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

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Aurizon Network Pty Ltd

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# User Funding – Extension Infrastructure Sub-Lease *[insert Extension name]*

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

**Drafting note:** *If the SUFA transaction will involve the construction of infrastructure which will form part of:*

- (a) *the Central Queensland Coal Network (other than the two sections of the North Coast Line which form part of the Central Queensland Coal Network), then an Extension Infrastructure Head-Lease and Integrated Network Deed will be entered into with Queensland Treasury Holdings Pty Ltd (the infrastructure lessor in respect of the Central Queensland Coal Network (other than the two sections of the North Coast Line which form part of the Central Queensland Coal Network)); or*
- (b) *either of the two sections of the North Coast Line in respect of which Aurizon is railway manager, then an Extension Infrastructure Head-Lease and Integrated Network Deed will be entered into with Queensland Rail Limited (the infrastructure lessor in respect of those sections of the North Coast Line).*

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

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Date

## Parties

**[Independent Trustee]** **[ACM]** 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**)

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## Background

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

### 1 Interpretation

#### 1.1 Extension Project Agreement

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

#### 1.2 Definitions

In this Agreement:

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

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

**Auditor** has the meaning given in **clause 10.2(a)**.

**Audits** has the meaning given in **clause 10.2(a)**.

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

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

**Aurizon DA Monthly Invoice** has the meaning given in **clause 3.7(a)(i)**.

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

**Aurizon Detriment** means, if **clause 3.6** applies, the Group (or, if Aurizon is not a member of a Consolidated Group, Aurizon) being financially worse-off (taking into account the overall “Tax” (as defined in the Unit Holders Deed), any adjustments to cash flow timing and other adverse financial consequences for the Group (or, if applicable, Aurizon)) as a direct result or consequence of the SIL Extension Infrastructure ceasing to be Subleased Extension Infrastructure subleased to Aurizon under this Agreement and becoming “Infrastructure” (as defined in the State Infrastructure Lease) under the State Infrastructure Lease, including because the Group (or, if applicable, Aurizon) suffers or incurs:

- (a) additional ongoing or lump sum costs;
- (b) additional or accelerated tax imposts;
- (c) reduced or delayed revenues; or
- (d) accelerated costs,

that would not have been suffered or incurred by the Group (or, if applicable, Aurizon) if the SIL Extension Infrastructure had continued to be Subleased Extension Infrastructure subleased by the Trustee to Aurizon under this Agreement.

**Aurizon Set-off Amount** has the meaning given in **clause 7.6(ba)**.

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

[Binding Determination has the meaning given in clause 9.8\(g\)](#)

**Coal System** means an Individual Coal System or a Coal System, as relevant, as defined in the then current Access Undertaking.

**CEO Process** means the process for resolution of disputes by senior management set out in the Dispute Resolution Process.

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

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

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

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

**Commencement Date** means the Condition Precedent Satisfaction Date.

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

**Cost** has the meaning given in **clause 16.5(h)(i)**.

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

**DA Monthly Instalment** for a Month means:

- (a) in respect of an Aurizon Detriment, the lesser of:
  - (i) the sum of all Detriment Amounts in respect of all Aurizon Detriments, together with any interest accrued on the Detriment Amounts under **clause 3.6(f)**, which are payable by the Trustee to Aurizon as at the date that Aurizon gives the Trustee a Monthly Invoice during that Month (excluding amounts already invoiced in an Aurizon DA Monthly Invoice); and
  - (ii) the amount of the Rent specified in a Monthly Invoice given by Aurizon to the Trustee during that Month; and
- (b) in respect of a Trustee Detriment, the lesser of:
  - (i) the sum of all Detriment Amounts in respect of all Trustee Detriments, together with any interest accrued on the Detriment Amounts under **clause 3.5(f)**, which are payable by Aurizon to the Trustee as at the date that Aurizon gives the Trustee a Monthly Invoice during the Month (excluding any amount already invoiced in a Trustee DA Monthly Invoice); and
  - (ii) the amount of the Rent specified in a Monthly Invoice given by Aurizon to the Trustee during that Month.

**DA Monthly Invoice** means an Aurizon DA Monthly Invoice or a Trustee DA Monthly Invoice, as the context requires.

[Deciding Expert has the meaning given in clause 9.8\(g\).](#)

**Defect** has the meaning given to "defect" in the Construction Agreement.

**Defects Rectification Period** has the meaning given to "defects rectification period" in the Construction Agreement.

**Defects Register** has the meaning given to "defects register" in the Construction Agreement.

**Detriment** means Aurizon Detriment or Trustee Detriment (as the case may be).

**Detriment Amount** means:

- (a) in respect of an Aurizon Detriment, any amount required to be paid by, or suffered or incurred by, the Group (or, if Aurizon is not a member of a Consolidated Group, Aurizon), as a direct consequence or result of the Aurizon Detriment suffered or incurred by the Group (or, if applicable, Aurizon) excluding any part of that amount which could have been avoided if the Group (or, if Aurizon is not a member of a Consolidated Group, Aurizon) had used reasonable endeavours to mitigate the direct consequences or result of the Aurizon Detriment; and
- (b) in respect of a Trustee Detriment, any amount required to be paid by, or suffered or incurred by, the Trustee or the Preference Unit Holders as a direct consequence or result of the Trustee Detriment suffered or incurred by the Trustee or any Preference

Unit Holder, excluding any part of that amount which could have been avoided if the Trustee or such Preference Unit Holders had used reasonable endeavours to mitigate the direct consequences or result of the Trustee Detriment, provided that where the Trustee and the Preference Unit Holders suffer the same Trustee Detriment, the Detriment Amount shall not be accounted for as a Detriment Amount for both the Trustee and the Preference Unit Holders.

The Detriment Amount for any Detriment which includes delayed revenue or accelerated outgoings includes interest on such delayed revenue or accelerated outgoings.

**Detriment Notice** means a notice given under either **clause 3.5(c)** or **clause 3.6(c)**.

**Direction to Pay Account** has the meaning given in **clause 8.4(a)**.

**Direction to Pay Amount** for:

- (a) an Extension Access Agreement for a Month means:
  - (i) the portion of the Access Charges for that Month payable under the Extension Access Agreement calculated in accordance with **schedule 3**; or
  - (ii) if **clause 8.1(c)** applies, the whole of the Access Charges for that Month payable under the Extension Access Agreement; and
- (b) a Specified Access Agreement for a Month means:
  - (i) the portion of the Access Charges for that Month payable under the Specified Access Agreement which Aurizon directs the Specified Access Agreement Customer to pay into the Direction to Pay Account under **clause 8.2**; or
  - (ii) if **clause 8.2(h)** applies, the whole of the Access Charges for that Month payable under the Specified Access Agreement.

**Dispute Resolution Process** means the process for resolution of disputes set out in the Extension Project Agreement.

**DTP Audit** has the meaning given in **clause 10.3(a)**.

**DTP Auditor** has the meaning given in **clause 10.3(a)**.

**DTP Date** for a Month means the date on which Aurizon is required to give Extension Access Agreement Customers and Specified Access Agreement Customers directions to pay under **clauses 8.1** and **8.2** for the Month.

**End Date** means the earlier of:

- (a) the date on which the State Infrastructure Lease terminates (for any reason) or expires; and
- (b) the date which is 24 months after the Zero Value Date.

**Excess Payment** has the meaning given in **clause 8.4(f)**.

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

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

- (a) **plus** the sum of all Rent Shortfall Adjustment Amounts for any non-payments for any preceding Months which Aurizon calculated under **clause 8.7(a)** which Aurizon has not taken into account in the calculation of the Expected Rent for any preceding Month; and

- (b) **less** the sum of all Late Payment Adjustment Amounts for any late payments for any preceding Months which Aurizon calculated under **clause 8.8(a)** which Aurizon has not taken into account in the calculation of the Expected Rent for any preceding Month.

**Expert Process** means the process for resolution of disputes by an Expert set out in the Dispute Resolution Process (including the provisions of clauses [5.4], [5.5] and [5.6] of the Extension Project Agreement).

**Extension Access Agreement** means:

- (a) an access agreement entered into (or deemed to be entered into) as a result of the operation of an Access Agreement Specific Terms Deed; and
- (b) any access agreement or CITS agreement entered into as a consequence of:
- (i) the renewal, replacement, transfer, assignment or novation, in whole or in part, of:
    - (A) an access agreement referred to in **paragraph (a)** of this definition; or
    - (B) an access agreement or CITS agreement referred to in this **paragraph (b)** of this definition; and
  - (ii) the transfer, in whole or in part, of the access rights under:
    - (A) an access agreement referred to in **paragraph (a)** of this definition; or
    - (B) an access agreement or CITS agreement referred to in this **paragraph (b)** of this definition,

despite the identity of the parties to such access agreement being different to the parties to:

- (iii) an access agreement referred to in **paragraph (a)** of this definition; or
- (iv) an access agreement or a CITS agreement referred to in **paragraph (b)** of this definition.

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

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

**Extension Infrastructure Lessor** means the person that is the "Lessor" under the Extension Infrastructure Head-Lease.

**Extension Project Agreement** means the agreement entitled "*User Funding - Extension Project Agreement: [insert Extension Name]*" between the Trustee, Aurizon and others.

