (B) each Preference Unit Holder, the Extension Project Agreement;
 - (C) each Access Seeker, the Extension Project Agreement and the Access Agreement Specific Terms Deed to which the Access Seeker is Party;
 - (D) to each State Party, the Integrated Network Deed [and the Financing Side Deed]; and

(E) to QTH, the Extension Infrastructure Head-Lease.

- (c) Between the day immediately after the Commencement Date and the date falling one Month after the Commencement Date, each Preference Unit Holder must execute the Extension Project Agreement and, following execution, deliver it to the Trustee and Aurizon Network.
- (d) The Trustee must date the Transaction Documents with the date (or the date of the next Business Day if it is received on a non-Business Day) of its receipt of the final executed Transaction Document it receives from any of the parties to any of those documents (being Aurizon Network, each Preference Unit Holder, each Access Seeker, **each Financing Party** and each State Party) and notify each counterparty to the Transaction Documents of such date.

4.7 **Termination of Deed if Bank Guarantee, Construction Agreement Guarantee and/or Security Documentation not provided**

If:

- (a) a Preference Unit Holder does not comply with **clause 4.2**;
- (b) a Preference Unit Holder ~~to which clause 4.3 applies~~ does not comply with **clause 4.3(b)**; or
- (c) a Preference Unit Holder does not comply with **clause 4.4**,

then, immediately after the End Date, the Trustee must terminate this Deed by notice to each other Party.

4.8 **Termination of Deed if clause 4.6 not complied with**

If:

- (a) the Trustee does not comply with its obligations under **clause 4.6**;
- (b) Aurizon Network does not comply with its obligations under **clause 4.6**;
or
- (c) a Preference Unit Holder does not comply with its obligations under **clause 4.6**,

then, immediately after the date falling one Month after the Commencement Date, the Trustee must terminate this Deed by notice to each other Party.

4.9 **Termination of Deed if Conditions Precedent not satisfied or waived by the End Date**

If the Conditions Precedent have not been satisfied or waived in accordance with the Extension Project Agreement by the End Date then, immediately after the End Date, the Trustee must terminate this Deed by notice to each other Party.

4.10 **Termination of Deed if not all Initial Loan Contributions received**

If a Preference Unit Holder does not comply with **clause 4.5(b)** then, immediately after the End Date, the Trustee must terminate this Deed by notice to each other Party.

4.11 **Consequences of termination of Deed under clauses 4.7, 4.8, 4.9 or 4.10**

- (a) If the Trustee terminates this Deed under **clauses 4.7, 4.8, 4.9 or 4.10**:
- (i) no Party will have any liability (other than those obligations and liabilities under clauses referred to in **clause 23.6**) to any other Party in connection with that termination;
 - (ii) within ten Business Days of the date of termination:
 - (A) the Trustee must return the Initial Subscription Amounts;
 - (B) if a Preference Unit Holder has paid its Initial Loan Contribution, then the Trustee must repay that Initial Loan Contribution to the Preference Unit Holder;
 - (C) if a Preference Unit Holder has complied with **clause 4.2**, then the Trustee must release the Security Documentation;
 - (D) if a Preference Unit Holder has complied with **clause 4.3**, then the Trustee must return to the Preference Unit Holder the Bank Guarantee provided by that Preference Unit Holder; and
 - (E) if a Preference Unit Holder has complied with **clause 4.4** then the Trustee must return ([once returned by Aurizon Network to the Trustee, if relevant](#)) to the Preference Unit Holder each Construction Agreement Guarantee provided by that Preference Unit Holder; and
 - (iii) the Trustee must wind up the Trust in accordance with the Trust Deed, such winding up commencing on the next Business Day after termination of this Deed.
- (b) The Trustee acknowledges that payment of an Initial Loan Contribution on demand by the Trustee under a Bank Guarantee is accepted as payment of that Initial Loan Contribution, on the date the payment is received from the Issuer.

4.12 **Acknowledgement of consequences on Transaction Documents of termination of Deed**

The Parties acknowledge that, if this Deed terminates under **clauses 4.7, 4.8, 4.9 or 4.10**:

- (a) the other Transaction Documents (excluding this Deed, the Trust Deed and Extension Project Agreement) will not come into force or effect; and
- (b) the Extension Project Agreement will terminate.

4.13 **Initial Unit Call and repayment of Initial Loan Contribution**

- (a) The Trustee must, within seven Business Days after the end of the Month in which the Condition Precedent Satisfaction Date falls:
 - (i) give to each Preference Unit Holder a Call Statement (**Initial Call Statement**); and
 - (ii) include in that Initial Call Statement a Call (**Initial Unit Call**) for that Preference Unit Holder's Initial Unit Call Amount.
- (b) The Trustee must, on a date determined by the Trustee, which must not be later than the last Business Day of the Month in which the Initial Unit Call is made, repay each Preference Unit Holder's Initial Loan Contribution.
- (c) Each Preference Unit Holder irrevocably directs the Trustee to apply any repayment of that Preference Unit Holder's Initial Loan Contribution in paying up the Unit Holder's Preference Units for the amount of the Initial Unit Call.
- (d) The Trustee must apply the repayment of each Preference Unit Holder's Initial Loan Contribution by paying up all of its Preference Units at the same time, by the same amount for each Unit.

5 **Loan Calls and Unit Calls after initial Calls**

5.1 **Loan Contributions during Construction Period**

- (a) The Trustee must calculate the Liquidity Requirement for each Month after the Month in which the Initial Unit Call is made until (and including) the last Month of the Construction Period.
- (b) The Trustee must calculate the amount of each Preference Unit Holder's Loan Contribution for each Month referred to in **clause 5.1(a)** as follows:
 - (i) if the Liquidity Requirement for the Month is a positive amount, the Loan Contribution for each Preference Unit Holder for that Month is the Unit Holder's Proportion of the Liquidity Requirement; and
 - (ii) if the Liquidity Requirement for the Month is nil or a negative amount, the Loan Contribution for each Preference Unit Holder for that Month is \$0.00.

5.2 **Call Statements**

Within seven Business Days after the start of each Month referred to in **clause 5.1(a)**, the Trustee must give to each Preference Unit Holder a Call Statement for that Month and include in the Call Statement a Loan Call for the amount of the Loan Contribution for the Preference Unit Holder for that Month.

5.3 **Emergency Loan Calls**

- (a) If, at any time, the Trustee is, or is likely to be, required to take urgent or emergency action which requires funds in excess of the funds then available to the Trustee, and which have not been provided for in the most recent Loan Call made under **clause 5.2**, then the Trustee may issue an emergency Loan Call to each Preference Unit Holder stating:
 - (i) the amount of funds required;
 - (ii) the circumstances, in reasonable detail, giving rise to the necessity for obtaining such funds; and
 - (iii) the Loan Contribution from the Preference Unit Holder, being that Unit Holder's Proportion of the amount of funds required.
- (b) Each Preference Unit Holder must pay that Preference Unit Holder's Loan Contribution as soon as practicable (and in any event within five Business Days) after receipt of an emergency Loan Call made by the Trustee under **clause 5.3(a)**.
- (c) For the avoidance of doubt, the provisions of this Deed in respect of Loan Calls apply to emergency Loan Calls made under **clause 5.3(a)**.

5.4 **Unit Calls during Construction Period**

- (a) In the Call Statement for a Preference Unit Holder for each December and June after the Month in which the Initial Unit Call is made until (and including) the last Month of the Construction Period, the Trustee must include, in addition to any Loan Call for that Month, a Unit Call for a Unit Call Amount equal to the amount of that Preference Unit Holder's Capital Loan Balance as at the last day of the immediately preceding Month, adjusted in accordance with **clause 5.4(c)** if applicable.
- (b) Where the Trustee has issued Call Statements in accordance with **clause 5.4(a)**, the Trustee must, on the last Business Day of December or June as applicable, repay in accordance with **clause 6.2** each Preference Unit Holder's Capital Loan Balance as at the last day of the preceding Month, adjusted in accordance with **clause 5.4(c)** if applicable.
- (c) If, at any time, paying up the full amount of the Capital Loan Balances of all Preference Unit Holders would have the effect that the aggregate of the Paid Up Amounts of all Preference Units would exceed 80% of the Target Trust Capital Cost at the time the Call Statement is issued, the Trustee must reduce the Unit Call Amounts that would otherwise be Called from each Preference Unit Holder under **clause 5.4(a)** so that the aggregate of the Paid Up Amounts of all Preference Units equals 80% of the Target Trust Capital Cost.

5.5 **Loan repayments and Unit Calls after Construction Period**

- (a) After the end of the Construction Period, the Trustee must from time to time make repayments of each Preference Unit Holder's Capital Loan Balance in accordance with **clause 5.5(d)**.
- (b) To the extent that the Trustee determines the Capital Loan Balances have been applied to Trust Capital Costs, the Trustee must, at the time a repayment is made, make a Unit Call for the amount of the repayment.
- (c) To the extent the Trustee determines the Capital Loan Balances will not be required to fund Trust Capital Costs, the Trustee must not make a Unit Call for the amount of the repayment.
- (d) The Trustee must apply the following principles in determining when and how repayments of Capital Loan Balances will be made:
 - (i) the Trustee will at all times retain aggregate Capital Loan Balances that the Trustee believes are sufficient to meet Trust Capital Costs the Trustee anticipates may be Incurred; and
 - (ii) where the Trustee anticipates that any Trust Capital Recoveries will be received at some future time, the Trustee will not make Unit Calls that would result in the aggregate Capital Loan Balances being less than the Trustee's estimate of the amount of the anticipated Trust Capital Recoveries.
- (e) Within seven Business Days after the end of the Month in which the Trustee receives the Final Certificate from the Independent Certifier under the Construction Agreement, the Trustee must:
 - (i) give each Preference Unit Holder a Call Statement which includes a Unit Call for that Preference Unit Holder's Capital Loan Balance to the extent the Trustee determines the Capital Loan Balance has been applied to Trust Capital Costs; and
 - (ii) repay the remaining amount of each Preference Unit Holder's outstanding Capital Loan Balance (which is the Capital Loan Balance minus the amount specified in **clause 5.5(e)(i)**) but must not make a Unit Call for that amount.
- (f) For the avoidance of doubt, repayment of the Capital Loan Balances under this **clause 5.5** does not preclude the Trustee from making subsequent Calls under **clause 5.6**.
- (g) Within seven Business Days after the end of the Month in which the Trustee determines that the revenue of the Trust is likely to exceed the expenses of the Trust on an ongoing basis, the Trustee must give each Preference Unit Holder a Call Statement and:
 - (i) include in the Call Statement a Unit Call for a Unit Call Amount equal to the amount of that Unit Holder's Operating Loan Balance; and

- (ii) repay that Preference Unit Holder's Operating Loan Balance in accordance with **clause 6.2**.
- (h) For the avoidance of doubt, repayment of the Operating Loan Balances does not preclude the Trustee from making subsequent Calls under **clause 5.6**.

5.6 **Loan Calls after Construction Period**

- (a) After the end of the Construction Period the Trustee may, from time to time (but not more than once per Month):
 - (i) give each Preference Unit Holder a Call Statement for a specified period; and
 - (ii) include in the Call Statement a Loan Call for the amount of the Unit Holder's Loan Contribution for that period.
- (b) The amount of each Preference Unit Holder's Loan Contribution for a period will be that Unit Holder's Proportion of the Projected Liquidity Requirement for that period.
- (c) Any Call under this **clause 5.6** is subject to **clause 5.9**.

5.7 **Call Statements**

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

5.8 **Disputes do not affect obligation to pay**

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

5.9 **Maximum Call Amounts**

- (a) The total of the Call Amounts that each Preference Unit Holder is obliged to pay under this Deed is the lesser of:
 - (i) the aggregate Application Price for all Preference Units of that Preference Unit Holder; and
 - (ii) the Unit Holder's Proportion of the total amount of Trust Costs Incurred prior to the later of:
 - (A) the date the Trustee gives the Call Statement under **clause 5.5(e)(i)**; and
 - (B) the date the Trustee gives the Call Statement under **clause 5.5(g)**,
(Extinguishment Date).
- (b) On and from the Extinguishment Date, the liability of each Preference Unit Holder to pay any further Call Amounts is extinguished, and all Preference Units of that Preference Unit Holder are deemed to be Fully Paid Units other than in respect of any Call Amounts that had been

Called on or before the Extinguishment Date but which have not been paid by that Preference Unit Holder.

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

5.10 **Expenses after Preference Units Fully Paid**

- (a) If, after all Preference Units are deemed to be Fully Paid Units under **clause 5.9(b)**, the Trustee determines that the revenue of the Trust is, or is likely to be, at any time insufficient to fully cover the expenses of the Trust, then each Preference Unit Holder must, within ten Business Days of a demand by the Trustee from time to time, pay to the Trustee its Unit Holder's Proportion of the Trustee's estimate of the amount by which the expenses of the Trust are likely to exceed the revenue of the Trust.
- (b) For the avoidance of doubt, the obligation of a Preference Unit Holder to pay the Trustee under **clause 5.10(a)** is a contractual obligation and does not constitute a Call.

6 **Payments of Calls and repayments of Loans**

6.1 **Payment of Loan Contributions**

Subject to **clause 4.4**, each Preference Unit Holder must pay that Preference Unit Holder's Loan Contribution for a Month to the Trustee by the later of:

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

6.2 Payment of Unit Calls

- (a) Each Preference Unit Holder irrevocably directs the Trustee to apply any repayment of that Preference Unit Holder's Loan Balance in paying up that Preference Unit Holder's Preference Units for the amount of any Unit Call outstanding at the time the repayment is made.
- (b) The Trustee must apply the repayments of the Preference Unit Holders' Loan Balances as directed under **clause 6.2(a)** on the last Business Day of the Month in which the Unit Calls are made, by paying up the Preference Units of all of the Preference Unit Holders at the same time by the same amount for each Preference Unit.
- (c) If the amount that is to be repaid to a Preference Unit Holder is less than the amount of that Preference Unit Holder's outstanding Unit Calls at the time the repayment is to be made under **clause 6.2(a)**, then that Preference Unit Holder remains liable to pay the balance of the Unit Call and **clause 7** applies.

6.3 Proportionate repayment

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

7 Failure to pay Calls

7.1 Interest on overdue Call payments

- (a) If for any reason a Preference Unit Holder does not pay an amount payable under or in connection with this Deed on or before the due date for payment, then that Preference Unit Holder must pay interest to the Trustee in respect of that unpaid amount.
- (b) Interest will accrue on the amount not paid from the due date for payment until that amount, together with the interest thereon, has been paid.
- (c) Interest will be calculated at the Interest Rate, and any interest accrued but unpaid at the end of each Month will be capitalised and will thereafter itself bear interest.
- (d) An amount of interest paid by a Preference Unit Holder under this **clause 7.1** (including any interest which is capitalised):
 - (i) does not constitute a payment of a Call Amount;
 - (ii) is not applied towards that Preference Unit Holder's Loan Balance or in paying up that Preference Unit Holder's Partly Paid Units; and
 - (iii) is an Asset of the Trust and included in Preference Income.

7.2 Failure to meet obligations

- (a) Each Preference Unit Holder acknowledges and agrees that:
 - (i) the performance of that Preference Unit Holder's obligation to meet the terms of a Call promptly and when due is critical to the success and financial wellbeing of the Trust;
 - (ii) if a Preference Unit Holder fails to make a payment in accordance with the terms of a Call, the Trust may suffer irreparable harm and the other Preference Unit Holders may suffer Loss (which may include Consequential Loss); and
 - (iii) the default provisions in the Trust Deed and in this Deed are in recognition of these matters and are reasonable to protect the Trust and the interests of Preference Unit Holders generally.
- (b) The Trustee acknowledges that payment of a Call Amount on demand by the Trustee under a Bank Guarantee is accepted as payment of a Call on the date the payment is received from the Issuer.
- (c) Where, at any time:
 - (i) a Preference Unit Holder fails to pay a Loan Call for a Month within five Business Days after the due date for payment of such Loan Call; and
 - (ii) the Trustee, in its absolute discretion, and without limiting the Trustee's rights under this **clause 7**, gives a notice to the Preference Unit Holder under this **clause 7.2(c)**,

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

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

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

7.3 Failure to pay Loan Call

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

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

then the Trustee must give a notice to the Defaulting Unit Holder (copying the other Preference Unit Holder(s)) stating that a default has occurred and has not been remedied and that **clause 7.3(c)** applies (**Failure to Pay Loan Call Notice**).

- (c) With immediate effect from the date of the Failure to Pay Loan Call Notice:
 - (i) the Defaulting Unit Holder loses all rights to participate in the Extension and, unless otherwise expressly stated in this Deed and other than accrued rights, ceases to have any further rights under the Transaction Documents; and
 - (ii) each of the Preference Unit Holders who have paid their Loan Calls (**Non-Defaulting Unit Holders**) will have the right, but not the obligation, to pay any:
 - (A) Loan Call that the Defaulting Unit Holder has failed to pay; and
 - (B) future Loan Calls the Defaulting Unit Holder becomes liable to pay and fails to pay by the due date,(together the **Shortfall**) by way of loans to the Trustee, in addition to the Unit Holder Loans, in proportions agreed between the Non-Defaulting Unit Holders and the Trustee (**Shortfall Loans**).
- (d) Even if Shortfall Loans are advanced to the Trustee in accordance with **clause 7.3(c)(ii)**, the Trustee may, without the consent of the Defaulting Unit Holder, in accordance with **clause 7.6**:
 - (i) exercise its power of sale or enforce any other rights conferred by the Security Documentation for that Defaulting Unit Holder, in order to sell (or otherwise dispose of):

- (A) all of the Preference Units held by the Defaulting Unit Holder;
 - (B) all of the rights of the Defaulting Unit Holder in respect of its Unit Holder Loans; and
 - (C) all of the accrued rights of the Defaulting Unit Holder in its capacity as a Preference Unit Holder under the Transaction Documents; and
- (ii) if any Shortfall Loans have been advanced to the Trustee in accordance with **clause 7.3(c)(ii)**, as agent for the Non-Defaulting Unit Holder(s) who have made Shortfall Loans, sell all of the rights of those Non-Defaulting Unit Holder(s) in respect of their Shortfall Loans,
- (together the **Sale Assets**).

7.4 **Shortfall Loans**

A Shortfall Loan made by a Non-Defaulting Unit Holder in accordance with **clause 7.3(c)(ii)**:

- (a) is payable to the Trustee at such times and on such terms agreed between that Non-Defaulting Unit Holder and the Trustee;
- (b) does not bear interest;
- (c) will rank pari passu with each other Shortfall Loan; and
- (d) will not be repayable by the Trustee except in circumstances where the Trustee sells the Sale Assets in accordance with **clause 7.6** and the Shortfall Loans are taken to be Unit Holder Loans advanced by the purchaser which are repayable in accordance with this Deed.

7.5 **Suspension or termination of Works for Extension**

- (a) If a Defaulting Unit Holder fails to pay a Loan Call for a Month by the due date for payment, and:
 - (i) the Defaulting Unit Holder has not remedied that breach;
 - (ii) the Non-Defaulting Unit Holders have not provided Shortfall Loans in accordance with **clause 7.3(c)(ii)** which, in aggregate, equal the Shortfall; and
 - (iii) the Trustee has not completed a sale of the Sale Assets in accordance with **clause 7.6**,
 by the date which is:
 - (iv) one Month after the due date for payment of the relevant Loan Call, then the Trustee may suspend all of the Works for the Extension under the Construction Agreement, and if the Trustee does so, then the Trustee may:

- (A) require that each Non-Defaulting Unit Holder pay to the Trustee, within five Business Days of a demand by the Trustee from time to time, a pro rata proportion (being the proportion that the total Paid Up Amounts on that Non-Defaulting Unit Holder's Preference Units bears to the aggregate Paid Up Amounts of the Preference Units of all Non-Defaulting Unit Holders) of the costs and expenses arising from the suspension (including, for example, the additional Construction Costs Incurred by the Trustee as a consequence of the suspension), and for the avoidance of doubt, the obligation of a Non-Defaulting Unit Holder to pay the Trustee an amount under this **clause 7.5(a)(iv)(A)** is a contractual obligation and does not constitute a Call; and
 - (B) take such action against the Defaulting Unit Holder as the Trustee considers appropriate for recovery of any Loss suffered by the Trust as a result of that Defaulting Unit Holder's failure to pay the Loan Call, including any Loss (including Consequential Loss) arising from the suspension; and
- (v) three Months after the due date for payment of the relevant Loan Call, then the Trustee may terminate the Construction Agreement, and if the Trustee does so, then the Trustee may:
- (A) require that each Non-Defaulting Unit Holder pay to the Trustee, within five Business Days of a demand by the Trustee from time to time, a pro rata proportion (being the proportion that the total Paid Up Amounts on that Non-Defaulting Unit Holder's Preference Units bears to the aggregate Paid Up Amounts of the Preference Units of all Non-Defaulting Unit Holders) of the costs and expenses arising from the termination (including, for example, additional Construction Costs Incurred by the Trustee as a consequence of the termination), and for the avoidance of doubt, the obligation of a Non-Defaulting Unit Holder to pay the Trustee an amount under this **clause 7.5(a)(v)(A)** is a contractual obligation and does not constitute a Call; and
 - (B) take such action against the Defaulting Unit Holder as the Trustee considers appropriate for recovery of any Loss suffered by the Trust as a result of that Defaulting Unit Holder's failure to pay the Loan Call, including any Loss (including Consequential Loss) arising from the termination.

- (b) If the Trustee suspends all of the Works for the Extension under the Construction Agreement, or terminates the Construction Agreement, in accordance with **clause 7.5(a)**, then:
- (i) each Preference Unit Holder acknowledges that the suspension or termination may cause the Trustee and Non-Defaulting Unit Holders to suffer Loss;
 - (ii) the Defaulting Unit Holder indemnifies the Trustee and all Non-Defaulting Unit Holders for any Loss (including Consequential Loss) arising from such suspension or termination or otherwise from the Defaulting Unit Holder's default; and
 - (iii) each Preference Unit Holder acknowledges that it has no Claim against the Trustee for any Loss (including Consequential Loss) arising from such suspension or termination except to the extent that the Loss arises as a result of, and to the extent of, the Trustee committing fraud, Gross Negligence or Wilful Default.
- (c) If the Trustee suspends all of the Works for the Extension under the Construction Agreement in accordance with **clause 7.5(a)**, then the Trustee may subsequently direct Aurizon Network, under the Construction Agreement, to recommence the carrying out of all of the Works for the Extension under the Construction Agreement, in which case the Trustee may:
- (i) make Loan Calls on the Preference Unit Holders for costs and expenses arising from the recommencement (including, for example, additional Construction Costs Incurred by the Trustee as a consequence of the recommencement); and
 - (ii) take such action against the Defaulting Unit Holder as the Trustee considers appropriate for recovery of any Loss suffered by the Trust as a result of that Defaulting Unit Holder's failure to pay the Loan Call, including any Loss (including Consequential Loss) arising from the recommencement.
- (d) If Aurizon Network terminates the Construction Agreement in accordance with clause **[38.9]** of the Construction Agreement, then the Trustee may:
- (i) require that each Non-Defaulting Unit Holder pay to the Trustee, within five Business Days of a demand by the Trustee from time to time, a pro rata proportion (being the proportion that the total Paid Up Amounts on that Non-Defaulting Unit Holder's Preference Units bears to the aggregate Paid Up Amounts of the Preference Units of all Non-Defaulting Unit Holders) of the costs and expenses arising from the termination (including, for example, additional Construction Costs Incurred by the Trustee as a consequence of the termination), and for the avoidance of doubt, the obligation of a Non-Defaulting Unit Holder to pay the Trustee

an amount under this **clause 7.5(d)** is a contractual obligation and does not constitute a Call; and

- (ii) take such action against the Defaulting Unit Holder as the Trustee considers appropriate for recovery of any Loss suffered by the Trust as a result of that Defaulting Unit Holder's failure to pay the Loan Call, including any Loss (including Consequential Loss) arising from the termination.

7.6 Sale of Sale Assets

- (a) If the Trustee is exercising its power of sale or enforcing any other rights conferred by the Security Documentation in accordance with **clause 7.3(d)**, the Trustee must, by written notice (**Sale Notice**), offer the Sale Assets for sale (**Sale Offer**) by way of an open tender process seeking offers from any third party (including the Non-Defaulting Unit Holders and the Ordinary Unit Holder, but excluding the Defaulting Unit Holder and any Related Body Corporate of the Defaulting Unit Holder).
- (b) If the Sale Offer occurs during the Construction Period, the Trustee must offer for sale all, and not part only, of the Sale Assets, on the basis that all of the Sale Assets must be sold, whether to one or more bidders, provided that any bid for Preference Units must also include a bid for the other Sale Assets in the proportion those Sale Assets bear to the Preference Units bid for. In such circumstances the Trustee will not be obliged to consider a bid for the Sale Assets (**Bid**) where that Bid is to purchase some only of the Sale Assets (**Partial Bid**) unless, when aggregated with other Partial Bids, sufficient Partial Bids are received to purchase, in total, all of the Sale Assets.

