

QCA Draft Decision

[Independent Trustee] as trustee for the [Name of Trust]

Aurizon Network Pty Ltd

The State of Queensland (represented by the Department administering the *Transport Infrastructure Act 1994* (Qld))

Queensland Treasury Holdings Pty Ltd

User Funding – Integrated Network Deed

[*insert Extension name*]

General drafting note:

This template Integrated Network Deed (**CQCIN IND**) is relevant to SUFA transactions involving the construction of Extension Infrastructure which will form part of the Central Queensland Coal Network (other than the two sections of the North Coast Line

which form part of the Central Queensland Coal Network). DTMR is the Land Lessor, and Queensland Treasury Holdings Pty Ltd is the infrastructure lessor, in respect of the Central Queensland Coal Network (other than the two sections of the North Coast Line which form part of the Central Queensland Coal Network).

If a SUFA transaction will involve the construction of Extension Infrastructure which will form part of either of the two sections of the North Coast Line in respect of which Aurizon Network is railway manager, an Integrated Network Deed for the North Coast Line (**NCL IND**) will be required. DTMR is the land lessor, and Queensland Rail Limited is the infrastructure lessor, in respect of those sections of the North Coast Line.

If a SUFA transaction will involve the construction of Extension Infrastructure which will form part of the Central Queensland Coal Network (other than the two sections of the North Coast Line which form part of the Central Queensland Coal Network) only, the relevant parties will enter into a CQCN IND.

If a SUFA transaction will involve the construction of Extension Infrastructure which will form part of the Aurizon Network-controlled sections of the North Coast Line only, the relevant parties will enter into an NCL IND.

If a SUFA transaction will involve the construction of Extension Infrastructure which will form part of both the Central Queensland Coal Network (other than the two sections of the North Coast Line which form part of the Central Queensland Coal Network) and the Aurizon Network-controlled sections of the North Coast Line, the relevant parties will enter into both a CQCN IND and an NCL IND.

The entry into of an Integrated Network Deed is in the absolute discretion of DTMR and Queensland Treasury Holdings Pty Ltd or Queensland Rail Limited (as applicable) on a transaction-by-transaction basis.

This Deed has been drafted on the basis that the Extension will be solely constructed on land that is the subject of a rail corridor sublease from the State of Queensland to Aurizon Network Pty Ltd that is granted under section 240 of the *Transport Infrastructure Act 1994* (Qld) and is dated 1 July 1995. It will need to be modified to the extent that the Extension is to be constructed on land that is not subject to this sublease. The State of Queensland is not under any obligation to, and makes no representation that it will, acquire, or facilitate the acquisition of, any interest in land for the construction of any Extension.

Contents

Agreed terms.....	1
1 Interpretation.....	1
1.1 Definitions.....	1
1.2 Interpretation.....	6
1.3 Survival.....	7
1.4 Acknowledgement.....	8
2 Condition precedent.....	8
3 Term.....	8
4 Consent by State Parties.....	8
5 Restrictions on Trustee.....	9
6 Extension Infrastructure.....	9
6.1 Assets prior to transfer.....	9
6.2 Extension Infrastructure.....	10
6.3 Excluded Extension Infrastructure.....	11
6.4 Extension Infrastructure not “Infrastructure”.....	11
6.5 Extension Infrastructure not “Railway Assets”.....	11
7 Early termination of Infrastructure Lease where Trust not terminated.....	12
7.1 Application.....	12
7.2 References to Extension Infrastructure.....	12
7.3 Notification of Infrastructure Lease End Date.....	12
7.4 Infrastructure Lease Disposal Clause.....	12
7.5 Disposal process.....	12
7.6 Determination of Percentage Shares.....	13
7.7 Payment of Shares.....	13
8 Expiry of Infrastructure Lease where Trust not terminated.....	14
8.1 Application.....	14
8.2 References to Extension Infrastructure and Other Extension Infrastructure.....	14
8.3 Notification of Expiry Date.....	15
8.4 Register.....	15
8.5 Excluded Extension Infrastructure.....	15
8.6 Infrastructure Lease Dispute Clause.....	16
8.7 Determination of Compensation Amount.....	16
8.8 Determination of Percentage Shares.....	17
8.9 Payment of Shares.....	18
9 Excluded Extension Infrastructure.....	19
9.1 Exercise of right of election.....	19
9.2 Excluded Extension Infrastructure land use rights.....	19
10 Other Integrated Network Deed.....	20
11 Payments under this Deed.....	21
11.1 Interest on overdue payments.....	21

11.2	Method of payment	21
12	No rights of termination	21
13	Disputes	21
13.1	Application	21
13.2	Dispute Notice	22
13.3	Senior executive resolution	22
13.4	Expert determination	22
13.5	Parties to assist Expert	24
13.6	Decision of Expert	24
13.7	Costs	24
13.8	Determination by Court	24
13.9	Injunctive relief	24
13.10	Disputes involving Aurizon Network, Trustee and Other Funders	24
14	Confidentiality	25
14.1	General obligations	25
14.2	Exceptions	25
15	GST	26
15.1	GST to be added to amounts payable	26
15.2	Liability net of GST	26
15.3	Timing of payment of GST Amount	27
15.4	Revenue exclusive of GST	27
15.5	Cost exclusive of GST	27
15.6	Adjustment Event	27
15.7	GST Group	27
15.8	Non-monetary consideration	27
15.9	Definitions	27
16	Assignment	28
16.1	Assignment	28
16.2	Assignment by Land Lessor	28
16.3	Assignment by Infrastructure Lessor	28
16.4	Assignment by Aurizon Network	29
16.5	Assignment by Trustee	32
16.6	Grant of Security by Trustee	32
17	Notices	32
18	Warranties	34
18.1	Warranties	34
18.2	Trustee warranties	34
18.3	Reliance	35
19	General	35
19.1	Entire agreement	35
19.2	No waiver	35
19.3	Rights cumulative	35
19.4	Amendment	35

19.5	Further assurance.....	35
19.6	No merger.....	35
19.7	Severability of provisions.....	35
19.8	Trustee’s limitation of liability.....	36
19.9	Consents.....	36
19.10	Counterparts.....	36
19.11	Relationship of Parties.....	36
19.12	Survival of representations and warranties.....	36
19.13	Enurement.....	36
19.14	Powers of attorney.....	37
19.15	Legal costs.....	37
19.16	Consequential Loss.....	37
20	Governing law and jurisdiction.....	37
21	Duty.....	37
	Schedule 1.....	41
	Schedule 2.....	42
	Schedule 3.....	44
	Schedule 4.....	45

Date

Parties

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

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

**The State of Queensland (represented by the Department administering
the *Transport Infrastructure Act 1994 (Qld)*)** of Level 11, 85 George Street,
Brisbane, Queensland (**Land Lessor**)

Queensland Treasury Holdings Pty Ltd ABN 52 011 027 295 of Level 6, 123
Albert Street, Brisbane, Queensland (**Infrastructure Lessor**)

Background

- A The Trustee wishes to procure the delivery and operation of the Extension.
 - B The Extension Infrastructure will be constructed on land leased by the Land Lessor to Aurizon Network under the Land Lease and in respect of which Aurizon Network grants a licence to the Trustee.
 - C The construction of the Extension Infrastructure will require modifications and/or additions to parts of the infrastructure leased by the Infrastructure Lessor to Aurizon Network under the Infrastructure Lease.
 - D The Extension Infrastructure will be owned by the Infrastructure Lessor and leased to the Trustee under the Extension Infrastructure Head-Lease.
 - E The Trustee will sublease the Extension Infrastructure to Aurizon Network in accordance with the requirements of the Extension Infrastructure Head-Lease.
 - F This Deed regulates the rights of the Parties in respect of the Extension Infrastructure and related assets.
-

Agreed terms

1 Interpretation

1.1 Definitions

In this Deed:

Assets has the meaning given in the Trust Deed.

Business Day means a day other than Saturday, Sunday or a public holiday in Brisbane, Queensland.

Claim includes any claim, demand, liability, cost, expense, damage, loss, proceeding, suit, litigation, action or cause of action, whether judicial or otherwise, and whether arising in contract, tort, under statute or otherwise, of whatever nature, liquidated or unliquidated.

Compensation Amount means the fair market value of, collectively, all of the assets referred to in **clause 8.7(a)**:

- (a) as notified by the Infrastructure Lessor to Aurizon Network, the Trustee and each Other Funder (if any) under **clause 8.7(a)**; or
- (b) if applicable, as otherwise agreed by Aurizon Network, the Trustee, each Other Funder (if any) and the Infrastructure Lessor or as determined by an independent expert in accordance with the procedure referred to in **clause 8.7(b)**.

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

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

but does not include:

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

Data Room means the virtual data room hosted by **[insert]** and made available to the Trustee as at the date of this Deed.

Deed means this deed, including the **schedules**.

Disposal Amount means the amount which, but for **clause 7.8**, the Infrastructure Lessor would have been required to pay to Aurizon Network (or as it directs) under the Infrastructure Lease Disposal Clause.

Dispute has the meaning given in **clause 13.1(a)** and includes:

- (a) a matter referred to an Expert for determination under this Deed; and
- (b) a dispute which is the subject of the dispute resolution process under an Other Integrated Network Deed, if the Trustee is joined to that dispute resolution process in accordance with **clause 13.10**.

Dispute Notice has the meaning given in **clause 13.2**.

Dispute Resolution Process means:

- (a) the dispute resolution process under **clause 13**; and
- (b) if the Trustee is joined to the dispute resolution process under an Other Integrated Network Deed in accordance with **clause 13.10**, the dispute resolution process under the Other Integrated Network Deed.

Effective Date means the date the conditions precedent in **clause Error! Reference source not found.** have been notified by the Trustee and Aurizon Network to the other Parties as being satisfied in accordance with **clause 2(b)** and **2(c)** (respectively).