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

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

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

- (c) act of God;
- (d) law, rule, regulation or order of any government or governmental authority;

- (e) executive or administrative orders or acts of either general or particular application of any government or of any official acting under the authority of such government;
- (f) act of war (declared or undeclared);
- (g) public disorder;
- (h) riot, insurrection, rebellion, sabotage or act of terrorists;
- (i) fire, earthquake, tidal wave or other natural calamity;
- (j) drought, flood, storm, hail, lightning, inclement weather or other severe weather conditions;
- (k) explosion, breakdown or injury to or expropriation, confiscation or requisitioning of production, manufacturing, selling, transportation or delivery facilities;
- (l) quarantine or customs restrictions;
- (m) strike, boycott, lockout or other labour disturbance (whether national, state-wide or otherwise);
- (n) act (including a delay in performing an act) or omission of any Authority;
- (o) a Change in Law;
- (p) act or omission of the Trustee or any of the Trustee's officers, employees, agents or contractors; and
- (q) any of the above events delaying a supplier or contractor to Aurizon in performing its obligations.

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

**Good Operating Practice** means the exercise of that degree of skill, diligence, prudence and foresight that reasonably would be expected from a prudent, efficient and experienced railway network operator in Australia under conditions comparable to those applicable to the railway network of which the Leased Extension Infrastructure forms part and having regard to the Permitted Purpose. For the avoidance of doubt, and if consistent with the foregoing, Good Operating Practice may entail part of the Infrastructure being put into care and maintenance.

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

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

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

**Infrastructure** means "Railway Transport Infrastructure" (as defined in the Extension Infrastructure Head-Lease as at the Commencement Date).

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

**Insolvency Event** in respect of Aurizon means:

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

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

**Late Payment Adjustment Amount** for a late payment for a Month means an amount calculated for that late payment and that Month in accordance with **clause 8.8(a)**.

**Leased Extension Infrastructure** means any:

- (a) Excluded Extension Infrastructure which is deemed to be Leased Extension Infrastructure under **clause 4.1(a)**; and
- (b) Trustee Additional Infrastructure,

but does not include any:

- (c) Removed Infrastructure;
- (d) Aurizon Additional Infrastructure;
- (e) Redundant Extension Infrastructure;
- (f) "Extension Infrastructure" (as defined under the Extension Infrastructure Head-Lease) leased to the Trustee under the Extension Infrastructure Head-Lease; or
- (g) "Infrastructure" (as defined in the State Infrastructure Lease) leased to Aurizon under the State Infrastructure Lease.

**Modifications** mean, in respect of the Leased Extension Infrastructure, any removal or replacement of, or modifications, alterations, additions or changes to, all or any part of the Leased Extension Infrastructure (other than by or for Aurizon in the performance of its obligations under **clause 4.6**).

**Monthly Invoice** has the meaning given under **clause 7.1(a)**.

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

**Monthly Aurizon Set-Off Amount** has the meaning given under **clause 7.6(d)(i)**.

**Notice** has the meaning given in **clause 16.3**.

**Objective** has the meaning given in **clause 9.1**.

**Other Relevant Access Agreement** means an access agreement or CITS agreement which:

- (a) is the subject of a SAA DTP Undertaking; or
- (b) contains a SAA DTP Provision,

but does not include an Extension Access Agreement.

**Other Relevant Access Agreement Customer** for an Other Relevant Access Agreement means the party to the Other Relevant Access Agreement that is required to pay the access charges under the Other Relevant Access Agreement.

**Other Transportation Costs** means costs other than below-rail costs incurred by ~~the CITS Provider~~ [Aurizon](#) in providing CITS.

**Overpayment Amount** for a Month means the amount calculated in accordance with the formula in **item 2 of schedule 3** for that Month.

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

**Permitted Purpose** means use of the Leased Extension Infrastructure:

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

preclude or materially impede the Leased Extension Infrastructure being used to manage and operate a railway.

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

**RCTI** has the meaning given in **clause 16.5(d)(i)**.

**Redundant Extension Infrastructure** has the meaning given in **clause 5.7**.

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

**Relevant DTP Customer** has the meaning given in **clause 7.6(d)(ii)**.

**Removed Infrastructure** means any part of the Leased Extension Infrastructure which is permanently removed from the Leased Extension Infrastructure or the Extension Land:

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

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

- (a) **less**, if Aurizon adds any Rent Shortfall Adjustment Amount for any non-payment for any preceding Month to the Expected Rent for that Month under **paragraph (a)** of the definition of Expected Rent, the Rent Reduction Amount for the same non-payment for the same preceding Month which Aurizon calculated under **clause 8.7(b)** at the time it calculated such Rent Shortfall Adjustment Amount; and
- (b) **plus**, if Aurizon deducts any Late Payment Adjustment Amount for any late payment for any preceding Month from the Expected Rent for that Month under **paragraph (b)** of the definition of Expected Rent, the Rent Increase Amount for the same late payment for the same preceding Month which Aurizon calculated under **clause 8.8(b)** at the time it calculated such Late Payment Adjustment Amount.

**Rent Calculation Methodology** means the methodology set out in **schedule 2** as varied from time to time.

**Rent Calculation Methodology Dispute** has the meaning given in **clause 9.6(a)(i)**.

**Rent Increase Amount** for a late payment for a Month means the amount calculated for that late payment and that Month in accordance with **clause 8.8(b)**.

**Rent Reduction Amount** for a non-payment for a Month means the amount calculated for that non-payment and that Month in accordance with **clause 8.7(b)**.

**Rent Shortfall Adjustment Amount** for a non-payment for a Month means the amount calculated for that non-payment and that Month in accordance with **clause 8.7(a)**.

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

**Revenue** has the meaning given in **clause 16.5(h)(ii)**.

**SAA DTP Provision** means a provision in an access agreement or a CITS agreement under which, during any period for which the access agreement is nominated by Aurizon or, unless the Railway Network ceases to be regulated under Access Legalisation, the Access Regulator to be a 'Specified Access Agreement' under a SUFA EISL, the party that is

required to pay access charges to Aurizon under that access agreement is obliged to pay the access charges for an invoice period:

- (a) to Aurizon and/or into the SUFA DTP Account under the SUFA EISL, in the portions directed by Aurizon in respect of that invoice period; or
- (b) in the absence of a direction by Aurizon in respect of that invoice period, into the SUFA DTP Account under the SUFA EISL.

**SAA DTP Undertaking** means an undertaking, in the form set out in **schedule 5**, given by the party to an access agreement or a CITS agreement that is required to pay access charges to Aurizon under the access agreement under which, during any period for which the access agreement is nominated by Aurizon or, unless the Railway Network ceases to be regulated under Access Legislation, the Access Regulator to be a 'Specified Access Agreement' under a SUFA EISL, that party undertakes to Aurizon to pay the access charges for an invoice period:

- (a) to Aurizon and/or into the SUFA DTP Account under the SUFA EISL, in the portions directed by Aurizon in respect of that invoice period; or
- (b) in the absence of a direction by Aurizon in respect of that invoice period, into the SUFA DTP Account under the SUFA EISL.

**Share of Monthly Aurizon Set-off Amount** for a Relevant DTP Customer for a Month means the amount calculated in accordance with the following formula:

$$\text{Aurizon Set-off Amount} \times \frac{\text{DTP Amount}}{\text{Total DTP Amount}}$$

where:

- Aurizon Set-off Amount = The Aurizon Set-off Amount as at the DTP Date for the relevant Month
- DTP Amount = The amount which Aurizon would, but for **clause 7.6(c)**, otherwise be required to direct the Relevant DTP Customer to pay under **clauses 8.1 or 8.2** (as applicable) for the relevant Month
- Total DTP Amount = The total amount which Aurizon would, but for **clause 7.6(c)**, otherwise be required to direct all Extension Access Agreement Customers and Specified Access Agreement Customers to pay under **clauses 8.1 and 8.2** for the relevant Month

**SIL Extension Infrastructure** means "Extension Infrastructure" (as defined in the Extension Infrastructure Head-Lease) which:

- (a) is leased to the Trustee under the Extension Infrastructure Head-Lease immediately prior to the termination of the Extension Infrastructure Head-Lease; and
- (b) under clause **[11.6]** of the Extension Infrastructure Head-Lease, is deemed to be "Infrastructure" (as defined in the State Infrastructure Lease) for the purpose of the State Infrastructure Lease,

but, for the avoidance of doubt, does not include:

- (c) any Excluded Extension Infrastructure; and
- (d) any "Extension Infrastructure" (as defined in the Extension Infrastructure Head-Lease) which the Trustee and the Extension Infrastructure Lessor agree may be removed by the Trustee under clause **[12.1]** of the Extension Infrastructure Head-Lease.

**Specified Access Agreement** means an Other Relevant Access Agreement which is nominated by Aurizon or the Access Regulator to be a Specified Access Agreement in accordance with **clause 8.3** (but does not include an Other Relevant Access Agreement which has ceased to be nominated as a Specified Access Agreement in accordance with **clause 8.3**).

**Specified Access Agreement Customer** for a Specified Access Agreement means the party to the Specified Access Agreement that is required to pay the access charges under the Specified Access Agreement.

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

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

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

**Subleased Extension Infrastructure** means the "Extension Infrastructure" (as defined in the Extension Infrastructure Head-Lease) that is leased, but only for so long as it is leased, by the Extension Infrastructure Lessor to the Trustee under the Extension Infrastructure Head-Lease.

**SUFA DTP Account** means, in respect of a SUFA EISL, a bank account, in the name of the trustee entity that is the lessor under the SUFA EISL, into which Aurizon may be required, under a SUFA EISL DTP Provision in that SUFA EISL, to direct an access agreement or CITS agreement customer to pay the whole or part of the access charges payable under the access agreement or CITS agreement (as the case may be).

**SUFA EISL** means this Agreement and any other agreement between Aurizon and a trustee entity which contains an acknowledgement and agreement in the form contained in **clause 1.4**.