[Drafting note: By way of example, and to assist in the interpretation of clause 7.6(b):

- *a bid for 30% of the Preference Units held by the Defaulting Unit Holder must also include a bid for 30% of all rights of the Defaulting Unit Holder in respect of its Unit Holder Loans and 30% of all the accrued rights of the Defaulting Unit Holder in its capacity as a Preference Unit Holder under the Transaction Documents, and would constitute a valid Partial Bid.*
 - *a bid for 100% of the Preference Units held by the Defaulting Unit Holder which did not include an offer to acquire any of the rights and obligations of the Defaulting Unit Holder under the Transaction Documents would not constitute a valid Bid or Partial Bid.]*
- (c) If the Sale Offer occurs after the end of the Construction Period, the Trustee may offer for sale all or part only of the Sale Assets, and the Trustee will be obliged to consider Bids, including Partial Bids.
 - (d) The Trustee must specify in the Sale Notice that all bids from prospective purchasers must include the following terms:

- (i) the amount of the consideration offered by the prospective purchaser (which must be payable in cash in Australian currency);
- (ii) the prospective purchaser must, as a term of its bid for the Sale Assets (or its bid for a less than 100% undivided interest in the Sale Assets), agree to pay to the Trustee, in addition to the consideration offered by the prospective purchaser for the Sale Assets (or interest in them), the amount being:
 - (A) all (or a relevant portion of) Loan Calls that the Defaulting Unit Holder is liable to pay as at the date of completion of the sale of the Sale Assets; **less**
 - (B) if any Shortfall Loans have been advanced to the Trustee in accordance with **clause 7.3(c)(ii)**, the amount of those Shortfall Loans (or a relevant portion of those Shortfall Loans),

which amount will be calculated by the Trustee as at the date of completion of the sale of the Sale Assets;
- (iii) the prospective purchaser must execute any documents required by the Trustee, in the form reasonably required by the Trustee, under which the prospective purchaser agrees to assume the rights, and be bound by the obligations, of the Defaulting Unit Holder under the Transaction Documents, with effect on and from the completion of the sale of the Sale Assets (irrespective of when the prospective purchaser becomes the registered holder of the applicable Preference Units); and
- (iv) the prospective purchaser must provide to the Trustee:
 - (A) a Bank Guarantee for the amount which will be the Reviewed Amount for that prospective purchaser (assuming, and determined as at the date of, the completion of the sale of the Sale Assets);
 - (B) the Security Documentation in accordance with the requirements for Security Documentation under **clause 4.2**; and
 - (C) a Construction Agreement Guarantee or Construction Agreement Guarantees in accordance with the requirements for Construction Agreement Guarantees under **clause 4.4** provided that the amount of such Construction Agreement Guarantee(s) shall be assuming, and determined as at the date of, the completion of the sale of the Sale Assets.
- (e) Any party eligible under **clause 7.6(a)** to participate in the tender process will have the right to make a Bid within a period of 20 Business Days from the date of the Sale Notice, and the Sale Offer must remain open for that period.

- (f) If any Bids which comply with the terms of **clause 7.6(d)** are received by the Trustee within the period referred to in **clause 7.6(e)**:
- (i) the Trustee must, within ten Business Days, evaluate the Bids and accept a Bid, or one or more Partial Bids, provided that if the Sale Offer occurs during the Construction Period, then the accepted Bid, or accepted Partial Bids in aggregate, must relate to all of the Sale Assets; and
- without limiting the Trustee's duties under section 420A of the Corporations Act, in evaluating the Bids, the Trustee is entitled to take into account the interests of the Trust and is not bound to sell the Sale Assets to:
- (A) the bidder that provided a Bid that offers; or
- (B) the bidders that provided Partial Bids which, in aggregate, offer,
- the highest price.
- (g) Upon acceptance by the Trustee of a Bid, the Trustee will serve notice on the purchaser (copying the Preference Unit Holder(s)) stating that the Bid has been accepted, and as soon as reasonably practicable thereafter complete the sale of the Sale Assets in accordance with the terms of the offer accepted by the Trustee, provided that completion of the sale of the Sale Assets is conditional on that purchaser:
- (i) paying the Trustee:
- (A) the consideration offered by the purchaser under **clause 7.6(d)(i)**; and
- (B) the amount determined under **clause 7.6(d)(ii)**; and
- (ii) providing to the Trustee the Security Documentation, the Bank Guarantee and the Construction Agreement Guarantee(s) in accordance with **clause 7.6(d)(iv)**.
- (h) On receipt of the consideration received from the sale of the Sale Assets and the amount determined under **clause 7.6(d)(ii)** (together the **Sale Proceeds**), the Trustee must apply or pay (as applicable) the Sale Proceeds in the following manner:
- (i) firstly, the Trustee must deduct from the Sale Proceeds all costs, liabilities and expenses incurred by the Trustee in conducting the sale of the Sale Assets (and, for the avoidance of doubt, any amounts deducted by the Trustee under this sub-paragraph will be retained by the Trustee as part of the Assets);
- (ii) secondly, to the extent there is any balance remaining after the application of **clause 7.6(h)(i)**, towards the payment of unpaid Loan Calls of the Defaulting Unit Holder together with any interest which has accrued under **clause 7.1** in respect of the unpaid Loan

Calls of the Defaulting Unit Holder (and, for the avoidance of doubt, any amounts applied by the Trustee under this sub-paragraph will also be retained by the Trustee as part of the Assets);

- (iii) thirdly, to the extent there is any balance remaining after the application of **clauses 7.6(h)(i) and 7.6(h)(ii)**, the Trustee must reimburse to each Non-Defaulting Unit Holder the amounts they have paid under **clause 7.5(a)(iv)(A) or 7.5(a)(v)(A)** (if any) (provided that if the balance remaining is less than the total of the amounts paid by all Non-Defaulting Unit Holders under **clauses 7.5(a)(iv)(A) and 7.5(a)(v)(A)**, the Trustee will only be obliged to reimburse the Non-Defaulting Unit Holders an amount equal to the balance remaining in the proportions that the total amount paid by each Non-Defaulting Unit Holder under **clauses 7.5(a)(iv)(A) and 7.5(a)(v)(A)** bears to the total of the amounts paid by all Non-Defaulting Unit Holders under **clauses 7.5(a)(iv)(A) and 7.5(a)(v)(A)**);
- (iv) fourthly, to the extent there is any balance remaining after the application of **clauses 7.6(h)(i), 7.6(h)(ii) and 7.6(h)(iii)**, the Trustee must pay to the relevant Non-Defaulting Unit Holder(s), as consideration for the purchase by the purchaser of the Non-Defaulting Unit Holder(s)' rights in respect of the Shortfall Loans, an amount not exceeding the amount of the Shortfall Loans, provided that if the balance remaining is less than the amount of the Shortfall Loans:
 - (A) the Trustee will only be obliged to pay to the relevant Non-Defaulting Unit Holder(s) an amount equal to the balance remaining in the proportions that the total amount of Shortfall Loans advanced by each Non-Defaulting Unit Holder bears to the aggregate amount of all Shortfall Loans; and
 - (B) if any Shortfall Loans have been advanced to the Trustee in accordance with **clause 7.3(c)(ii)**, for the avoidance of doubt all of the Non-Defaulting Unit Holder(s)' rights in respect of the Shortfall Loans will pass to the purchaser and the relevant Non-Defaulting Unit Holder(s) will have no right or entitlement to be repaid the balance remaining by the Trustee; and
- (v) finally, to the extent that there is any balance remaining after the application of **clauses 7.6(h)(i), 7.6(h)(ii), 7.6(h)(iii) and 7.6(h)(iv)**, the balance remaining will be payable to the Defaulting Unit Holder,

provided that the Trustee will not apply or pay any part of the Sale Proceeds under **clauses 7.6(h)(ii), 7.6(h)(iii), 7.6(h)(iv) and 7.6(h)(v)**

until the Trustee has been able to finally determine, and apply or pay (as applicable), the amount required to be applied or paid under the immediately preceding sub-paragraph of this **clause 7.6(h)**.

- (i) In exercising its power of sale, or enforcing any other rights conferred by the Security Documentation, the Trustee must comply with the requirements of **clause 11.1** which apply to a transfer of Units by a Preference Unit Holder.
- (j) Upon completion of the sale and purchase of all of the Sale Assets in accordance with **clause 7.6(g)**:
 - (i) the Trustee must release the Defaulting Unit Holder from the charges created by the Security Documentation;
 - (ii) subject to the Trustee's rights of recourse to the Bank Guarantee under **clause 9.3**, the Trustee must return that Bank Guarantee to the Defaulting Unit Holder; and
 - (iii) subject to Aurizon Network's rights of recourse to each Construction Agreement Guarantee as provided for under the Construction Agreement (as acknowledged in **clause 9.8**), the Trustee must return the Construction Agreement Guarantee(s) provided by the Defaulting Unit Holder to the Defaulting Unit Holder ten Business Days after the date on which such Construction Agreement Guarantee is returned to it by Aurizon Network.

7.7 Indemnity to Trustee

- (a) Subject to compliance by the Trustee with **clause 7.6** and any other duties or obligations imposed on the Trustee, whether by statute or otherwise (including under section 420A of the Corporations Act), in conducting the sale process contemplated under **clause 7.6**, to the extent permitted by law each Preference Unit Holder indemnifies the Trustee against any Loss (including Consequential Loss) incurred or suffered by the Trustee in connection with or arising out of any sale of the Sale Assets.
- (b) Each Preference Unit Holder's liability under the indemnity in **clause 7.7(a)** is limited to its Unit Holder's Proportion of such Loss and/or Consequential Loss.

7.8 Suspension of Unit Calls

The Trustee must not make any Unit Calls during the period from the date of the Loan Call Default by a Defaulting Unit Holder until the completion of the sale of the Defaulting Unit Holder's Sale Assets under **clause 7.6**, and for the avoidance of doubt:

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

- (b) any Loan Calls made are to be made on all Preference Unit Holders (including the Defaulting Unit Holder); and
- (c) any payment of a Loan Call by the Defaulting Unit Holder after the Trustee issues a Sale Notice does not remedy the default, but the amount of the payment will reduce the amount of unpaid Loan Calls.

8 Estimated Final Trust Costs and Mandatory Reallocation Process

8.1 Estimated Final Trust Costs Statement

- (a) Within 15 Business Days after the end of the Construction Period, the Trustee must give the Preference Unit Holders a statement (**Estimated Final Trust Costs Statement**) setting out:
 - (i) the Estimated Final Trust Costs for each Segment comprising the Extension; and
 - (ii) the Total Estimated Final Trust Costs for the Extension.
- (b) To determine the Estimated Final Trust Costs for each Segment under **clause 8.1(a)(i)**, the Trustee must ensure that the Estimated Final Trust Costs are allocated to a Segment which are directly attributable to that Segment or otherwise allocated to a Segment applying the Allocation Principles.
- (c) The Estimated Final Trust Costs Statement given by the Trustee to the Preference Unit Holders under **clause 8.1(a)** must be accompanied by reasonable details of the calculation of the Estimated Final Trust Costs for each Segment and the Total Estimated Final Trust Costs for the Extension.
- (d) In the absence of fraud or manifest error, the Estimated Final Trust Costs for each Segment and the Total Estimated Final Trust Costs for the Extension set out in the Estimated Final Trust Costs Statement is final and binding on the Parties.

8.2 Unit Holder reconciliation

- (a) By no later than the last Business Day of the Month following the Month in which the Construction Period ends, the Trustee must:
 - (i) calculate the Revised Unit Holder's Proportion for each Preference Unit Holder in accordance with the Revised UHP Calculation Methodology; and
 - (ii) give to each Preference Unit Holder a statement (**Unit Holder Reconciliation Statement**) setting out the number of Revised Preference Units for each Preference Unit Holder.
- (b) When calculating the number of Revised Preference Units for each Preference Unit Holder, the Trustee must round either up or down the

number of Preference Units it calculates for that Preference Unit Holder to the nearest whole number so that the total number of Revised Preference Units for all Preference Unit Holders is equal to the Total Original Preference Units.

- (c) The Unit Holder Reconciliation Statement given by the Trustee to the Preference Unit Holders under **clause 8.2(a)** must be accompanied by reasonable details of the calculation of the number of Revised Preference Units for each Preference Unit Holder.
- (d) In the absence of fraud or manifest error the number of Revised Preference Units for each Preference Unit Holder set out in the Unit Holder Reconciliation Statement is final and binding on the Parties.

8.3 **Mandatory Reallocation Process**

- (a) If the Unit Holder Reconciliation Statement sets out that the number of Revised Preference Units for any Preference Unit Holder is equal to the number of Original Preference Units for that Preference Unit Holder, then **clauses 8.3** (other than this **clause 8.3(a)**), **8.4** and **8.5** do not apply.
- (b) If the Unit Holder Reconciliation Statement sets out that the number of Revised Preference Units for any Preference Unit Holder is not equal to the number of Original Preference Units for that Preference Unit Holder, then the Mandatory Reallocation Process set out in **clauses 8.3, 8.4** and **8.5** applies and the Trustee and the Preference Unit Holders must comply with the Mandatory Reallocation Process.
- (c) To secure the rights of the Preference Unit Holders under this **clause 8**, each Preference Unit Holder hereby irrevocably appoints the Trustee and its directors as the attorney of that Preference Unit Holder with power to sign all documents and do all other things in the name of that Preference Unit Holder to effect the transfer of the True-up Units, and the True-up Unit Loan Balance attributable to the True-up Units, and otherwise complete the transfer of the True-up Units, and the True-up Unit Loan Balance attributable to the True-up Units, as set out in the True-up Statement and in accordance with the Mandatory Reallocation Process.
- (d) Subject to the provisions of this **clause 8.3**, if the Mandatory Reallocation Process applies, the Preference Unit Holders acknowledge and agree that where:
 - (i) the number of Revised Preference Units for a Preference Unit Holder is greater than the number of Original Preference Units for that Preference Unit Holder, that Preference Unit Holder is entitled and obliged to have transferred to it the number of Preference Units by which the number of Revised Preference Units for that Preference Unit Holder exceeds the number of Original

- Preference Units for that Preference Unit Holder (**Receipt Units**) in accordance with the Mandatory Reallocation Process;
- (ii) the number of Revised Preference Units for a Preference Unit Holder is less than the number of Original Preference Units for that Preference Unit Holder, that Preference Unit Holder must transfer the number of Preference Units by which the number of Revised Preference Units for that Preference Unit Holder is less than the number of Original Preference Units for that Preference Unit Holder (**Transfer Units**) in accordance with the Mandatory Reallocation Process; and
 - (iii) the number of Revised Preference Units for a Preference Unit Holder is equal to the number of Original Preference Units for that Preference Unit Holder, that Preference Unit Holder is neither entitled and obliged to have transferred to it, nor obliged to transfer, any Preference Units in accordance with the Mandatory Reallocation Process.
- (e) By no later than five Business Days before the True-up Date, two Preference Unit Holders, one of whom is entitled and obliged to have Preference Units transferred to it, and the other of whom is obliged to transfer Preference Units, may jointly give a notice (**Matching Notice**) to the Trustee stating that these Preference Unit Holders irrevocably elect not to receive a certain number of Receipt Units or transfer a certain number of Transfer Units (as applicable for each of those Preference Unit Holders) (**Matching Units**), and that accordingly the Matching Units will not constitute True-up Units for the purposes of the Mandatory Reallocation Process, provided that the number of Transfer Units and the number of Receipts Units specified in the Matching Notice must be equal.
- (f) A Preference Unit Holder may be a party to a number of arrangements described in **clause 8.3(e)** with any other Preference Unit Holders provided that the sum of the number of Matching Units to be transferred or received by it (as applicable), as specified in each Matching Notice for that Preference Unit Holder, does not exceed the total number of Transfer Units or Receipt Units (as applicable) which that Preference Unit Holder is obliged to transfer or entitled and obliged to receive (as applicable) to give effect to **clause 8.3(d)**.
- (g) On the True-up Date, the Trustee must:
- (i) deduct from the total number of Transfer Units or Receipt Units for each Preference Unit Holder, the total number of Matching Units for that Preference Unit Holder, to determine the net number of Preference Units to be transferred or received by that Preference Unit Holder (**True-up Units**); and
 - (ii) give each Preference Unit Holder a statement (**True-up Statement**) setting out for each Preference Unit Holder:

- (A) the number of True-up Units (if any);
 - (B) the transferor and transferee of each True-up Unit;
 - (C) the Transfer Settlement Date; and
 - (D) the True-up Unit Loan Balance for each True-up Unit.
- (h) Within five Business Days after the date on which the True-up Statement is given by the Trustee under **clause 8.3(g)(ii)**, the Trustee must give each Preference Unit Holder a further statement (**Additional True-up Statement**) setting out for each Preference Unit Holder the Transfer Consideration to be paid or received by it.
- (i) The True-up Statement and the Additional True-up Statement given by the Trustee to each Preference Unit Holder must be accompanied by reasonable details of the calculation of each matter required to be included in the True-up Statement or the Additional True-up Statement (as applicable).
- (j) In the absence of fraud or manifest error, the True-up Statement and the Additional True-up Statement are final and binding on the Parties.
- (k) On the True-up Date each Preference Unit Holder is deemed:
- (i) if it is the transferor of a True-up Unit:
 - (A) to have agreed to transfer the unencumbered beneficial interest in each True-up Unit it is required to transfer to the transferee of that True-up Unit as set out in the True-up Statement; and
 - (B) to have agreed to transfer the unencumbered beneficial interest in the True-up Unit Loan Balance attributable to each True-up Unit to the transferee of that True-up Unit as set out in the True-up Statement; and
 - (ii) if it is the transferee of a True-up Unit, to have agreed to accept a transfer of the beneficial interest in that True-up Unit and the True-up Unit Loan Balance attributable to that True-up Unit.
- (l) On the Transfer Settlement Date each Preference Unit Holder must:
- (i) if it is the transferor of a True-up Unit:
 - (A) transfer the unencumbered legal interest in each True-up Unit it is required to transfer to the transferee of that True-up Unit as set out in the True-up Statement; and
 - (B) transfer the unencumbered legal interest in the True-up Unit Loan Balance attributable to each True-up Unit to the transferee of that True-up Unit as set out in the True-up Statement; and
 - (ii) if it is the transferee of a True-up Unit:

- (A) accept a transfer of that True-up Unit and the True-up Unit Loan Balance attributable to that True-up Unit; and
 - (B) pay the applicable transferor the Transfer Consideration for each True-up Unit transferred to it by that applicable transferor.
- (m) If a transferee of a True-up Unit does not comply with **clause 8.3(l)(ii)(B)**, then the Trustee must effect the transfer under the power of attorney granted to it under **clause 8.3(c)**, and the Transfer Consideration which remains unpaid in respect of those True-up Units is a debt due and payable by the relevant transferee to the relevant transferor for those True-up Units.
- (n) If a transferee of a True-up Unit does not comply with **clause 8.3(l)(ii)(B)** then, without limiting any rights of that transferor against that transferee, that transferee hereby irrevocably directs the Trustee, on and from the date the Trustee is notified by the transferor of that failure to pay the Transfer Consideration, to pay that portion of the Distributable Amount or Distributable Sum (as applicable) that is payable to that transferee in respect of all Preference Units held by that transferee to the relevant transferor until the Trustee is notified by the transferor that the relevant Transfer Consideration, together with interest which will accrue on the Transfer Consideration from the Transfer Settlement Date, has been paid to the relevant transferor in full.
- (o) The interest referred to in **clause 8.3(n)** will be calculated at the Interest Rate, and any interest accrued but unpaid at the end of each Month will be capitalised and will thereafter itself bear interest.
- (p) For the purposes of **clause 8.3(n)** the transferor of a True-up Unit who has not been paid the Transfer Consideration for a True-up Unit must:
 - (i) promptly, and in any event not later than three Business Days, after the Transfer Settlement Date, notify the Trustee and the transferee that it has not received the payment of the Transfer Consideration, or has only received payment of part of the Transfer Consideration, for that True-up Unit from that transferee (including the identity of that transferee); and
 - (ii) subsequently on receipt of the full amount of the Transfer Consideration (and interest) for that True-up Unit from that transferee, promptly, and in any event not later than three Business Days after receipt of payment, notify the Trustee and the transferee that it has received that payment for that True-up Unit.
- (q) For the purposes of **clause 8.3(n)**, any notice given by a transferor to the Trustee under **clause 8.3(p)** is evidence that the transferee, as named in that notice, has failed to pay to that transferor the Transfer Consideration for a True-up Unit, and the Trustee is entitled to rely on that notice

without further inquiry or investigation and is not liable to any Party in respect of any Claim arising from its reliance on that notice.

- (r) Promptly, and in any event no later than three Business Days, after the Transfer Settlement Date the Trustee must record the transfer of the True-up Units in the Register subject to and in accordance with clause **[6.6]** of the Trust Deed.
- (s) The Parties agree that **clause 11.1** does not apply to a transfer of a Preference Unit made under this **clause 8.3**.
- (t) Each Preference Unit Holder agrees that any Stamp Duty payable in respect of a transfer of a True-up Unit, or the True-up Unit Loan Balance attributable to the True-up Unit, will be borne equally by the transferor and transferee of that True-up Unit.

8.4 **Adjustments for each True-up Unit**

- (a) For each True-up Unit, the transferee and transferor of that True-up Unit agree as between them that:
 - (i) for any distributions in respect of a True-up Unit received by a transferee after the True-up Date which relates (in whole or in part) to a period prior to the True-up Date, the transferee must pay the transferor an amount equal to that portion of the income which relates to the period prior to the True-up Date; and
 - (ii) for a Call in respect of a True-up Unit:
 - (A) the transferor must pay any Calls in respect of that True-up Unit which fall due and payable on a date prior to the True-up Date; and
 - (B) the transferee must pay any Calls in respect of that True-up Unit which fall due and payable on a date on or after the True-up Date, whether or not a Call Statement for that Call was issued prior to the True-up Date.
- (b) Any dispute between a transferee and a transferor in respect of a True-up Unit under this **clause 8.4** is a matter for resolution between that transferee and transferor and does not otherwise affect the operation of this Deed or the rights and obligations of that transferee or transferor as a Preference Unit Holder under this Deed.

8.5 **Recalculation of the Unit Holder's Proportion**

- (a) Promptly, and in any event not later than three Business Days, after the Transfer Settlement Date the Trustee must give each Preference Unit Holder a statement (**Recalculated Unit Holder's Proportion Statement**) setting out the recalculated Unit Holder's Proportion for each Preference Unit Holder (**Recalculated Unit Holder's Proportion**).
- (b) The Trustee must calculate the Recalculated Unit Holder's Proportion for each Preference Unit Holder by dividing the number of Preference Units

held by a Preference Unit Holder immediately following the Transfer Settlement Date by the total number of Preference Units on issue as at the Transfer Settlement Date.

- (c) The Recalculated Unit Holder's Proportion Statement given by the Trustee to each Preference Unit Holder under **clause 8.5(a)** must be accompanied by reasonable details of the calculation of the Recalculated Unit Holder's Proportion for each Preference Unit Holder.
- (d) In the absence of fraud or manifest error, the Recalculated Unit Holder's Proportion for each Preference Unit Holder set out in the Recalculated Unit Holder's Proportion Statement is final and binding on the Parties.
- (e) If a Preference Unit Holder breaches its obligation to pay the Transfer Consideration for any True-up Unit under **clause 8.3(l)**, that Preference Unit Holder is nonetheless obliged to comply with its obligations under this Deed on the basis of its Recalculated Unit Holder's Proportion.