EPA Conditions Precedent means the conditions precedent contained in the Extension Project Agreement.

Excluded Extension Infrastructure has the meaning given in **clause 8.5(a)**.

Expert has the meaning given in **clause 13.3(b)**.

Expiry Date means the date of the expiration of the "Term" (as defined in the Infrastructure Lease) of the Infrastructure Lease.

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

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

Extension Infrastructure Head-Lease means the agreement entitled "*User Funding – Extension Infrastructure Head-Lease: [insert Extension name]*" between the Infrastructure Lessor, the Trustee and Aurizon Network entered into on or about the date of this Deed.

Extension Project Agreement means the agreement entitled "*User Funding – Extension Project Agreement: [insert Extension name]*" between the Lessee, the Sublessee and others..

Finance has the meaning given in **clause 16.6(b)**.

Financier has the meaning given in **clause 16.6(b)**.

Governmental Agency means a government or a governmental, semi-governmental or judicial entity or authority including the Commissioner of Taxation and the Australian Taxation Office. It also includes a self-regulatory organisation established under statute or a stock exchange.

Guarantee has the meaning given in the Extension Infrastructure Head-Lease.

Guarantor has the meaning given in the Extension Infrastructure Head-Lease.

Infrastructure Lease means the lease entitled "*Infrastructure Lease*" between the Infrastructure Lessor and Aurizon Network dated 30 June 2010.

Infrastructure Lease Disposal Clause means clause **[insert]** in the copy of the Infrastructure Lease which was disclosed by Aurizon Network to the Trustee in the Data Room as at the date of this Deed.

Infrastructure Lease Dispute Clause means clause [insert] in the copy of the Infrastructure Lease which was disclosed by Aurizon Network to the Trustee in the Data Room as at the date of this Deed.

Infrastructure Lease End Date means the date on which the lease of the infrastructure under the Infrastructure Lease comes to an end for any reason.

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

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

- (a) 2%; and
- (b) the Commonwealth Bank of Australia's reference rate being the "Corporate Overdraft Reference Rate" (monthly charging cycle) quoted by the Commonwealth Bank of Australia on its public website for the last trading day of the previous Month (or in the event that such a rate is not so quoted at or in respect of any relevant date, such other similar rate as is quoted by a major commercial bank as agreed by the Parties or, failing agreement, as determined by an Expert under **clause 13.4**).

Land Lease means the lease of land between the State of Queensland (represented by the Department of Transport and Main Roads), as sublessor, and Aurizon Network Pty Ltd (ABN 78 132 181 116), as sublessee, dated 1 July 1995.

Land Licence has the meaning given in the Extension Infrastructure Head-Lease (and, for the avoidance of doubt, includes the Rail Corridor Agreement).

Law means:

- (a) any statute, regulation or subordinate legislation of the Commonwealth of Australia, the State of Queensland or local or other government in force in the State of Queensland;
- (b) the common law and principles of equity as applied from time to time in the State of Queensland; and
- (c) any code, ruling, guideline, policy or other instrument that is legally binding on the persons to which it applies.

Month means a calendar month.

Notice has the meaning given in **clause 17**.

Other Extension Infrastructure has the meaning given in the Extension Infrastructure Head-Lease.

Other Extension Infrastructure Head-Lease has the meaning given in the Extension Infrastructure Head-Lease.

Other Funder means a person that leases Other Extension Infrastructure from the Infrastructure Lessor under an Other Extension Infrastructure Head-Lease.

Other Integrated Network Deed means a deed, other than this Deed, between (among others) the State Parties and Aurizon Network which contains an acknowledgement and agreement in the form of **clause 1.4**.

Parties means collectively Aurizon Network, the Trustee, the Infrastructure Lessor and the Land Lessor, and **Party** means one of them.

Percentage Share means, in respect of each of Aurizon Network, the Trustee and each Other Funder (if any):

- (a) for the purpose of **clause 7**, the percentage calculated in accordance with **item 1** of **schedule 3**:
 - (i) as notified by Aurizon Network to the Trustee and each Other Funder (if any) under **clause 7.7(a)**; or
 - (ii) if applicable, as agreed or determined under the Dispute Resolution Process; and
- (b) for the purpose of **clause 8**, the percentage calculated in accordance with **item 2** of **schedule 3**:
 - (i) as notified by Aurizon Network to the Trustee and each Other Funder (if any) under **clause 8.8(a)**; or
 - (ii) if applicable, as agreed or determined under the Dispute Resolution Process.

Permitted Lien means:

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

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

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

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

Rail Corridor Agreement means an agreement entitled "*User Funding – Rail Corridor Agreement: [insert Extension name]*" between Aurizon Network and the Trustee, substantially in the form shown in **schedule 1**.

Rail Corridor Land means land that, immediately prior to the termination or expiry of the Land Lease, was leased pursuant to the Land Lease.

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

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

- (a) any security interest within the meaning of section 12(1) of the PPSA;
- (b) any thing which gives a creditor priority to other creditors with respect to any asset; and
- (c) retention of title other than in the ordinary course of day-to-day trading and a deposit of money by way of security,

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

Share means, in respect of each of Aurizon Network, the Trustee and each Other Funder (if any):

- (a) for the purpose of **clause 7**, the dollar amount that is calculated by multiplying the Percentage Share for the relevant person by the Disposal Amount; and
- (b) for the purpose of **clause 8**, the dollar amount that is calculated by multiplying the Percentage Share for the relevant person by the Compensation Amount.

State means the State of Queensland but does not include any State bodies which are separate legal entities.

State Parties means collectively the Land Lessor and the Infrastructure Lessor, and **State Party** means one of them.

Sublease has the meaning given in the Extension Infrastructure Head-Lease.

Taxable Supply has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) excluding the reference to section 84-5 of that Act.

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

Transferee Extension Infrastructure Head-Lease has the meaning given in **clause 16.4(d)(i)**.

Transferee Integrated Network Deed has the meaning given in **clause 16.4(c)**.

Trust means the trust constituted under the Trust Deed.

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

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

1.2 Interpretation

The following rules apply unless the context requires otherwise:

- (a) headings are for convenience only and do not affect the interpretation of

this Deed;

- (b) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (c) “includes” means includes without limitation;
- (d) no rule of construction will apply to the disadvantage of one Party on the basis that that Party put forward the documents comprising this Deed;
- (e) words in the singular include the plural and vice versa;
- (f) words importing one gender will include every gender;
- (g) references to clauses and schedules are references to clauses of, and schedules to, this Deed;
- (h) a requirement for a Party to obtain the consent or approval of another Party requires the first Party to obtain the consent or approval in writing; and
- (i) a reference to:
 - (i) a person includes any company, partnership, joint venture, trust, unincorporated association, corporation or other body corporate and a government or statutory body or authority;
 - (ii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified, consolidated, re-enacted or replaced;
 - (iii) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (iv) a right includes a benefit, remedy, discretion and power;
 - (v) time is to local time in Brisbane, Queensland;
 - (vi) \$ or dollars is a reference to Australian currency;
 - (vii) this Deed or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
 - (viii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmission; and
 - (ix) a Party includes that Party’s successors according to law and permitted assigns and any person to whom it novates its rights and obligations.

1.3 Survival

In addition to this **clause 1.3**, the following clauses survive the termination of this Deed: **clauses 1.1, 1.2, 1.4, 7, 8, 11, 13, 14, 15, 17, 18, 19, 20 and 21.**

1.4 Acknowledgement

The Parties acknowledge and agree that this Deed is an "Other Integrated Network Deed" (as defined in an Other Integrated Network Deed).

2 Condition precedent

- (a) This Deed (except for this **clause 2** and **clauses 1, 3, 14, 15, 16, 17, 18, 19, 20** and **21**) is of no force or effect unless and until:
 - (i) Aurizon Network delivers to the Infrastructure Lessor an original copy of each of the Guarantees duly executed by the Guarantor;
 - (ii) the Trustee applies the Initial Unit Call Amount for each Preference Unit Holder in paying up Preference Units under the Unit Holders Deed; and
 - (iii) the EPA Conditions Precedent are either satisfied or waived in accordance with the Extension Project Agreement.
- (b) Aurizon Network must notify the other Parties promptly, and in any event within two Business Days, of the condition precedent in **clause 2(a)(i)** being satisfied.
- (c) The Trustee must notify the other Parties promptly, and in any event within two Business Days, of the conditions precedent in **clauses 2(a)(ii)** and **2(a)(iii)** being satisfied.

3 Term

Subject to **clause 2**, this Deed commences on the date of the Deed and continues until the termination of the Extension Infrastructure Head-Lease in accordance with clause **[11]** of the Extension Infrastructure Head-Lease.

4 Consent by State Parties

- (a) Each State Party consents to each of Aurizon Network and the Trustee:
 - (i) entering into the Rail Corridor Agreement; and
 - (ii) exercising their respective rights, and performing their respective obligations, under the Rail Corridor Agreement.
- (b) Each State Party agrees that Aurizon Network will not be taken to have breached any provision of the Land Lease or the Infrastructure Lease merely by virtue of:
 - (i) Aurizon Network and the Trustee entering into the Rail Corridor Agreement; or
 - (ii) each of Aurizon Network and the Trustee exercising their respective rights, and performing their respective obligations, under the Rail Corridor Agreement.
- (c) Aurizon Network and the Trustee each acknowledges and agrees that the Land Lessor is entitled to exercise such rights as are expressly or

impliedly conferred on it under the Land Lease or this Deed, or are conferred by Law, in relation to the Rail Corridor Land or in relation to any activities undertaken on, or any things that are located on, under or over, Rail Corridor Land.