**SUFA EISL DTP Provision** means **clause 8.2** and any other provision in another SUFA EISL which contains an acknowledgement and agreement in respect of that provision in the form contained in **clause 8.2(a)**.

**Supplier** has the meaning given in **clause 16.5(c)**.

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

**Termination Notice** has the meaning given in **clause 5.7**.

**Threshold Amount** means, at any time, the amount which is the sum of the amounts which Aurizon or the Access Regulator (as applicable) reasonably estimate will be payable as Rent:

- (a) for the six Month period commencing at the start of the Month that commences immediately after that time;
- (b) applying the Rent Calculation Methodology; and
- (c) assuming for the purpose of such estimate that the access rights under all relevant access agreements and CITS agreements are fully utilised during that period and that all applicable Access Charges for each applicable Month are fully paid by the due date for payment.

**TIA** means the *Transport Infrastructure Act 1994* (Qld).

**Total DTP Access Charge Amount** means, at any time, the amount which Aurizon or the Access Regulator (as applicable) reasonably estimate will be the total of the access charges payable:

- (a) under each Extension Access Agreement or Specified Access Agreement (as applicable) at that time for the operation of train services during the six Month period commencing at the start of the Month that commences immediately after that time; and
- (b) assuming for the purpose of such estimate that the access rights under the Extension Access Agreement or Specified Access Agreement (as applicable) are fully utilised during that period.

**Total Direction to Pay Amount** for a Month means the sum of the amounts which Aurizon has directed (or is taken to have directed) an Extension Access Agreement Customer or a Specified Access Agreement Customer to pay into the Direction to Pay Account under **clauses 8.1 and 8.2** for that Month, as specified in the Notice given by Aurizon to the Trustee under **clause 8.5** for that Month.

**Total Extension Infrastructure** means:

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

**Trustee Additional Infrastructure** means any Infrastructure, part, accessory or equipment which is constructed, incorporated, installed in or attached to the Leased Extension Infrastructure or the Extension Land by or for Aurizon in the performance of its obligations under **clause 4.6**.

**Trustee DA Monthly Invoice** has the meaning given in **clause 3.7(a)(ii)**.

**Trustee Detriment** means, if **clause 3.5** applies, the Trustee or any Preference Unit Holder being financially worse-off (taking into account the payment of the compensation amount payable to the Trustee under **clause 3.5**, the overall Tax, any adjustments to cash flow timing and other adverse financial consequences for the Trustee or the Preference Unit Holders) as a direct result or consequence of the termination of the Extension Infrastructure Head-Lease.

**Trustee Supplies** has the meaning given in **clause 16.5(d)(i)**.

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

**Variation Notice** has the meaning given in **clause 9.4**.

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

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

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

**Zero Value Date** means:

- (a) if the Trustee does not give Aurizon a Dispute Notice referred to in **clause 2.2(c)**, the date which is 60 Business Days after the date that Aurizon gives the Trustee the Notice under **clause 2.2(b)**; or

- (b) if the Trustee gives Aurizon a Dispute Notice referred to in **clause 2.2(c)**, the date on which it is agreed or determined under the Dispute Resolution Process that the Total Extension Infrastructure has Zero Value.

### 1.3 Interpretation

Unless expressed to the contrary in this Agreement, the provisions of clause [1.2] of the Extension Project Agreement apply to this Agreement.

### 1.4 Acknowledgement

The Parties acknowledge and agree that this Agreement is a SUFA EISL.

## 2 Term

### 2.1 Term

- (a) Subject to **clause 2.1(b)**, this Agreement commences on the Commencement Date and, unless earlier terminated in accordance with this Agreement, continues until the End Date.
- (b) This Agreement will automatically terminate, without the need for any Party to give notice to any other Party, if:
  - (i) the Extension Project Agreement has not been executed by all of the parties to it on or before the End Date; or
  - (ii) the Extension Project Agreement is terminated in accordance with clause [2.5] of the Extension Project Agreement.

### 2.2 Total Extension Infrastructure has Zero Value

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

### 3 Subleased Extension Infrastructure

#### 3.1 Sublease of Subleased Extension Infrastructure

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

#### 3.2 Extension Infrastructure Head-Lease

- (a) The Trustee must comply with its obligations under the Extension Infrastructure Head-Lease.
- (b) Aurizon must comply with its obligations as Sublessee under the Extension Infrastructure Head-Lease and with its obligations under the State Infrastructure Lease.
- (c) Aurizon must (at all times when accessing and using the Subleased Extension Infrastructure, or allowing such access or use) not do, cause or contribute to any act or omission which constitutes or causes a breach of the Extension Infrastructure Head-Lease by either Aurizon or the Trustee.
- (d) The Trustee:
  - (i) irrevocably nominates Aurizon as the Trustee's nominee for the purpose of clause **[6.5(a)]** of the Extension Infrastructure Head-Lease during the term of this Agreement; and
  - (ii) must promptly notify the Extension Infrastructure Lessor that the Trustee has nominated Aurizon as the Trustee's nominee for the purpose of clause **[6.5(a)]** of the Extension Infrastructure Head-Lease during the term of this Agreement.
- (e) The Trustee must not exercise its right under clause **[6.5(b)]** of the Extension Infrastructure Head-Lease without the prior written consent of Aurizon.
- (f) The Trustee:
  - (i) irrevocably nominates Aurizon as the Trustee's nominee for the purpose of clause **[6.5(c)]** of the Extension Infrastructure Head-Lease during the term of this Agreement; and
  - (ii) must promptly notify the Extension Infrastructure Lessor that the Trustee has nominated Aurizon as the Trustee's nominee for the purpose of clause **[6.5(c)]** of the Extension Infrastructure Head-Lease during the term of this Agreement.
- (g) The Trustee must promptly notify Aurizon in writing upon becoming aware of any matter which Aurizon is required to notify to the Extension Infrastructure Lessor under clause **[7.5]** of the Extension Infrastructure Head-Lease.

- (h) If Aurizon gives a notice to the Extension Infrastructure Lessor under clause [7.5] of the Extension Infrastructure Head-Lease, Aurizon must, at the same time as it gives that notice to the Extension Infrastructure Lessor, give a copy of that notice to the Trustee.
- (i) If Aurizon gives the asset register to the Extension Infrastructure Lessor under clause [7.6] of the Extension Infrastructure Head-Lease, Aurizon must, at the same time as it gives the asset register to the Extension Infrastructure Lessor, give a copy of the asset register to the Trustee. Within 20 Business Days of receipt of the asset register, the Trustee must provide any comments it has on the content of the asset register to Aurizon. Aurizon must, diligently and in good faith, consult with the Trustee or any comments the Trustee has provided.
- (j) The Trustee must promptly notify Aurizon in writing upon becoming aware of any matter which Aurizon is required to notify the Extension Infrastructure Lessor under clauses [9.3] and [9.6] of the Extension Infrastructure Head-Lease.
- (k) The Trustee, as between the Parties, is liable for and must pay all amounts payable by the Parties under:
  - (i) clause [16(a)] of the Extension Infrastructure Head-Lease; or
  - (ii) clause [21] of the Integrated Network Deed,
 except to the extent such liability for payment was caused or contributed (to the extent of the contribution) to by Aurizon's breach of this Agreement or any Transaction Document or by any negligent act or omission by Aurizon or any of Aurizon Associates.
- (l) If Aurizon pays any amount for which the Trustee is liable under **clause 3.2(k)**, the Trustee must pay that amount to Aurizon promptly on demand.

### 3.3 Indemnity

- (a) The Trustee indemnifies Aurizon against any amounts which are paid or payable by Aurizon to the Extension Infrastructure Lessor under clause [10.2] of the Extension Infrastructure Head-Lease in respect of any "Losses" (as defined in the Extension Infrastructure Head-Lease) of every kind that may be incurred or sustained, whether directly or indirectly, by the Extension Infrastructure Lessor in respect of or arising from or in any way connected with any matter referred to in clauses [10.2(a)(i)] to [(vii)] of the Extension Infrastructure Head-Lease to the extent that the relevant matter was caused, or contributed to (to the extent of the contribution), by any act, omission, negligence or failure on the part of the Trustee or a Trustee's Associate.
- (b) Subject to **clause 13.1** and only to the extent that the Trustee has not paid an equivalent amount under **clause 3.3(a)** in respect of the same act, omission, breach, negligence or failure on the part of the Trustee or a Trustee's Associate, the Trustee indemnifies the Guarantor for any amounts which are paid by the Guarantor to the Extension Infrastructure Lessor under a Guarantee to the extent that the Guarantor's liability to pay that amount was caused, or contributed to (to the extent of the contribution), by any act, omission, breach, negligence or failure on the part of the Trustee or a Trustee's Associate.
- (c) It is not necessary for Aurizon or the Guarantor to incur any expense or, in the case of **clause 3.1(a)**, make any payment before enforcing a right of indemnity under this **clause 3.3**.
- (d) Each indemnity under this **clause 3.3** is a continuing obligation separate and independent of the Trustee's other obligations.
- (e) For the avoidance of doubt, each indemnity under this **clause 3.3** continues to apply despite **clause 3.5** or **3.6** also applying.

- (f) The Trustee, as promisor, covenants and agrees with Aurizon and the Guarantor, as promisee, that, in consideration for the execution of this Deed and for the purposes of section 55 of the *Property Law Act 1974* (Qld) or otherwise the common law, the Trustee's promise under **clause 3.3(b)** is intended to be for the benefit of the Guarantor as beneficiary and that, upon acceptance by the Guarantor, will be enforceable by the Guarantor against the Trustee directly.