8.6 **Subsequent increases or decreases to the final Trust Costs**

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

9 Requirements for and use of guarantees

9.1 **Requirements for Bank Guarantee**

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

- (a) be an unconditional and irrevocable bank guarantee in favour of the Trustee;
- (b) be issued by an authorised deposit-taking institution under the *Banking Act 1959* (Cth) which holds a long-term credit rating by Standard & Poors Rating Services of at least A (or the equivalent rating by another internationally recognised ratings agency) (**Issuer**);
- (c) require the Issuer to pay on demand by the Trustee, without recourse to the Party providing the Bank Guarantee or any other person, an amount or amounts up to the amount specified in the Bank Guarantee;
- (d) have no expiry date, or have an expiry date no earlier than 12 Months after the date of issue of the Bank Guarantee;
- (e) state that the Bank Guarantee is assignable by the Trustee to an assignee of the Trustee under **clause 11.6** (subject to the relevant Issuer and the Party providing the Bank Guarantee being given notice of the identity of the assignee); and

- (f) otherwise be in a form, and upon terms, acceptable to the Trustee (acting reasonably).

9.2 Purpose of Bank Guarantee

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

9.3 Recourse to Bank Guarantee

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

9.4 Replacement Bank Guarantee

- (a) If a Bank Guarantee has an expiry date, that Preference Unit Holder must, at least 20 Business Days prior to the expiry of that Bank Guarantee, deliver to the Trustee a replacement Bank Guarantee in accordance with the requirements set out in **clause 9.1** in exchange for the existing Bank Guarantee.
- (b) If a Preference Unit Holder fails to provide a replacement Bank Guarantee as required by **clause 9.4(a)**, then the Trustee must draw down on the existing Bank Guarantee prior to its expiry, and hold the cash drawn down as a cash security deposit in place of the Bank Guarantee.
- (c) The provisions of **clause 9** will apply to the cash security deposit with any necessary amendments.
- (d) A Preference Unit Holder will be entitled to recover from the Trustee the amount of the cash security deposit held by the Trustee for that Preference Unit Holder at any time upon delivery to the Trustee of a Bank Guarantee which satisfies the requirements of clause 9.
- (e) If a Preference Unit Holder is required to provide an additional or replacement Bank Guarantee under this Deed (other than under clause 4) and fails to provide such Bank Guarantee in accordance with the requirements of this Deed, then:

- (i) that Preference Unit Holder will lose all rights to participate in the Extension and, unless otherwise expressly stated and other than accrued rights, will cease to have any further rights under the Transaction Documents; and
- (ii) that Preference Unit Holder will be considered a Defaulting Unit Holder for the purpose of **clause 7.6** and the Trustee may, without the consent of that Preference Unit Holder, exercise its power of sale or enforce any other rights conferred by the Security Documentation in order to sell (or otherwise dispose of) the Sale Assets in accordance with the procedure set out in **clause 7.6**.

9.5 **Changes to amount of Bank Guarantee**

- (a) If, at any time, in the Trustee's reasonable opinion, in respect of a Preference Unit Holder, the amount which at that time is:
 - (i) the sum of:
 - (A) any Call Amounts called but not yet paid by that Preference Unit Holder; and
 - (B) the Unit Holder's Proportion of the amount which the Trustee (acting reasonably) estimates to be the total Trust Costs to be Incurred by the Trustee prior to the end of the Construction Period;

less
 - (ii) the amount of the Unit Holder's Proportion of the Liquidity Target, **(Reviewed Amount)** exceeds the amount of the Bank Guarantee then given by that Preference Unit Holder **(Current Amount)**, then the Trustee may, in its absolute discretion, by notice to that Preference Unit Holder (setting out each of the above calculations), increase the amount of the Bank Guarantee required to be given by that Preference Unit Holder up to the Reviewed Amount.
- (b) Without limiting **clause 9.5(a)**, the Trustee must review the amount of the Bank Guarantee required to be given by a Preference Unit Holder at intervals of not more than three Months, at which time:
 - (i) if the Current Amount exceeds the Reviewed Amount, the Trustee must, by notice to that Preference Unit Holder, decrease the amount of the Bank Guarantee required to be given by that Preference Unit Holder to the Reviewed Amount; or
 - (ii) if the Reviewed Amount exceeds the Current Amount, the Trustee may, by notice to that Preference Unit Holder, increase the amount of the Bank Guarantee required to be given by that Preference Unit Holder up to the Reviewed Amount.
- (c) If the Trustee gives a notice increasing the amount of the Bank Guarantee required to be given by a Preference Unit Holder under

clause 9.5(a) or **clause 9.5(b)(ii)**, that Preference Unit Holder must, within ten Business Days, deliver to the Trustee:

- (i) a further Bank Guarantee for the amount of the increase; or
 - (ii) a replacement Bank Guarantee for the Reviewed Amount in exchange for the existing Bank Guarantee.
- (d) If the Trustee gives a notice decreasing the amount of the Bank Guarantee required to be given by a Preference Unit Holder under **clause 9.5(b)(i)**, that Preference Unit Holder may deliver to the Trustee a replacement Bank Guarantee for the Reviewed Amount in exchange for the existing Bank Guarantee.

9.6 **Return of Bank Guarantee**

For each Preference Unit Holder that has provided a Bank Guarantee, the Trustee must, subject to the Trustee's rights of recourse to the Bank Guarantee under **clause 9.3**, return the Bank Guarantee to that Preference Unit Holder ten Business Days after:

- (a) the later of:
 - (i) the date of termination of this Deed in respect of that Preference Unit Holder; and
 - (ii) the date upon which that Preference Unit Holder has discharged all of its payment obligations under this Deed which arise as a consequence of, or which survive, such termination; or
 - (b) the last day of the Construction Period,
- whichever occurs first.

9.7 **Requirements for Construction Agreement Guarantee**

A Construction Agreement Guarantee required to be provided under this Deed must:

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

- (d) have no expiry date, or have an expiry date no earlier than 12 Months after the date of issue of the Construction Agreement Guarantee;
- (e) state that the Construction Agreement Guarantee is assignable by the Trustee to Aurizon Network under **clause 11.6**;
- (f) be in the form contained in [Annexure Part J of the Construction Agreement] (or such other form as Aurizon Network may approve in accordance with the Construction Agreement); and
- (g) otherwise be in a form, and upon terms, acceptable to the Trustee (acting reasonably).

9.8 Purpose of, and recourse to, Construction Agreement Guarantee

A Preference Unit Holder provides a Construction Agreement Guarantee for the purposes of the Construction Agreement and the Parties acknowledge that Aurizon Network may make recourse to the Construction Agreement Guarantee as provided for in the Construction Agreement.

9.9 Replacement Construction Agreement Guarantee

- (a) A Preference Unit Holder must:
 - (i) where the Construction Agreement Guarantee provided by it to the Trustee has an expiry date, at least 20 Business Days prior to the expiry of that Construction Agreement Guarantee; or
 - (ii) where the credit rating of the bank or another entity issuing the Construction Agreement Guarantee provided by the Preference Unit Holder to the Trustee falls below the minimum required under clause [5.2(d)] of the Construction Agreement (**Change in Credit Rating**), ~~immediately~~ notify the Trustee as soon as practicable of the Change in Credit Rating and within ~~five Business Days~~ ten days after the Change in Credit Rating,

deliver to the Trustee a replacement Construction Agreement Guarantee in accordance with the requirements set out in **clause 9.7** in exchange for the existing Construction Agreement Guarantee.

- (b) If a Preference Unit Holder is required to provide a replacement Construction Agreement Guarantee under **clause 9.9(a)** and fails to provide such Construction Agreement Guarantee in accordance with **clause 9.9(a)**, then:
 - (i) that Preference Unit Holder will lose all rights to participate in the Extension and, unless otherwise expressly stated and other than accrued rights, will cease to have any further rights under the Transaction Documents; and
 - (ii) that Preference Unit Holder will be considered a Defaulting Unit Holder for the purpose of **clause 7.6** and the Trustee may, without the consent of that Preference Unit Holder, exercise its power of

sale or enforce any other rights conferred by the Security Documentation in order to sell (or otherwise dispose of) the Sale Assets in accordance with the procedure set out in **clause 7.6**.

9.10 **Return of Construction Agreement Guarantee**

The Trustee must, subject to Aurizon Network's rights of recourse to each Construction Agreement Guarantee as provided for under the Construction Agreement (as acknowledged in **clause 9.8**), return each Construction Agreement Guarantee to the Preference Unit Holder which provided it ten Business Days after the date on which such Construction Agreement Guarantee is returned to it by Aurizon Network.

10 **Funding adjustments**

10.1 **Additional funding**

- (a) If in the Trustee's opinion, on the basis of information provided by Aurizon Network under the Construction Agreement, the total Trust Costs are likely to exceed the aggregate Application Price of all Preference Units then on issue, then the Trustee must give the Unit Holders:
 - (i) sufficient of the information received from Aurizon Network under the Construction Agreement, about:
 - (A) the revised estimate of total Construction Costs; and
 - (B) the reason for the likely increase in the Construction Costs, to reasonably enable them to assess the requirements to complete the construction of the Extension; and
 - (ii) any relevant information about Estimated Trust Administration Costs.
- (b) The Preference Unit Holders must, in good faith, consider and endeavour to agree with the Trustee mechanisms for providing additional funding (whether by issue of additional Preference Units or otherwise) to complete the Works for the Extension.

10.2 **Costs if Extension not completed**

- (a) If the Preference Unit Holders do not agree with the Trustee mechanisms for providing additional funding to complete the Works for the Extension under **clause 10.1(b)** within 20 Business Days of giving them the information under **clause 10.1(a)**, then the Trustee:
 - (i) must terminate the Construction Agreement; and
 - (ii) may continue to make Loan Calls on the Preference Unit Holders for costs and expenses arising from the termination (including, for example, additional Construction Costs Incurred by the Trustee as a consequence of the termination).

- (b) If the Trustee terminates the Construction Agreement in accordance with **clause 10.2(a)(i)**, then each Preference Unit Holder:
 - (i) acknowledges that the termination may cause the Trustee to suffer Loss;
 - (ii) indemnifies the Trustee for its Unit Holder's Proportion of any Loss (including Consequential Loss) arising from such termination except to the extent that the Loss arose out of the Trustee committing fraud, Gross Negligence, Wilful Default, breach of trust or breach of the Trust Deed or this Deed; and
 - (iii) acknowledges that it has no Claim against the Trustee for any Loss (including Consequential Loss) arising from such termination except to the extent that the Loss arose out of Trustee committing fraud, Gross Negligence, Wilful Default, breach of trust or breach of the Trust Deed or this Deed.
- (c) Any Loan Calls made for the purposes of **clause 10.2(a)(ii)** are made in accordance with **clause 5.1**.

11 Transfers and other dealings with Units

11.1 Transfers by Preference Unit Holders

- (a) Subject to **clause 8.3(s)** but otherwise despite any provision in this Deed or the Trust Deed to the contrary, a Preference Unit Holder, in addition to satisfying any other requirement in relation to the transfer of Preference Units in this Deed or any other Transaction Document, must not transfer all or some of the Preference Units unless that Preference Unit Holder complies with all requirements in respect of a transfer set out in each Transaction Document, including **clause 11.1(b)**.
- (b) Without limiting **clause 11.1(a)**, a transfer of Preference Units by a Preference Unit Holder must satisfy the following conditions:
 - (i) if the transfer is to occur during the Construction Period, the proposed transferee:
 - (A) executes any documents (including Security Documentation) required by the Trustee, in the form reasonably required by the Trustee, under which the proposed transferee agrees to assume the rights, and be bound by the obligations, of the Preference Unit Holder under this Deed, with effect upon the proposed transferee becoming the registered holder of the Preference Units;
 - (B) executes documents, in accordance with the requirements of the Extension Project Agreement, under which the proposed transferee agrees to assume the rights, and be bound by the obligations, of the Preference Unit Holder under the Extension Project Agreement, with effect upon the

- proposed transferee becoming the registered holder of the Preference Units;
 - (C) provides a Bank Guarantee; and
 - (D) provides a Construction Agreement Guarantee or Construction Agreement Guarantees (as applicable); and
 - (ii) if the transfer is to occur after the end of the Construction Period, the proposed transferee:
 - (A) executes any documents required by the Trustee, in the form reasonably required by the Trustee, under which the proposed transferee agrees to assume the rights, and be bound by the obligations, of the Preference Unit Holder under this Deed, with effect upon the proposed transferee becoming the registered holder of the Preference Units; and
 - (B) executes documents, in accordance with the requirements of the Extension Project Agreement, under which the proposed transferee agrees to assume the rights, and be bound by the obligations, of the Preference Unit Holder under the Extension Project Agreement, with effect upon the proposed transferee becoming the registered holder of the Preference Units; and
 - (iii) in any case, the proposed transferee is an Eligible Investor.
- (c) If a Preference Unit Holder other than an Aurizon Preference Unit Holder proposes to transfer all or some of its Preference Units to a proposed transferee who is not a Related Body Corporate of the Preference Unit Holder, then the Preference Unit Holder must give the Ordinary Unit Holder (or each Ordinary Unit Holder, if there is more than one) an opportunity to make an offer to acquire the relevant Preference Units. For the avoidance of doubt:
 - (i) no Ordinary Unit Holder has a right of first refusal in respect of such Preference Units; and
 - (ii) the Preference Unit Holder is not obliged to accept an offer made by an Ordinary Unit Holder.

11.2 **Transfer by Ordinary Unit Holder**

- (a) If an entity will acquire from the Ordinary Unit Holder all of the Ordinary Unit Holder's interest in the parts of the Railway Network which include the Segments, then the Ordinary Unit Holder must transfer to the acquiring entity:
 - (i) its Ordinary Unit; and
 - (ii) all of its rights and liabilities as Ordinary Unit Holder under this Deed and the Trust Deed,

at the time that the acquiring entity acquires the Ordinary Unit Holder's interest in the relevant parts of the Railway Network. Notwithstanding any other provision of this Deed, the Ordinary Unit Holder must bear all costs and duties payable in respect of the transfer.

- (b) If an entity will acquire from the Ordinary Unit Holder an undivided interest in the parts of the Railway Network which include the Segments, then the Ordinary Unit Holder must transfer to the acquiring entity:
 - (i) an undivided interest in its Ordinary Unit with the result that the undivided interests in the Ordinary Unit will be held by the Ordinary Unit Holder and the acquiring entity as tenants in common in proportions equivalent to their undivided interests in the relevant parts of the Railway Network; and
 - (ii) a proportion of its rights and liabilities as Ordinary Unit Holder under this Deed and the Trust Deed equivalent to the acquiring entity's undivided interest in the relevant parts of the Railway Network,

at the time that the acquiring entity acquires the Ordinary Unit Holder's interest in the relevant parts of the Railway Network.

- (c) In order to give effect to a transfer:
 - (i) in the case of **clause 11.2(a)**, the Trustee must register the transfer of the Ordinary Unit to the acquiring entity; and
 - (ii) in the case of **clauses 11.2(a) or 11.2(b)**, each Party and the acquiring entity must execute a deed of assignment and assumption or deed of novation in a form acceptable to the Trustee (acting reasonably) to give effect to the transfer of any rights or liabilities of the Ordinary Unit Holder required under this **clause 11.2**.

11.3 **Sale of Units**

If the Trustee sells a Preference Unit Holder's Units in accordance with **clause 7.6**, then **clause 11.1** applies to the sale of such Preference Units as if the sale of the Preference Units by the Trustee was a transfer of such Preference Units by the Preference Unit Holder.

11.4 **Charging**

A Preference Unit Holder (**Chargor**) may mortgage, charge or encumber (**Charge**) all or any of its rights, assets and obligations under the Trust Deed, this Deed and the Extension Project Agreement and the assets the subject of security in the Security Documentation, in whole or in part, in favour of any financier, mortgagee or chargee (**Chargee**), provided that the Chargor, the Chargee and the Trustee execute a deed or agreement the terms of which are acceptable to the Trustee (acting reasonably), including, as a minimum, terms consistent with the following:

- (a) the Trustee acknowledges the existence of the Charge;
- (b) the Trustee will give the Chargee a copy of all notices given to the Chargor under this Deed, the Trust Deed and the Extension Project Agreement, at the same time as they are given to the Chargor;
- (c) the Trustee will not redeem or permit the redemption of the Chargor's Preference Units or the transfer (including transfer under **clause 7.6**) of the Chargor's Preference Units without first giving the Chargee a notice of such redemption or transfer;
- (d) the Trustee will not permit the mortgaging or charging of the Chargor's Preference Units without the prior written approval of the Chargee, other than as required by the Security Documentation (including perfecting any security the subject of the Security Documentation) for which the Chargee is taken to have approved;
- (e) the Trustee will not vary this Deed, the Trust Deed or the Extension Project Agreement without the approval of the Chargee other than in circumstances where the Trustee has an express right under this Deed, the Trust Deed or the Extension Project Agreement to unilaterally vary such document;
- (f) the Chargee may at any time, and from time to time, by notice to the Trustee exercise its rights under the Charge to act as the agent of the Chargor, and the Trustee will then treat the Chargee in all respects as if the Chargee were the Chargor;
- (g) the Chargee must comply with the provisions of this Deed (including this **clause 11**), the Extension Project Agreement and the Trust Deed in the exercise of its rights under the Charge; and
- (h) the provisions contemplated in **item 5 of schedule 9**.

11.5 **Restrictions on other dealings and assignment generally**

Unless expressly permitted under this Deed (including this **clause 11.5**):

- (a) a Preference Unit Holder must not enter into any transaction or dealing in respect of that Preference Unit Holder's Preference Units that may result in a transfer of Preference Units (for example, a put option or call option) where the resultant transfer would not be permitted under the Trust Deed or this Deed; and
- (b) a Unit Holder must not assign, transfer, mortgage, charge, make the subject of a trust or otherwise deal with or encumber all or any of its rights or liabilities under this Deed or the Trust Deed (or procure or permit any of those things) other than in respect of the same dealing with that Unit Holder's Units in accordance with this **clause 11**.

11.6 **Assignment by Trustee**

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

- (i) the Trustee must procure that the new trustee executes a document by which the new trustee agrees to assume the rights, and be bound by the obligations, of the Trustee under this Deed; and
 - (ii) all other Parties must execute the document as contemplated under **clause 11.6(a)(i)**.
- (b) The Trustee may assign the Construction Agreement Guarantees to Aurizon Network for the purposes of clause [5] of the Construction Agreement.
 - (c) Except as permitted by **clauses 11.6(a) or 11.6(b)**, the Trustee must not assign or novate its rights, obligations or liabilities under this Deed.

12 Usual payment arrangements and set offs

12.1 Method of payment

All payments to be made under, or in connection with, this Deed must be paid in Australian currency in cleared and immediately available funds, without set-off or deduction (except as directed under **clauses 6.2, 8.3(n) or 12.4** or as provided in **clause 12.2**), by:

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

12.2 Trustee's right of set off

- (a) Subject to **clause 12.3**, the Trustee may deduct from any amounts which are due and payable by the Trustee to a Preference Unit Holder under this Deed any amounts which are due and payable by that Preference Unit Holder to the Trustee under this Deed or the Trust Deed (**Outstanding Amounts**).
- (b) To the extent that an amount is due and payable by a Preference Unit Holder for a Call, the amount the Trustee deducts must be applied to the payment of that Call.
- (c) To the extent that an amount is due and payable by a Preference Unit Holder in respect of any Outstanding Amount other than a Call (including, for example, unpaid interest on an overdue Call), the amount the Trustee deducts from any payment to that Preference Unit Holder is retained as an Asset.

12.3 Exercise of Trustee's right of set off

- (a) If the Trustee exercises the Trustee's right of deduction under **clause 12.2** in respect of a Preference Unit Holder or a Defaulting Unit Holder (as applicable):

- (i) the Trustee must notify that Preference Unit Holder or Defaulting Unit Holder (as applicable) of the deduction; and
 - (ii) the Outstanding Amount in respect of which the deduction is made by the Trustee will be taken to have been paid by that Preference Unit Holder or Defaulting Unit Holder (as applicable) to the Trustee on the date of the deduction.
- (b) The Trustee must not exercise the Trustee's right of deduction under **clause 12.2** in respect of a Preference Unit Holder to the extent that:
- (i) if **clause 13** applies – the Trustee can withdraw funds from the Bank Account; or
 - (ii) otherwise – the Trustee can draw on a Bank Guarantee given by that Preference Unit Holder,
- to satisfy the Outstanding Amount.

12.4 **Payment of Tax Indemnity Amounts**

- (a) Each Preference Unit Holder directs the Trustee to:
- (i) deduct an amount equal to the Tax Indemnity Amount for that Preference Unit Holder together with any interest accrued on the Tax Indemnity Amount under **clause 17.9** from any amounts which are due and payable by the Trustee to that Preference Unit Holder under this Deed if, and to the extent that, the Preference Unit Holder fails to pay the Tax Indemnity Amount for that Preference Unit Holder on or before the due date for payment under **clause 17**; and
 - (ii) pay the amount deducted to the Indemnified Entity in accordance with **clause 17**.
- (b) Any amount deducted under **clause 12.4(a)** shall constitute payment of that Tax Indemnity Amount and any interest accrued on the Tax Indemnity Amount under **clause 17.9** by the Preference Unit Holder to the extent of the amount deducted only once paid by the Trustee to the Indemnified Entity in accordance with **clause 17**.

13 **Alternative payment arrangements**

13.1 **Application of alternative payment arrangements**

This **clause 13** will commence in respect of a Preference Unit Holder if:

- (a) that Preference Unit Holder does not deliver to the Trustee a replacement Bank Guarantee under, and within the time required by, **clause 9.4**; or
- (b) the Issuer of the Bank Guarantee elects to pay to the Trustee the full or remaining amount of the Bank Guarantee without demand by the Trustee.

13.2 **Trustee entitled to draw on Bank Guarantee**

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

- (a) where **clause 13.1(a)** applies, draw on the full amount of the Bank Guarantee provided by that Preference Unit Holder;
- (b) establish a separate interest bearing bank account in the Trustee's name (**Bank Account**) for that Preference Unit Holder; and
- (c) deposit the amount drawn by the Trustee under **clause 13.2(a)**, or paid by the Issuer under **clause 13.1(b)**, into the Bank Account.

13.3 **Drawing and depositing funds**

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

- (a) if an amount is due and payable by that Preference Unit Holder to the Trustee under this Deed:
 - (i) the Trustee must draw from the Bank Account:
 - (A) where the amount is a Loan Call and that Preference Unit Holder has failed to pay the Loan Call on or before the date that is five Business Days after the due date for payment of that Loan Call, the outstanding amount of the Loan Call (or, if the balance of the Bank Account is less than the outstanding amount, the balance of the Bank Account) on the day which is six Business Days after the due date for payment;
 - (B) otherwise, the amount that is due and payable (or, if the balance of the Bank Account is less than the outstanding amount, the balance of the Bank Account) as soon as reasonably practicable after the amount becomes due and payable; and
 - (ii) the amount drawn from the Bank Account under **clause 13.3(a)(i)** will be treated as payment by that Preference Unit Holder to the Trustee of the amount that is due and payable (up to the amount drawn from the Bank Account) at the time it is drawn from the Bank Account;
- (b) if an amount is due and payable by that Preference Unit Holder to the Trustee under this Deed and the Trustee cannot draw some or all of the amount from the Bank Account under **clause 13.3(a)** by the due date for payment because there is insufficient funds in the Bank Account:
 - (i) the amount due (together with any interest accruing on that amount under **clause 7.1**) that cannot be drawn from the Bank Account by the due date for payment will, for the avoidance of

doubt, continue to be due and payable by that Preference Unit Holder to the Trustee under this Deed; and

- (ii) if, and when, funds are deposited into the Bank Account, the Trustee must draw from the Bank Account any amount due and payable in accordance with **clause 13.3(a)** in priority to any other amounts that subsequently become due and payable under this Deed; and
- (c) if an amount is due and payable by the Trustee to that Preference Unit Holder under this Deed:
 - (i) the Trustee must, subject to the Trustee's right of set-off under **clause 12.2**, deposit into the Bank Account the amount that is due and payable within the time for payment of that amount under this Deed; and
 - (ii) the amount deposited into the Bank Account will be treated as payment by the Trustee to that Preference Unit Holder of the amount that is due and payable (up to the amount deposited into the Bank Account) on the date the amount is deposited into the Bank Account.

13.4 **Funds in Bank Account not Assets**

- (a) The Trustee acknowledges that all amounts deposited in a Bank Account under **clauses 13.2(c)** or **13.3(c)** (including any interest earned on amounts in the Bank Account) from time to time in respect a Preference Unit Holder are held jointly on trust for the Trustee and that Preference Unit Holder absolutely and do not form part of the Assets.
- (b) Any interest earnings on amounts deposited in the Bank Account from time to time in respect of a Preference Unit Holder are income of that Preference Unit Holder.
- (c) Despite **clause 13.4(a)**, the Trustee is authorised to, and each Preference Unit Holder hereby irrevocably directs the Trustee to:
 - (i) deposit amounts into the Bank Account as required or permitted under **clauses 13.2, 13.3** and **13.6**; and
 - (ii) draw amounts from the Bank Account (including any interest earnings on amounts in the Bank Account) as permitted under **clauses 13.3** and **13.6**.