- (d) Notwithstanding **clause 4(a)**:
- (i) Aurizon Network continues to be bound to comply with all its obligations under the Land Lease, the Infrastructure Lease and the Extension Infrastructure Head-Lease;
 - (ii) the Trustee continues to be bound to comply with all its obligations under the Extension Infrastructure Head-Lease;
 - (iii) both Aurizon Network and the Trustee acknowledge and agree that their rights under the Rail Corridor Agreement are subject and subordinate to the rights of the State Parties under the Land Lease, the Infrastructure Lease and the Extension Infrastructure Head-Lease;
 - (iv) Aurizon Network acknowledges and agrees that any act or omission by it or the Trustee that causes a breach of the Land Lease or the Infrastructure Lease will constitute a breach of the Land Lease or the Infrastructure Lease (as the case may be) on the part of Aurizon Network even if that act or omission is permitted by, or is not prohibited by, the Rail Corridor Agreement;
 - (v) Aurizon Network acknowledges and agrees that any act or omission by it that causes a breach of the Extension Infrastructure Head-Lease will constitute a breach by it of the Extension Infrastructure Head-Lease even if that act or omission is permitted by, or is not prohibited by, the Rail Corridor Agreement; and
 - (vi) the Trustee acknowledges and agrees that any act or omission by it that causes a breach by it of the Extension Infrastructure Head-Lease will constitute a breach of the Extension Infrastructure Head-Lease even if that act or omission is permitted by, or is not prohibited by, the Rail Corridor Agreement.

5 Restrictions on Trustee

The Trustee must not, without the Infrastructure Lessor's prior written approval, terminate, rescind or repudiate, or obtain any order with the effect of terminating or rescinding, any Sublease or any Land Licence that is entered into by the Trustee and Aurizon Network.

6 Extension Infrastructure

6.1 Assets prior to transfer

The Parties agree that:

- (a) prior to the Trustee transferring ownership of such assets to the Infrastructure Lessor under clause **[3.1(b)]** of the Extension Infrastructure

Head-Lease, the “Railway Transport Infrastructure” (as defined in the Extension Infrastructure Head-Lease), and all parts, accessories and equipment that are incorporated or installed in, or attached to, such “Railway Transport Infrastructure” (as defined in the Extension Infrastructure Head-Lease), which form part of the Extension;

- (b) prior to the Trustee transferring ownership of such assets to the Infrastructure Lessor under clause [3.1(c)] of the Extension Infrastructure Head-Lease, all parts, accessories and equipment that are incorporated or installed in, or attached to, the Extension Infrastructure, and any replacements, modifications, alterations, additions or changes that are made in respect of the Extension Infrastructure; and
- (c) prior to Aurizon Network transferring ownership of such assets to the Infrastructure Lessor under clause [3.1(d)] or clause [3.5(a)] of the Extension Infrastructure Head-Lease, all parts, accessories and equipment that are incorporated or installed in, or attached to, the Extension Infrastructure, and any replacements, modifications, alterations, additions or changes that are made in respect of the Extension Infrastructure,

and each part of those assets:

- (d) do not form part of, or attach to, the land on, under or above which they are situated regardless of whether or not any part of them is a fixture or is affixed to the land;
- (e) are excluded from any lease of the land on, under or above which they are situated;
- (f) are to be treated as personal property of, as applicable, the Trustee or Aurizon Network and not as a fixture or as affixed to the land; and
- (g) are owned by, as applicable, the Trustee or Aurizon Network and ownership of them does not vest in the owner of the land on, under or above which they are situated.

6.2 Extension Infrastructure

The Parties agree that the Extension Infrastructure and each part of it:

- (a) does not form part of, or attach to, the land on, under or above which it is situated regardless of whether or not any part of it is a fixture or is affixed to the land;
- (b) is excluded from any lease of the land on, under or above which it is situated;
- (c) is to be treated as personal property of the Infrastructure Lessor (or any transferee of the Extension Infrastructure from the Infrastructure Lessor) and not as a fixture or as affixed to the land; and
- (d) is owned by the Infrastructure Lessor (or any transferee of the Extension Infrastructure from the Infrastructure Lessor) and ownership of it does not vest in the owner of the land on, under or above which it is situated.

6.3 Excluded Extension Infrastructure

The Parties agree that the Excluded Extension Infrastructure and each part of it:

- (a) does not form part of, or attach to, the land on, under or above which it is situated regardless of whether or not any part of it is a fixture or is affixed to the land;
- (b) is excluded from any lease of the land on, under or above which it is situated;
- (c) is to be treated as personal property of, as applicable, the Trustee or Aurizon Network (or any transferee of the Excluded Extension Infrastructure from, as applicable, the Trustee or Aurizon Network) and not as a fixture or affixed to the land;
- (d) is owned by, as applicable, the Trustee or Aurizon Network (or any transferee of the Excluded Extension Infrastructure from, as applicable, the Trustee or Aurizon Network) and ownership of it does not vest in the owner of the land on, under or above which it is situated; and
- (e) may, subject to any restrictions on transfer or disposal imposed under this Deed, the Trust Deed or a Transaction Document, be transferred or disposed of by, as applicable, the Trustee or Aurizon Network (or any transferee of the Excluded Extension Infrastructure from the Trustee or Aurizon Network) separately from the land on, under or above which it is situated.

6.4 Extension Infrastructure not “Infrastructure”

Except as otherwise provided in the Extension Infrastructure Head-Lease or this Deed, Aurizon Network and the Infrastructure Lessor agree that, despite the terms of the Infrastructure Lease, no part of the Extension Infrastructure or the Excluded Extension Infrastructure will be, for the purposes of the Infrastructure Lease:

- (a) owned by Aurizon Network and transferred to the Infrastructure Lessor under the Infrastructure Lease;
- (b) owned by the Infrastructure Lessor and leased to Aurizon Network under the Infrastructure Lease; or
- (c) taken to be “Infrastructure” (as defined in the Infrastructure Lease).

6.5 Extension Infrastructure not “Railway Assets”

Except as otherwise provided in the Extension Infrastructure Head-Lease or this Deed, Aurizon Network and the Infrastructure Lessor agree that, despite the terms of the Infrastructure Lease, the Extension Infrastructure or any Excluded Extension Infrastructure will not be taken to be “Railway Assets” (as defined in the Infrastructure Lease) for the purposes of the Infrastructure Lease.

7 Early termination of Infrastructure Lease where Trust not terminated

7.1 Application

- (a) This **clause 7** (other than this **clause 7.1** and **clause 7.5**) applies if (and only if):
 - (i) the Infrastructure Lease End Date occurs prior to the Expiry Date;
 - (ii) immediately prior to the Infrastructure Lease End Date, the Trustee is the lessee of the Extension Infrastructure under the Extension Infrastructure Head-Lease; and
 - (iii) as at the Infrastructure Lease End Date, the Trust has not been terminated.
- (b) This **clause 7.1** and **clause 7.5** apply on and from the date of this Deed.

7.2 References to Extension Infrastructure

- (a) For the purpose of **clause 7.4**, a reference to Extension Infrastructure is a reference to that part of the "Infrastructure" (as defined in the Infrastructure Lease) that was Extension Infrastructure leased to the Trustee under the Extension Infrastructure Head-Lease immediately prior to the Infrastructure Lease End Date.
- (b) For the purpose of this **clause 7** (other than **clause 7.4**) and **schedule 3**, a reference to Extension Infrastructure is a reference to that part of the "Infrastructure" (as defined in the Infrastructure Lease) that was Extension Infrastructure leased to the Trustee under the Extension Infrastructure Head-Lease immediately prior to the Infrastructure Lease End Date.

7.3 Notification of Infrastructure Lease End Date

Promptly after the Infrastructure Lease End Date, Aurizon Network must provide written notification to the Trustee of the Infrastructure Lease End Date.

7.4 Infrastructure Lease Disposal Clause

- (a) The Infrastructure Lessor and Aurizon Network each warrant to the Trustee that, as at the date of this Deed, the Infrastructure Lease contains the Infrastructure Lease Disposal Clause.
- (b) While the Trust continues in existence, and for so long as the Trustee is the lessee of the Extension Infrastructure under the Extension Infrastructure Head-Lease, the Infrastructure Lessor and Aurizon Network agree not to vary the Infrastructure Lease Disposal Clause without the Trustee's prior written consent (which consent must not be unreasonably withheld or delayed).

7.5 Disposal process

Subject to **clause 7.8**, the Infrastructure Lessor agrees to comply with the Infrastructure Lease Disposal Clause.

7.6 Determination of Percentage Shares

- (a) As soon as reasonably practicable after the Infrastructure Lease End Date, Aurizon Network must give the Trustee and each Other Funder (if any) a notice:
 - (i) specifying the percentages which Aurizon Network determines to be Aurizon Network's, the Trustee's and each Other Funder's Percentage Share; and
 - (ii) providing reasonable details of the calculation of Aurizon Network's, the Trustee's and each Other Funder's Percentage Share.
- (b) Within 45 Business Days after Aurizon Network gives a Notice that satisfies **clause 7.7(a)** to the Trustee, the Trustee may give Aurizon Network a Dispute Notice which disputes the percentage which Aurizon Network determines to be the Trustee's Percentage Share as specified in such Notice and provides reasonable details of the basis for such Dispute.
- (c) If the Dispute referred to in **clause 7.7(b)** is not resolved in accordance with **clause 13.3**, the Trustee may refer the Dispute to an Expert to determine under **clause 13.4** Aurizon Network's, the Trustee's and each Other Funder's Percentage Share.
- (d) If the Trustee does not give Aurizon Network a Dispute Notice referred to in **clause 7.6(b)** within the time referred to in **clause 7.6(b)**, then:
 - (i) the Trustee must not give Aurizon Network a Dispute Notice which disputes Aurizon Network's, the Trustee's or an Other Funder's Percentage Share;
 - (ii) any such Dispute Notice which is given by the Trustee will be taken to be of no effect; and
 - (iii) the Trustee will not have, and must not make, any Claim against Aurizon Network in respect of such a Dispute.