### 3.4 Termination of Sublease

- (a) The Sublease automatically terminates, without the need for either Party to notify the other Party, at the same time as the Extension Infrastructure Head-Lease terminates (for any reason).
- (b) For the avoidance of doubt, the terms of this Agreement, other than **clause 3.1(a)**, continue in full force and effect despite the termination of the Sublease under this **clause 3.4**.

### 3.5 Compensation arrangement – Aurizon cause

- (a) This **clause 3.5** applies if:
- (i) the Extension Infrastructure Lessor exercises its right to terminate the Extension Infrastructure Head-Lease under clause [11.4] of the Extension Infrastructure Head-Lease due to the occurrence of any event or circumstance specified in clause [11.4] of the Extension Infrastructure Head-Lease which was caused by an act or omission of Aurizon; or
  - (ii) the Extension Infrastructure Head-Lease automatically terminates under clause [11.5] of the Extension Infrastructure Head-Lease due to the Trustee exercising its right of termination under **clauses 12.1** or **12.2**.
- (b) If this **clause 3.5** applies:
- (i) despite the SIL Extension Infrastructure ceasing to be Subleased Extension Infrastructure subleased to Aurizon under this **clause 3**, all of the terms of this Agreement (other than this **clause 3**) will continue to apply as if the SIL Extension Infrastructure was Subleased Extension Infrastructure subleased by the Trustee to Aurizon under this **clause 3**; and
  - (ii) the Parties acknowledge and agree that the amount of the Rent payable each Month to the Trustee by operation of **clause 3.5(b)(i)** will not be rent payable for the sublease of the SIL Extension Infrastructure but, rather, will be a compensation amount payable by Aurizon to the Trustee as a consequence of the early termination of the Extension Infrastructure Head-Lease due to Aurizon's cause.
- (c) If the Trustee or any Preference Unit Holder suffers or incurs a Trustee Detriment, then:
- (i) the Trustee must promptly give Aurizon a notice specifying reasonable details of the Trustee Detriment and the Detriment Amount in respect of the Trustee Detriment (including reasonable details of the calculation of the Detriment Amount and reasonable supporting evidence of the Trustee Detriment and the Detriment Amount) (**Detriment Notice**); and
  - (ii) within 28 days of receipt of the Detriment Notice, Aurizon must give the Trustee either:
    - (A) a notice specifying that it agrees with the Detriment Amount in respect of the Trustee Detriment specified in the Detriment Notice; or

- (B) a Dispute Notice under the Dispute Resolution Process which disputes the Detriment Amount specified in the Detriment Notice.
- (d) If a Dispute referred to in **clause 3.5(c)(ii)(B)** is not resolved in accordance with the CEO Process, then the Dispute must be referred to an Expert to determine the Detriment Amount in respect of the Trustee Detriment in accordance with the Expert Process.
- (e) If **clause 3.5(c)(ii)** applies and Aurizon does not give the Trustee a Dispute Notice referred in **clause 3.5(c)(ii)(B)** within the time referred to in **clause 3.5(c)(ii)(B)**, then:
  - (i) Aurizon must not give the Trustee a Dispute Notice under the Dispute Resolution Process disputing the Detriment Amount specified in the Detriment Notice; and
  - (ii) any such Dispute Notice which is given by Aurizon will be taken to be of no effect.
- (f) Interest (calculated at the Interest Rate) will accrue on the unpaid portion of the Detriment Amount in respect of a Trustee Detriment from the date that the Trustee gives Aurizon a Detriment Notice in respect of the Trustee Detriment until the Detriment Amount has been fully paid by Aurizon and any interest accrued on the Detriment Amount but not paid by Aurizon at the end of each month will itself bear interest under this **clause 3.5(f)**.
- (g) If:
  - (i) Aurizon gives the Trustee a notice specifying that it agrees with the Detriment Amount in respect of a Trustee Detriment specified in the Detriment Notice; or
  - (ii) the Detriment Amount in respect of a Trustee Detriment is determined by an Expert in accordance with the Expert Process,
 the Detriment Amount (as agreed or determined) is payable to the Trustee by Aurizon but only in accordance with **clause 3.7**.
- (h) Despite any other Transaction Document, except as provided in this **clause 3.5**, Aurizon-~~Network~~ will have no liability to the Trustee in connection with a termination of the Extension Infrastructure Head-Lease referred to in **clause 3.5(a)** or any event or circumstance or act or omission of Aurizon-~~Network~~ giving rise to such termination.

### **3.6 Compensation arrangement – other cause**

- (a) This **clause 3.6** applies if the Extension Infrastructure Lessor exercises its right to terminate the Extension Infrastructure Head-Lease under:
  - (i) clause **[11.1]** of the Extension Infrastructure Head-Lease; or
  - (ii) clause **[11.4]** of the Extension Infrastructure Head-Lease (other than for a reason specified in **clause 3.5(a)(i)**).
- (b) If this **clause 3.6** applies, then despite the SIL Extension Infrastructure ceasing to be Subleased Extension Infrastructure subleased by the Trustee to Aurizon under this **clause 3**, all of the terms of this Agreement (other than this **clause 3**) (including Aurizon's obligation to pay Rent under **clause 7**) in respect of the SIL Extension Infrastructure) will continue to apply as if the SIL Extension Infrastructure continued to be Subleased Extension Infrastructure subleased by the Trustee to Aurizon under this **clause 3**, on the basis that in consideration of such agreement, Aurizon must pay the Trustee the sum of \$1.00 but only if demanded in writing by the Trustee.
- (c) If the Group (or, if Aurizon is not a member of a Consolidated Group, Aurizon) suffers or incurs any Aurizon Detriment, then:

- (i) Aurizon must promptly give the Trustee a notice specifying reasonable details of the Aurizon Detriment and the Detriment Amount in respect of the Aurizon Detriment (including reasonable details of the calculation of the Detriment Amount and reasonable supporting evidence of the Aurizon Detriment and the Detriment Amount) (**Detriment Notice**); and
- (ii) within 28 days of receipt of the Detriment Notice, the Trustee must give Aurizon either:
  - (A) a notice specifying that it agrees with the Detriment Amount in respect of the Aurizon Detriment specified in the Detriment Notice; or
  - (B) a Dispute Notice under the Dispute Resolution Process which Disputes the Detriment Amount specified in the Detriment Notice.
- (d) If a Dispute referred to in **clause 3.6(c)(ii)(B)** is not resolved in accordance with the CEO Process, then the Dispute must be referred to an Expert to determine the Detriment Amount in respect of the Aurizon Detriment in accordance with the Expert Process.
- (e) If **clause 3.6(c)(ii)** applies and the Trustee does not give Aurizon a Dispute Notice referred to in **clause 3.6(c)(ii)(B)** within the time referred to in **clause 3.6(c)(ii)(B)**, then:
  - (i) the Trustee must not give Aurizon a Dispute Notice under the Dispute Resolution Process Disputing the Detriment Amount specified in the Detriment Notice; and
  - (ii) any such Dispute Notice which is given by the Trustee will be taken to be of no effect.
- (f) Interest (calculated at the Interest Rate) will accrue on the unpaid portion of the Detriment Amount in respect of an Aurizon Detriment from the date that Aurizon gives the Trustee a Detriment Notice in respect of the Aurizon Detriment until the Detriment Amount has been fully paid by the Trustee and any interest accrued on the Detriment Amount but not paid by the Trustee at the end of each Month will itself bear interest under this **clause 3.6(f)**.
- (g) If:
  - (i) the Trustee gives Aurizon a notice specifying that it agrees with the Detriment Amount in respect of an Aurizon Detriment specified in the Detriment Notice; or
  - (ii) the Detriment Amount in respect of an Aurizon Detriment is determined by an Expert in accordance with the Expert Process,
 the Detriment Amount (as agreed or determined) is payable to Aurizon by the Trustee but only in accordance with **clause 3.7**.

### **3.7 Payment of Monthly DA Instalment**

- (a) If, at the time that Aurizon gives the Trustee a Monthly Invoice under **clause 7.1**:
  - (i) any Detriment Amount (or portion of a Detriment Amount) is payable to Aurizon, then, at the same time that it gives the Trustee the Monthly Invoice under **clause 7.1**, Aurizon must provide the Trustee with a tax invoice setting out the DA Monthly Instalment for the Month in which the Monthly Invoice is given, including comprehensive details of the calculation of that amount (**Aurizon DA Monthly Invoice**); or
  - (ii) any Detriment Amount (or portion of a Detriment Amount) is payable to the Trustee, then the Trustee must provide Aurizon with a tax invoice setting out the DA Monthly Instalment for the Month in which the Monthly Invoice is given,

including comprehensive details of the calculation of the amount (**Trustee DA Monthly Invoice**).