13.5 **Statement of Bank Account**

Within 15 Business Days after the end of each Month after this **clause 13** commences in respect of a Preference Unit Holder, the Trustee must give that Preference Unit Holder a statement for that Month setting out:

- (a) any amounts drawn from the Bank Account during that Month;
- (b) any amounts deposited into the Bank Account during that Month;

- (c) any interest earned on the amount in the Bank Account during that Month;
- (d) the balance of the Bank Account at the end of that Month;
- (e) the sum of all amounts due and payable by that Preference Unit Holder to the Trustee under this Deed at the end of that Month; and
- (f) the sum of all amounts due and payable by the Trustee to that Preference Unit Holder under this Deed at the end of that Month.

13.6 **Reconciliation of Bank Account**

- (a) On the Bank Account Reconciliation Date, the Trustee must draw from each Bank Account any amounts which the Trustee is entitled to draw from that Bank Account at that time in accordance with **clause 13.3**.
- (b) Within 15 Business Days after the Bank Account Reconciliation Date, the Trustee must give to each Preference Unit Holder to which this **clause 13** applies a statement (**Bank Account Reconciliation Statement**) setting out:
 - (i) the balance of the Bank Account as at the end of the Bank Account Reconciliation Date;
 - (ii) the sum of all amounts due and payable by the Trustee to that Preference Unit Holder under this Deed as at the end of the Bank Account Reconciliation Date;
 - (iii) the sum of all amounts due and payable by that Preference Unit Holder to the Trustee under this Deed as at the end of the Bank Account Reconciliation Date; and
 - (iv) the total statement amount being the sum of the amounts specified in **clauses 13.6(b)(i)** and **13.6(b)(ii)** less the amount specified in **clause 13.6(b)(iii)** (which may be a positive or negative amount).
- (c) If the total statement amount specified in the Bank Account Reconciliation Statement is a positive amount, at the time that the Trustee gives a Preference Unit Holder the Bank Account Reconciliation Statement, the Trustee must pay the total statement amount to that Preference Unit Holder.

14 **Income Distributions for Preference Units**

14.1 **Preference Units terms of issue – income rights**

- (a) The terms of issue of each Preference Unit in relation to distributions of Distributable Income are as set out in this **clause 14**.
- (b) The Parties acknowledge that the Ordinary Unit Holders are not presently entitled to any Distributable Income at any time that Preference Units are on issue.

14.2 **Principles of calculation of Distributable Income**

For the purposes of clause [\[12.2\(a\)\]](#) of the Trust Deed, while the Preference Units are on issue:

- (a) all Distributable Income is Preference Income; and
- (b) the provisions of this Deed in relation to calculation of Preference Income are a standing determination of principles for calculating the Distributable Income.

14.3 **Preference Income**

Subject to **clause 14.4**, each Preference Unit Holder is entitled, as at each Distribution Calculation Date, to a share of the Preference Income for the Distribution Period that ends on that Distribution Calculation Date, pro rata in the proportion that the total Paid Up Amounts on that Unit Holder's Units bears to the aggregate Paid Up Amounts of all Preference Units on issue.

14.4 **Distributions for Preference Unit Holders**

- (a) The Trustee determines that the last day of each Month is a Distribution Calculation Date for the purposes of the Trust Deed.
- (b) If the Preference Income is positive in any Month, the Trustee must make a distribution of Distributable Income equal to that amount in respect of that Month.
- (c) If the Preference Income is negative in any Month, the Trustee is not required to make a distribution of Distributable Income in respect of that Month.
- (d) For the avoidance of doubt, where the Preference Income has been negative for any Month(s), the Trustee must take account of this for the purpose of the calculation of the amount of Preference Income for any following Months.

14.5 **Distributable Amount and Distribution Account**

Clauses [\[12.4\]](#) and [\[12.6\]](#) of the Trust Deed apply to distributions of Preference Income as if references to 'Distributable Income' included a reference to 'Preference Income'.

14.6 **Preference Income Statement**

- (a) The Trustee must, as soon as practicable after the end of each Distribution Period, give each Preference Unit Holder a statement (**Income Statement**) setting out:
 - (i) the amount of Preference Income for the Distribution Period;
 - (ii) the method of calculation of that Preference Income; and
 - (iii) the amount of the distribution to be made for that Distribution Period.

- (b) The Trustee must give each Preference Unit Holder, within a reasonable period after the end of each Financial Year, a statement setting out information about the components of the distributions of Preference Income made during the Financial Year that is reasonably required in respect of the Preference Unit Holder's tax return.

15 Allocation of costs, records and auditing

15.1 When costs and expenses Incurred

- (a) For the purposes of this Deed, a cost or expense will be taken to be **Incurred**:
 - (i) in the case of a cost or expense payable by the Trustee to a third party, when the cost or expense is paid by the Trustee; and
 - (ii) in any other case, when the cost or expense is incurred by the Trustee.
- (b) For the avoidance of doubt, when a cost or expense is Incurred for the purposes of this Deed does not affect the calculation of Distributable Income or how the cost or expense is accounted for in the Trust's financial statements.

15.2 Keeping of records

- (a) The Trustee must maintain complete records of and relating to the Extension, including all matters necessary to enable the calculation of:
 - (i) distributions of Preference Income; and
 - (ii) Call Amounts.
- (b) The Trustee must preserve and maintain the records referred to in **clause 15.2(a)**, in respect of each distribution and Call, for a period of not less than five years after the distribution was made or the Call Amount was received.

15.3 Audit of Call Statements or Income Statements

- (a) Any Preference Unit Holder may, within 12 Months after a Call Statement or Income Statement is given, engage an auditor (**Auditor**) in accordance with this **clause 15.3** to carry out an audit in order to verify amounts included in that Call Statement or Income Statement.
- (b) Any Preference Unit Holder proposing to engage an Auditor must give each other Preference Unit Holder reasonable prior notice of their intention to do so.
- (c) Where Preference Unit Holders holding (in aggregate) less than 50% of the Preference Units on issue engage an Auditor, those Preference Unit Holders are responsible for payment of all fees and reimbursements charged by the Auditor, payable by each of them pro rata in the proportion that the total Paid Up Amounts on each Preference Unit

Holder's Preference Units bears to the aggregate Paid Up Amounts of all Preference Units of those Preference Unit Holders who engaged the Auditor.

- (d) Where Preference Unit Holders holding (in aggregate) 50% or more of the Preference Units on issue engage an Auditor, all Preference Unit Holders are responsible for payment of all fees and reimbursements charged by the Auditor, payable by each of them pro rata in the proportion that the total Paid Up Amounts on each Preference Unit Holder's Preference Units bears to the aggregate Paid Up Amounts of all Preference Units on issue.
- (e) Subject to **clause 15.3(f)**, upon at least ten Business Days prior written request given by the Auditor, the Trustee must:
 - (i) give the Auditor reasonable access during normal business hours to the books, accounts and records of the Trustee relevant to the audit; and
 - (ii) otherwise provide reasonable assistance and co-operation to the Auditor in relation to the conduct of the audit,provided the Auditor has:
 - (iii) given a signed confidentiality undertaking in favour of the Trustee in a form acceptable to the Trustee (acting reasonably) prior to undertaking the audit; and
 - (iv) if the information to be provided to the Auditor requires the Trustee to provide the Auditor with any Price Sensitive Information, the Auditor must enter into a confidentiality agreement in favour of the Party which is under the contractual or other obligation (including an equitable obligation of confidence) to not disclose the information requiring the Auditor to keep the Price Sensitive Information confidential (including from any Preference Unit Holder or Aurizon Network, as the case may be).
- (f) The Trustee is not obliged to permit an Auditor to conduct an audit more than once in each half yearly period ending June and December unless a Preference Unit Holder demonstrates to the Trustee's satisfaction (acting reasonably) that:
 - (i) the audit is necessary for that Preference Unit Holder's compliance with any law or the rules of any securities exchange; and
 - (ii) the most recent Auditor's report did not contain sufficient information for that Preference Unit Holder's compliance with any law or the rules of any securities exchange.
- (g) Subject to **clause 15.3(h)**, the Trustee and each Preference Unit Holder are entitled to a copy of the Auditor's report.

- (h) The Auditor is entitled to disclose to the Preference Unit Holders all information (other than Price Sensitive Information) provided by the Trustee to the Auditor under **clause 15.3(e)**.

15.4 **Monthly reporting**

Within 18 Business Days after the end of each Month, the Trustee must give to each Unit Holder a report in respect of the matters set out in **schedule 11**.

16 **Trust administration**

16.1 **Authorised Cash Investments**

- (a) Where the Trustee determines not to invest any cash amounts which are not immediately required for payment of Trust Costs in accordance with **clause 16.1(b)**, then the Trustee must hold those cash amounts in a bank account at the Trustee’s cash management bank.
- (b) Subject to **clauses 16.1(c)** and **16.1(d)**, where the Trustee determines to invest any cash amounts not immediately required for payment of Trust Costs, those amounts must be invested in any one of the following instruments:
 - (i) a deposit with;
 - (ii) a bank bill accepted by; or
 - (iii) a negotiable certificate of deposit issued by, any deposit-taking facility made available by an authorised deposit-taking institution under the *Banking Act 1959* (Cth) (**Authorised Counterparties**), provided that:
 - (iv) the maximum maturity of any such investment is 35 days; and
 - (v) at the time of making that investment, it, when aggregated with all other current investments made under **clause 16.1(b)**, satisfies the following limits in relation to the Trustee’s exposure to any one Authorised Counterparty across all instrument types:

Standard & Poor’s Rating Services long-term credit rating (or equivalent)	Maximum counterparty credit limit (A\$M)
AAA	100
AA+, AA, AA-	50
A+, A	25

- (c) If:

- (i) the Trustee does not hold, or is not an authorised representative of an entity which holds, an “Australian financial services licence” (as defined in the Corporations Act) or does not otherwise have the benefit of an exemption from the requirement for an “Australian financial services licence” in accordance with the Corporations Act; and
- (ii) the investment by the Trustee in a particular product specified in **clause 16.1(b)** would require the Trustee to hold, or obtain an exemption from the requirement for, an “Australian financial services licence”,

then the Trustee will not, and cannot be required by the Unit Holders to, invest in that particular product.

- (d) The Trustee may modify any of the requirements in **clause 16.1(b)** if the modification is first submitted to and approved by the Ordinary Unit Holder and by a Special Majority of the Preference Unit Holders.

16.2 Tax Policy

- (a) Subject to **clause 16.2(b)**, the Trustee must administer the Trust in accordance with the Tax Policy and in doing so must act reasonably.
- (b) The Trustee is not required to administer the Trust in accordance with the Tax Policy to the extent that to do so would breach or contravene or result in a breach of contravention of the Law.
- (c) The Trustee may modify the Tax Policy:
 - (i) to the extent the Trustee, acting reasonably, determines is necessary (after notifying the Unit Holders that a change is required and consultation with the Unit Holders) to adequately address any change to Tax Law or change in administrative practice of any Governmental Agency (including the manner in which the Tax Law is interpreted or administered by any Governmental Agency), including any change to Tax Law or change in administrative practice which takes effect retrospectively; or
 - (ii) by notice to the Unit Holders in respect of any non-material matters.
- (d) The Trustee may modify the Tax Policy otherwise than as provided in **clause 16.2(c)** if the modification is first submitted to and approved by the Ordinary Unit Holder and a Special Majority of the Preference Unit Holders.

16.3 Appointment of a Tax Reviewer

- (a) A Preference Unit Holder may notify the Trustee that it considers that the Trustee has not administered the Trust as required by **clause 16.2(a)** (**Tax Policy Notice**) provided that the Tax Policy Notice is accompanied

by evidence that a copy of that Tax Policy Notice has been provided to each Preference Unit Holder and that Preference Unit Holders holding not less than 50% of the total number of Preference Units on issue have agreed to issue the Tax Policy Notice.

- (b) On receipt of a Tax Policy Notice, the Trustee and the Preference Unit Holders that have agreed to issue the Tax Policy Notice (**Relevant Unit Holders**) must engage in good faith discussions to reach agreement in respect of the appointment of a Tax Reviewer to review whether the Trustee has administered the Trust as required by **clause 16.2(a)**. If the Trustee and the Relevant Unit Holders cannot, within 10 Business Days after the day on which the Tax Policy Notice was issued to the Trustee under **clause 16.3(a)**, agree on the appointment of the Tax Reviewer, the appointment of the Tax Reviewer is to be determined by the President (or his or her delegate) of the Tax Institute (or its successor).
- (c) The Tax Reviewer must be instructed to review whether the Trustee has administered the Trust as required by **clause 16.2(a)** and in so acting must:
 - (i) invite and consider any submissions made by Preference Unit Holders and the Trustee in writing;
 - (ii) consider any advice obtained by the Trustee from external taxation advisers; and
 - (iii) determine whether, in his or her view, the Trustee has administered the Trust as required by **clause 16.2(a)** and notify the Trustee and the Preference Unit Holders of that determination and reasonable particulars.
- (d) If the Tax Reviewer makes a determination under **clause 16.3(c)(iii)** that the Trustee has not administered the Trust as required by **clause 16.2(a)**, the Trustee must administer the Trust in such a manner so as to comply with **clause 16.2(a)** taking into account the determination of the Tax Reviewer.
- (e) Prior to the Tax Reviewer undertaking a review, the Preference Unit Holders must ensure that the Tax Reviewer provides the Trustee with a signed confidentiality undertaking from the Tax Reviewer in favour of the Trustee in a form acceptable to the Trustee (acting reasonably).
- (f) The Trustee must provide to the Tax Reviewer all reasonable information access and assistance for the purpose of effecting the Review.
- (g) If the Tax Reviewer finds that the Trustee has not administered the Trust in accordance with the Tax Policy, the Trustee must amend its procedures so as to comply with the Tax Policy and revisit positions previously adopted by the Trustee taking into account (and adopting) the determinations of the Tax Reviewer.

- (h) For the avoidance of doubt, the costs and expenses of a Tax Reviewer will be a Trust Administration Cost.

16.4 **Obligations of Trustee to provide information and appointment of the PUH Engineer**

- (a) The Trustee must promptly give each Preference Unit Holder a copy of all notices, reports and written information provided by the Trustee to, or received by the Trustee from:
 - (i) Aurizon Network under the Construction Agreement;
 - (ii) Aurizon Network under the Extension Infrastructure Sub-Lease;
 - (iii) the Landholder under the Rail Corridor Agreement;
 - (iv) a party to the Extension Infrastructure Head-Lease under the Extension Infrastructure Head-Lease; or
 - (v) a party to the Integrated Network Deed under the Integrated Network Deed.
- (b) The Preference Unit Holders (other than an Aurizon Preference Unit Holder) may, by Special Majority, appoint an engineer as the PUH Engineer, and must promptly notify the Trustee of that appointment, including particulars for notices to the PUH Engineer.
- (c) Prior to the provision of any information to the PUH Engineer in connection with this Deed or any other Transaction Document, the Extension or the Works for the Extension, the Preference Unit Holders must procure the PUH Engineer to enter into a confidentiality agreement in favour of:
 - (i) Aurizon Network under which the PUH Engineer undertakes to Aurizon Network to keep confidential any such information provided to the PUH Engineer (including by Aurizon Network, the Trustee, a Preference Unit Holder or the Independent Certifier), or of which the PUH Engineer otherwise becomes aware, on terms satisfactory to Aurizon Network (acting reasonably); and
 - (ii) the Trustee under which the PUH Engineer undertakes to the Trustee to keep confidential any such information provided to the PUH Engineer (including by Aurizon Network, the Trustee, a Preference Unit Holder or the Independent Certifier), or of which the PUH Engineer otherwise becomes aware, on terms satisfactory to the Trustee (acting reasonably).
- (d) The Parties acknowledge that the confidentiality undertakings referred to in **clause 16.4(c)** must not prevent:
 - (i) the PUH Engineer from disclosing the information received by it to a Preference Unit Holder; and
 - (ii) a Preference Unit Holder from providing information in accordance with the Confidentiality Obligations.

- (e) Subject to the PUH Engineer executing each of the relevant confidentiality agreements contemplated under **clause 16.4(c)**, the Trustee must, upon request by any Preference Unit Holder:
 - (i) give the PUH Engineer (or procure that the PUH Engineer is given) access to all documents and information (other than Price Sensitive Information) to which the Trustee has access under the Construction Agreement, Extension Infrastructure Sub-Lease and Rail Corridor Agreement;
 - (ii) give the PUH Engineer reasonable notice of all meetings which are to be attended by the Trustee under the Construction Agreement, Extension Infrastructure Sub-Lease and Rail Corridor Agreement; and
 - (iii) permit the PUH Engineer to attend all meetings (as an observer) which the Trustee is entitled to attend under the Construction Agreement, Extension Infrastructure Sub-Lease and Rail Corridor Agreement.
- (f) The costs and expenses of the PUH Engineer must be borne solely by the Preference Unit Holders (other than any Aurizon Preference Unit Holder).
- (g) The Trustee must promptly give each Unit Holder written notice if the Trustee becomes aware of a breach of the Construction Agreement, Extension Infrastructure Sub-Lease or Rail Corridor Agreement. Such notice must include (to the extent reasonably possible) reasonable details of the breach.

16.5 Variations to Scope of Works

The Trustee:

- (a) may vary the description of the Extension and the Segments in **item 1 of schedule 1** if, and to the extent, required as a consequence of a variation to the Scope of Works under the Construction Agreement; and
- (b) must promptly notify the Unit Holders of any variation made to that description of the Extension under **clause 16.5(a)**.

16.6 Trustee's power to borrow

Except for Unit Holder Loans, Shortfall Loans and amounts payable to the Trustee under **clauses 7.5(a)(iv)(A), 7.5(a)(v)(A) and 7.5(d)(i)**, the Trustee must not borrow or raise money (**Finance**) from a person (**Financier**) unless:

- (a) the Financier duly executes a deed poll, in a form that is reasonably satisfactory to the Ordinary Unit Holder, under which the Financier undertakes to the Ordinary Unit Holder that the Trustee is unconditionally and irrevocably released and discharged from any obligation to pay and/or repay any Facility Moneys on the earlier to occur of:

- (i) the Zero Value Date; and
 - (ii) the date that the last of the Preference Units is redeemed or repurchased by the Trustee under the Trust Deed; or
- (b) if the Trustee grants a Security Interest over the Assets as security for the performance of its obligations in relation to the Finance, a deed referred to in clause [16.6] of the Integrated Network Deed has been duly executed by all of the parties to that deed in accordance with clause [16.6] of the Integrated Network Deed.

17 Tax indemnity

17.1 Tax Indemnity

- (a) The Parties acknowledge and agree that the Extension Structure is not intended to result in any Extension Structure Tax Cost to an Indemnified Entity.
- (b) Subject to **clause 17.1(f)**, each Preference Unit Holder must indemnify and keep indemnified Aurizon Network and the Trustee (both in its capacity as trustee of the Trust and in its personal capacity) (each an **Indemnified Entity**) against any:
- (i) Extension Structure Tax Cost; and
 - (ii) all reasonable costs and expenses incurred or payable by an Indemnified Entity or a Related Body Corporate of it in connection with any Extension Structure Tax Cost referred to in this **clause 17.1(b)** or any action taken under or consistent with this **clause 17**, (for the avoidance of doubt, costs incurred by an Indemnified Entity in the ordinary course of its business in relation to matters that are unlikely to give rise to an Extension Structure Tax Cost are excluded), including:
 - (A) reasonable costs of engaging any person (other than an Indemnified Entity) to assist the Indemnified Entity;
 - (B) reasonable costs of employees of the Indemnified Entity or a Related Body Corporate of it; and
 - (C) all reasonable costs relating to legal proceedings concerning any Extension Structure Tax Cost, any audit or investigation made by a Governmental Agency in relation to the Tax treatment of the Extension Structure, and the settlement of, and steps taken to mitigate or resolve any process which could lead to, an Extension Structure Tax Cost, whether or not it transpires that it does,

but only to the extent set out in **clause 17.6**.
- (c) An Extension Structure Tax Cost is:

- (i) any Liability for Tax that an Indemnified Entity or the Head Company incurs, suffers or is liable for, less any Extension Structure Tax Benefit;
- (ii) any Liability incurred by an Indemnified Entity under a Transaction Document to compensate another party to that document in respect of that party's Liability for Tax; or
- (iii) the tax effect (if any) of any Tax Relief of an Indemnified Entity or the Head Company that is utilised or denied,

in respect of the implementation of, participation in or exit from the Extension Structure where:

- (iv) the Liability, utilisation or denial would not have arisen or occurred; or
- (v) the Liability or the amount of the Tax Relief utilised or denied is greater than the amount that would have arisen, been utilised or denied,

had the Extension not been designed, procured, constructed and commissioned and the Extension Structure not been implemented.

- (d) An Extension Structure Tax Benefit means the tax effect of any Tax Relief available to an Indemnified Entity or the Head Company in relation to the Extension Structure for the year of income to which the Liability for Tax referred to in **clause 17.1(c)(i)** relates, but only if the Tax Relief has not already been taken into account in determining the Liability for Tax and only to the extent that the tax effect of any Tax Relief does not exceed the Liability for Tax.
- (e) In determining the tax effect of any Tax Relief for the purpose of **clauses 17.1(c) or 17.1(d)**, the income tax rate is that which applies to the Indemnified Entity or the Head Company, as the case may be (for the purposes of section 4-10 of the Tax Act and determined in accordance with section 23 of the *Income Tax Rates Act 1986* (Cth)), at the time that the Liability for Tax is incurred, suffered or arises or the Tax Relief is utilised or denied, expressed as a decimal.
- (f) No Preference Unit Holder is liable for a Claim under the Tax Indemnity to the extent that the Claim arises from any:
 - (i) amount derived by Aurizon Network (or the Head Company) as Contractor under the Construction Agreement;
 - (ii) amount of any "Fee" (as defined in the Rail Corridor Agreement) derived by Aurizon Network (or the Head Company) as Landholder under clause **[5]** of the Rail Corridor Agreement;
 - (iii) amount derived by Aurizon Network (or the Head Company) in its capacity as a Preference Unit Holder in the Trust;

- (iv) amount derived by the Trustee pursuant to clause [19] of the Trust Deed;
- (v) amount derived or expense incurred by Aurizon Network (or the Head Company) in satisfying its obligations to repair or replace the Extension Infrastructure (or part thereof) under clause [4] of the Extension Infrastructure Sub-Lease;
- (vi) Stamp Duty payable on, in relation to, or as a consequence of any acquisition by Aurizon Network of Preference Units in the Trust;
- (vii) Liability for Tax that arises in respect of any amount by which the portion of the aggregate of Access Charges under applicable Access Agreements for a fiscal year that is attributable to the operation and maintenance of the Extension exceeds the expenditure incurred by Aurizon Network or the Head Company in relation to the operation and maintenance of the Extension during that fiscal year;
- (viii) failure by the Indemnified Entity making the Claim to comply with a Tax Law (except where that failure arises as a result of the Indemnified Entity adopting a position after forming the view, acting reasonably, that the position would more likely than not prevail if adjudicated by a court);
- (ix) demand made by the Indemnified Entity making a Claim after the expiry of 3 months after the expiration of the statutory period within which the relevant Governmental Agency may seek to recover the Tax to which the Claim relates;
- ~~(x) amount equal to "OPRA" (as defined in [schedule 1] of the Extension Infrastructure Sub-Lease) derived by Aurizon Network;~~
- ~~(xi)~~ amount of interest derived by the Indemnified Entity making the Claim (or the Head Company where the Claim is made by Aurizon Network) pursuant to a clause of a Transaction Document that requires the payment of such interest;
- ~~(xii)~~ charges, Taxes and rates payable by Aurizon Network, as lessee, in accordance with clause [5.5] of the Extension Infrastructure Sub-Lease;
- ~~(xiii)~~ any amount in respect of which (and the extent to which) the Indemnified Entity has otherwise been compensated under another Transaction Document or another Claim previously made under this Deed;
- ~~(xiv)~~ any income tax payable by Aurizon Network (or the Head Company) in respect of distributions arising in consequence of the early termination of the Trust save to the extent to which the amounts assessable to Aurizon Network (or the Head Company) exceed the amount or value of distributions which Aurizon Network is entitled to receive in consequence of such termination;

- (xiv) ~~(xv)~~ failure by the Indemnified Entity making the Claim to comply with or satisfy the facts and circumstances within a Ruling provided to that Indemnified Entity and which that Indemnified Entity can control or comply with or satisfy or in respect of which that Indemnified Entity is or was responsible for accuracy; or
 - (xv) ~~(xvi)~~ any amount which results from a failure by the Indemnified Entity making the Claim to take action which it reasonably should have taken under the Tax Law or results from any failure by the Indemnified Entity to take reasonable action to mitigate the amount of Tax.
- (g) For the avoidance of doubt, any Tax Relief or other Tax benefit that arises to an Indemnified Entity or the Head Company in respect of the matters set out in **clause 17.1(f)** will not reduce any amount payable by the Preference Unit Holder under the Tax Indemnity.
- (h) If a Preference Unit Holder has made a payment to an Indemnified Entity under the Tax Indemnity and:
- (i) if the Indemnified Entity is the Trustee, the Trustee; and
 - (ii) if the Indemnified Entity is Aurizon Network, Aurizon Network or the Head Company,

receives any payment (whether by way of refund, credit, offset, recoupment, compensation, penalty, damages, restitution, relief or otherwise or under another Transaction Document or otherwise) in respect of the Extension Structure Tax Cost giving rise to the payment under the Tax Indemnity, then the Indemnified Entity must pay to the Preference Unit Holder within 30 Business Days of receipt of the payment an amount equal to the lesser of:

- (iii) the Preference Unit Holder's share of the value of the payment so received and allocated in accordance with **clause 17.6**; and
- (iv) the payment made by the Preference Unit Holder to the Indemnified Entity under the Tax Indemnity to which the payment relates.