7.7 Payment of Shares

- (a) The Infrastructure Lessor and Aurizon Network agree that if this **clause 7** applies, the Infrastructure Lessor's obligation to pay the Disposal Amount to Aurizon Network (or as it directs) under the Infrastructure Lease Disposal Clause will be replaced by the Infrastructure Lessor's obligations under this **clause 7.8**.
- (b) Despite the terms of the Infrastructure Lease Disposal Clause:
 - (i) the Infrastructure Lessor and Aurizon Network agree that Aurizon Network, the Trustee and each Other Funder (if any) are each entitled to be paid their Share by the Infrastructure Lessor in accordance with this **clause 7.8**; and

- (ii) the Infrastructure Lessor agrees to pay (or procure payment of) Aurizon Network's, the Trustee's and each Other Funder's (if any) Share to them in accordance with this **clause 7.8**.
- (c) As soon as reasonably practicable after a disposal is effected under the Infrastructure Lease Disposal Clause, the Infrastructure Lessor must notify Aurizon Network and the Trustee of the Disposal Amount.
- (d) As soon as reasonably practicable after the Disposal Amount is notified to Aurizon Network under **clause 7.8(c)**, Aurizon Network must give a Notice to the Infrastructure Lessor (and a copy of such notice to the Trustee and each Other Funder (if any)) notifying the Infrastructure Lessor of Aurizon Network's, the Trustee's and each Other Funder's (if any) Share.
- (e) Within 60 Business Days after Aurizon Network gives the Infrastructure Lessor a notice under **clause 7.8(c)**, the Infrastructure Lessor must pay (or procure payment of):
 - (i) the Trustee's Share to the Trustee;
 - (ii) Aurizon Network's Share to Aurizon Network; and
 - (iii) each Other Funder's Share to each Other Funder (if any),
 in each case, as notified by Aurizon Network in the notice given under **clause 7.8(d)**.
- (f) The Trustee agrees that it will have no recourse against the Infrastructure Lessor for any "Losses" (as defined in the Infrastructure Lease) that are referred to in clause 10.4(f) of the Infrastructure Lease.

8 Expiry of Infrastructure Lease where Trust not terminated

8.1 Application

- (a) Subject to **clause 8.1(b)**, this **clause 8** commences to apply one year prior to the Expiry Date.
- (b) If this **clause 8** commences to apply under **clause 8.1(a)** and, prior to the Expiry Date:
 - (i) the Trust is terminated; or
 - (ii) the Infrastructure Lease End Date occurs and the Trust has not been terminated as at the Infrastructure Lease End Date,

then this **clause 8** will immediately cease to apply, and will be of no further force or effect, on and from the date of the occurrence of such event.

8.2 References to Extension Infrastructure and Other Extension Infrastructure

- (a) For the purpose of **clause 8.4**, a reference to Extension Infrastructure is a reference to the Extension Infrastructure leased to the Trustee under

the Extension Infrastructure Head-Lease as at the date Aurizon Network provides the register to the Infrastructure Lessor under **clause 8.4**.

- (b) For the purpose of this **clause 8** (other than **clauses 8.4** and **8.5**) and **schedule 3**, a reference to Extension Infrastructure is a reference to that part of the “Infrastructure” (as defined in the Infrastructure Lease) as at the Expiry Date that was Extension Infrastructure leased to the Trustee under the Extension Infrastructure Head-Lease immediately prior to the Expiry Date (and, for the avoidance of doubt, does not include any Excluded Extension Infrastructure or Extension Infrastructure which the Trustee and the State agree may be removed by the Trustee under clause [12.1] of the Extension Infrastructure Head-Lease).
- (c) For the purpose of this **clause 8** and **schedule 3**, a reference to Other Extension Infrastructure is a reference to that part of the “Infrastructure” (as defined in the Infrastructure Lease) as at the Expiry Date that was Other Extension Infrastructure leased to an Other Funder under an Other Extension Infrastructure Head-Lease immediately prior to the Expiry Date (and, for the avoidance of doubt, does not include any “Excluded Extension Infrastructure” (as defined in an Other Extension Infrastructure Head-Lease)) or any “Extension Infrastructure” (as defined in an Other Extension Infrastructure Head-Lease) which an Other Funder and the State agree may be removed by the Other Funder under a provision of the Other Extension Infrastructure Head-Lease which corresponds with clause [12.1] of the Extension Infrastructure Head-Lease).

8.3 Notification of Expiry Date

Aurizon Network must notify the Trustee of the Expiry Date at least one year prior to the Expiry Date.

8.4 Register

Not more than seven months, but not less than six months, prior to the Expiry Date, Aurizon Network must provide to the Infrastructure Lessor a register of the Extension Infrastructure.

8.5 Excluded Extension Infrastructure

- (a) Not more than six months prior to the Expiry Date, the Infrastructure Lessor may give a Notice to Aurizon Network and the Trustee nominating parts of the Extension Infrastructure (**Excluded Extension Infrastructure**) which the Infrastructure Lessor elects (in its absolute discretion) to transfer to the Trustee on the Expiry Date.
- (b) With effect on the Expiry Date:
 - (i) the Infrastructure Lessor hereby transfers to the Trustee all of the Infrastructure Lessor’s right, title and interest in the Excluded Extension Infrastructure free from all Security Interests (other than Permitted Liens); and
 - (ii) despite clause [11.6(a)(ii)(A)] of the Extension Infrastructure Head-Lease, the Excluded Extension Infrastructure will not be deemed to

be “Infrastructure” (as defined in the Infrastructure Lease) for the purpose of the Infrastructure Lease.

8.6 Infrastructure Lease Dispute Clause

- (a) The Infrastructure Lessor and Aurizon Network each warrant to the Trustee that, as at the date of this Deed, the Infrastructure Lease contains the Infrastructure Lease Dispute Clause.
- (b) While the Trust continues in existence, and for so long as the Trustee is the lessee of the Extension Infrastructure under the Extension Infrastructure Head-Lease, the Infrastructure Lessor and Aurizon Network agree not to vary the Infrastructure Lease Dispute Clause without the Trustee’s prior written consent (which consent must not be unreasonably withheld or delayed).

8.7 Determination of Compensation Amount

- (a) Promptly after the Expiry Date, the Infrastructure Lessor must notify Aurizon Network, the Trustee and each Other Funder (if any) of the amount which the Infrastructure Lessor determines to be the fair market value of, collectively:
 - (i) the “Infrastructure” (as defined in the Infrastructure Lease) immediately prior to the Expiry Date, excluding any “Infrastructure” which is removed or agreed to be removed in accordance with clause 16.1 of the Infrastructure Lease (which, for the avoidance of doubt, does not include any Extension Infrastructure or Other Extension Infrastructure (if any) as at the Expiry Date referred to in **clauses 8.7(a)(ii) and 8.7(a)(iii)**);
 - (ii) the Extension Infrastructure as at the Expiry Date; and
 - (iii) the Other Extension Infrastructure (if any) as at the Expiry Date.
- (b) If, within 30 Business Days after the Infrastructure Lessor gives a notice referred to in **clause 8.7(a)** to Aurizon Network and the Trustee, Aurizon Network and/or the Trustee gives a written notice to the Infrastructure Lessor which disputes the amount specified in such notice, then any Party that gives that notice may refer the dispute to an independent expert under the Infrastructure Lease Dispute Clause, for which purpose the procedure set out in the Infrastructure Lease Dispute Clause applies as if references to the parties to the Infrastructure Lease were instead references to the Infrastructure Lessor, the Trustee, Aurizon Network and each Other Funder (if any).
- (c) If:
 - (i) Aurizon Network and/or an Other Funder gives a notice to the Infrastructure Lessor under a provision of an Other Integrated Network Deed which corresponds to **clause 8.7(b)** which disputes the amount specified in a notice given by the Infrastructure Lessor under a provision of an Other Integrated Network Deed which corresponds to **clause 8.7(a)**; and

- (ii) Aurizon Network or the Other Funder (as applicable) exercises its right under a provision of the Other Integrated Network Deed which corresponds to **clause 8.7(b)** to refer the dispute to an independent expert under the Infrastructure Lease Dispute Clause,

then the procedure set out in the Infrastructure Lease Dispute Clause applies as if references to the parties to the Infrastructure Lease were instead references to the Infrastructure Lessor, the Trustee, Aurizon Network, the applicable Other Funder and each Other Funder (if any).

- (d) If:

- (i) Aurizon Network or the Trustee refers a dispute, under **clause 8.7(b)**, to an independent expert under the Infrastructure Lease Dispute Clause; and/or
- (ii) Aurizon Network or an Other Funder refers a dispute, under a provision of an Other Integrated Network Deed which corresponds to **clause 8.7(b)**, to an independent expert under the Infrastructure Lease Dispute Clause,

then the Infrastructure Lessor, Aurizon Network, the Trustee and each Other Funder (if any) will be bound by the outcome of the resolution of the dispute under the procedure set out in the Infrastructure Lease Dispute Clause irrespective of whether or not they choose to actively participate in the dispute resolution process.

- (e) If Aurizon Network or the Trustee does not give the Infrastructure Lessor a written notice referred to in **clause 8.7(b)** within the time referred to in **clause 8.7(b)**, then:
 - (i) Aurizon Network and the Trustee must not, and are not entitled to, dispute the fair market value that is set out in the notice given by the Infrastructure Lessor under **clause 8.7(a)**; and
 - (ii) Aurizon Network and the Trustee will not have, and must not make, any Claim against the Infrastructure Lessor in respect of its determination of that fair market value.