- (b) Within 10 Business Days after Aurizon gives the Trustee an Aurizon DA Monthly Invoice or the Trustee gives Aurizon a Trustee DA Monthly Invoice:
  - (i) in the event of an Aurizon DA Monthly Invoice, the Trustee must pay the DA Monthly Instalment specified in the Aurizon DA Monthly Invoice; and
  - (ii) in the event of a Trustee DA Monthly Invoice, Aurizon must pay the DA Monthly Instalment specified in the Trustee DA Monthly Invoice.
- (c) If a Party Disputes the DA Monthly Instalment specified in a DA Monthly Invoice:
  - (i) that Party may give the other Party a Dispute Notice under the Dispute Resolution Process; and
  - (ii) if the Dispute is not resolved in accordance with the CEO Process, then either Party may refer the Dispute to an Expert to determine the DA Monthly Instalment in accordance with the Expert Process.
- (d) Notwithstanding **clause 3.7(b)**, if the DA Monthly Instalment specified in a DA Monthly Invoice is Disputed, the party required to pay the DA Monthly Instalment must pay the portion of the DA Monthly Instalment that is not in Dispute within the time specified in **clause 3.7(b)**.
- (e) Upon resolution of any Dispute about the DA Monthly Instalment specified in a DA Monthly Invoice, if the DA Monthly Instalment for the relevant Month as agreed or determined under the Dispute Resolution Process is:
  - (i) more than the amount that was paid in respect of the DA Monthly Invoice, then the amount of the difference, together with interest on that amount calculated in accordance with **clause 7.3** (provided that for the purpose of calculating that interest, the due date for payment is deemed to be the date when that amount would have been due and payable but for the Dispute), must be paid by the Trustee to Aurizon (in the case of an Aurizon DA Monthly Invoice) or by Aurizon to the Trustee (in the case of a Trustee DA Monthly Invoice) within ten Business Days after:
    - (A) if the DA Monthly Instalment as agreed or determined under the Dispute Resolution Process is the same as the DA Monthly Instalment specified in the DA Monthly Invoice, the date of resolution of the Dispute Resolution Process; or
    - (B) if **clause 3.7(e)(i)(A)** does not apply, a Party gives the other Party an adjustment note or further tax invoice (as applicable) under **clause 3.7(f)**; or
  - (ii) less than the amount that was paid in respect of the DA Monthly Invoice, then the amount of the difference, together with interest on that amount calculated in accordance with **clause 7.3** (provided that for the purpose of calculating that interest, the amount will be deemed to be a payment due and payable by the Party who has been overpaid to the other Party and the due date for payment is deemed to be the date when the amount was paid by the other Party), must be paid by Aurizon to the Trustee (in the case of an Aurizon DA Monthly Invoice) or by the Trustee to Aurizon (in the case of a Trustee DA Monthly Invoice) within ten Business Days after a Party gives the other Party an adjustment note or further tax invoice (as applicable) under **clause 3.7(f)**.
- (f) If, upon resolution of any Dispute about the DA Monthly Instalment specified in a DA Monthly Invoice given by a Party under **clause 3.7(a)**, the DA Monthly Instalment as

agreed or determined under the Dispute Resolution Process differs from the amount of the DA Monthly Instalment specified in the DA Monthly Invoice, the Party issuing the DA Monthly Invoice must, within five Business Days after resolution of the Dispute, give the other Party an adjustment note or further tax invoice (as applicable) in respect of the difference.

- (g) If, at any time a Party discovers an error in a DA Monthly Invoice resulting in an underpayment or overpayment, then that Party must promptly notify the other Party of this error.
- (h) Despite payment of a DA Monthly Invoice, if, at any time, an error (resulting in an underpayment or overpayment) is discovered and notified to the other Party in accordance with **clause 3.7(g)**, then:
  - (i) if the error results in an underpayment:
    - (A) the Party who has been underpaid must, within five Business Days after the date the error is verified by that Party who has been underpaid, give the other Party an adjustment note or further tax invoice (as applicable) for the amount of the underpayment, together with interest on that amount calculated in accordance with **clause 7.3** (provided that for the purpose of calculating that interest, the due date for payment is deemed to be the date when the amount of the underpayment would have been due and payable but for the error); and
    - (B) within ten Business Days of receipt of the adjustment note or further tax invoice under **clause 3.7(h)(i)(A)**, the other Party must pay the amount referred to in **clause 3.7(h)(i)(A)** to the Party who has been underpaid; or
  - (ii) if the error results in an overpayment:
    - (A) within five Business Days after the date the error is verified by the Party who has been overpaid, that Party must give the other Party an adjustment note for the amount of the overpayment, together with interest on that amount calculated in accordance with **clause 7.3** (provided that for the purpose of calculating that interest, the amount of the overpayment is deemed to be a payment due and payable by the Party who has been overpaid to the other Party and the due date for payment is deemed to be the date when the overpayment was paid by the other Party); and
    - (B) within ten Business Days after receipt of the adjustment note or further tax invoice (as applicable) under **clause 3.7(h)(ii)(A)**, the Party who was overpaid must pay the amount referred to in **clause 3.7(h)(ii)(A)** to the other Party.

## 4 Leased Extension Infrastructure

### 4.1 Lease of Leased Extension Infrastructure

- (a) With effect on the date on which the Extension Infrastructure Lessor transfers ownership of any Excluded Extension Infrastructure to the Trustee under the Integrated Network Deed, that Excluded Extension Infrastructure is deemed to be Leased Extension Infrastructure and is hereby leased by the Trustee to Aurizon under this Agreement until the end of the Term.
- (b) The Parties acknowledge and agree that:
  - (i) as between the Parties, the Leased Extension Infrastructure is owned by the Trustee;

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

#### **4.2 Use only for Permitted Purposes**

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

#### **4.3 Title**

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

#### **4.4 Exclusive use and possession**

- (a) Subject to **clause 4.4(b)**, Aurizon will have exclusive use and possession of the Leased Extension Infrastructure and may peaceably possess and enjoy the Leased Extension Infrastructure for the Term without any interruption or disturbance from the Trustee (or any other person lawfully claiming by, from or under the Trustee) subject only to any interruption or disturbance which results from the exercise by the Trustee of its rights under this Agreement, or any Transaction Document or any rights conferred on the Trustee by Legislation.

- (b) Subject to **clause 4.4(c)**, Aurizon permits the Trustee and the Trustee's Associates, at reasonable times and having given Aurizon reasonable notice, to access any Leased Extension Infrastructure for purpose of inspecting the Leased Extension Infrastructure.
- (c) When exercising its rights under **clause 4.4(b)**, the Trustee and the Trustee's Associates:
  - (i) must not interfere with Aurizon's operations or business;
  - (ii) will be subject to the same limitations upon and conditions of access as apply to any third party visitor to the place where the relevant Leased Extension Infrastructure is located; and
  - (iii) must comply with all safety requirements and other reasonable directions of Aurizon in relation to such access.
- (d) The Trustee must, and must ensure that the Trustee's Associates, only access and use the Leased Extension Infrastructure for the purposes referred to in **clause 4.4(b)**.
- (e) The Trustee must promptly upon demand pay all costs and expenses reasonably incurred by Aurizon in facilitating and supervising access to and use of the Total Extension Infrastructure for the purpose referred to in **clause 4.4(b)**.
- (f) The Trustee must ensure that the Trustee's Associates do not do anything in relation to the Leased Extension Infrastructure which, if done by the Trustee, would be a breach of this Agreement by the Trustee.

#### **4.5 Obligation to operate and manage**

- (a) Aurizon must operate and manage the Leased Extension Infrastructure:-
  - (i) in accordance with Good Operating Practice; and
  - (ii) in accordance with all applicable Legislation and the requirements of all relevant Authority Approvals (including the Access Undertaking).
- (b) Aurizon must ensure that Aurizon's Associates do not do anything in respect of the Leased Extension Infrastructure which, if done by Aurizon, would be a breach of this Agreement by Aurizon.

#### **4.6 Obligation to Repair and maintain**

- (a) Subject to **clauses 4.7**, Aurizon must, at its cost, Repair and maintain the Leased Extension Infrastructure:
  - (i) in accordance with Good Operating Practice;
  - (ii) in accordance with all applicable Legislation;
  - (iii) in accordance with the requirements of all relevant Authority Approvals (including the Access Undertaking); and
  - (iv) in accordance with all notices, orders and directions lawfully given by any Governmental Agency (including so far as they impose obligations on the Trustee and the performance of those obligations by Aurizon is not prohibited by Law).
- (b) Aurizon must, at its cost, replace any part of the Leased Extension Infrastructure that is lost or destroyed.

#### **4.7 No obligation to replace**

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

#### **4.8 Modifications**

- (a) Aurizon may:
  - (i) make any Modifications to the Leased Extension Infrastructure; or
  - (ii) authorise third parties to make any Modifications to the Leased Extension Infrastructure,provided that all Modifications:
  - (iii) comply with all applicable Legislation;
  - (iv) comply with the requirements of all relevant Authority Approvals;
  - (v) are in accordance with Good Operating Practice.
- (b) Aurizon must maintain details of all Modifications made, or authorised to be made, to the Leased Extension Infrastructure under **clause 4.8(a)**.