17.2 Amendments and dispute

- (a) If an Indemnified Entity becomes aware that the Extension Structure results in, or is likely to result in, an Extension Structure Tax Cost, then the Indemnified Entity must, within a reasonable time (having regard to the nature and complexity of the circumstances resulting in or likely to result in an Extension Structure Tax Cost and the applicable regulatory timeframes governing any dispute of the Extension Structure Tax Cost with the relevant Governmental Agency) of becoming aware, give each Preference Unit Holder notice setting out the amount of the Extension Structure Tax Cost that it has calculated and reasonable particulars in relation to that calculation (including details of any Extension Structure

Tax Benefit taken into account in the calculation of the Extension Structure Tax Cost) and the amount allocated to the Preference Unit Holder pursuant to **clause 17.6 (Tax Claim Notice)**. Notwithstanding any other provision in this Deed, a Preference Unit Holder's sole remedy for any delay by an Indemnified Entity in providing a Tax Claim Notice will be that the Preference Unit Holder will not be liable in respect of any Claim made by that Indemnified Entity under the Tax Indemnity to the extent that the delay gives rise to or increases an amount contemplated by **clause 17.1(b)(i)**, net of any corresponding benefit arising from the delay.

- (b) A Preference Unit Holder must notify the Indemnified Entity within 20 Business Days of receipt of a Tax Claim Notice if it:
 - (i) disagrees with the existence or calculation of the Extension Structure Tax Cost or the allocation to the Preference Unit Holder contained in such notice and, if so, what modifications it proposes (**Tax Adjustment Notice**); or
 - (ii) proposes that an Indemnified Entity dispute or procure the dispute of the Extension Structure Tax Cost with the relevant Governmental Agency (**Tax Dispute Notice**). The Preference Unit Holder may only issue a Tax Dispute Notice if it provides reasonable particulars (having regard to the nature and complexity of the circumstances resulting in or likely to result in an Extension Structure Tax Cost) of the action that the Preference Unit Holder proposes be taken in respect of the Extension Structure Tax Cost (**Disputing Action**).
- (c) On receipt of:
 - (i) a Tax Adjustment Notice or Tax Adjustment Notices;
 - (ii) a Tax Dispute Notice or Tax Dispute Notices evidencing that Preference Unit Holders holding not less than 75% of the total number of Preference Units on issue have agreed to the proposed Disputing Action,

within the notice period referred to in **clause 17.2(b)**, then, from the next Business Day following the end of the notice period, the Preference Unit Holder or Preference Unit Holders which had served the Tax Adjustment Notice, Tax Adjustment Notices, Tax Dispute Notice or Tax Dispute Notices (as the case may be) and the Indemnified Entity must engage in good faith discussions to reach agreement in respect of:

- (iii) in the case of a Tax Adjustment Notice or Tax Adjustment Notices, corrections to the calculation of the Extension Structure Tax Cost and the allocation to the Preference Unit Holder or Preference Unit Holders which had served the Tax Adjustment Notice or Tax Adjustment Notice (as the case may be) and, if such agreement is reached, the amount of the Extension Structure Tax Cost or the

- allocation to that Preference Unit Holder or those Preference Unit Holders will be adjusted accordingly; or
- (iv) in the case of a Tax Dispute Notice, whether an Indemnified Entity will commence or procure the commencement of a Disputing Action and, if so, the type of Disputing Action.
- (d) If, within 20 Business Days after the next Business Day following the end of the notice period referred to in **clause 17.2(b)**, the Indemnified Entity and the Preference Unit Holder or Preference Unit Holders which had served the Tax Adjustment Notice or Tax Adjustment Notices (as the case may be) cannot agree on the Extension Structure Tax Cost or the allocation to the Preference Unit Holder or Preference Unit Holders which had served the Tax Adjustment Notice or Tax Adjustment Notices (as the case may be), or if **clauses 17.7(b)(i)** or **17.7(b)(ii)** apply in relation to the calculation of the Extension Structure Tax Cost or its allocation among Preference Unit Holders:
- (i) the Extension Structure Tax Cost and the allocation to the Preference Unit Holder or Preference Unit Holders which had served the Tax Adjustment Notice or Tax Adjustment Notices (as the case may be) is to be determined by a Tax Expert. In so acting, the Tax Expert:
 - (A) must be instructed to review the basis for and the calculation of the Extension Structure Tax Cost (including the legal basis of the Extension Structure Tax Cost having regard to the Tax Law and the relevant Governmental Agency's interpretation of it) and the allocation to the Preference Unit Holder or Preference Unit Holders which had served the Tax Adjustment Notice or Tax Adjustment Notices (as the case may be) by reference to the Tax Law applicable to the period relevant to the Extension Structure Tax Cost to achieve the aim set out in **clause 17.1(a)** using the principles in **clauses 17.1(c), 17.1(d), 17.1(e)** and **17.6**; and
 - (B) will act as an expert and not as an arbitrator and, in the absence of manifest error, his or her decision will be final and binding on the Parties with the amount of the Extension Structure Tax Cost and the allocation to the Preference Unit Holder being adjusted accordingly; and
 - (ii) to the extent that the Tax Adjustment Notice or Tax Adjustment Notices (as the case may be) given under **clause 17.2(b)(i)** gives or give rise to the reference to the Tax Expert under this **clause 17.2(d)**, as between the Parties, each Preference Unit Holder that had served the Tax Adjustment Notice or Tax Adjustment Notices (as the case may be) will pay the Tax Expert's costs and expenses in respect of any such reference in the proportion which the number of Preference Units held by each of those Preference Unit

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

- (e) If, and to the extent that, the Tax Expert determines in favour of each Preference Unit Holder, then the Tax Expert's costs and expenses in respect of any such reference shall, in respect of the Preference Unit Holders, be a Trust Administration Cost under the Trust.
- (f) If the Indemnified Entity and the Preference Unit Holder or the Preference Unit Holders which gave a Tax Dispute Notice to the Indemnified Entity satisfying the requirements of **clause 17.2(c)(ii)** within the notice period referred to in **clause 17.2(b)** cannot, within 20 Business Days after the next Business Day following the end of the notice period, agree on the matters contemplated by **clause 17.2(c)(iv)**, or if **clauses 17.7(b)(i)** or **17.7(b)(ii)** apply in relation to the taking of any Disputing Action:
 - (i) the matter is to be referred to a Tax Expert to determine:
 - (A) whether any such Disputing Action is more likely than not to succeed and, if so, what type of Disputing Action should be taken; and
 - (B) the Tax Expert will act as an expert and not as an arbitrator and, in the absence of manifest error, his or her decision will be final and binding on the Parties; and
 - (ii) to the extent that the Tax Dispute Notice given under **clause 17.7(b)(ii)** gives rise to the reference to the Tax Expert under this **clause 17.2(f)** then, as between the Parties, the Preference Unit Holders will pay the Tax Expert's costs and expenses in respect of any such reference in the proportion which the number of Preference Units held by each Preference Unit Holder bears to the total number of Preference Units on issue to the Preference Unit Holders, at that time.
- (g) If, and to the extent that, the Tax Expert determines the Disputing Action is more likely than not to succeed in favour of each Preference Unit Holder then the Tax Expert's costs and expenses in respect of any such reference shall, in respect of the Preference Unit Holders, be a Trust Administration Cost under the Trust.
- (h) If the Indemnified Entity and the Preference Unit Holder or the Preference Unit Holders which gave a Tax Dispute Notice or Tax Dispute Notices (as the case may be) to the Indemnified Entity satisfying the requirements of **clause 17.2(c)(ii)** within the notice period referred to in **clause 17.2(b)** agree, within 20 Business Days after the next Business Day following the end of the notice period, to commence or procure the commencement of a Disputing Action or the Tax Expert determines that any Disputing Action is more likely than not to succeed:

- (i) the Indemnified Entity must, within two Business Days of the date of the agreement to commence a Disputing Action or the date that the Tax Expert notifies the Parties of the determination in **clause 17.2(f)**, notify the Preference Unit Holder regarding the entity that will take the Disputing Action;
- (ii) if:
 - (A) more than one Preference Unit Holder has given notice to an Indemnified Entity under **clause 17.2(b)(ii)**; or
 - (B) an Indemnified Entity is of the opinion, acting reasonably, that the Disputing Action may be relevant to one or more Preference Unit Holders,

the Indemnified Entity must call a meeting of the Preference Unit Holders for the purpose of nominating one Preference Unit Holder to represent them (**Preference Unit Holder Representative**) for the purposes of this **clause 17.2(h)**. Each Preference Unit Holder agrees that the Preference Unit Holder Representative will be determined by Preference Unit Holders holding not less than 50% of the total number of Preference Units on issue at that time;

- (iii) the Indemnified Entity will be responsible for conducting the Disputing Action including, subject to the Indemnified Entity complying with **clause 17.2(h)(iv)**, controlling all discussions, correspondence and communications with any Governmental Agency in relation to the Disputing Action;
- (iv) the Indemnified Entity must, in relation to the conduct of the Disputing Action:
 - (A) act in good faith at all times;
 - (B) liaise with the Preference Unit Holder Representative as to any action proposed or not proposed to be taken;
 - (C) follow all reasonable instructions of the Preference Unit Holder Representative. An instruction will not be regarded as reasonable if complying with it would cause material reputational damage to the Indemnified Entity or any Related Body Corporate;
 - (D) make available to the Preference Unit Holder Representative, as soon as possible, but in any event within five Business Days, of receipt by the Indemnified Entity, a copy of the portion of any notice, correspondence or other document relating to the Disputing Action;
 - (E) notify the Preference Unit Holder Representative regarding, and make provision for the Preference Unit Holder Representative to attend all meetings, discussions or conferences with any Governmental Agency; and

- (F) except if **clause 17.2(h)(iv)(C)** applies, not take any action which it is objectively unreasonable to take in all the circumstances;
- (v) each Preference Unit Holder must, in relation to the conduct of the Disputing Action:
 - (A) bear all costs in relation to the conduct of the Disputing Action; and
 - (B) pay to the relevant Indemnified Entity so much of any Tax as is required by the relevant Governmental Agency to be paid in order to conduct the Disputing Action no later than the day that is five Business Days preceding the due date (or any extended date for payment permitted by the relevant Governmental Agency) specified in any notice issued by the Governmental Agency,

but only to the extent set out in **clause 17.6**; and
- (vi) the Indemnified Entity must not:
 - (A) accept, compromise, pay, agree to arbitrate, settle or admit liability in relation to the Disputing Action; or
 - (B) make any payment in respect of the Disputing Action to a Governmental Agency (except any payment made to a Governmental Agency as contemplated by **clause 17.2(h)(v)(B)**),

without the prior approval of the Preference Unit Holder Representative (such approval not to be unreasonably withheld or delayed).
- (i) For the avoidance of doubt, the Indemnified Entity has no obligations under **clauses 17.2(h)(iv)(B), 17.2(h)(iv)(C), 17.2(h)(iv)(D), 17.2(h)(iv)(E) or 17.2(h)(vi)** if the Preference Unit Holders fail to appoint a Preference Unit Holder Representative under **clause 17.2(h)(ii)**.

17.3 **Payment**

- (a) Each Preference Unit Holder must pay to an Indemnified Entity an amount equal to:
 - (i) **(no adjustment or dispute)** if the Preference Unit Holder does not give a Tax Adjustment Notice or a Tax Dispute Notice to the Indemnified Entity under **clause 17.2(b)** within the requisite period and neither **clause 17.7(b)(i)** nor **clause 17.7(b)(ii)** apply, the amount of the Extension Structure Tax Cost allocated to the Preference Unit Holder as specified in the Tax Claim Notice within 25 Business Days after the day the notice was given;
 - (ii) **(adjustment agreed)** if the Preference Unit Holder and the Indemnified Entity agree to the amount of the adjusted Extension

Structure Tax Cost allocated to the Preference Unit Holder in accordance with **clauses 17.2(c)(iii)** and **17.2(d)** does not apply, that amount within five Business Days of reaching the agreement referred to in **clause 17.2(c)(iii)**;

- (iii) **(Tax Expert determined Extension Structure Tax Cost)** if **clause 17.2(d)** applies and no Disputing Action is or is to be taken, an amount equal to the adjusted Extension Structure Tax Cost allocated to the Preference Unit Holder referred to in **clause 17.2(d)(i)(B)** within five Business Days of the Tax Expert notifying the Parties of the amount of the adjusted Extension Structure Tax Cost and the amount allocated to the Preference Unit Holder; or
 - (iv) **(Tax Expert determined no Disputing Action)** if no Disputing Action is or is to be taken following a referral to the Tax Expert under **clause 17.2(h)**, an amount equal to the amount of the Extension Structure Tax Cost allocated to the Preference Unit Holder as notified by the Indemnified Entity under **clause 17.2(a)** within five Business Days of the Tax Expert notifying the Parties of his or her decision.
- (b) If a Disputing Action is or is to be taken:
- (i) then subject to **clause 17.2(h)(v)(B)**, any payment that would otherwise be required to be made by a Preference Unit Holder pursuant to **clause 17.3(a)** will be deferred until such time that the Disputing Action is concluded;
 - (ii) within a reasonable time following the conclusion of the Disputing Action, the Indemnified Entity must recalculate the Extension Structure Tax Cost and its allocation to the Preference Unit Holder having regard to the outcome of the Disputing Action and provide a copy of the recalculation to the Preference Unit Holder; and
 - (iii) if the amount of the Extension Structure Tax Cost allocated to the Preference Unit Holder as determined in accordance with **clause 17.3(b)(ii)**:
 - (A) exceeds the amount paid by the Preference Unit Holder pursuant to **clause 17.2(h)(v)(B)** (if any), the Preference Unit Holder must pay to the Indemnified Entity an amount equal to the Extension Structure Tax Cost as determined, but only to the extent set out in **clause 17.6**, less any amount paid by the Preference Unit Holder pursuant to **clause 17.2(h)(v)(B)** and not refunded pursuant to **clause 17.1(h)**, within five Business Days of the determination; or
 - (B) is less than the amount paid by the Preference Unit Holder pursuant to **clause 17.2(h)(v)(B)** (if any) and the Indemnified Entity or the Head Company receives any

refund in respect of that amount, the Indemnified Entity must pay an amount equal to the lesser of:

- (1) the refund so received; and
- (2) the payment made by the Preference Unit Holder pursuant to **clause 17.2(h)(v)(B)**,

within five Business Days of receipt of the refund.

- (c) Each Preference Unit Holder must pay to the Indemnified Entity any amount under **clause 17.1(b)(ii)** allocated to the Preference Unit Holder under **clause 17.6** or determined by the Tax Expert and any amount under **clause 17.2(h)(v)(A)**, but only to the extent set out in **clause 17.6**, within ten Business Days after notice of the Claim is provided to the Preference Unit Holder.
- (d) A Preference Unit Holder is not required to make a payment to the Indemnified Entity under this **clause 17.3** to the extent that the Indemnified Entity has recovered compensation in relation to the same matter under a Transaction Document (excluding this Deed).
- (e) For the avoidance of doubt, any amount payable under this **clause 17.3** in relation to an Extension Structure Tax Cost relating to the Head Company must be paid to Aurizon Network.

17.4 **No further adjustment to particular Extension Structure Tax Cost**

The Parties acknowledge and agree that, subject to **clauses 17.1(h)** and **17.3(b)(iii)(A)**, an Extension Structure Tax Cost which has been determined and settled in accordance with **clause 17.3** will be final and:

- (a) the Indemnified Entities are precluded from bringing any further claim under **clause 17.1**, and agree that each Preference Unit Holder will not be liable to make any additional payment, in respect of that particular Extension Structure Tax Cost; and
- (b) each Preference Unit Holder is precluded from bringing any claim against the Indemnified Entities, and agrees that the Indemnified Entities will not be liable to make any payment or refund to the Preference Unit Holder, in respect of that particular Extension Structure Tax Cost.

However, for the avoidance of doubt, nothing in this **clause 17.4** prohibits a Tax Claim Notice in respect of any other Extension Structure Tax Cost.

17.5 **Tax effect**

If any payment by a Preference Unit Holder to an Indemnified Entity under this Deed, including **clause 17.3**, would require the Indemnified Entity or the Head Company to pay Tax (for the avoidance of doubt, including any amount calculated under Parts 3-1 to 3-3 of the *Income Tax Assessment Act 1997* (Cth)) as a result of the amount received by the Indemnified Entity, the Preference Unit Holder must pay to the Indemnified Entity, within five Business

Days of a demand from the Indemnified Entity, an additional amount calculated as follows:

$$AA = - P$$

where:

AA = the additional amount to be paid;

P = the amount payable by the Preference Unit Holder to the Indemnified Entity disregarding this clause; and

T = the income tax rate that would apply to the Indemnified Entity or the Head Company, as the case may be (for the purposes of section 4-10 of the Tax Act and determined in accordance with section 23 of the *Income Tax Rates Act 1986* (Cth)), at the time that the calculation is performed, expressed as a decimal.

17.6 Apportionment

(a) The amount of any:

- (i) liability of a Preference Unit Holder under the Tax Indemnity (including any amount referred to in **clauses 17.1(b)(i), 17.1(b)(ii), 17.2(h)(v) and 17.3**); or
- (ii) refund to be provided by the Indemnified Entities to the Preference Unit Holder in accordance with **clauses 17.1(h) or 17.3(b)(iii)(B)**,

will be calculated as follows:

$$A = L \times P/TP$$

where:

A = the amount to be paid by the Preference Unit Holder to an Indemnified Entity or to be refunded by an Indemnified Entity to the Preference Unit Holder as the case may be;

L = the amount payable by or refundable to the Preference Unit Holder disregarding this **clause 17.6**;

P = means the sum of the number of Preference Units (if any) held by the Preference Unit Holder; and

TP = the total number of Preference Units on issue, including, for the avoidance of doubt, the Preference Units held by Aurizon Network (if any).

(b) For the purposes of the formula in **clause 17.6(a)**, the number of units held by a person is to be determined:

- (i) for an Extension Structure Tax Cost referred to in **clause 17.1(b)(i)** (including where the subject of a payment under **clause 17.2(h)(v)**), at the time that the Tax Claim Notice is given by the Indemnified Entity under **clause 17.2(a)**;

- (i) for costs and expenses referred to in **clause 17.1(b)(ii)**, at the time that the relevant cost or expense is incurred or payable by an Indemnified Entity or a Related Body Corporate; and
 - (ii) for a refund in accordance with **clauses 17.1(h)** or **17.3(b)(iii)(A)**, at the time that the refund is to be provided.
- (c) The amount of any refund provided by the Indemnified Entities shall be provided to the Preference Unit Holders (or former Preference Unit Holders) who paid the amounts refunded in proportion to the amounts respectively paid.

17.7 **Appointment of Tax Expert**

- (a) Where **clause 17.7(b)** does not apply, for the purposes of this **clause 17**, the Tax Expert will be an independent Tax expert that Aurizon Network and the Preference Unit Holders agree or, failing such agreement within 10 Business Days, appointed by the President (or his or her delegate) of the Tax Institute (or its successor).
- (b) If:
- (i) one or more Preference Unit Holders have given a notice to an Indemnified Entity under **clause 17.2(b)**; or
 - (ii) an Indemnified Entity is of the opinion, acting reasonably, that a matter that is to be referred to a Tax Expert under:
 - (A) **clauses 17.2(d)** or **17.2(e)** may be relevant to one or more of the other Preference Unit Holders; or
 - (B) a provision of an agreement corresponding to **clauses 17.2(d)** or **17.2(e)** may be relevant to the Preference Unit Holders under this Deed,

then Aurizon Network may by notice to the Preference Unit Holders nominate two independent Tax experts to determine the matters in dispute under this Deed and any agreement including a clause corresponding to **clauses 17.2(d)** or **17.2(e)**. Each Preference Unit Holder must promptly advise Aurizon Network which of the nominees it approves to be the Tax Expert. The Tax Expert will be the person that is approved by the most Preference Unit Holders based on the number of Preference Units on issue at that time.

- (c) The amount of any costs of the Tax Expert will be allocated pro rata among all Preference Unit Holders to whom the proviso in **clauses 17.2(d)(ii)** or **17.2(f)(ii)** (or a provision of an agreement corresponding to those provisions) does not apply.
- (d) The Tax Expert must provide a copy of its decision to Aurizon Network and the Preference Unit Holders.

17.8 Deduction

- (a) If any Tax Indemnity Amount is not paid by the due date for payment under this **clause 17 (Unpaid Amount)**, then:
 - (i) Aurizon Network may notify the Trustee of the non-payment of the Unpaid Amount;
 - (ii) the Trustee must in accordance with **clause 12.4** deduct the Unpaid Amount together with any interest accrued on the Unpaid Amount under **clause 17.9** from any amounts which are due and payable to the Preference Unit Holder under this Deed; and
 - (iii) the Trustee must pay any amount deducted to the relevant Indemnified Entity promptly after the date the amount is deducted.
- (b) Any amount paid under **clause 17.8(a)(iii)** will be in satisfaction of the Unpaid Amount to the extent of the payment.

17.9 Interest on overdue payments

- (a) If, for any reason, a Preference Unit Holder does not pay a Tax Indemnity Amount payable on or before the due date for payment under this **clause 17**, it must pay interest to the Indemnified Entity who is entitled to receive the payment.
- (b) Interest will accrue on the outstanding amount from the due date for payment until that amount, together with the interest thereon, has been paid.
- (c) Interest will be calculated at the Interest Rate, and any interest accrued but unpaid at the end of each Month will be capitalised and will thereafter itself bear interest.

18 Stamp Duty and Costs of Private Binding Ruling

18.1 Stamp duty

- (a) Except to the extent covered by **clause 17.1**, as between the Parties, each Preference Unit Holder is liable for and must pay all Stamp Duty payable on, in relation to, or as a consequence of:
 - (i) its acquisition of Preference Units of any kind in the Trust, including partly paid Preference Units;
 - (ii) its payment in response to any Call, and any other paying up of outstanding amounts on its Preference Units;
 - (iii) any redemption, surrender or cancellation of its Preference Units;
 - (iv) any change to the rights attaching to its Preference Units;
 - (v) any change in its capacity in holding its Preference Units;

- (vi) any change in the rights attaching to an Ordinary Unit triggered by a Preference Unit Holder; and
- (vii) any other act or event that results in Stamp Duty being payable in connection with the Preference Unit Holder's Preference Units except any Stamp Duty payable by the transferee in respect of a transfer of Preference Units or Loan Balance,

whether or not the Preference Unit Holder is liable under a statute to pay the Stamp Duty.

- (b) Except to the extent covered by **clause 17.1**, as between the Parties, each holder of an Ordinary Unit is liable for and must pay all Stamp Duty payable on, in relation to, or as a consequence of:
 - (i) any redemption, surrender or cancellation of that Ordinary Unit;
 - (ii) any change to the rights attaching to that Ordinary Unit other than a change triggered by a Preference Unit Holder; and
 - (iii) any change in its capacity in holding that Ordinary Unit;

whether or not the holder of the Ordinary Unit is liable under a statute to pay the Stamp Duty.