8.8 Determination of Percentage Shares

- (a) Promptly after the Expiry Date, Aurizon Network must give the Trustee and each Other Funder (if any) a notice specifying the percentages which Aurizon Network determines to be Aurizon Network's, the Trustee's and each Other Funder's Percentage Share.
- (b) The notice referred to in **clause 8.8(a)** must include reasonable details of the calculation of Aurizon Network's, the Trustee's and each Other Funder's (if any) Percentage Share.
- (c) Within 45 Business Days after Aurizon Network gives a notice referred to in **clause 8.8(a)** to the Trustee, the Trustee may give Aurizon Network a Dispute Notice which disputes the amount which Aurizon Network determines to be the Trustee's Percentage Share as specified in such notice and provides reasonable details of the basis for such Dispute.

- (d) If the Dispute referred to in **clause 8.8(c)** is not resolved in accordance with **clause 13.3**, the Trustee may refer the Dispute to an Expert to determine under **clause 13.4** Aurizon Network's, the Trustee's and each Other Funder's (if any) Percentage Share.
- (e) If the Trustee does not give Aurizon Network a Dispute Notice referred to in **clause 8.8(c)** within the time referred to in **clause 8.8(c)**, then:
 - (i) the Trustee must not give Aurizon Network a Dispute Notice which disputes Aurizon Network's, the Trustee's or an Other Funder's Percentage Share;
 - (ii) any such Dispute Notice which is given by the Trustee will be taken to be of no effect; and
 - (iii) the Trustee will not have, and must not make, any Claim against Aurizon Network in respect of such a Dispute.

8.9 Payment of Shares

- (a) The Infrastructure Lessor and Aurizon Network agree that if this **clause 8** applies, the Infrastructure Lessor's obligation to Aurizon Network under clause 16.2 of the Infrastructure Lease will be satisfied by the Infrastructure Lessor performing its obligation under this **clause 8.9**.
- (b) The Infrastructure Lessor and the Trustee agree that if this **clause 8** applies, the Infrastructure Lessor's obligation to the Trustee under clause **[12.2]** of the Extension Infrastructure Head-Lease will be satisfied by the Infrastructure Lessor performing its obligation under this **clause 8.9**.
- (c) Despite the terms of the Infrastructure Lease and the Extension Infrastructure Head-Lease:
 - (i) the Infrastructure Lessor, Aurizon Network and the Trustee each agree that Aurizon Network, the Trustee and each Other Funder (if any) are each entitled to be paid their Share by the Infrastructure Lessor in accordance with this **clause 8.9**; and
 - (ii) the Infrastructure Lessor agrees to pay Aurizon Network's, the Trustee's and each Other Funder's (if any) Share to them in accordance with this **clause 8.9**.
- (d) Aurizon Network must give a notice to the Infrastructure Lessor (and a copy of such notice to the Trustee and each Other Funder (if any)) notifying the Infrastructure Lessor of Aurizon Network's, the Trustee's and each Other Funder's (if any) Share not less than 30 Business Days, but not more than 40 Business Days, after:
 - (i) the Compensation Amount:
 - (A) is notified by the Infrastructure Lessor under **clause 8.7(a)**;
or
 - (B) if applicable, is agreed or determined in accordance with the procedure referred to in **clause 8.7(b)**; and

- (ii) Aurizon Network's, the Trustee's and each Other Funder's (if any) Percentage Share:
 - (A) is notified by Aurizon Network under **clause 8.8(a)**; or
 - (B) if applicable, is agreed or determined in accordance with the Dispute Resolution Process.
- (e) Within 60 Business Days after Aurizon Network gives the Infrastructure Lessor a notice under **clause 8.9(d)**, the Infrastructure Lessor must pay (or procure payment of):
 - (i) the Trustee's Share to the Trustee;
 - (ii) Aurizon Network's Share to Aurizon Network; and
 - (iii) each Other Funder's Share to each Other Funder (if any),
 in each case, as notified by Aurizon Network in the notice given under **clause 8.9(d)**.

9 Excluded Extension Infrastructure

9.1 Exercise of right of election

- (a) In exercising its right of election under **clause 8.5(a)** to nominate parts of the Extension Infrastructure which is to be transferred to the Trustee or Aurizon Network (as applicable), the Infrastructure Lessor may only nominate parts of the Extension Infrastructure if, as a consequence of the exercise of that right of election, the "Infrastructure" (as defined under the Infrastructure Lease) remaining after the transfer of the Excluded Extension Infrastructure as a consequence of the exercise of that right of election will not (in the Infrastructure Lessor's absolute discretion) cease to be reasonably capable of being operated as a fully functioning railway network.
- (b) The Trustee and Aurizon Network:
 - (i) must not give the Infrastructure Lessor a Dispute Notice which disputes the Extension Infrastructure nominated by the Infrastructure Lessor in the exercise of its right of election under **clause 8.5(a)**;
 - (ii) any such Dispute Notice which is given by the Trustee or Aurizon Network will be taken to be of no effect; and
 - (iii) will not have, and must not make, any Claim against the Infrastructure Lessor in respect of the Extension Infrastructure nominated by the Infrastructure Lessor in the exercise of its right of election under **clause 8.5(a)**.

9.2 Excluded Extension Infrastructure land use rights

- (a) If the Infrastructure Lessor exercises its right of election under **clause 8.5(a)**, then the Infrastructure Lessor will seek to facilitate the Trustee in its endeavours to procure from the State the grant of proprietary or contractual rights in, over or in respect of Rail Corridor

Land on, under or above which the Excluded Extension Infrastructure is situated which are reasonably required to enable:

- (i) the Excluded Extension Infrastructure to be operated by the Trustee; and
- (ii) access to, and the management, operation, repair, maintenance, alteration, modification, change and replacement of, the Excluded Extension Infrastructure by the Trustee,

to, or for the benefit of, the Trustee which is:

- (iii) for nominal consideration;
 - (iv) for a term which commences on, or as soon as reasonably practicable after, the Infrastructure Lease End Date and ceases on the earlier of:
 - (A) the end of the "Term" as defined under the Infrastructure Lease, excluding any extension of that Term which had not commenced as at the Infrastructure Lease End Date; and
 - (B) if:
 - (1) third party access to the Excluded Extension Infrastructure is regulated under State or Commonwealth legislation, the last day of the period during which regulated returns on the Excluded Extension Infrastructure may be earned; or
 - (2) third party access to the Excluded Extension Infrastructure is not regulated under State or Commonwealth legislation, the expiry of the economic life of the Excluded Extension Infrastructure,

as determined in each case by the Infrastructure Lessor following consultation with the Trustee; and
 - (v) on other commercial terms which are consistent with standard practices for the provision of land use rights by the State for rail transport infrastructure corridors as at the time of the granting of those rights.
- (b) The Trustee acknowledges that the Infrastructure Lessor is not in a position to ensure or procure that the State provides proprietary or contractual rights of the kind referred to above.

10 Other Integrated Network Deed

The State Parties and Aurizon Network:

- (a) warrant that each Other Integrated Network Deed entered into as at the date of this Deed contains; and
- (b) agree that each Other Integrated Network Deed entered into after the date of this Deed will contain,

provisions which are of substantially the same effect as this **clause 10** and **clauses 7, 8, 9** and **13** and **schedule 3**.

11 Payments under this Deed

11.1 Interest on overdue payments

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

11.2 Method of payment

All payments to be made under or in connection with this Deed must be paid in Australian currency, without set-off or deduction, by:

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

12 No rights of termination

- (a) Despite any rule of law or equity to the contrary, no Party may terminate, rescind or treat as repudiated, or obtain any order with the effect of terminating or rescinding, this Deed.
- (b) Nothing in this **clause 12** prejudices in any way a Party's right to claim and recover damages for any breach of this Deed by another Party.

13 Disputes

13.1 Application

- (a) This **clause 13** applies to any Claim, dispute or question that arises under or in respect of **clause 7.7(b)** or **8.8(c) (Dispute)**, in which case, the Parties to the Dispute will be taken to be the Trustee and Aurizon Network.
- (b) Unless otherwise expressly provided to the contrary in this Deed, a Dispute under or in respect of **clause 7.7(b)** or **8.8(c)** must be resolved in accordance with this **clause 13**.

13.2 Dispute Notice

If a Dispute arises, any Party to the Dispute may give to each other Party to the Dispute a notice in writing (**Dispute Notice**) specifying reasonable details of the Dispute and referring it for resolution in accordance with this **clause 13**.

13.3 Senior executive resolution

- (a) Within ten Business Days after the giving of a Dispute Notice, the Dispute must be referred in the first instance to the chief executive officer (or equivalent) of each Party to the Dispute (or his or her nominee) for the purposes of this **clause 13.3** for resolution.
- (b) If the Dispute is not resolved within ten Business Days after the referral under **clause 13.3(a)**, or in the event that a chief executive officer (or equivalent) appoints a nominee that is unacceptable to any other Party to the Dispute, then the Dispute:
 - (i) must, where this Deed expressly requires or permits referral to an expert; and
 - (ii) may, by agreement of the Parties to the Dispute in any other case, be referred for resolution by an expert (**Expert**) in accordance with **clause 13.4**.