#### **4.9 Trustee Additional Infrastructure**

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

#### **4.10 Aurizon Additional Infrastructure**

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

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

#### **4.11 Removed Infrastructure**

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

#### **4.12 Insurance**

- (a) Aurizon must effect and maintain insurance policies and/or adopt internal 'self-insurance strategies' in respect of:
  - (i) the replacement and reinstatement of the ~~Landholder Infrastructure and~~ Leased Extension Infrastructure;

- (ii) public liability risks in connection with ~~the Landholder Infrastructure~~, the Extension Land and the Leased Extension Infrastructure;
  - (iii) Aurizon's liabilities under this Agreement in respect of the Leased Extension Infrastructure in respect of items of an insurable nature, which provide a level of cover that is not materially lower than the level of cover provided under the insurance policies and/or internal 'self-insurance strategies' that Aurizon would effect, maintain and/or adopt to the extent required in accordance with Good Operating Practice in respect of:
    - (iv) the replacement and reinstatement of "Infrastructure" (as defined in the State Infrastructure Lease); and
    - (v) public liability risks in connection with "Infrastructure" (as defined in the State Infrastructure Lease).
- (b) Each of the policies of insurance effected in accordance with this Agreement must, to the extent permitted by law and only to the extent consistent with good insurance industry practice:
- (i) ensure that the Trustee is noted (or dealt with in such other manner as may be equivalent to noting) on each policy as an insured party;
  - (ii) ensure ~~where legally possible~~, that each policy ~~providers~~provides that all insuring agreements and endorsements shall operate in the same manner as if there were a separate policy of insurance covering each insured party; and
  - (iii) ensure, ~~where legally possible~~, that each policy provides that the insurer waives all rights, remedies or relief which it might become entitled to by subrogation against any insured parties, and that failure by any insured party to observe and fulfil the terms of the policy shall not prejudice the insurance in respect of any other insured party.
- (c) Aurizon must:
- (i) upon request by the Trustee (not more than once every 12 months) produce to the Trustee certificates of currency of policies taken out pursuant to this **clause 4.12** within 20 Business Days of request;
  - (ii) otherwise provide evidence to the Trustee acting reasonably of the capacity of Aurizon to "self-insure" in accordance with this **clause 4.12**;
  - (iii) at all times comply with the terms and conditions of all insurance policies effected pursuant to this **clause 4.12**;
  - (iv) notify the Trustee as soon as practicable after the occurrence of any claim under any insurance policy required by this Agreement providing reasonable details of such claim where such claim relates to the assets, risks or liabilities referred to in clauses 4.12(a)(i), 4.12(a)(ii) and 4.12(a)(iii) and may materially adversely affect the interest of the Trustee; and
  - (v) in respect of any claims by it or any other insured for which it is responsible, pay and bear all expenses/deductibles provided for in any insurances effected under this **clause 4.12**.
- (d) Aurizon must promptly inform the Trustee if QTH has notified Aurizon that QTH under the State Infrastructure Lease or the Extension Infrastructure Head-Lease is not satisfied that Aurizon has sufficient financial capacity and internal "self-insurance" strategies to "self-insure" in accordance with the State Infrastructure Lease or the Extension Infrastructure Head-Lease (as the case may be).

- (e) If:
- (i) the Trustee considers that Aurizon has failed to maintain a policy of insurance required under this **clause 4.12**; and
  - (ii) under the State Infrastructure Lease or the Extension Infrastructure Head-Lease, Aurizon is obliged to effect and maintain an equivalent policy of insurance because it was unable to satisfy QTH under the State Infrastructure Lease or the Extension Infrastructure Head-Lease that it has sufficient financial capacity and internal "self-insurance" strategies to "self-insure",
- then:
- (iii) the Trustee may:
    - ~~(A) effect and maintain such insurance; and (B)~~ give Aurizon a Dispute Notice under the Dispute Resolution Process in respect of that Dispute;
  - (iv) if the Dispute referred to in **clause 4.12(e)(iii)(B)** is not resolved in accordance with the CEO Process, then the Dispute must be referred to an Expert to determine in accordance with the Expert Process whether or not Aurizon has failed to maintain the relevant policy of insurance required under this **clause 4.12** and whether or not **clause 4.12(e)(ii)** applies;
  - (v) if it is agreed or determined in accordance with the Dispute Resolution Process that Aurizon has failed to maintain the relevant policy of insurance required under this **clause 4.12** and **clause 4.12(e)(ii)** applies, then the Trustee may effect and maintain ~~(or continue to effect and maintain)~~ the relevant policy of insurance required under this **clause 4.12** and pay the premiums in that respect and recover any amounts so paid, ~~together with any amounts paid in effecting and maintaining the insurance under clause 4.12(e)(iii)(A)~~ as a debt due from Aurizon; and
  - (vi) if the Trustee seeks to effect and maintain any policy of insurance under ~~clauses 4.12(e)(iii)(A) or~~ **clause 4.12(e)(v)**, then:
    - (A) the Trustee must, in seeking to effect and maintain such policy of insurance:
      - (1) act prudently;
      - (2) consult with Aurizon-~~Network~~ on a reasonable basis; and
      - (3) consult with Aurizon-~~Network~~ and other lessors or sub-lessors of railway infrastructure to Aurizon-~~Network~~, as notified by Aurizon ~~Network~~, in respect of similar insurance requirements that they may have; and
    - (B) the Trustee must not effect and maintain such policy of insurance upon notification by Aurizon-~~Network~~ that Aurizon-~~Network~~ has effected and maintained the relevant policy of insurance required under this **clause 4.12**.

#### 4.13 PPSA

If the Trustee determines that the lease of the Leased Extension Infrastructure in accordance with the terms of this Agreement creates a security interest or security interests for the purposes of the PPSA, Aurizon must do all things which the Trustee reasonably requires, including without limitation, obtaining consents, signing and producing documents and supplying information for the purposes of:

- (a) ensuring that any security interest so created is enforceable and otherwise effective under the PPSA;

- (b) enabling the Trustee to apply for any registration or give any notifications in connection with the security interest so that the security interest has the priority required by the Trustee; or
- (c) enabling the Trustee to exercise its rights in connection with the security interest.

## 5 Total Extension Infrastructure

### 5.1 Non-discrimination

- (a) Aurizon must not take any action in respect of the Total Extension Infrastructure where such action is for the purpose of reducing the Rent payable by it under this Agreement. Nothing in this **clause 5.1(a)** will prevent Aurizon taking action required in order for Aurizon to comply with Good Operating Practice which would have, as a result, the effect that the Rent payable by it under this Agreement is reduced.
- (b) Nothing in this **clause 5.1** imposes any restriction or limitation on the making of any submissions or representations by Aurizon to the Access Regulator and the content of such submissions or representations.

### 5.2 Keeping of Records by Aurizon

- (a) Aurizon must keep and maintain reasonable records relating to the operation, management, repair, maintenance, Modification and use and condition of the Total Extension Infrastructure.
- (b) Aurizon must, promptly upon written request by the Trustee from time to time, deliver to the Trustee, in the format Aurizon generally keeps records of that nature, a copy of any record kept and maintained by Aurizon under **clause 5.2(a)**.

### 5.3 Condition based asset reports

- (a) Whilst the Railway Network is regulated under Access Legislation, Aurizon must provide the Trustee with a copy of ~~each~~a condition based assessment in respect of the Total Extension Infrastructure within 5 Business Days ~~of its provision to the Access Regulator by Aurizon in accordance with the Access Undertaking, together with a further~~after Aurizon is required to publish a condition based assessment ~~which specifically identifies the Total Extension Infrastructure~~in respect of the Railway Network under the Access Undertaking.
- (b) If the Railway Network ceases to be regulated under Access Legislation, Aurizon must provide the Trustee with a condition based assessment in respect of the Total Extension Infrastructure upon deregulation and every four years thereafter. Such condition based assessment must comply with the requirements in respect of condition based assessments under the last Access Undertaking to provide for condition based assessments, notwithstanding deregulation.
- (c) The Trustee must, promptly upon demand by Aurizon, pay to Aurizon, without set-off or deduction, Aurizon's reasonable costs of preparing each condition based assessment provided to the Trustee under **clause 5.3(b)**.

### 5.4 Lease continues

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

### 5.5 Outgoings

- (a) Despite the Extension Infrastructure Head-Lease:

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

## 5.6 Replacement of Total Extension Infrastructure

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

## 5.7 Termination of Construction Agreement

If a termination notice referred to in clause [40B] of the Construction Agreement (**Termination Notice**) is given under the Construction Agreement, then within 20 Business Days after the Termination Notice is given, Aurizon may notify the Trustee of particular parts of the Works which have not or will not become Subleased Extension Infrastructure as at the date the Termination Notice is given (**Redundant Extension Infrastructure**).

## 5.8 Rail Corridor Agreement

The Trustee agrees that it will not, at any time during the Term, exercise its right under [clause 8] of the Rail Corridor Agreement to remove any part of the Total Extension Infrastructure save with the prior consent of Aurizon (which consent must not be unreasonably withheld).

## 5.9 Warranty in respect of clause 6.1 of the Extension Infrastructure Head-Lease

- (a) Aurizon represents and warrants to the Trustee that it has complied with its obligations under clause 6.1 of the Extension Infrastructure Head-Lease.
- (b) The representation and warranty in **clause 5.9(a)** will be repeated on each day of the term of this Agreement.

# 6 Rectification of Defects

## 6.1 Rectification of Defects by Trustee

- (a) The Trustee must procure the rectification of any Defects promptly after they are recorded (or required to be recorded) in the Defects Register.
- (b) The Trustee has appointed or will appoint Aurizon to perform, at Aurizon;s cost, the Trustee’s obligations under this **clause 6.1**.

## 6.2 Rectification of Defects by Aurizon

- (a) After the end of the Defects Rectification Period, Aurizon must rectify, or procure the rectification of, all Defects other than Defects which are recorded (or required to be recorded) in the Defects Register.

- (b) As between the Trustee and Aurizon, Aurizon will be responsible for the costs of rectifying, or procuring the rectification of, Defects under **clause 6.2(a) (Aurizon Defect Rectification Costs)**.
- (c) The Trustee acknowledges that Aurizon may seek to include Aurizon Defect Rectification Costs in the Regulatory Asset Base as part of the capital cost of the Total Extension Infrastructure.

## 7 Rent and other payments

### 7.1 Rent

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

### 7.2 Supporting information

- (a) Subject to **clause 7.2(b)**, each Monthly Invoice given by Aurizon to the Trustee under **clause 7.1** must be accompanied by details of the calculation of the Rent for the Month specified in the Monthly Invoice.
- (b) Nothing in this Agreement obliges Aurizon to disclose any Customer Confidential Information to the Trustee.