- (c) As between the Parties, the Trustee is liable for and must pay all Stamp Duty payable on, in relation to, or as a consequence of the issue of the Ordinary Unit as contemplated by **clause 3.5** whether or not the Trustee is liable under a statute to pay the Stamp Duty.
- (d) If Aurizon Network or the Trustee pays any Stamp Duty to which **clause 18.1(a)** applies, the applicable Preference Unit Holder must pay that amount to Aurizon Network or the Trustee (as applicable) on demand and hereby indemnifies Aurizon Network and the Trustee for that amount.
- (e) If the Preference Unit Holder or the Trustee pays any Stamp Duty to which **clause 18.1(b)** applies, Aurizon Network must pay that amount to the Preference Unit Holder or the Trustee (as applicable) on demand and hereby indemnifies the Preference Unit Holder and the Trustee for that amount.

18.2 **Costs of private binding ruling**

- (a) The Trustee must pay to Aurizon Network the PBR Costs within 10 Business Days after a receipt of an invoice from Aurizon Network in respect of the PBR Costs.
- (b) If the Access Regulator decides not to include all of the PBR Costs into the Regulatory Asset Base, then Aurizon Network must pay to the Trustee the portion of the PBR Costs that the Access Regulator decided not to include into the Regulatory Asset Base within 10 Business Days after receipt of an invoice from the Trustee in respect of such portion of the PBR Costs.

19 Reserve Decisions and Reserve Powers

19.1 Reserve Decisions

- (a) The Trustee must not implement a decision to exercise any power or discretion of the Trustee in relation to the management of the Trust that is listed in **schedule 4 (Reserve Decision)**, unless the Reserve Decision is first submitted to and approved by:
 - (i) the Prescribed Majority of:
 - (A) if **schedule 4** specifies that:
 - (1) an Aurizon Preference Unit Holder can participate in respect of the Reserve Decision; and
 - (2) the Prescribed Majority is the Prescribed Majority of Affected Users in respect of that Reserve Decision, those Affected Users (including each Aurizon Preference Unit Holder which is an Affected User); and
 - (B) if **schedule 4** specifies that an Aurizon Preference Unit Holder can participate in respect of the Reserve Decision but **clause 19.1(a)(i)(A)** does not apply, all Preference Unit Holders (including each Aurizon Preference Unit Holder); and
 - (C) in all other circumstances, all Preference Unit Holders excluding each Aurizon Preference Unit Holder; and
 - (ii) if **schedule 4** specifies that the approval of the Ordinary Unit Holder is required in respect of the Reserve Decision, the Ordinary Unit Holder.
- (b) Where the Trustee is required to exercise any Reserve Power as directed under **clause 19.2**, the exercise of such Reserve Power in accordance with the direction will not constitute a Reserve Decision for the purpose of this **clause 19.1** and **schedule 4**.

19.2 Reserve Powers

- (a) The Preference Unit Holders may, subject to **clauses 19.2(b)** and **19.2(c)**, direct the Trustee how to exercise any right, power or discretion of the Trustee under the Extension Infrastructure Sub-Lease, Construction Agreement or Rail Corridor Agreement (**Reserve Power**), and the Trustee must comply with any such direction given by the Preference Unit Holders.
- (b) For the purpose of **clause 19.2(a)**:
 - (i) if a Reserve Power is not listed in **schedule 5**, a direction to exercise that Reserve Power must be approved and given by a

- Special Majority of all Preference Unit Holders excluding each Aurizon Preference Unit Holder;
- (ii) if a Reserve Power is listed in **schedule 5**, a direction to exercise that Reserve Power must be approved and given by the Prescribed Majority of:
 - (A) if **schedule 5** specifies that:
 - (1) an Aurizon Preference Unit Holder can participate in respect of the Reserve Power; and
 - (2) the Prescribed Majority is the Prescribed Majority of Affected Users in respect of that Reserve Power, those Affected Users (including each Aurizon Preference Unit Holder which is an Affected User); and
 - (B) if **schedule 5** specifies that an Aurizon Preference Unit Holder can participate in respect of the Reserve Power, all Preference Unit Holders (including each Aurizon Preference Unit Holder).
 - (c) A direction under **clause 19.2(a)**:
 - (i) must be given to the Trustee, each Preference Unit Holder and the Ordinary Unit Holder;
 - (ii) must be signed by each relevant Preference Unit Holder which supports the issuing of that direction under **clause 19.2(a)**;
 - (iii) must be given by fax in accordance with the requirements of **clause 23.3** or by such other means as the Trustee may otherwise agree;
 - (iv) must be specific to the exercise of a particular right, power or discretion in a particular instance;
 - (v) may include a direction to exercise, or not to exercise, the relevant Reserve Power; and
 - (vi) where the direction is to exercise a Reserve Power, must specify the manner in which the Trustee is required to exercise the Reserve Power, including sufficient details for the Trustee to comply with the requirements under the applicable Transaction Document for exercise of that Reserve Power.
 - (d) Any written direction given to the Trustee under **clause 19.2(c)** is evidence that the direction has been duly passed by the Prescribed Majority for that Reserve Power and the Trustee is entitled to rely on that notice without further inquiry or investigation.
 - (e) In order to give Preference Unit Holders an opportunity, should the relevant majority wish to do so, to give a direction under **clause 19.2(a)** in relation to the exercise of a Reserve Power (including a direction not

to exercise the Reserve Power), where there is a prescribed date by which a Reserve Power must be exercised, the Trustee must not exercise that Reserve Power more than two Business Days prior to that prescribed time.

- (f) If the Trustee has complied with this **clause 19.2** and has exercised a specific right, power or discretion under the Extension Infrastructure Sub-Lease, Construction Agreement or Rail Corridor Agreement in a particular instance and immediately before exercising that specific right, power or discretion in that particular instance has not received a direction from the Preference Unit Holders in respect of that specific right, power or discretion in accordance with this **clause 19.2**, then any notice subsequently given by the Preference Unit Holders under this **clause 19.2** in respect of the exercise of that specific right, power or discretion in that particular instance is of no force and effect and for the avoidance of doubt the Trustee is not, as a result of that notice, taken to have failed to comply with this **clause 19.2**.

19.3 **Aurizon Preference Unit Holder entitled to information**

- (a) Subject to **clause 19.3(b)**, an Aurizon Preference Unit Holder is entitled to receive notices and information provided to the Preference Unit Holders in respect of any Reserve Decision or Reserve Power, even where that Aurizon Preference Unit Holder is not entitled to vote on the matter.
- (b) An Aurizon Preference Unit Holder is not entitled to receive notices and information provided to the Preference Unit Holders in respect of any Reserve Decision or Reserve Power in circumstances where the Preference Unit Holders are considering whether the Trustee will take action against Aurizon Network or a Related Body Corporate of it.

19.4 **Affected Users**

- (a) For the purposes of the exercise of a specific Reserve Power or a Reserve Decision in a particular instance which must be approved by a Prescribed Majority of Affected Users, any Preference Unit Holder may, by notice to each other Party, request the determination of the Affected Users for the relevant matter for the purposes of this **clause 17 (Affected User Notice)**.
- (b) Within ten Business Days after receipt of an Affected User Notice, the Trustee must:
 - (i) determine, in respect of the exercise of that specific Reserve Power or Reserve Decision in that particular instance as specified in that Affected User Notice, the Affected Users in relation to that Reserve Power or Reserve Decision; and
 - (ii) notify each other Party of its determination of the Affected Users in relation to that Reserve Power or Reserve Decision.

- (c) Any determination by the Trustee of the Affected Users under **clause 19.4(b)** is, in the absence of manifest error, final and binding on the Parties.
- (d) Subject to **clause 19.4(e)**, where the Prescribed Majority of the Preference Unit Holders in respect of any Reserve Decision or Reserve Power requires the approval of the Affected Users for that Reserve Decision or Reserve Power, then each such Affected User will be entitled to such percentage of voting rights in respect of such Reserve Decision or Reserve Power that is equal to the amount of such Affected User's Unit Holder's Proportion calculated in accordance with **item 4 of schedule 7**.
- (e) Despite **clause 19.4(d)**, if in respect of any Reserve Decision or Reserve Power the approval of Affected Users is required for that Reserve Decision or Reserve Power and the only Affected User is an Aurizon Preference Unit Holder, then the Prescribed Majority of all Preference Unit Holders (other than each Aurizon Preference Unit Holder) will be required in respect of that Reserve Decision or Reserve Power.

20 Default by Preference Unit Holder

20.1 Events of Default

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

- (a) that Preference Unit Holder breaches any provision of this Deed, other than an obligation to pay a Call Amount, an obligation to provide a Bank Guarantee (including an additional or replacement Bank Guarantee) or an obligation to provide a Construction Agreement Guarantee (including a replacement Construction Agreement Guarantee), and:
 - (i) does not remedy that breach within 20 Business Days after receiving a notice of that breach from another Party requesting the breach to be remedied; or
 - (ii) if the breach is incapable of being remedied, does not:
 - (A) pay reasonable compensation to the Trustee in respect of the breach; and
 - (B) take reasonable steps to prevent the breach from recurring, within 20 Business Days after receiving a notice of that breach from another Party; or
- (b) that Preference Unit Holder has:
 - (i) an application made against it, an order made, a resolution passed or a meeting summoned or convened to consider a resolution for its winding up or dissolution (other than for the purposes of reconstruction or amalgamation whilst solvent) and the application

is not dismissed, the order is not set aside, the resolution is not withdrawn (as applicable) within 30 days;

- (ii) a receiver appointed over its assets or undertaking or any part of them;
- (iii) any execution or other process of any court or authority issued against or levied upon any of its assets in any amount in excess of 10% of its shareholders' funds, or, if the Unit Holder is a trustee, 10% of the value of the assets of the trust in respect of which the Units are held, and that execution or process is not discharged or withdrawn within 60 Business Days of the date of issue;
- (iv) ceased to pay its debts or suspended payment generally or ceased or threatened to cease to carry on its business or become insolvent or become unable to pay its debts as and when they become due and payable;
- (v) an official manager, trustee, voluntary administrator, liquidator or provisional liquidator appointed for all or any part of its assets or undertaking where the appointment is not stayed, withdrawn or dismissed within 30 days; or
- (vi) entered into or resolved to enter into an arrangement, composition or compromise with, or assignment for the benefit of, its creditors generally or any class of creditors, or proceedings are commenced to sanction such an arrangement, composition or compromise other than for the purposes of a bona fide scheme of solvent reconstruction or amalgamation.

20.2 **Consequence of default**

- (a) If an Event of Default occurs in relation to a Preference Unit Holder, the Trustee may declare by notice to that Preference Unit Holder that the rights (but not the obligations) attaching to the Preference Units are suspended as set out in **clause 20.2(b)**, and the suspension of those rights will continue until the earlier of:
 - (i) the date the Event of Default is remedied;
 - (ii) the date this Deed terminates in respect of that Preference Unit Holder; and
 - (iii) the date the Trust terminates.
- (b) For the purposes of **clause 20.2(a)**, while the rights attaching to a Preference Unit Holder's Preference Units are suspended:
 - (i) the Trustee must withhold all distributions of the Trust attributable to that Preference Unit Holder and accumulate such distributions while the suspension of those rights continues;

- (ii) that Preference Unit Holder is not entitled to receive notices or other information under this Deed or any other Transaction Document; and
 - (iii) that Preference Unit Holder is not entitled to vote under this Deed or the Trust Deed.
- (c) If an event specified in **clause 20.1(b)** occurs in respect of a Preference Unit Holder, then, whether or not that Preference Unit Holder has failed to pay a Loan Call as contemplated in **clauses 7.3(a)** and **7.3(b)**, **clause 7.3(c)** will apply and the Trustee is entitled to exercise its rights under and in accordance with **clauses 7.5** and **7.6** as if that Preference Unit Holder were a 'Defaulting Unit Holder'.

21 Warranties and acknowledgements

21.1 Warranties by all Parties

Each Party warrants that:

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

21.2 Trustee warranties

The Trustee warrants to the other Parties that:

- (a) the Trust, once constituted, will be a unit trust duly formed, validly existing and in good standing under the laws of Australia;
- (b) the Trust Deed has been duly executed by the Trustee and is a valid and legally binding obligation of the Trustee, enforceable by the other Parties against the Trustee in accordance with the terms of the Trust Deed; and
- (c) the Trustee has full power and authority, and holds all necessary approvals and licences, to enter into this Deed and to perform the Trustee's obligations under this Deed and the Trust Deed.

21.3 **Subscriber warranties**

Each Subscriber separately warrants to the Trustee, each as a material term of this Deed and to induce the Trustee to accept the Subscriber's application, that:

- (a) the Subscriber has sufficient financial resources to fulfil the Subscriber's obligations under this Deed and as a Unit Holder under the Trust Deed;
- (b) the Subscriber has full power and authority to enter into this Deed and to perform the Subscriber's obligations under this Deed and as a Unit Holder under the Trust Deed;
- (c) all authorisations and approvals necessary for the valid and proper acquisition of Units by the Subscriber have been duly obtained and no required consents or approvals are outstanding;
- (d) the Subscriber has the experience necessary to evaluate and understands the financial, investment and other risks involved in an investment in the Trust;
- (e) the Subscriber is fully aware that the Trustee or any associate (as that term is defined in the Corporations Act) of the Trustee does not guarantee the repayment of capital or the performance of the Trust or make any representation concerning any of these matters;
- (f) the Subscriber has sought advice from the Subscriber's advisers as to the legal, tax, financial and other implications of subscribing for Units and entering into this Deed and has relied solely on such advice and investigations made by the Subscriber and the Subscriber's advisers in satisfying itself that subscribing for Units and entering into this Deed are suitable, appropriate and desirable transactions for the Subscriber; and
- (g) at the Commencement Date and at all times while the Subscriber is a Unit Holder:
 - (i) the Subscriber is not a "Retail Client" (as defined in the Corporations Act), and accordingly the Subscriber acknowledges that any offer or issue of Partly Paid Units does not need disclosure to the Subscriber under the Corporations Act or any other law;
 - (ii) the Subscriber is an Eligible Investor; and
 - (iii) the Subscriber understands that the Trust will not be registered as a "managed investment scheme" (as defined in the Corporations Act) under the Corporations Act and will not be registered under any securities or other laws of any jurisdiction.

21.4 **Obligation to notify and update**

Each Subscriber agrees to notify the Trustee as soon as practicable if any representation or warranty under this Deed becomes untrue, inaccurate, misleading or deceptive in a material respect at any time.

21.5 **Subscribers' acknowledgement in relation to secondary market**

Each Subscriber acknowledges and agrees, as a material term of this Deed and to induce the Trustee to accept the Subscriber's application, that there is no established or official secondary market for the Units and the Trustee is under no obligation to acquire, transfer or make a market for Units.

21.6 **Subscribers bound by Trust Deed**

The Trustee and each Subscriber agrees that on and from the date on which it is issued Units:

- (a) the Subscriber is bound by the Trust Deed;
- (b) the Trustee may enforce the provisions of the Trust Deed against and in respect of the Subscriber as if the Subscriber were a party to the Trust Deed when originally made;
- (c) the Subscriber may enforce the provisions of the Trust Deed against and in respect of the Trustee as if the Subscriber were a party to the Trust Deed when originally made; and
- (d) subject to **clause 1.4**, the Trustee and the Subscriber will act in accordance with the Trust Deed and not engage in conduct which is inconsistent with any provision of the Trust Deed.

21.7 **Trustee's limitation of liability**

Each Subscriber:

- (a) acknowledges that the Trustee enters into this Deed in its capacity as trustee of the Trust and not in any other capacity; and
- (b) agrees that the liability of the Trustee to the Subscriber under, or arising out of, this Deed is limited to the amount that the Trustee is properly entitled to receive in the exercise of its rights of indemnity from the Trust,

except where:

- (c) this Deed or the Trust Deed expressly provides that an obligation or liability is an obligation or liability of the Trustee personally; or
- (d) this Deed or the Trust Deed expressly provides that the Trustee is not entitled to an indemnity or reimbursement out of the Assets in respect of that obligation or liability.

21.8 **Information about identity of Subscriber**

- (a) Each Subscriber acknowledges that the Trustee is subject to certain anti-money laundering and counter-terrorist financing laws in Australia and other jurisdictions.
- (b) In order to assist the Trustee in fulfilling the Trustee's obligations under those laws, the Subscriber agrees to provide information relating to the

identity of the Subscriber as may be requested by the Trustee for the purposes of complying with those laws, including (for example):

- (i) certified copies of the Subscriber's constituent documents; and
 - (ii) such information as may be reasonably required by the Trustee in relation to the directors of the Subscriber.
- (c) The Subscriber consents to the disclosure by the Trustee, on a strictly need-to-know and confidential basis, of any information provided by the Subscriber pursuant to **clause 21.8(b)**.

21.9 **Aurizon Network's limitation of liability**

Aurizon Network's liability to a Preference Unit Holder in respect of a Claim arising out of, or in any way related to, a Transaction Document, other than this Deed or the Trust Deed, is limited to \$1.00. For the avoidance of doubt, this **clause 21.9** is without derogation from or limitation to any Claim:

- (a) a Preference Unit Holder may have against the Trustee in respect of clause [14(b)] of the Extension Project Agreement; or
- (b) the Trustee may have against Aurizon Network in respect of the Construction Agreement.

22 **Unincorporated joint ventures**

22.1 **Warranty and undertaking**

Each Preference Subscriber warrants that its Preference Units, and the rights granted to it (as Preference Unit Holder) under the Extension Project Agreement, do not comprise assets of any unincorporated joint venture, other than to the extent specified in respect of that Preference Subscriber in **schedule 1**.

22.2 **Joint Venture Participants' liability**

- (a) If **schedule 1** specifies that this **clause 22.2** applies in respect of that Preference Subscriber, then this **clause 22.2** applies in respect of that Preference Subscriber and each Joint Venture Participant in respect of that Preference Subscriber.
- (b) Each Joint Venture Participant in respect of a Preference Subscriber must hold the Preference Units of that Preference Subscriber as tenants in common in proportions equivalent to the Participating Interest of each Joint Venture Participant in respect of that Preference Subscriber.
- (c) The Preference Subscriber executes this Deed or any Transaction Document as agent for the Joint Venture Participants in the Joint Venture in respect of that Preference Subscriber, and warrants that it enters this Deed and any Transaction Document as agent for those Joint Venture Participants in their respective Participating Interests from time to time.

- (d) The liability of each Joint Venture Participant in a Joint Venture under this Deed and the Trust Deed is:
 - (i) subject to **clause 22.2(e)**, several in respect of any Financial Obligations in proportion to their Participating Interest for that Joint Venture; and
 - (ii) joint and several in respect of the performance of any obligations under this Deed or the Trust Deed which are not Financial Obligations.
- (e) If a Joint Venture Participant in a Joint Venture is in default of a Financial Obligation, and the Preference Subscriber has not given notice to the Trustee identifying the relevant defaulting Joint Venture Participant within two Business Days after the Trustee gives a notice to the Preference Subscriber identifying the default, then all Joint Venture Participants in that Joint Venture will be jointly and severally liable for the performance of that Financial Obligation.
- (f) For the purposes of this Deed, any notice given under **clause 22.2(e)** is conclusive evidence that the Joint Venture Participant named in that notice is in default and that notice binds all Joint Venture Participants in that Joint Venture.
- (g) Any notice given to the Preference Subscriber is deemed to be notice to each Joint Venture Participant in the Joint Venture for that Preference Subscriber.

23 General

23.1 Disputes

If any Dispute arises between the Parties under this Deed, the Parties must follow the Dispute Resolution Procedure to resolve that Dispute.

23.2 Confidentiality

Subject to **clause 21.8**, the Parties must comply with the Confidentiality Obligations in respect of Confidential Information.

23.3 Notices

Any notice, demand, certification, process or other communication (**Notice**) under this Deed must comply with and be given in accordance with the Extension Project Agreement as if the Notice were a notice under that document.

23.4 Trustee consent to transfer of Unit Holder Loans

Where a Preference Unit Holder transfers, or the Trustee sells, Preference Units to a transferee pursuant to and in accordance with this Deed and that Preference Unit Holder has a Loan Balance, then on that transferee being registered in the Register as the holder of those Preference Units:

- (a) the Trustee is deemed to consent to the transfer of the Loan Balance to that transferee, to the extent attributable to the Preference Units transferred to the transferee; and
- (b) the Trustee acknowledges and agrees that the transferee is the person entitled to repayment in accordance with this Deed and the Trust Deed of the amount of the Loan Balance attributable to the Preference Units transferred to the transferee.

23.5 **GST**

- (a) In this **clause 23.5**:
 - (i) unless there is a contrary indication, words and expressions which are not defined in this Deed but which have a defined meaning in GST Law have the same meaning as in the GST Law; and
 - (ii) references to GST payable and input tax credit entitlement include GST payable by, and the input tax credit entitlement of, the representative member for a GST group of which the entity is a member and the GST joint venture operator of any GST joint venture of which the entity is a participant.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Deed are exclusive of GST.
- (c) If GST is payable on any supply made by a party (or any entity through which that party acts) (**Supplier**) under or in connection with this Deed, the recipient of the supply will pay to the Supplier an amount equal to the GST payable on the supply.
- (d) The amount referred to in **clause 23.5(c)** must be paid in addition to and at the same time and in the same manner (without any set-off or deduction) that the consideration for the supply is to be provided under this Deed.
- (e) The Supplier must deliver a tax invoice or an adjustment note to the recipient of a taxable supply before the Supplier is entitled to payment of an amount under **clause 23.5(c)**, and the recipient can withhold payment of the amount until the Supplier provides a tax invoice or an adjustment note, as appropriate.
- (f) If an adjustment event arises in respect of a taxable supply made by a Supplier under this Deed, the amount payable by the recipient under **clause 23.5(c)** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier, or by the Supplier to the recipient, as the case requires.
- (g) Where a Party is required under this Deed to pay for, reimburse or contribute to any expense, loss, liability or outgoing of another Party or indemnify another party in relation to such an expense, loss, liability or outgoing, the amount required to be paid, reimbursed or contributed by the first Party will be the sum of:

- (i) the amount of the expense, loss, liability or outgoing less any input tax credits in respect of the expense, loss, liability or outgoing to which the other Party is entitled; and
 - (ii) if the payment, reimbursement or contribution is subject to GST, an amount equal to that GST.
- (h) If an amount of consideration payable or to be provided under or in connection with this Deed is to be calculated by reference to:
 - (i) any expense, loss, liability or outgoing suffered or incurred by another person (**Cost**), that reference will be to the amount of that Cost excluding the amount of any input tax credit entitlement of that person relating to the Cost suffered or incurred; and
 - (ii) any price, value, sales, proceeds, revenue or similar amount (**Revenue**), that reference will be to that Revenue determined by deducting from it an amount equal to the GST payable on the supply for which it is consideration.

23.6 **Survival**

This **clause 23, clauses 1, 2.5, 4.11, 4.12, 5.3, 7.1, 17.9** and **23.2** survive the termination of this Deed.

23.7 **Incorporated General Provisions**

Except to the extent of any inconsistency with this Deed, the General Provisions are taken to be incorporated into this Deed *mutatis mutandis*.

23.8 **Applicable law**

- (a) This Deed will be governed by and construed in accordance with the laws applicable in the State.
- (b) Each Party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in the State and courts of appeal from them in respect of any proceedings arising out of or in connection with this Deed. Each Party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

23.9 **Counterparts**

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

Schedule 1

Agreement details

1 Extension and Segments

1.1 Extension

[insert]

[Drafting note: Insert a high level output oriented description of the Extension. For example: 'The enhancement to the rail infrastructure on the Alpha and Beta Systems in order to facilitate the transportation of coal to the approximately 25 Mtpa proposed coal terminal at Zenith.' A description or diagram clearly identifying each Segment comprising the Extension and referred to below should be included on a transaction-by-transaction basis.]