13.4 Expert determination

Where any matter is referred to an Expert pursuant to **clause 13.3** then the following provisions of this **clause 13.4** will apply:

- (a) an Expert must be appointed by agreement between the Parties to the Dispute, or in default of such appointment within ten Business Days of the requirement or right (as applicable) to refer the matter to an Expert, then that person is to be nominated at the request of any Party to the Dispute by:
 - (i) where the Parties to the Dispute agree the Dispute is purely of a financial or accounting nature, the President (for the time being) of The Institute of Chartered Accountants in Australia – Queensland Branch; and
 - (ii) in any other case, the President (for the time being) of the Queensland Law Society, Inc;
- (b) if the Expert is to be nominated by a person referred to in **clause 13.4(a)** and that person declines to nominate a person as the Expert but provides a list of people that could be appointed as the Expert:
 - (i) the first person specified in that list will be taken to be nominated as the Expert;
 - (ii) if the first person specified in that list does not accept the appointment as the Expert, the next person specified in that list will be taken to be the first person specified in that list and will be nominated as the Expert; and

- (iii) the process specified in **clause 13.4(b)(ii)** will apply to the next and each subsequent person specified in that list until a person that is taken to be nominated as the Expert accepts the appointment as the Expert;
- (c) subject to **clause 13.4(b)**, if the Expert is to be nominated by a person referred to in **clause 13.4(a)** and the person nominated as the Expert does not accept the appointment as the Expert, then an alternative person is to be nominated as the Expert at the request of any Party to the Dispute by the same person referred to in **clause 13.4(a)**;
- (d) if the Expert is to be nominated by a person referred to in **clause 13.4(a)**, the Parties to the Dispute must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of that person (including providing relevant indemnities and paying any charges or fees (which charges or fees will be borne equally by the Parties to the Dispute)) that must be satisfied or complied with as a condition of that person agreeing to nominate an Expert;
- (e) the Parties to the Dispute must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of an agreed or nominated Expert (including providing relevant indemnities and paying any charges or fees (which charges or fees will be borne equally by the Parties to the Dispute)) that must be satisfied or complied with as a condition of that person accepting the appointment as an Expert; and
- (f) the Expert must:
 - (i) have appropriate qualifications and practical experience having regard to the nature of the Dispute;
 - (ii) have no interest or duty which conflicts or may conflict with his or her function as Expert, he or she being required to fully disclose any such interest or duty by written notice to the Parties to the Dispute before his or her appointment;
 - (iii) not be, or have been in the last five years, an employee of a Party or a Preference Unit Holder or a Related Body Corporate of a Party or a Preference Unit Holder;
 - (iv) not be permitted to act until he or she has given written notice to the Parties to the Dispute that he or she is willing and able to accept the appointment;
 - (v) have regard to the provisions of this Deed and consider all submissions (including oral submissions by a Party to the Dispute provided that such oral submissions are made in the presence of the other Parties to the Dispute), supporting documentation, information and data with respect to the matter submitted by the Parties to the Dispute;
 - (vi) provide the Parties to the Dispute with a copy of his or her determination in the form of a report setting out reasonable details

of the reasons for the Expert's determination within a reasonable time after his or her appointment;

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

13.5 Parties to assist Expert

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

13.6 Decision of Expert

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

13.7 Costs

- (a) The costs of the Expert and any advisers engaged by the Expert will be borne equally by the Parties to the Dispute.
- (b) Each Party to the Dispute will bear its own legal costs and the costs of any advisers to it in respect of the Dispute Resolution Process under this **clause 13**.

13.8 Determination by Court

If any Dispute is not otherwise resolved in accordance with this **clause 13**, then the Dispute may, subject to **clause 20**, be referred by a Party to the Dispute to a court.

13.9 Injunctive relief

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

13.10 Disputes involving Aurizon Network, Trustee and Other Funders

If:

- (a) a Dispute arises under, or in respect of, **clauses 7.7(b)** or **8.8(c)**; or
- (b) a "Dispute" (as defined under an Other Integrated Network Deed) arises under, or in respect of, a corresponding provision of the Other Integrated Network Deed (also a Dispute for the purposes of this **clause 13.10**),

then:

- (c) as applicable:

- (i) Aurizon Network or the Trustee must join all (for the avoidance of doubt, not only some) of the Other Funders to the Dispute Resolution Process under this Deed; or
- (ii) Aurizon Network or an Other Funder may join the Trustee and all Other Funders (for the avoidance of doubt, not only some) to the Dispute Resolution Process under the Other Funder's Other Integrated Network Deed;
- (d) Aurizon Network, the Trustee and all Other Funders will be bound by, and must comply with, the Dispute Resolution Process under this Deed or the Other Integrated Network Deed (as applicable) as if they were parties (if they are not already parties) to this Deed or the Other Integrated Network Deed (as applicable); and
- (e) Aurizon Network, the Trustee and all Other Funders will be bound by the outcome of the resolution of the Dispute irrespective of whether or not they choose to actively participate in the Dispute Resolution Process (whether under this Deed or an Other Integrated Network Deed).

14 Confidentiality

14.1 General obligations

Each Party must keep confidential and not allow, make or cause any disclosure of or in relation to this Deed without the prior written consent of each other Party, which consent may be given or withheld, or given with conditions, in each other Party's sole discretion.

14.2 Exceptions

A Party's obligations in **clause 14.1** do not apply to disclosures to the extent that the disclosure is:

- (a) by that Party to its legal or other professional advisers, auditors or other consultants, or employees of that Party or that Party's Related Bodies Corporate or shareholders, to the extent that those persons require the information for the purposes of this Deed (or any transactions contemplated by it) or for the purpose of advising that Party in relation thereto;
- (b) of information which is at the time lawfully in the possession of the proposed recipient of the information;
- (c) required by law or by a lawful requirement of any Governmental Agency or recognised stock exchange having jurisdiction over that Party or its Related Bodies Corporate or where such disclosure is determined by the Trustee as reasonably required for administration of the Trust;
- (d) required in connection with legal proceedings, arbitration or expert determination relating to this Deed or for the purpose of advising that Party in relation thereto;
- (e) of information which is at the time generally and publicly available other than as a result of breach of confidence by that Party;

- (f) necessary or commercially desirable to a bona fide proposed or prospective assignee or transferee, in which case that Party must, if requested by any other Party, procure that the proposed recipient of the information executes a confidentiality deed in favour of the other Party prior to the disclosure of that information;
- (g) necessary or commercially desirable to an existing or bona fide proposed or prospective financier of Aurizon Network or a State Party, in which case that Party must, if requested by any other Party, procure that the proposed recipient of the information executes a confidentiality deed in favour of the other Party prior to the disclosure of that information;
- (h) by a State Party to the other State Party, the State or any Minister of the Crown in right of the State or any of its agencies or instrumentalities; or
- (i) by the Trustee to:
 - (i) a Preference Unit Holder;
 - (ii) an advisor of a Unit Holder; or
 - (iii) a financier or prospective financier of a Preference Unit Holder or the Trustee,

provided that the Trustee first procures that the proposed recipient of the information executes a confidentiality deed in favour of the State Parties and Aurizon Network (on terms reasonably acceptable to them) prior to the disclosure of the information; or

- (j) to an Other Funder or a prospective Other Funder or their advisors (provided that the Aurizon Network first procures that the prospective Other Funder or their advisors execute a confidentiality deed in favour of the State Parties, the Trustee and Aurizon Network (on terms reasonably acceptable to them) prior to the disclosure of the information).

15 GST

15.1 GST to be added to amounts payable

If GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This **clause 15** does not apply to the extent that the Consideration for the Taxable Supply is expressly stated to be GST inclusive.

15.2 Liability net of GST

Any reference in the calculation of Consideration, or any indemnity, reimbursement or similar amount, to a cost, expense or other liability incurred by a Party, must exclude the amount of any Input Tax Credit entitlement of that Party in relation to the relevant cost, expense or other liability. A Party will be assumed to have an entitlement to a full Input Tax Credit unless it demonstrates otherwise prior to the date on which the Consideration must be provided.

15.3 Timing of payment of GST Amount

The GST Amount is payable on the earlier of:

- (a) the first date on which all or any part of the Consideration for the Taxable Supply is first provided; and
- (b) the date five Business Days after the date on which an Invoice is issued in relation to the Taxable Supply.

The GST Amount is not payable until a Tax Invoice is issued to the payer of the GST Amount.

15.4 Revenue exclusive of GST

Unless otherwise stated, any reference in this Deed to price, value, sales, revenue or a similar amount (**Revenue**), is a reference to that Revenue exclusive of GST.

15.5 Cost exclusive of GST

Unless otherwise stated, any reference in this Deed (other than in the calculation of Consideration) to cost, expense or other similar amount (**Cost**), is a reference to that Cost exclusive of GST.

15.6 Adjustment Event

If an Adjustment Event occurs in respect of a Taxable Supply described in this **clause 15**, an adjustment must be made to any amount paid pursuant to this **clause 15**. The supplier must issue an Adjustment Note for an Adjustment Event.

15.7 GST Group

If a Party is a member of a GST Group, references to GST which the Party must pay and to Input Tax Credits to which that Party is entitled, include GST which the representative member of the GST Group must pay and Input Tax Credits to which the representative member of the group is entitled.

15.8 Non-monetary consideration

If a supply made under this Deed is a Taxable Supply made for non-monetary consideration, then:

- (a) the Supplier must provide the Recipient with a Tax Invoice which states the GST inclusive market value of that non-monetary consideration; and
- (b) for the avoidance of doubt, any non-monetary consideration payable under or in connection with this Deed is GST inclusive.

15.9 Definitions

- (a) Words or expressions used in this **clause 15** which are defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and related imposition Acts or, if not so defined, then which are defined in the *Consumer and Competition Act 2010* (Cth), have the same meaning in this **clause 15** unless expressly provided otherwise in **clauses 1.1** or **15.9(c)**.

- (b) **GST Amount**, in relation to a Taxable Supply, means the amount of GST payable in respect of that Taxable Supply.
- (c) References to GST payable and Input Tax Credit entitlements include notional GST payable by, and notional Input Tax Credit entitlements of the Commonwealth, a State or a Territory (including a government, government body, authority, agency or instrumentality of the Commonwealth, a State or a Territory).

16 Assignment

16.1 Assignment

Subject to **clauses 16.2, 16.3, 16.4 and 16.5**, a Party must not assign, transfer, mortgage, charge, make the subject of a trust or otherwise deal with or encumber all or any of its rights or obligations under this Deed (or procure or permit any of those things) without the prior written consent of each other Party.