### 7.3 Interest on overdue payments

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

### 7.4 Disputes

- (a) If the Trustee Disputes the amount of the Rent for a Month specified in a Monthly Invoice, the Trustee may give Aurizon a Dispute Notice under the Dispute Resolution Process.
- (b) Upon resolution of a Dispute referred to in **clause 7.4(a)**, if the amount of the Rent payable under the relevant Monthly Invoice as agreed or determined under the Dispute Resolution Process is:
  - (i) more than the amount that was paid by Aurizon under the Monthly Invoice, then within five Business Days after the date of the resolution of the Dispute, Aurizon must:
    - (A) give the Trustee a further RCTI or adjustment note (as applicable) for the amount of the difference, together with interest on that amount calculated in accordance with **clause 7.3** (provided that for the purpose of calculating that interest, the due date for payment is deemed to be the due date for the payment of the Monthly Invoice under **clause 7.1(b)**); and
    - (B) pay the amount referred to in **clause 7.4(b)(i)(A)** to the Trustee; or
  - (ii) less than the amount that was paid by Aurizon under the Monthly Invoice, then:

- (A) within five Business Days after the date of the resolution of the Dispute, Aurizon must give the Trustee an adjustment note for the amount of the difference, together with interest on that amount calculated in accordance with **clause 7.3** (provided that for the purpose of calculating that interest, the amount of the difference is deemed to be a payment due and payable by the Trustee to Aurizon and the due date for payment is deemed to be date when the amount payable under the Monthly Invoice was paid by Aurizon); and
- (B) ~~within 10 Business Days after Aurizon gives the Trustee an adjustment note under~~Aurizon may set-off the amount referred to in **clause 7.4(b)(ii)(A)**, ~~the Trustee must pay the amount referred to in that adjustment note to Aurizon~~ in accordance with **clause 7.6**.

## 7.5 Correction of errors

- (a) If, at any time:
  - (i) the Trustee discovers an error in the Monthly Invoice resulting in an underpayment or overpayment, then the Trustee must promptly notify Aurizon of this error; and
  - (ii) Aurizon discovers an error in the Monthly Invoice resulting in an underpayment or overpayment, then Aurizon must promptly notify the Trustee of this error.
- (b) Despite Aurizon's payment of a Monthly Invoice, if, at any time, an error (resulting in an underpayment or overpayment) is discovered and notified to the other Party in accordance with **clause 7.5(a)**, then:
  - (i) if the error results in an underpayment then Aurizon must, within five Business Days after the date the error is verified by Aurizon:
    - (A) give the Trustee a further RCTI or adjustment note (as applicable) for the amount of the underpayment; and
    - (B) within 10 Business Days after Aurizon gives the Trustee a further RCTI or adjustment note (as applicable), pay the amount referred to in **clause 7.5(b)(i)(A)** to the Trustee; or
  - (ii) if the error results in an overpayment:
    - (A) within five Business Days after the date the error is verified by Aurizon, Aurizon may give the Trustee an adjustment note for the amount of the overpayment to Aurizon; and
    - (B) ~~within 10 Business Days after Aurizon gives the Trustee an adjustment note under~~Aurizon may set-off the amount referred to in **clause 7.5(b)(ii)(A)**, ~~the Trustee must pay the amount referred to in that adjustment note to Aurizon.~~ in accordance with **clause 7.6**.

## 7.6 Right of set-off

- (a) Aurizon may ~~not~~ deduct from any amounts which are due and payable by Aurizon to the Trustee ~~under this Agreement~~ any amounts which are due and payable by the Trustee to Aurizon under this Agreement ~~other than as permitted by this **clause 7.6** or any other Transaction Document where those amounts:~~
  - (i) ~~(b) Aurizon may deduct from any amounts which are due and payable by Aurizon to the Trustee under this Agreement any amounts which are due and payable by the Trustee to Aurizon where those amounts are due and~~ are payable under ~~**clause 8.2(e)** or **8.6**~~;
  - (ii) have been agreed by the Parties as being due and payable; or

(iii) are agreed or determined to be due and payable in accordance with the Dispute Resolution Process or by a validly constituted court or tribunal.

**(Aurizon Set-off Amount).**

(b) ~~(e)~~ The Trustee may ~~not~~ deduct from any amounts which are due and payable by the Trustee to Aurizon ~~under this Agreement~~ any amounts which are due and payable by Aurizon to the Trustee under this Agreement or any other Transaction Document where those amounts:

(i) have been agreed by the Parties as being due and payable; or

(ii) are agreed or determined to be due and payable in accordance with the Dispute Resolution Process or by a validly constituted court or tribunal.

(c) ~~(d)~~ If:

(i) Aurizon wishes to deduct from any Rent for a Month (**relevant Month**) an Aurizon Set-Off Amount which is due and payable by the Trustee to Aurizon as at the DTP Date for the relevant Month under this Agreement (**Monthly Aurizon Set-off Amount**); and

(ii) Aurizon is required to give a direction to pay into the Direction to Pay Account to an Extension Access Agreement Customer or a Specified Access Agreement Customer (**Relevant DTP Customer**) for the relevant Month under **clauses 8.1** or **8.2** (as applicable),

then, despite **clauses 8.1** and **8.2**, Aurizon may reduce the amount that it would, but for this **clause 7.6(d)**, otherwise be required to direct the Relevant DTP Customer to pay into the Direction to Pay Account under **clauses 8.1** or **8.2** (as applicable) for the relevant Month by:

(iii) if the amount which Aurizon would, but for this **clause 7.6(d)**, otherwise be required to direct the relevant DTP Customer to pay into the Direction to Pay Account under **clauses 8.1** or **8.2** (as applicable) for the relevant Month is less than or equal to the Relevant DTP Customer's Share of the Monthly Aurizon Set-off Amount for the relevant Month - the full amount which Aurizon would, but for this **clause 7.6(d)**, otherwise be required to direct the Relevant DTP Customer to pay for the relevant Month; or

(iv) if the amount which Aurizon would, but for this **clause 7.6(d)**, be required to direct the Relevant DTP Customer to pay into the Direction to Pay Account for the relevant Month under **clauses 8.1** or **8.2** (as applicable) is more than the Relevant DTP Customer's Share of the Monthly Aurizon Set-off Amount for the relevant Month – the Relevant DTP Customer's Share of the Monthly Aurizon Set-off Amount for the relevant Month,

so that, despite **clauses 8.1** and **8.2**, the amount which Aurizon is required to direct the Relevant DTP Customer to pay into the Direction to Pay Account under **clauses 8.1** or **8.2** (as applicable) for the relevant Month is the reduced amount after the deduction under this **clause 7.6(d)**.

(d) ~~(e)~~ Any amount that is deducted under **clause 7.6(b)** from an amount that Aurizon would, but for **clause 7.6(b)**, otherwise be required to direct an Extension Access Agreement Customer or a Specified Access Agreement Customer to pay into the Direction to Pay Account under **clauses 8.1** or **8.2** (as applicable) for a Month is taken to have been paid by the Trustee to Aurizon on the date that the Extension Access Agreement Customer or Specified Access Agreement Customer (as applicable) pays that amount to Aurizon under **clauses 8.1** or **8.2** (as applicable).

(e) ~~(f)~~ If the total of the amounts that are deducted under **clause 7.6(bc)** from amounts that Aurizon would, but for **clause 7.6(bc)**, otherwise be required to direct Extension Access Agreement Customers and Specified Access Agreement Customers to pay into the Direction to Pay Account under **clauses 8.1** and **8.2** for a Month are less than the Monthly Aurizon Set-off Amount as at the DTP Date for the Month, then, for the avoidance of doubt, the amount of the difference continues to be due and payable by the Trustee to Aurizon.

(f) ~~(g)~~ Any amounts that are deducted under **clause 7.6(bc)** from amounts that Aurizon would, but for **clause 7.6(bc)**, otherwise be required to direct Extension Access Agreement Customers and Specified Access Agreement Customers to pay into the Direction to Pay Account under **clauses 8.1** and **8.2** for a Month are taken to have been paid, for the purposes of **clause 7.47.6(bc)**, by ~~Aurizon to~~ the Trustee to Aurizon by the due date under **clause 7.47.6(bc)** for payment of the Monthly Invoice for that Month.

## 7.7 Reference Tariffs

Aurizon must submit a variation of the Reference Tariff to the Access Regulator in accordance with the Access Undertaking in respect of any amounts, individually or in aggregate in excess of \$[insert], paid by the Trustee to Aurizon which were due and payable by the Trustee to Aurizon as a result of a Change in Law or a Change in Relevant Taxes (as each is defined in the Access Undertaking).

**[Drafting note: This definition may need to be updated depending upon the types of standard access agreements in place at the time this Agreement is entered into.]**

## 8 Direction to pay

### 8.1 Direction to pay – Extension Access Agreement

(a) Unless **clause 8.1(b)** applies, at the time that Aurizon gives an Extension Access Agreement Customer an Extension Access Agreement Invoice for a Month, Aurizon must, by notice to the Extension Access Agreement Customer (such notice to be copied to the Trustee), direct the Extension Access Agreement Customer to pay by the due date for payment under the Extension Access Agreement:

- (i) into the Direction to Pay Account – the Direction to Pay Amount for that Extension Access Agreement for that Month; and
- (ii) to Aurizon (in the manner required under the Extension Access Agreement) – the remaining amount of the Access Charges, if any, which are payable under that Extension Access Agreement Invoice for that Month after subtracting the amount referred to in **clause 8.1(a)(i)**.