1.2 Segment #1 – [Name of Segment]

Name of Segment [insert]

Description of Segment [insert]

Preference [insert]

Subscribers applicable to the Segment [insert]

1.3 Segment #2 – [Name of Segment]

Name of Segment [insert]

Description of Segment [insert]

Preference [insert]

Subscribers applicable to the Segment [insert]

2 Preference Subscriber details

Item	General description	Preference Subscriber 1	Preference Subscriber #	Preference Subscriber #
2.1	Details	<p>Name [insert]</p> <p>ABN [insert]</p> <p>Address [insert]</p> <p>Australian resident for tax purposes [Yes / No (as applicable)]</p>		
2.2	Preference Subscriber's subscription details	<p>Number of Preference Units at [\$1.00] per Preference Unit [insert]</p> <p><i>[Drafting note: The amount to be inserted here is calculated as follows Target Trust Capital Cost (as at execution of this Deed) multiplied by the Unit Holders Proportion multiplied by 1.3 and divided by the Application Price]</i></p>		

Item	General description	Preference Subscriber 1	Preference Subscriber #	Preference Subscriber #
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Unit Holder's Proportion

		<p>Initial Subscription Amount [insert]</p> <p>[Drafting note: A dollar amount, which will be of nominal size, will be inserted here. For example that amount could be \$1 X 10⁻⁶/Unit.]</p> <p>Initial Loan Contribution [Drafting note: A dollar amount is to be inserted here. That amount will equal the Unit Holder's Proportion of [#]% of the Target Trust Capital Cost.]</p> <p>[Drafting note: The percentage will be determined on a transaction-by-transaction basis so that on receipt of all Initial Loan Contributions the Trustee will receive sufficient funds to meet the Liquidity Requirements for the applicable Month.]</p> <p>Initial Bank Guarantee Amount [insert]</p> <p>[Drafting note: A dollar amount is to be inserted here. That amount will equal the Unit Holder's Proportion of the Target Trust Capital Cost less the Initial Construction</p>		
--	--	--	--	--

[Drafting note: for the purposes of item 2.2 of this Schedule 1 as at the Commencement Date, the Unit Holder's Proportion for each Preference Subscriber is to be calculated in accordance with the following formula: •

$$UHP = \frac{PST}{CS} \times \text{Segment Proportion}$$
where: •
UHP=The Unit Holder's Proportion for the relevant Preference Subscriber PST=The Preference Subscriber's Total Share for the relevant Preference Subscriber as at the Commencement Date CS=The Contract Sum as at the Commencement Date **Preference Subscriber Segment Proportion** for a Preference Subscriber for a Segment means that proportion for which the Preference Subscriber will be a Segment Unit Holder as detailed in **item 2 of schedule 7** as at the Commencement Date for that Segment. •
Preference Subscriber's Segment Share means the amount which is the Preference Subscriber Segment Proportion for that Segment of the Contract Sum allocated to that Segment in accordance with the Construction Agreement. •
Preference Subscriber's Total Share for a Preference Subscriber means the amount which is the sum of that Preference Subscriber's Segment Share for each Segment for which that Preference Subscriber will be a Segment Unit Holder as detailed in **schedule 7** as at the Commencement Date.]•

Item	General description	Preference Subscriber 1	Preference Subscriber #	Preference Subscriber #				
		<p data-bbox="781 362 1099 405"><i>Agreement Guarantee Amount for that Preference Subscriber.]</i></p> <p data-bbox="562 437 730 501">Initial Construction Agreement Guarantee Amount</p> <p data-bbox="781 437 837 459">[insert]</p> <p data-bbox="781 491 1122 598"><i>[Drafting note: A dollar amount is to be inserted here. That amount will equal the Unit Holder's Proportion of the Peak Termination Exposure (as defined in the Construction Agreement).]</i></p>						
2.3	Application of clause 22	<p data-bbox="562 633 696 676">Does clause 22 apply?</p> <p data-bbox="781 633 837 655">[yes/no]</p> <p data-bbox="562 708 730 730">Joint Venture name</p> <p data-bbox="781 708 837 730">[insert]</p> <p data-bbox="562 815 674 858">Joint Venture Participants</p> <table border="1" data-bbox="781 815 1099 997"> <thead> <tr> <th data-bbox="781 815 987 837">Name</th> <th data-bbox="992 815 1099 858">Percentage interest</th> </tr> </thead> <tbody> <tr> <td data-bbox="781 943 837 965">[insert]</td> <td data-bbox="992 943 1048 965">[insert]</td> </tr> </tbody> </table>	Name	Percentage interest	[insert]	[insert]		
Name	Percentage interest							
[insert]	[insert]							
2.4	Particulars for notice	<p data-bbox="562 1053 719 1075">Business address</p> <p data-bbox="781 1053 837 1075">[insert]</p> <p data-bbox="562 1160 696 1182">Postal address</p> <p data-bbox="781 1160 837 1182">[insert]</p> <p data-bbox="562 1267 674 1289">Facsimile No.</p> <p data-bbox="781 1267 837 1289">[insert]</p>						

Item	General description	Preference Subscriber 1	Preference Subscriber #	Preference Subscriber #
		Email address [insert] Attention [insert]		

[Drafting note: Complete the details for each Preference Subscriber as set out for Preference Subscriber 1.]

Schedule 2

Allocation Principles

(Clauses 1.2 and 8.1)

(a) Where:

- (i) costs, expenses and/or recovered amounts relate to two or more Segments; and
- (ii) components of those costs, expenses and/or recovered amounts may be allocated on a reasonable basis between each of those Segments on the basis of each Segment's share of the Works that gave rise to those costs, expenses and/or recovered amounts regardless of whether those Works are within or outside the area of that Segment,

those components of costs, expenses and/or recovered amounts will be allocated to each of the Segments to which they relate.

(b) Where:

- (i) costs, expenses and/or recovered amounts relate to two or more Segments; and
- (ii) **item (a)(ii)** of this **schedule 2** does not apply,

then those costs, expenses and/or recovered amounts will be allocated to each of those Segments on a pro-rata basis, based on the proportion that the portion of the Contract Sum allocated to each Segment bears to the total of the Contract Sum allocated to all such Segments.

Schedule 3

Call Statements (Clauses 1.2 and 5.7)

Call Statements during Construction Period

0.1 Information for all Months

The Call Statement sent to each Preference Unit Holder for a Month during the Construction Period (other than the Initial Call Statement) must include:

- (a) the date the Call Statement is issued;
- (b) the due date for payment of the Unit Holder's Loan Contribution;
- (c) the amount of the Unit Holder's Loan Contribution;
- (d) the total amount of Loan Contributions Called from all Unit Holders;
- (e) the amount that the aggregate Capital Loan Balances of the Unit Holders will be when the Loan Contributions Called in the Call Statement are received; and
- (f) details of the calculation of the total amount of Loan Contributions Called, including:
 - (i) the Liquidity Requirement;
 - (ii) the Liquidity Target;
 - (iii) the Rolling Three Month Net Cash Outgoing;
 - (iv) the net cash holding;
 - (v) the Estimated Trust Administration Costs; and
 - (vi) the Net Cash Outgoings,for the Month.

0.2 Information for Months where Unit Call made

The Call Statement sent to each Preference Unit Holder for a Month in which a Unit Call is made must include (in addition to the information in **item 1.1** of this **schedule 3**):

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

- (ii) Capital Loan Balance; and
- (iii) Operating Loan Balance;
- (b) the amount of the Unit Call;
- (c) if the amount of the Unit Call is less than the Capital Loan Balance:
 - (i) an explanation of the reason for the difference; and
 - (ii) details of the method of calculation of the amount of the Unit Call (in accordance with **clause 5.4(a)**);
- (d) the Paid Up Amounts of each Preference Unit Holder, and the aggregate of the Paid Up Amounts, on the Trustee paying up the Unit Calls; and
- (e) the Paid Up Amounts of each Preference Unit Holder, and the aggregate of the Paid Up Amounts, prior to the Trustee paying up the Unit Calls.

1 Call Statements after Construction Period

1.1 Notice of Final Certificate

In the Month in which the Trustee receives the Final Certificate from the Independent Certifier, the Trustee must include notice that the Final Certificate is received.

1.2 Information for Loan Calls

The Call Statement sent to each Preference Unit Holder for a Loan Call after the Construction Period must include:

- (a) the date the Call Statement is issued;
- (b) the due date for payment of the Unit Holder's Loan Contribution;
- (c) the amount of the Unit Holder's Loan Contribution;
- (d) the total amount of Loan Contributions Called from all Unit Holders;
- (e) the aggregate Capital Loan Balances of the Unit Holders;
- (f) the amount that the aggregate Capital Loan Balances of the Unit Holders will be when the Loan Contributions Called in the Call Statement are received; and
- (g) details of the calculation of the total amount of Loan Contributions Called, including:
 - (i) the Projected Liquidity Requirement;
 - (ii) the Projected Cash Holdings;
 - (iii) the Estimated Net Operating Expenses; and
 - (iv) any Trust Capital Costs,
 for the period.

1.3 **Information for Unit Calls**

The Call Statement sent to each Preference Unit Holder for a Unit Call after the Construction Period must include (in addition to the information in **item 2.2** of this **schedule 3**):

- (a) the Unit Holder's:
 - (i) Loan Balance;
 - (ii) Capital Loan Balance; and
 - (iii) Operating Loan Balance;
- (b) the amount of the Unit Call;
- (c) the Paid Up Amounts of each Preference Unit Holder, and the aggregate of the Paid Up Amounts, on the Trustee paying up the Unit Calls; and
- (d) the Paid Up Amounts of each Preference Unit Holder, and the aggregate of the Paid Up Amounts, prior to the Trustee paying up the Unit Calls.

Schedule 4

Reserve Decisions (Clauses 1.2 and 19.1)

The following powers and discretions of the Trustee are **Reserve Decisions** for the purposes of **clause 19.1**:

Item	Summary description	Prescribed Majority*	Approval of Ordinary Unit Holder required? Yes / No	Aurizon Preference Unit Holder participation? Yes / No
(a)	any issue of Ordinary Units other than to the Ordinary Unit Holder, Aurizon Network or a Related Body Corporate of Aurizon Network	Special Majority	Yes	Yes
(b)	any cancellation or issue of Units except for any issue or cancellation of Units which is expressly provided for under the Trust Deed or this Deed	Unanimous Agreement	Yes	Yes
(c)	any material amendment or modification of this Deed except for any material amendment or modification which is expressly provided for under this Deed	Unanimous Agreement	Yes	Yes

Item	Summary description	Prescribed Majority*	Approval of Ordinary Unit Holder required? Yes / No	Aurizon Preference Unit Holder participation? Yes / No
(d)	any material amendment or modification of a Transaction Document (other than this Deed) except for any material amendment or modification which is expressly provided for under the relevant Transaction Document	Unanimous Agreement	Yes	No
(e)	any waiving of a material right of the Trustee under this Deed. To avoid doubt, this does not include acceptance of payments after the due date, or waiving a requirement for the provision of a Bank Guarantee	Special Majority	Yes	Yes
(f)	any waiving of a material right of the Trustee under a Transaction Document (to avoid doubt, this does not include acceptance of payments after the due date, or waiving provision of a Bank Guarantee or a Construction Agreement Guarantee)	Special Majority	No	(a) Subject to (b) , no. (b) Yes, in respect of the Unit Holder's Deed.

Item	Summary description	Prescribed Majority*	Approval of Ordinary Unit Holder required? Yes / No	Aurizon Preference Unit Holder participation? Yes / No
(g)	assignment or novation of any rights or obligations of the Trustee under a Transaction Document (other than as provided for under clause 11.6(b))	Unanimous Agreement	Yes	Yes
(h)	transfer of all or any part of the Trustee's title to the "Leased Extension Infrastructure" (as defined in the Extension Infrastructure Sub-Lease) except for any transfers expressly permitted or required under the Extension Infrastructure Sub-Lease	Unanimous Agreement	Yes	No
(i)	instituting any suit, action or proceeding against Aurizon Network or a Related Body Corporate of Aurizon Network arising out of or in connection with any Transaction Document (subject to the dispute resolution provisions contained in such Transaction Document)	Special Majority	No	No
(j)	instituting any suit, action or proceeding against a person (other than Aurizon Network or a Related Body Corporate of	Special Majority	No	Yes

Item	Summary description	Prescribed Majority*	Approval of Ordinary Unit Holder required? Yes / No	Aurizon Preference Unit Holder participation? Yes / No
	Aurizon Network) arising out of or in connection with any Transaction Document (subject to the dispute resolution provisions contained in such Transaction Document)			
(k)	consenting to a "discretionary variation"(as defined in the Construction Agreement) under the Construction Agreement	Special Majority of Affected Users	No	Yes
(l)	the Trustee electing to form a Consolidated Group	Unanimous Agreement	Yes	Yes
(m)	nominating or agreeing an expert for the purposes of item 2 of schedule 2 to the Extension Infrastructure Sub-Lease	Special Majority	No	No
(n)	consenting to a variation of the Infrastructure Lease Disposal Clause (as that term is defined in the Integrated Network Deed)	Special Majority	No	No
(o)	the Trustee redeeming the Preference Units on or after the Zero Value Date and before	Unanimous Agreement	Yes	Yes

Item	Summary description	Prescribed Majority*	Approval of Ordinary Unit Holder required? Yes / No	Aurizon Preference Unit Holder participation? Yes / No
	the Final Redemption Date			
(p)	the Trustee exercising its right to terminate the Extension Infrastructure Sub-Lease following the Zero Value Date.	Unanimous Agreement	Yes	Yes

* subject to the last column of the table in this **schedule 4** in respect of the participation of an Aurizon Preference Unit Holder

Schedule 5

Reserve Powers (Clauses 1.1 and 19.2)

1 Participation in Reserve Powers under Construction Agreement

CA clause refers to the clause of the Construction Agreement.

CA clause	Summary description	Prescribed Majority*	Aurizon Preference Unit Holder participation (to the extent they qualify as an Affected User): Yes / No
[35]	Preference Unit Holders may require the Trustee either to grant or to withhold consent to a "discretionary variation" (as defined in the Construction Agreement)	Special Majority of Affected Users	Yes
[35]	Preference Unit Holders may require the Trustee to request a "discretionary variation" (as defined in the Construction Agreement).	Special Majority of Affected Users	Yes

* subject to the last column of the table in this **schedule 5** in respect of the participation of an Aurizon Preference Unit Holder

2 Participation in Reserve Powers under the Rail Corridor Agreement

RCA clause refers to the clause of the Rail Corridor Agreement.

RCA clause	Summary description	Prescribed Majority*	Aurizon Preference Unit Holder participation (to the extent they qualify as an Affected User): Yes / No
[3.3]	Preference Unit Holders may require the Trustee to propose a "Proposed Variation" (as defined in the Rail Corridor Agreement) (and, if so, will provide the Trustee with the text of that "Proposed Variation").	Special Majority of all Preference Unit Holders	Yes

* subject to the last column of the table in this **schedule 5** in respect of the participation of an Aurizon Preference Unit Holder

Schedule 6

Not used

Schedule 7

Revised UHP Calculation Methodology and Affected User Calculation Methodology (Clause 1.1)

1 Definitions

1.1 Definitions for items 2 and 3

In this **schedule 7** for **items 2 and 3**:

Segment Unit Holder for a Segment means a Unit Holder for that Segment in **item 2** of this **schedule 7** (as varied in accordance with **item 2.3** of this **schedule 7** from time to time).

Unit Holder's Segment Proportion for a Segment Unit Holder for a Segment means that Unit Holder's proportion for that Segment specified in **item 2** of this **schedule 7**.

Unit Holder's Segment Share for a Segment Unit Holder for a Segment means for the purpose of calculating that Unit Holder's Total Share for the purpose of the Revised UHP Calculation Methodology, the amount which is the Unit Holder's Segment Proportion for that Segment of the Estimated Final Trust Costs for that Segment.

Unit Holder's Total Share for a Unit Holder means the amount which is the sum of that Unit Holder's Segment Share for each Segment for which that Unit Holder is a Segment Unit Holder.

1.2 Definitions for item 4

In this **schedule 7** for **item 4**:

Affected User's Segment Proportion for an Affected User for an Affected Segment, means that Affected User's proportion for that Segment as specified in **item 2** of this **schedule 7** (as varied in accordance with **item 2.3** of this **schedule 7** from time to time).

Affected User's Segment Share for an Affected User for an Affected Segment, means the amount which is the Affected User's Segment Proportion for that Affected Segment of the Contract Sum allocated to that Affected Segment as specified in the Construction Agreement.

Affected User's Total Share for an Affected User means the amount which is the sum of the Affected User's Segment Share(s) for each of the Affected Segments for which it is an Affected User.

2 Segments details

2.1 Segment #1 – [Name of Segment]

Segment Unit Holders for Segment	Unit Holder's Segment Proportion (%)
[insert]	[insert]
[insert]	[insert]

2.2 Segment #2 – [Name of Segment]

Segment Unit Holders for Segment	Unit Holder's Segment Proportion (%)
[insert]	[insert]
[insert]	[insert]

[Drafting note: This item 2 of this schedule 7 is to be determined on a transaction-by-transaction basis. The Unit Holder's Segment Proportions for all Segment Unit Holders for a Segment must equal 100%]

2.3 Revision of Segment Unit Holder's Proportion

If any or all of a Preference Unit Holder's (**Transferor PUH**) Preference Units (**Transferred PUs**) are transferred by the Preference Unit Holder (which, for the purpose of this **item 2.3** of **schedule 7**, includes any sale by the Trustee) under this Deed to a new or existing Preference Unit Holder (**Transferee PUH**), then, with effect on the date that the Transferee PUH becomes the registered holder of the Transferred PUs, the table in this **item 2** of this **schedule 7** for each Segment for which that Transferor PUH is a Segment Unit Holder (**Relevant Segment**) will be varied as follows:

- (a) if the Transferor PUH transferred all of its Preference Units to the Transferee PUH, then the Transferee PUH will be specified as the "Segment Unit Holder for Segment" in each table in this **item 2** of this **schedule 7** for each Relevant Segment in place of the Transferor PUH;
- (b) if the Transferor PUH transferred some (but not all) of its Preference Units to the Transferee PUH, then:
 - (i) the amount calculated in accordance with the following formula for each Relevant Segment will be specified as the Transferor PUH's "Unit Holder's Segment Proportion" in the table for the Relevant Segment in this **item 2** of this **schedule 7**;

$$\frac{\text{RUHS}}{\text{P}} = \text{OUHSP} \times \frac{\text{FPU}}{\text{OPU}}$$

where:

- RUHS = The amount of the Transferor PUH's "Unit Holder's Segment Proportion" to be specified in the table for the Relevant Segment in this **item 2** of **schedule 7**
- OUHS = The amount of the Transferor PUH's "Unit Holder's Segment Proportion" specified in the table for the Relevant Segment in this **item 2** of this **schedule 7** immediately prior to the variation under this **item 2.3** of this **schedule 7** taking effect
- FPU = The number of Preference Units held by the Transferor PUH immediately after the Transferee PUH becomes the registered holder of the Transferred PUs
- OPU = The number of Preference Units held by the Transferor PUH immediately prior to the Transferee PUH becoming the registered holder of the Transferred PUs
- (ii) if the Transferee PUH is not a Segment Unit Holder for a Relevant Segment immediately prior to the Transferee PUH becoming the registered holder of the Transferred PUs, then:
- (A) the Transferee PUH will be specified as a "Segment Unit Holder for Segment" in the table for each Relevant Segment in this **item 2** of this **schedule 7**; and
- (B) the amount calculated in accordance with the following formula for each Relevant Segment will be specified as the Transferee PUH's "Unit Holder's Segment Proportion" in the table for the Relevant Segment in this **item 2** of this **schedule 7**:

$$\text{UHSP} = \text{OUHSP} \times \frac{\text{OPU} - \text{FPU}}{\text{OPU}}$$

where:

- UHSP = The amount of the Transferee PUH's "Unit Holder's Segment Proportion" to be specified in the table for the Relevant Segment in this **item 2** of **schedule 7**
- OUHSP = The amount of the Transferor PUH's "Unit Holder's Segment Proportion" specified in the table for the Relevant Segment in this **item 2** of this **schedule 7** immediately prior to the variation under this **item 2.3** of this **schedule 7** taking effect

- FPU = The number of Preference Units held by the Transferor PUH immediately after the Transferee PUH becomes the registered holder of the Transferred PUs
- OPU = The number of Preference Units held by the Transferor PUH immediately prior to the Transferee PUH becoming the registered holder of the Transferred PUs

- (c) if the Transferee PUH is already a Segment Unit Holder for a Relevant Segment immediately prior to the Transferee PUH becoming the registered holder of the Transferred PUs, then the amount to be specified as the Transferee PUH's "Unit Holder's Segment Proportion" for that Relevant Segment will be the amount of the Transferee PUH's "Unit Holder's Segment Proportion" for the Relevant Segment immediately prior to Transferee PUH becoming the registered holder of the Transferred PUs plus the amount of the Transferee PUH's "Unit Holder's Segment Proportion" for the Relevant Segment calculated in accordance with the formula specified in **item 2.3(b)(ii)(B)** of this **schedule 7** (assuming **item 2.3(b)(ii)(B)** of this **schedule 7** applied).

3 Revised UHP Calculation Methodology

For the purpose of **clause 8.2**, the Revised Unit Holder's Proportion for each Preference Unit Holder is to be calculated in accordance with the following formula:

$$\text{RUHP} = \frac{\text{UHTS}}{\text{TEFPCE}}$$

where:

- RUHP = The Revised Unit Holder's Proportion for the relevant Preference Unit Holder
- UHTS = The Unit Holder's Total Share for the relevant Preference Unit Holder
- TEFPC E = The Total Estimated Final Trust Costs for the Extension E

4 Affected User Calculation Methodology

For the purpose of **clause 19.4**, the Affected User's Unit Holder's Proportion for each Affected User is to be recalculated in accordance with the following formula:

$$\text{AUUHP} = \frac{\text{AUTS}}{\text{SAUTS}}$$

where:

- AUUHP = The Affected User's Unit Holder's Proportion for the relevant Affected User
- AUTS = The Affected User's Total Share for the relevant Affected User as at the time that the Trustee is required to exercise the Reserve Decision or Reserve Power
- SAUTS = The sum of the Affected User's Total Shares for each of the Affected Users

Schedule 8

Tax Policy (Clauses 1.1 and 16.2)

[**General note:** In the event that favourable private binding tax rulings have not been obtained from the Commissioner in respect of Aurizon Network, the Trustee and the Preference Unit Holders before execution of the Deed, this Tax Policy will be updated to describe the process for obtaining such rulings.]

1 Definitions

In this **schedule 8** each capitalised term has the meaning given to that capitalised term below. Capitalised terms not set out below that are defined in the body of this Deed have the same meaning when used in this schedule.

Capitalised term	Meaning
Capital Works	Assets that satisfy section 43-20 of ITAA97
Commissioner	The Commissioner of Taxation of the Commonwealth of Australia
Depreciating Asset	An asset that satisfies section 40-30 of ITAA97
Effective Life Taxation Ruling	The most recent public ruling issued by the Commissioner setting out the Commissioner's determination of the effective life of depreciating assets which, as at the date of this document, is <i>Taxation Ruling TR 2012/2</i>
ITAA36	<i>Income Tax Assessment Act 1936</i> (Cth)
ITAA97	<i>Income Tax Assessment Act 1997</i> (Cth)
Material Tax Adjustment	An adjustment in relation to Tax that would, or is reasonably likely to, result in the Net Income of the Trust for a Financial Year, or the aggregate of the Net Income if the circumstances relate to multiple Financial Years, being increased by at least 5% of the Contract Sum [Drafting note: Net Income is a gross number. 5% of Contract Sum equates to 1.5% in cash tax terms (assuming a 30% corporate tax rate).]
Material Tax	A dispute between a Governmental Agency imposing or

Dispute	administering a Tax and the Trustee that, if resolved in accordance with the Governmental Agency's position in that dispute, would result in a Material Tax Adjustment
Material Tax Enquiry	Any material request for information, risk review or audit procedure initiated by the Australian Taxation Office
Material Tax Matter	An act, event or circumstance which will or is reasonably likely to give rise to a Material Tax Adjustment or material non-compliance with a Tax Law and any tax matter or change in law which could be reasonably expected to result in a Material Tax Adjustment
Net Income	Means "net income" in relation to a trust estate under section 95 of ITAA36
Tax Law	The same meaning given in the Trust Deed and, in addition, includes: (a) case law where the principal subject matter is Tax; and (b) any private binding rulings or other legally or administratively binding advice issued by a Governmental Agency imposing or administering a Tax to the Trustee (in its capacity as trustee of the Trust), that is applicable to the relevant income year or Tax period
Tax Return	The same meaning given in the Trust Deed

2 Purpose

2.1 Background

In order to comply with Tax Law and good tax management practice, the Trustee may need to undertake, or procure the undertaking of, some or all of the following Tax compliance and compliance-related actions (collectively '**Tax Compliance**') in respect of the Trust:

- (a) lodgement of Tax Returns;
- (b) lodgement of notices, elections, forms and similar documents relating to Tax with Governmental Agencies;
- (c) submission of requests to Governmental Agencies that they exercise certain discretion(s) relating to Tax;
- (d) lodgement and provision of investor-related Tax information, including distribution statements;
- (e) payment to the relevant Governmental Agency of any Tax assessed to the Trustee in respect of the Net Income of the Trust or required to be withheld and remitted to the relevant Governmental Agency;

- (f) issue of correspondence to, and review of correspondence from, Governmental Agencies imposing or administering Tax;
- (g) provision of Tax-related information to Government Agencies where required by a Tax Law;
- (h) application to the Commissioner for private binding rulings or other legally or administratively binding advice;
- (i) lodgement of requests for amended assessments, objecting to assessments or other decisions by a Governmental Agency in relation to the application of a Tax Law and prosecuting any dispute arising therefrom; and
- (j) consultation with appropriately qualified external tax advisers, as required.