16.2 Assignment by Land Lessor

- (a) The Land Lessor may assign and transfer all (and not part only) of its rights and obligations under this Deed to a person to whom it assigns or transfers at the same time all (but not part only) of its right, title and interest in the Rail Corridor Land and its rights and obligations under the Land Lease, being a person that is the State or is owned or controlled by the State, provided that such assignment is subject to the condition that, if the assignee (not being the State) ceases to be owned or controlled by the State, those rights and obligations must, on or prior to that cessation, be assigned and transferred to the State or a person that is owned or controlled by the State. Any such assignee must execute a deed under which the assignee undertakes to the Parties to be bound by the terms of this Deed (including in respect of any accrued obligations) as if it were the Land Lessor.
- (b) The Land Lessor must not assign or transfer its rights and obligations under the Land Lease unless it assigns and transfers, at the same time and to the same person, all of its rights and obligations under this Deed.

16.3 Assignment by Infrastructure Lessor

- (a) The Infrastructure Lessor may assign and transfer all (and not part only) of its rights and obligations under this Deed to a person to whom it assigns or transfers at the same time all (but not part only) of its right, title and interest in the Extension Infrastructure and the "Infrastructure" (as defined under the Infrastructure Lease) and its rights and obligations under the Extension Infrastructure Head-Lease and the Infrastructure Lease, being a person that is the State or is owned or controlled by the State, provided that such assignment is subject to the condition that, if the assignee (not being the State) ceases to be owned or controlled by the State, those rights and obligations must, on or prior to that cessation, be assigned and transferred to the State or a person that is owned or controlled by the State. Any such assignee must execute a deed under

which the assignee undertakes to the Parties to be bound by the terms of this Deed (including in respect of any accrued obligations) as if it were the Infrastructure Lessor.

- (b) The Infrastructure Lessor must not assign or transfer its rights and obligations under the Infrastructure Lease unless it assigns and transfers, at the same time and to the same person, all of its rights and obligations under this Deed.

16.4 Assignment by Aurizon Network

- (a) Aurizon Network may assign and transfer all (and not part only) of its rights and obligations under this Deed to another person provided that:
 - (i) Aurizon Network also assigns and transfers at the same time to the proposed transferee:
 - (A) if Aurizon Network is an “Ordinary Unit Holder”, its “Ordinary Unit” (each as defined in the Unit Holders Deed) in accordance with the requirements of the Unit Holders Deed;
 - (B) all of Aurizon Network’s rights and obligations under any Sublease, any Land Licence and the other Transaction Documents (other than, if Aurizon Network is a Preference Unit Holder, Aurizon Network’s Preference Units and its rights and obligations as a Preference Unit Holder under the Unit Holders Deed), in accordance with the requirements of the Transaction Documents;
 - (C) all of Aurizon Network’s rights and obligations under the Land Lease, in accordance with the requirements of the Land Lease;
 - (D) all of Aurizon Network’s rights and obligations under the Infrastructure Lease, in accordance with the requirements of the Infrastructure Lease; and
 - (E) all of Aurizon Network’s rights and obligations under the Extension Infrastructure Head-Lease, any Other Extension Infrastructure Head-Lease, any Other Integrated Network Deed and any "Sublease" and any "Land Licence" (as defined in an Other Integrated Network Deed); and
 - (ii) the proposed transferee has provided to each other Party a duly executed deed, in a form reasonably required by the other Parties, under which the proposed transferee undertakes to each other Party to assume the rights, and be bound by the obligations (including accrued obligations), of Aurizon Network under this Deed as if it were Aurizon Network.
- (b) Aurizon Network must not:
 - (i) if Aurizon Network is an “Ordinary Unit Holder”, transfer its “Ordinary Unit” (each as defined in the Unit Holders Deed);

- (ii) assign or transfer any of Aurizon Network's rights and obligations under any Sublease, any Land Licence or the other Transaction Documents (other than, if Aurizon Network is a Preference Unit Holder, Aurizon Network's Preference Units and its rights and obligations as a Preference Unit Holder under the Unit Holders Deed);
- (iii) assign or transfer any of Aurizon Network's rights and obligations under the Land Lease;
- (iv) assign or transfer any of Aurizon Network's rights and obligations under the Infrastructure Lease; or
- (v) assign or transfer any of Aurizon Network's rights and obligations under the Extension Infrastructure Head-Lease, any Other Extension Infrastructure Head-Lease, any Other Integrated Network Deed or any "Sublease" or "Land Licence" (as defined in an Other Integrated Network Deed),

to a proposed transferee unless:

- (vi) Aurizon Network also assigns and transfers at the same time to the proposed transferee:
 - (A) if Aurizon Network is an "Ordinary Unit Holder", its "Ordinary Unit" (each as defined in the Unit Holders Deed) in accordance with the requirements of the Unit Holders Deed;
 - (B) all of Aurizon Network's rights and obligations under any Sublease, any Land Licence and the other Transaction Documents (other than, if Aurizon Network is a Preference Unit Holder, Aurizon Network's Preference Units and its rights and obligations as a Preference Unit Holder under the Unit Holders Deed and as a "Unit Holder" under the Extension Project Agreement), in accordance with the requirements of the Transaction Documents;
 - (C) all of Aurizon Network's rights and obligations under the Land Lease, in accordance with the requirements of the Land Lease;
 - (D) all of Aurizon Network's rights and obligations under the Infrastructure Lease, in accordance with the requirements of the Infrastructure Lease;
 - (E) all of Aurizon Network's rights and obligations under this Deed; and
 - (F) all of Aurizon Network's rights and obligations under the Extension Infrastructure Head-Lease, any Other Extension Infrastructure Head-Lease, any Other Integrated Network Deed and any "Sublease" and any "Land Licence" (as defined in an Other Integrated Network Deed); and

- (vii) the proposed transferee has provided to each other Party a duly executed deed, in a form reasonably required by the other Parties, under which the proposed transferee undertakes to each other Party to assume the rights, and be bound by the obligations (including accrued obligations), of Aurizon Network under this Deed as if it were Aurizon Network.
- (c) If Aurizon Network, with the consent of the Infrastructure Lessor under clause **[15.2(e)]** of the Extension Infrastructure Head-Lease, proposes to assign or transfer Aurizon Network's rights and obligations under the Extension Infrastructure Head-Lease in so far as they relate to part only of the Extension Infrastructure, the Parties must, promptly after being requested to do so by Aurizon Network, enter into a deed (**Transferee Integrated Network Deed**) with the assignee of such rights and obligations under the Extension Infrastructure Head-Lease on the same terms and conditions as this Deed (except that the assignee will be the party which is "Aurizon Network" under such Transferee Integrated Network Deed and the "Extension Infrastructure Head-Lease" under such Integrated Network Deed will be the Transferee Extension Infrastructure Head-Lease) with effect on and from the date of such assignment or transfer.
- (d) Upon a Transferee Integrated Network Deed taking effect:
 - (i) the agreement giving effect to such assignment or transfer of Aurizon Network's rights and obligations under the Extension Infrastructure Head-Lease as relate to part of the Extension Infrastructure (**Transferee Extension Infrastructure Head-Lease**) will be deemed to be the "Extension Infrastructure Head-Lease" for the purposes of the Transferee Integrated Network Deed;
 - (ii) the Transferee Integrated Network Deed will be deemed to be an Other Integrated Network Deed for the purposes of this Deed; and
 - (iii) the Transferee Extension Infrastructure Head-Lease will be deemed to be an Other Extension Infrastructure Head-Lease for the purposes of this Deed.
- (e) Upon a "Transferee Integrated Network Deed" (as defined in an Other Integrated Network Deed) taking effect under a provision of the Other Integrated Network Deed which corresponds with **clause 16.4(c)**:
 - (i) the "Transferee Integrated Network Deed" (as defined in the Other Integrated Network Deed) will be deemed to be an Other Integrated Network Deed for the purposes of this Deed; and
 - (ii) the agreement which is deemed to be the "Extension Infrastructure Head-Lease" for the purposes of the "Transferee Integrated Network Deed" (as defined in the Other Integrated Network Deed) will be deemed to be an Other Extension Infrastructure Head-Lease for the purposes of this Deed.

16.5 Assignment by Trustee

- (a) If the Trustee is replaced by a new trustee of the Trust:
 - (i) the Trustee must, with effect upon the appointment of the new trustee of the Trust, assign and transfer all (and not part only) of its rights and obligations (including accrued obligations) under this Deed, the Extension Infrastructure Head-Lease, any Sublease and any Land Licence and any other Transaction Document to the new trustee of the Trust; and
 - (ii) the new trustee of the Trust must provide to each other Party a duly executed deed, in a form reasonably required by the other Parties, under which the new trustee of the Trust undertakes to each other Party to assume the rights, and be bound by the obligations (including accrued obligations), of the Trustee under this Deed as if it were the Trustee.
- (b) Subject to **clause Error! Reference source not found.**, the Trustee must not otherwise assign or transfer any of its rights and obligations under this Deed.

16.6 Grant of Security by Trustee

- (a) Except as provided in **clause Error! Reference source not found.**, the Trustee must not create or allow to subsist a Security Interest (other than a Permitted Lien) over any of the Assets.
- (b) If the Trustee borrows or raises money (**Finance**) from a person (**Financier**) in accordance with clause **[16.6]** of the Unit Holders Deed, then the Trustee may grant a Security Interest over all (but not part only) of the Assets in favour of the Financier and/or a security trustee provided that the Trustee, the Financier (or its agent) and, if applicable, the security trustee each execute a deed in a form reasonably satisfactory to Aurizon Network, the Land Lessor and the Infrastructure Lessor.
- (c) Each of Aurizon Network, the Land Lessor and the Infrastructure Lessor:
 - (i) acknowledge and agree that the requirement under **clause 16.6(b)** will be satisfied if the Trustee, the Financier (or its agent) and, if applicable, the security trustee each duly execute, and deliver to Aurizon Network, the Land Lessor and the Infrastructure Lessor a deed substantially in the form set out in **schedule 3**; and
 - (ii) must duly execute any deed substantially in the form set out in **schedule 3** which has been duly executed by the Trustee, the Financier (or its agent) and, if applicable, the security trustee, and delivered to it.