2.2 **Objective**

The objective of this Tax Policy is to specify how the Trustee will conduct Tax Compliance in respect of the Trust.

3 **Conduct of Tax Compliance**

3.1 **General**

The Trustee shall conduct all Tax Compliance in respect of the Trust in accordance with the requirements of **clauses 3.2 to 3.8** inclusive of this **schedule 8**.

3.2 **Tax Risk Strategy**

The Tax risk management strategy for the Trust is to:

- (a) conduct Tax Compliance in a timely manner;
- (b) insofar as reasonably practicable or considered appropriate by the Trustee, co-operate with Governmental Agencies imposing or administering Tax;
- (c) operate in good faith and transparently in dealings with Governmental Agencies imposing or administering Tax;
- (d) comply with the Tax Law;
- (e) adopt positions on Tax matters that are at a minimum reasonably arguable. A position will be reasonably arguable if the Trustee forms the view, acting reasonably and after taking into account the advice of appropriately qualified external tax advisers where considered necessary, that the position would more likely than not prevail if adjudicated by a court;
- (f) assess the acceptability of Tax risk having regard to the avoidance of any detrimental impacts on the goodwill and reputation of the Preference Unit Holders, the Ordinary Unit Holder and the Trustee;

- (g) where considered appropriate, defend any position adopted by the Trustee, including lodging requests for amended assessments, objecting to assessments or decisions by a Governmental Agency in relation to the application of a Tax Law and prosecuting any dispute arising therefrom;
- (h) engage appropriately qualified external Tax advisers, where appropriate; and
- (i) ensure that the Trust does not become a member of any tax consolidated group whilst Preference Units are on issue,

subject to such action being consistent with the Trustee's fiduciary obligations.

3.3 **Compliance with Tax Law**

The Trustee must comply with the Tax Law. In doing so, the Trustee must act reasonably in all circumstances, including having regard to:

- (a) the effect of Tax Compliance on the future Tax position of the Preference Unit Holders, the Ordinary Unit Holder and the Trustee; and
- (b) the views of Governmental Agencies imposing or administering Tax as expressed in public rulings, determinations and interpretative decisions that are applicable to the relevant income year or Tax period (as appropriate).

3.4 **Treatment of Fixed Assets in Tax Compliance**

For each class of assets that the Trustee owns or has a right to use or possess, the Trustee must carry out, or procure the carrying out of, the following Tax Compliance matters in accordance with the income Tax Law:

- (a) determine whether the class of asset is comprised of Depreciating Assets, Capital Works or another class of asset in accordance with the income Tax Law;
- (b) in respect of each class of asset that is Capital Works, determine whether the Trustee can deduct the cost of those assets and, if so, determine the amount of the deduction for the purposes of Division 43 of ITAA97;
- (c) in respect of each class of asset that is a Depreciating Asset, determine whether the Trustee is the holder of those assets and, if so, determine the cost of those assets for the purposes of Division 40 of ITAA97;
- (d) in respect of each asset that is a Depreciating Asset, determine whether the asset will be treated as either a separate Depreciating Asset or a component of another Depreciating Asset, having regard to the facts and degree to which the asset is capable of functioning by itself, its location in the railway network of which it forms part and other factors identified in the Tax Law;
- (e) in respect of each asset that is a Depreciating Asset, determine when the asset is installed and ready for use on the basis of information

provided to the Trustee by Aurizon Network under the Construction Agreement;

- (f) in respect of each asset that is a Depreciating Asset, determine the useful life of the asset. Where the Trustee considers that the effective life for that asset as determined by the Commissioner, as set out in an Effective Life Taxation Ruling (“**Safeharbour Effective Life**”), accurately reflects the useful life of the asset, the Trustee shall adopt the useful life specified in the Effective Life Taxation Ruling. Where the Trustee considers otherwise, the Trustee may self-assess the effective life of the asset provided this life is not longer than the Safeharbour Effective Life;
- (g) in respect of each asset that is a Depreciating Asset, apply the ‘diminishing value method’ set out in section 40-72 of ITAA97 to determine the decline in value of that asset (or class of assets) of the Trust to the extent allowed under the income Tax Law;
- (h) maintain a register that supports any deductions claimed by the Trust under Division 40 and Division 43 of ITAA97; and
- (i) in respect of each class of asset that comprises Depreciating Assets, review and, as necessary, adjust the useful life applied to those assets to reflect any reassessment of its useful life due to:
 - (i) changed circumstances relating to the nature of the use of the asset under subsection 40-110(1) of ITAA97, or
 - (ii) where otherwise permitted by section 40-110 of ITAA97.

3.5 **Taxation of Financial Arrangements Elections**

- (a) If, on the Commencement Date, Division 230 of the ITAA97 does not apply to the financial arrangements of the Trust, the Trustee will make any election available to it for Division 230 of the ITAA97 to apply to its financial arrangements.
- (b) The Trustee will not, without the prior written approval of the Preference Unit Holders and the Ordinary Unit Holder, make a ‘tax-timing method election’ under any of the following sections of ITAA97:
 - (i) section 230-210 (Fair value election);
 - (ii) section 230-255 (Foreign exchange retranslation election);
 - (iii) section 230-315 (Hedging financial arrangement election); or
 - (iv) section 230-395 (Election to rely on financial reports).

3.6 **Overs and Unders**

Where permitted by the income Tax Law or the administrative practices of the Commissioner, if there is a difference between the Net Income of the Trust included in the Trust’s income Tax Return and the total of Net Income amounts notified to Preference Unit Holders for an income year, the Trustee may adjust a subsequent year’s Net Income and the total of all taxable components

advised as being distributed to unit holders for that subsequent year by the 'over or under' distribution. Any such adjustment will be made in the Tax year in which the difference has been identified regardless of the Tax year in which the difference occurred.

3.7 **Management of a Material Tax Dispute and Material Tax Enquiry**

- (a) If the Trustee becomes aware of a Material Tax Dispute or Material Tax Enquiry, the Trustee will, in relation to the Material Tax Dispute or Material Tax Enquiry:
- (i) notify the Preference Unit Holders and the Ordinary Unit Holder and provide reasonable particulars;
 - (ii) brief external Tax advisers and consider their advice when determining any action proposed or not proposed to be taken;
 - (iii) consult with the Preference Unit Holders and the Ordinary Unit Holder as to any action proposed or not proposed to be taken, including any proposal to accept, compromise, pay, agree to arbitrate, settle or admit liability in relation to the Material Tax Dispute or Material Tax Enquiry; and
 - (iv) provide Preference Unit Holders with an opportunity to submit comments to the Trustee in relation to the Material Tax Dispute within a period set by the Trustee (acting reasonably) and notified to the Preference Unit Holders having regard to the circumstances of the Material Tax Dispute or Material Tax Enquiry.
- (b) If one or more Preference Unit Holders submit comments to the Trustee in relation to the Material Tax Dispute or Material Tax Enquiry within the period contemplated by **clause 3.7(a)(iv)** of this **schedule 8**, the Trustee will consider such comments when determining any action proposed or not proposed to be taken referred to in **clause 3.7(a)(iii)** of this **schedule 8**.
- (c) For the avoidance of doubt it is expressly provided that consultation under and for the purposes of **clause 3.7(a)(iii)** of this **schedule 8** should, where feasible, occur with a view to preventing occurrence of a Material Adverse Change or a Material Tax Enquiry and without derogation to the processes in **clause 2.4** of this Deed.

3.8 **Record Management**

The Trustee must, for the period required under Tax Law retain and preserve:

- (a) all business records (including any advice provided by external Tax advisers) used to:
- (i) prepare Tax Returns, accounts and other financial statements; or
 - (ii) comply with, and otherwise discharge its obligations pursuant to, Tax Law; and

- (b) records of every act, transaction, event or circumstance that could reasonably be expected to be relevant to determining whether the Trust has made a 'capital gain' or 'capital loss' from a 'CGT event', as those terms are defined in the ITAA97.

3.9 **Availability of records**

- (a) Subject to **clause 3.9(b)** of this **schedule 8**, a Preference Unit Holder may request in writing that the Trustee provide copies of the records contemplated by **clause 3.8** of this **schedule 8 (Tax Records Notice)** and the Trustee must provide copies of those records in a reasonable time, except where the Trustee believes (acting reasonably) such records are the subject of client legal privilege or similar administrative concession and the granting of access may waive that privilege or concession.
- (b) The Preference Unit Holder may only issue a Tax Records Notice if:
 - (i) the Preference Unit Holder does not hold or has not previously been provided with the record;
 - (ii) it is accompanied by evidence that 50% (by number) of the Preference Unit Holders (excluding Preference Unit Holders comprising Aurizon Network or a Related Body Corporate of Aurizon Network) have agreed to issue the Tax Record Notice; and
 - (iii) the form and content of the request is reasonable having regard to the administrative burden placed upon the Trustee in responding to such request.
- (c) If the Trustee is required to provide records to a Preference Unit Holder under **clause 3.9(a)** of this **schedule 8**, the Trustee must also provide copies of those records to all other Preference Unit Holders.
- (d) **Clauses 3.9(b)(ii) and 3.9(b)(iii)** of this **schedule 8** do not apply to a Tax Records Notice provided to the Trustee by a Preference Unit Holder if:
 - (i) the Tax Records Notice is accompanied by evidence reasonably satisfactory to the Trustee that the records are relevant to a review, audit or dispute initiated by a Governmental Agency imposing or administering Tax in relation to the Preference Unit Holder; or
 - (ii) the records that are the subject of the Tax Records Notice have been previously provided to all other Preference Unit Holders. For the avoidance of doubt, **clause 3.9(b)(i)** of this **schedule 8** still applies to such Tax Records Notices.

3.10 **Material Tax Matters and changes in Tax Law**

- (a) If:

- (i) a Material Tax Matter arises; or
- (ii) without limiting **clause 2.4** of this Deed, a change in Tax Law is announced or there is a change in the interpretation of a Tax Law by a Court or Governmental Agency that may have a material impact on the Tax status of the Trust,

a Preference Unit Holder may give notice of that fact to the Trustee, in which case the Trustee must:

- (iii) within a reasonable time, give the Preference Unit Holders notice of that fact and provide reasonable particulars, including any advice in relation to the Material Tax Matter or change in Tax Law or its interpretation obtained by the Trustee from external Tax advisers, except where the Trustee believes (acting reasonably) such advice is the subject of client legal privilege or similar administrative concession and the granting of access to that advice may waive that privilege or concession; and
 - (iv) as soon as practicable after the notice referred to in **clause 3.10(a)(iii)** of this **schedule 8**, call a meeting of the Preference Unit Holders to discuss the Material Tax Matter or the change in Tax Law or its interpretation and its potential impact on the Tax status of the Trust.
- (b) In determining the impact of a Material Tax Matter on the Preference Unit Holders or the change in Tax Law or its interpretation on the Tax status of the Trust and any action proposed or not proposed to be taken in relation to the administration of the Tax Policy, the Trustee will take into account any advice obtained by the Trustee from external taxation advisers and submissions made by Preference Unit Holders in writing or at the meeting referred to in **clause 3.10(a)(iv)** of this **schedule 8**.
- (c) This **clause 3.10** of this **schedule 8** does not apply to any election by the Trustee referred to in **clause 3.5** of this **schedule 8** to have Division 230 of the ITAA97 to apply to its financial arrangements

3.11 Breach of the Tax Policy

- (a) If, in the opinion of the Trustee (acting reasonably), there has been non-compliance with this Tax Policy and that non-compliance has resulted in or is reasonably likely to or could reasonably result in a Material Tax Adjustment, the Trustee must:
 - (i) promptly notify the Preference Unit Holders of that fact in writing and provide reasonable particulars; and
 - (ii) within a reasonable time, provide Preference Unit Holders with a proposal to mitigate the impact or potential impact of the non-compliance with the Tax Policy.
- (b) If, after notice has been given in accordance with **clause 3.11(a)(i)** of this **schedule 8**, a Preference Unit Holder requests that the Trustee call

a meeting of the Preference Unit Holders to discuss the non-compliance with the Tax Policy or the proposal referred to in **clause 3.11(a)(ii)** of this **schedule 8**, the Trustee must promptly call such a meeting.

- (c) In determining the impact of the non-compliance with the Tax Policy and any action proposed or not proposed to be taken in relation to the administration of the Tax Policy, the Trustee will take into account any advice obtained by the Trustee from external taxation advisers and submissions made by Preference Unit Holders in writing or at the meeting referred to in **clause 3.11(b)** of this **schedule 8**.

Schedule 9

Security Documentation (Clauses 1.2 and 4.2)

[Drafting note: *The Security Documentation is required to be entered into in order to:*

- (a) *ensure that the Trustee has an unimpeded right to sell the Sale Assets;*
- (b) *address any (1) insolvency risk and (2) administration risk as regards that Preference Unit Holder; and*
- (c) *regulate priority vis-a-vis any competing securities held by that Preference Unit Holder's financiers over any or all of the Sale Assets.*

The form of the Security Documentation to be executed by a Preference Unit Holder will be agreed by the parties prior to the execution of this Deed and must be included in this schedule. The Security Documentation will need to comply with the principles set out in this schedule 9.]

1 General

- (a) Where appropriate, defined terms in the Security Documentation should mirror those in this Deed.
- (b) Any representations, warranties or undertakings which are required to be included in any Security Documentation shall reflect (to the extent to which the subject matter of such representation, warranty and undertaking is the same as the corresponding representation, warranty and undertaking in this Deed) the commercial arrangements set out in this Deed (except to the extent that it is referred to below or is necessary to include any further provisions (or deviate from those commercial arrangements contained in this Deed) in order to protect or preserve the security granted to the Trustee).

2 Equitable Mortgage of Units (EMU)

An EMU granted by each Preference Unit Holder in favour of the Trustee in respect of all present and future Units in the Trust held by the Preference Unit Holder on the basis that:

- (a) the security is given to secure the performance of the obligations of the Preference Unit Holder under the Transaction Documents, consistent with **clause 4.2** of this Deed;

- (b) the charged property will be limited to secured property (**Secured Property**) comprising:
- (i) all present and future Units in the Trust held by the Preference Unit Holder (**mortgaged Units**); and
 - (ii) any present or future right of a Preference Unit Holder arising from a mortgaged Unit to acquire (by purchase or otherwise) any property from the Trustee including any additional marketable securities, whether units, shares (bonus or otherwise), warrants, options, notes, convertible securities or otherwise and however that right arises.
- (c) the Trustee will be required to discharge the security upon full and final satisfaction of all secured obligations;
- (d) the following representations and warranties in relation to the Units will be incorporated:
- (i) confirmation as to the legal and beneficial ownership of the Units and all other Secured Property and no trusts other than as disclosed in writing to the Trustee;
 - (ii) confirmation that there are no other encumbrances over the Secured Property other than encumbrances which are subject to the Priority Deed; and
 - (iii) confirmation that there are no agreements in force which otherwise restrict the transfer of any Units or any of the other Secured Property on enforcement;
- (e) exercise of rights with respect to the Units, such as entitlement to dividends, distributions, voting rights, appointment of proxies and authorised representatives, will be for the Preference Unit Holder unless the security has become enforceable;
- (f) the following further undertakings will be incorporated:
- (i) title documents to be provided to the Trustee (in order to perfect the security);
 - (ii) the Preference Unit Holder to perform its obligations under the Transaction Documents;
 - (iii) no other security to be given over the Units or any other Secured Property, other than security which is subject to the Priority Deed;
 - (iv) within a reasonable time following request by the Trustee, the Preference Unit Holder to provide full details of the Secured Property;
 - (v) within a reasonable time following request by the Trustee, the Preference Unit Holder to provide any other information in the possession or under the control of the Preference Unit Holder

- which in the Trustee's reasonable opinion is relevant to the Secured Property;
- (vi) on being notified of it, the Preference Unit Holder to provide full details of any compensation event in respect of any of the Secured Property;
 - (vii) the Preference Unit Holder to promptly pay all taxes (other than contested taxes) in respect of the Secured Property;
 - (viii) the Preference Unit Holder to duly comply with its obligations in relation to the Secured Property, including under any encumbrance over the Secured Property, any law applicable to the Secured Property and any lawful direction from any Governmental Agency; and
 - (ix) the Preference Unit Holder to institute or defend any legal proceedings which the Trustee may reasonably require to protect the Secured Property.
- (g) the EMU will be enforceable only while specified trigger events are subsisting (such as in the event of insolvency or other default as specified in **clause 7.3** of this Deed); and
 - (h) such other customary provisions are incorporated relating to the appointment of receivers upon enforcement, the powers of any receivers, a power of attorney in favour of the Trustee (exercisable only when the EMU is enforceable), perfection of the security and further assurances, application of enforcement proceeds, costs and expenses and assignment.

3 Specific Security Agreement (SSA)

- (a) An SSA granted by each Preference Unit Holder in favour of the Trustee, such security to be in respect of, and attach to the Preference Unit Holder's present and future rights in respect of its Unit Holder Loans (where such Unit Holder Loans have not yet been converted into Units).
- (b) The SSA will be prepared on the basis that:
 - (i) the security is given to secure the performance of the obligations of the Preference Unit Holder under the Transaction Documents, consistent with **clause 4.2** of this Deed;
 - (ii) the secured property will be limited to the Unit Holder Loans;
 - (iii) the Trustee will be required to discharge the security upon full and final satisfaction of all secured obligations;
 - (iv) the following representations and warranties in relation to the Unit Holder Loans are incorporated:

- (C) confirmation as to the legal and beneficial ownership of the Unit Holder Loans and no trusts other than as disclosed in writing to the Trustee;
 - (D) confirmation that there are no other encumbrances over the Unit Holder Loans other than encumbrances which are subject to the Priority Deed;
 - (E) confirmation that there are no agreements in force which otherwise restrict the transfer of any Unit Holder Loans on enforcement;
 - (F) confirmation as to the legality, validity and enforceability of the Unit Holder Loans; and
 - (G) confirmation that there is no breach or default or any asserted or threatened assertion of any right of termination or repudiation or any claim made under or in connection with the Unit Holder Loans other than as disclosed in writing to, and accepted by, the Trustee;
- (v) exercise of rights with respect to the Unit Holder Loans, such as rights to amend, vary, grant waivers etc under the Trust Deed or Unit Holders Deed (as applicable), will be for the Preference Unit Holder unless the security has become enforceable;
 - (vi) an undertaking will be incorporated that no other security to be given over the Unit Holder Loans, other than security which is subject to the Priority Deed;
 - (vii) the SSA will be enforceable only while specified trigger events are subsisting (such as in the event of insolvency or other default as specified in **clause 7.3** of this Deed); and
 - (viii) such other customary provisions are incorporated relating to the appointment of receivers upon enforcement, the powers of any receivers, a power of attorney in favour of the Trustee (exercisable only when the SSA is enforceable), perfection of the security and further assurances, application of enforcement proceeds, costs and expenses and assignment.

4 Featherweight general security agreement

A featherweight general security agreement granted by the Preference Unit Holder in favour of the Trustee over all the Preference Unit Holder's assets (exercisable only upon the appointment of an administrator to the Preference Unit Holder). The purpose of this security is solely to ensure that the Trustee is not prevented from enforcing the EMU and SSA due to the moratorium on enforcement of security following the appointment of an administrator. The security is to be prepared in a manner consistent with this overriding principle, so this security would (among other things):

- (a) be expressed to rank behind any other security, including the EMU and the SSA and any security in favour of a third party financier;
- (b) not prohibit any dealings in the secured property (other than the secured property subject to the EMU and the SSA);
- (c) not contain any substantive representations or undertakings; and
- (d) secure only a fixed nominal amount, to preclude the Trustee or a receiver appointed by the Trustee from obtaining unintended benefit from this security.

5

Priority deed

- (a) A priority deed between the Preference Unit Holder, the Trustee and any financier of the Preference Unit Holder (the **Unitholder Financier**) whose security attaches to the assets the subject of the EMU and SSA (the **Secured Assets**) and which:
 - (i) restricts the rights of the Unitholder Financier to enforce its security over the Secured Assets without the consent of the Trustee (including customary non-compete provisions); and
 - (ii) gives the Trustee priority as regards the Sale Proceeds.
- (b) The Trustee will not be required to obtain the consent of the Unitholder Financier in relation to any proposed assignment of the Secured Assets by the Trustee pursuant to enforcement of the EMU and/or the SSA.
- (c) This priority deed will be prepared on the basis of the priority outlined above and that:
 - (i) the Trustee and the Unitholder Financier each consent to the creation of each security by the Preference Unit Holder;
 - (ii) general representation and warranties by the Trustee and the Unitholder Financier will be included as to:
 - (A) ownership of its interest under the securities free from any encumbrance; and
 - (B) whether it has received any notice of default under its securities;
 - (iii) general undertakings by the Trustee and the Unitholder Financier will be included as to:
 - (A) the possession of any title documents (which are to be held by the Trustee unless the Unitholder Financier is enforcing its security with the consent of the Trustee); and
 - (B) payment of any proceeds with respect to enforcement in accordance with the priority outlined above;

- (iv) the Trustee and the Unitholder Financier will be free to determine the timing and manner of enforcement (subject to consent requirements described above); and
- (v) the Unitholder Financier will undertake to advise of any event of default under its finance documents; and
- (d) other customary provisions relating to costs and expenses and a restriction on assignment of the securities unless the relevant assignee also agrees to be bound by the priority arrangements.

[Drafting note: *The parties may consider on a transaction-by-transaction basis whether the priority deed should include an additional provision which permits a Unitholder Financier to step-in and cure Unit Holder Default under a Transaction Document and as a result of that step-in to transfer all (and not part) of the Preference Units of the Defaulting Unit Holder in accordance with clause 11 of this Deed.*]

Schedule 10

Terms of issue of Preference Units

1 Introduction

This document summarises the terms of issue of Preference Units in the **[Name of Trust] (Trust)** constituted under the Trust Deed entitled “*User Funding – Trust Deed of [Name of Trust]*”, as amended from time to time.

“*User Funding – [Name of Trust] Subscription and Unit Holders Deed*” (**Unit Holders Deed**).

Terms defined in the “*User Funding – [Name of Trust] Subscription and Unit Holders Deed*” (**Unit Holders Deed**) have the same meaning in these terms of issue.

It is intended as a summary only and the terms of the Preference Units are as set out in the Trust Deed and this Deed.

[Drafting note: This schedule 10 is to be completed on a transaction-by-transaction basis and to include details of the terms of issue of Preference Units including the Application Price and terms relating to Calls, Distributions, voting and redemption.]

Schedule 11

Monthly reports (clause 15.4)

- (a) Until the monthly report in respect of the Month after the Month in which the Final Certificate is received, each monthly report must contain the following information as at the end of the relevant Month:
- (i) the forecast amounts of:
 - (A) Trust Costs;
 - (B) Trust Administration Costs other than Trust Capital Costs;
 - (C) Trust Capital Recoveries; and
 - (D) the total, being (A) less (B) less (C),by Segment and for all Segments as a total; and
 - (ii) the actual amounts of:
 - (A) Trust Costs;
 - (B) Trust Administration Costs other than Trust Capital Costs;
 - (C) Trust Capital Recoveries; and
 - (D) the total, being (A) less (B) less (C),by month from inception to date, and by Segment and for all Segments as a total.
- (b) Each monthly report must contain the following information as at the end of the relevant Month:
- (i) the forecast amount of Trust Administration Costs other than Trust Capital Costs for the current financial year; and
 - (ii) the actual amounts of Trust Administration Costs other than Trust Capital Costs for the current financial year by month from the first month of that financial year to date.

Executed as a deed.

Executed by **[Independent Trustee]** in)
accordance with section 127 of the)
Corporations Act 2001 (Cth):

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

Date: / /

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

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

Date: / /

Executed by **[Preference Subscriber**)
#1] in accordance with section 127 of)
the *Corporations Act 2001* (Cth):

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

Date: / /

Annexure A

Extension Project Agreement