17 Notices

Any notice, demand, consent or other communication (for the purposes of this **clause 17**, a **Notice**) given or made under this Deed:

- (a) except as otherwise specified in this Deed, must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand or fax to the address or fax number below or the address or fax number last notified by the intended recipient to the sender:

- (i) to the **Trustee**

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

- (ii) to **Aurizon Network**

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

- (iii) to the **Infrastructure Lessor**

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

- (iv) to the **Land Lessor**

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

- (c) will conclusively be taken to be duly given or made:

- (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to address in another country); and

- (iii) in the case of a fax, on receipt by the sender of a transmission control report from the dispatching machine showing the relevant number of pages and the correct destination fax machine number or name of recipient and indicating the transmission has been made without error,

but if the result is that a Notice would be taken to be given or made on a day that is not a business day in the place to which the Notice is sent or is later than 4.00pm (local time) it will be taken to have been duly given at 9.00am on the next business day in that place.

18 Warranties

18.1 Warranties

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

18.2 Trustee warranties

The Trustee warrants that:

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

18.3 Reliance

- (a) Each Party acknowledges that each other Party has entered into this Deed in reliance upon the warranties contained in **clause 18.1**.
- (b) The Trustee acknowledges that the other Parties have entered into this Deed also in reliance upon the warranties contained in **clause 18.2**.

19 General

19.1 Entire agreement

- (a) This Deed contains the entire understanding between the Parties as to its subject matter.
- (b) This Deed sets out the only conduct relied on by the Parties and supersedes all prior agreements and undertakings between the Parties in connection with its subject matter.

19.2 No waiver

No failure to exercise nor any delay in exercising any right, power or remedy under this Deed by a Party operates as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the Party granting that waiver unless made in writing.

19.3 Rights cumulative

Subject to any express provision in this Deed to the contrary, the rights, powers and remedies of a Party under this Deed are cumulative and are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or by any other agreement.

19.4 Amendment

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

19.5 Further assurance

Each Party must do everything (including executing agreements and documents) necessary or reasonably required by any other Party to give full effect to this Deed and the transactions contemplated by it.

19.6 No merger

The rights and obligations of the Parties will not merge on the completion of any transaction contemplated by this Deed. They will survive execution and delivery of any assignment or other document entered into for the purpose of implementing any such transaction.

19.7 Severability of provisions

Any provision of this Deed that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Deed nor affect the validity or enforceability of that provision in any other jurisdiction.

19.8 Trustee's limitation of liability

- (a) The Parties acknowledge that the Trustee enters into this Deed in its capacity only as trustee of the Trust, and in no other capacity (other than in respect of the warranties in relation to trustee capacity in **clause 18.2** which are given by the Trustee in its personal capacity).
- (b) A liability of the Trustee arising under or in connection with this Deed is limited to and can be enforced against the Trustee in its capacity as trustee of the Trust only to the extent to which the Trustee is entitled to be indemnified out of the Trust for the liability and the liability can be satisfied out of property of the Trust.
- (c) The limitation of liability in this **clause 19.8** will not apply to any liability of the Trustee in its capacity as trustee of the Trust to the extent that the liability is not satisfied out of the property of the Trust because there is a reduction in the Trustee's right of indemnity as a result and to the extent that, the Trustee has committed:
 - (i) fraud;
 - (ii) Gross Negligence (as defined in the Trust Deed); or
 - (iii) a Wilful Default (as defined in the Trust Deed).
- (d) The Trustee must not amend the Trust Deed in any way that might reduce the scope of its entitlement to indemnity out of the Trust as specified in clause [17.2] of the Trust Deed nor the definitions of "Gross Negligence" or "Wilful Default" (as each is defined in the Trust Deed) as those provisions stand at the date of the Trust Deed (such provisions being set out in **schedule 4**).

19.9 Consents

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

19.10 Counterparts

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

19.11 Relationship of Parties

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

19.12 Survival of representations and warranties

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

19.13 Enurement

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

19.14 Powers of attorney

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

19.15 Legal costs

- (a) Aurizon Network and the Trustee must each pay their own legal costs and expenses of the drafting, negotiating and execution of this Deed.
- (b) The Trustee must pay and, if paid by a State Party, reimburse the State Party for, its reasonable legal costs and expenses of the drafting, negotiating and execution of this Deed.

19.16 Consequential Loss

Despite any provision of this Deed, no Party will be liable to any other Party for any Consequential Loss suffered by or Claimed against that other Party.

20 Governing law and jurisdiction

- (a) This Deed is governed by the laws of the State of Queensland.
- (b) Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Queensland and courts of appeal from them for determining any dispute concerning this Deed. Each Party waives any right it has to object to an action being brought in those courts, to claim that the action has been brought in an inconvenient forum, or to claim that those courts do not have jurisdiction.
- (c) The Parties agree that none of them will institute or attempt to institute any proceedings in relation to any dispute or any matter or thing arising out of or in connection with this Deed other than in a court in Queensland or, in respect of any proceedings in a Federal court, in the Brisbane registry of the relevant Federal court. A Party must not, without the consent of all other Parties, request that proceedings instituted in a Federal court in Queensland be heard outside Queensland.
- (d) Without preventing any other mode of service, any document in an action (including any writ of summons or other originating process or any third or other party notice) may be served on a Party by being delivered to that Party in accordance with **clause 17**.

21 Duty

The Trustee and Aurizon Network must pay and indemnify and keep indemnified the State Parties against any liabilities for stamp, transaction, registration and similar taxes (including fines and penalties resulting from delay or omission to pay such taxes, where such delay or omission is a result of the action or inaction of the Trustee or Aurizon Network) which may be payable in relation to this Deed or the performance, operation or enforcement of this Deed or any payment or receipt or other transaction contemplated by it (other than in respect of any assignment or transfer of the rights or obligations of the Land

Lessor or Infrastructure Lessor contemplated by **clause 16**). The obligation of the Trustee and Aurizon Network under this **clause 21** binds them separately and together.

Executed as a deed.

Executed by Independent Trustee as)
trustee for the **[Name of Trust]**:)

.....
Company Secretary/Director Director

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

Date: / /

Executed by Aurizon Network Pty)
Ltd:)

.....
Company Secretary/Director Director

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

Date: / /

Executed by Queensland Treasury)
Holdings Pty Ltd:)

.....
Company Secretary/Director Director

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

Date: / /

Executed on behalf of the **State of Queensland** represented by the **Department administering the Transport Infrastructure Act 1994 (Qld)** by a person duly authorised to act in that behalf, in the presence of:

)
)
)
)
)
)

.....
Witness

.....
.
Authorised Person

.....
Name of Witness (print)

.....
.
Name of Authorised Person (print)

.....
.
Position of Authorised Person (print)

Date: / /

Schedule 1

Rail Corridor Agreement

[Drafting note: *The form of the Rail Corridor Agreement to be included on a transaction-by-transaction basis.*]

Schedule 2

Share calculation methodology

1 Calculation of Percentage Shares of Disposal Amount

[**Drafting note:** Percentage Share for Sharing Party of the Disposal Amount will be calculated in accordance with the following methodology.

Sharing Party means each of Aurizon Network, the Trustee and each Other Funder.

The **Percentage Share** of each Sharing Party shall be

- (a) the 'Discounted Value' (as defined below) of the cashflows that would have related to that Sharing Party under the SUFA documentation that relates to it had no early termination event occurred and had the 'Reference Case' (also as defined below) occurred, divided by
- (b) the aggregate of the amounts in item (a) for all Sharing Parties, as determined on a fair and reasonable basis.

Discounted Value means the discounted value on the basis of the Reference Discount Rate as determined at the Reference Point.

Reference Case means the case of expected (future) pre-tax cashflows, which shall comprise revenues and operational & maintenance expenses and replacement capital outgoings only, that would arise from the conduct of 'business as usual' commencing from the 'Reference Point' (as defined below) and ending when such revenue and O&M expenses are expected to end (that is, this case represents what would have happened in the absence of the early termination event), subject to the overriding assumption that no augmentation of the railway network would occur. In the development of the Reference Case there should only be regard to the state of affairs known as at the date of the Reference Point.

Reference Discount Rate means the discount rate equal to the 'central case' rate of return (on a pre-tax basis) for comparable net income streams from comparable infrastructure assets (on an ungeared basis) applied in good valuation practice of Australian infrastructure assets on the basis of a transfer of ownership of such net income streams within markets where there are willing buyers and willing sellers. The Reference Discount Rate shall be determined as at the Reference Point.

Reference Point means the date on which the Infrastructure Lease terminates.]

2 Calculation of Percentage Shares of Compensation Amount

[Drafting note: *The Percentage Share for each Sharing Party of the Compensation Amount will be the proportion of the aggregate market value that relates to the assets that were funded by the applicable Sharing Party and are in place as at the date on which the Infrastructure Lease expires, as determined on a fair and reasonable basis.*

Sharing Party means each of Aurizon Network, the Trustee and each Other Funder.]

Schedule 3

Pro forma Financing Side Deed

[Drafting note: *Pro forma Financing Side Deed to be included in this schedule.*]

Schedule 4

Extract of Trust Deed

[Drafting note: An extract of clause [17.2] of the Trust Deed to be included in this schedule.]