(b) If:

- (i) the Direction to Pay Amount for an Extension Access Agreement for a Month is zero; or
- (ii) the Direction to Pay Amount for an Extension Access Agreement for a Month less the amount that Aurizon is permitted to deduct from a direction to pay given to the Extension Access Agreement Customer for that Extension Access Agreement under **clause 7.6(bc)** for that Month is zero,

then, at the time that Aurizon gives the Extension Access Agreement Customer for that Extension Access Agreement an Extension Access Agreement Invoice for that Month, Aurizon must, by notice to that Extension Access Agreement Customer (such notice to be copied to the Trustee), direct that Extension Access Agreement Customer to pay by the due date for payment under that Extension Access Agreement:

- (iii) into the Direction to Pay Account – zero dollars; and
  - (iv) to Aurizon (in the manner required under the Extension Access Agreement) – 100% of the Access Charges which are payable under that Extension Access Agreement Invoice for that Month.
- (c) If, at the time that Aurizon gives an Extension Access Agreement Customer an Extension Access Agreement Invoice for a Month, Aurizon does not give that Extension Access Agreement Customer a direction to pay under **clauses 8.1(a)** or **8.1(b)**, then, despite that Extension Access Agreement Customer not being given a direction to pay under **clauses 8.1(a)** or **8.1(b)**:
- (i) the Direction to Pay Amount for that Extension Access Agreement for that Month will be taken to be 100% of the Access Charges which are payable under that Extension Access Agreement Invoice for that Month; and
  - (ii) that Extension Access Agreement Customer will be taken to have been given a direction to pay the Direction to Pay Amount for that Month into the Direction to Pay Account under **clause 8.1(a)**.

## **8.2 Direction to pay – Specified Access Agreements**

- (a) The Parties acknowledge and agree that this **clause 8.2** is a SUFA EISL DTP Provision.
- (b) The Trustee may procure access agreement and CITS agreement customers to give Aurizon a SAA DTP Undertaking in respect of their access agreements or CITS agreements (as the case may be).
- (c) The Parties acknowledge and agree that Aurizon will treat a SAA DTP Undertaking as being in force and binding upon the party giving the SAA DTP Undertaking unless and until that party notifies Aurizon that it revokes the SAA DTP Undertaking.
- (d) Subject to **clause 8.2(g)**, if:
  - (i) the sum of the Direction to Pay Amounts for all Extension Access Agreements for a Month is less than the Expected Rent for that Month; and
  - (ii) the amount which is the difference between:
    - (A) the sum of the Direction to Pay Amounts for all Extension Access Agreements for that Month; and
    - (B) the amount which is the Expected Rent for that Month,
 is greater than or equal to the sum of the amount of the Access Charges payable under all Specified Access Agreement Invoices for that Month,

then, at the time that Aurizon gives each Specified Access Agreement Customer its Specified Access Agreement Invoice for that Month, Aurizon must, by notice to each Specified Access Agreement Customer (such notice to be copied to the Trustee), direct each Specified Access Agreement Customer to pay 100% of the Access Charges payable under its Specified Access Agreement Invoice for that Month into the Direction to Pay Account by the due date for payment under its Specified Access Agreement.

- (e) Subject to **clause 8.2(g)**, if:
  - (i) the sum of the Direction to Pay Amounts for all Extension Access Agreements for a Month is less than the Expected Rent for that Month; and
  - (ii) the amount which is the difference between:

(A) the sum of the Direction to Pay Amounts for all Extension Access Agreements for that Month; and

(B) the amount which is the Expected Rent for that Month,

is less than the sum of the amount of the Access Charges payable under all Specified Access Agreement Invoices for that Month,

then, at the time that Aurizon gives each Specified Access Agreement Customer its Specified Access Agreement Invoice for that Month, Aurizon must, by notice to each Specified Access Agreement Customer (such notice to be copied to the Trustee), direct each Specified Access Agreement Customer to pay by the due date for payment under its Specified Access Agreement:

(iii) into the Direction to Pay Account – the whole of, part of or none (zero dollars) of the amount of the Access Charges which are payable under its Specified Access Agreement Invoice for that Month; and

(iv) to Aurizon (in the manner required under the Specified Access Agreement) – the remaining amount of the Access Charges, if any, which are payable under its Specified Access Agreement Invoice for that Month after subtracting the amount of such Access Charges which the Specified Access Agreement Customer is directed to pay into the Direction to Pay Account under **clause 8.2(e)(iii)**,

so that, in total, Aurizon has directed one or more Specified Access Agreement Customers to pay into the Direction to Pay Account the amount which is the difference between:

(v) the Expected Rent for that Month; and

(vi) the sum of the Direction to Pay Amounts for all Extension Access Agreements for that Month.

(f) If the sum of the Direction to Pay Amounts for all Extension Access Agreements for a Month is equal to or greater than the Expected Rent for that Month, then at the time that Aurizon gives each Specified Access Agreement Customer its Specified Access Agreement Invoice for that Month, Aurizon must, by notice to each Specified Access Agreement Customer (such notice to be copied to the Trustee), direct each Specified Access Agreement Customer to pay by the due date for payment under its Specified Access Agreement:

(i) into the Direction to Pay Account – zero dollars; and

(ii) to Aurizon (in the manner required under the Specified Access Agreement) – 100% of the Access Charges which are payable under its Specified Access Agreement Invoice for that Month.

(g) If the amount of the Access Charges which are payable under a Specified Access Agreement Invoice for a Month which a Specified Access Agreement Customer would, but for this **clause 8.2(g)**, otherwise be directed to pay into the Direction to Pay Account for that Month under this **clause 8.2** less the amount that Aurizon is permitted to deduct from a direction to pay given to that Specified Access Agreement Customer for its Specified Access Agreement under **clause 7.6(b,c)** for that Month is zero, then, at the time that Aurizon gives the Specified Access Agreement Customer its Specified Access Agreement Invoice for that Month, Aurizon must, by notice to that Specified Access Agreement Customer (such notice to be copied to the Trustee), direct that Specified Access Agreement Customer to pay by the due date for payment under its Specified Access Agreement:

(i) into the Direction to Pay Account – zero dollars; and

- (ii) to Aurizon (in the manner required under the Specified Access Agreement) – 100% of the Access Charges which are payable under the Specified Access Agreement Invoice for that Month.
- (h) If, at the time that Aurizon gives a Specified Access Agreement Customer a Specified Access Agreement Invoice for a Month, Aurizon does not give that Specified Access Agreement Customer a direction to pay under **clauses 8.2(d), 8.2(e), 8.2(f) or 8.2(g)**, then, despite that Specified Access Agreement Customer not being given a direction to pay under **clauses 8.2(d), 8.2(e), 8.2(f) or 8.2(g)**:
  - (i) the Direction to Pay Amount for its Specified Access Agreement for that Month will be taken to be 100% of the Access Charges which are payable under the Specified Access Agreement Invoice for that Month; and
  - (ii) the Specified Access Agreement Customer will be taken to have been given a direction to pay the Direction to Pay Amount for that Month into the Direction to Pay Account under **clause 8.2(d)**.

### **8.3 Nomination of Specified Access Agreements**

- (a) Subject to **clause 8.3(b)**, Aurizon may, at any time during the term, give a notice to the Trustee and the Other Relevant Access Agreement Customer for an Other Relevant Access Agreement, notifying them that the Other Relevant Access Agreement is nominated as a Specified Access Agreement with effect on and from the date of such notice.
- (b) Aurizon must not nominate an Other Relevant Access Agreement to be a Specified Access Agreement if the Other Relevant Access Agreement is already nominated by Aurizon or the Access Regulator to be a 'Specified Access Agreement' under another SUFA EISL.
- (c) Without limiting Aurizon's obligation under **clause 8.3(d)**, Aurizon may, at any time during the term, give a notice to the Trustee and the Specified Access Agreement Customer for a Specified Access Agreement, notifying them that the Specified Access Agreement will cease to be nominated as a Specified Access Agreement with effect on and from the date specified in the notice (which date must be at least two months after the date the notice is given).
- (d) If, at any time during the term, the Total DTP Access Charge Amount is less than the Threshold Amount, then Aurizon must, within five Business Days:
  - (i) nominate one or more Other Relevant Access Agreements to be Specified Access Agreements so that, at the time that such nomination or nominations take effect, the Total DTP Access Charge Amount will be equal to or greater than the Threshold Amount; or
  - (ii) if Aurizon is not able to comply with **clause 8.3(d)(i)** because there are insufficient Other Relevant Access Agreements which are able to be nominated as Specified Access Agreements, nominate as many Other Relevant Access Agreements to be Specified Access Agreements as Aurizon is able to nominate at that time.
- (e) If at any time during the term, the Trustee considers that Aurizon has not complied with **clause 8.3(d)**, then the Trustee may give a notice to Aurizon requesting that Aurizon comply with **clause 8.3(d)** within five Business Days after the date on which the notice is given to Aurizon.
- (f) If:
  - (i) the Trustee gives a notice to Aurizon under **clause 8.3(e)**; and

- (ii) the Trustee considers that Aurizon has not complied with **clause 8.3(d)** within the five Business Days referred to in **clause 8.3(e)**,

then the Trustee may give a notice to Aurizon and the Access Regulator requesting that the Access Regulator, subject to **clause 8.3(g)**, nominate one or more Other Relevant Access Agreements to be Specified Access Agreements so that, at the time that such nominations take effect, the Total DTP Access Charge Amount will be equal to or greater than the Threshold Amount.

- (g) If the Access Regulator receives a notice under **clause 8.3(f)**, the Access Regulator may give a notice to Aurizon, the Trustee and the Other Relevant Access Agreement Customer for an Other Relevant Access Agreement, notifying them that the Other Relevant Access Agreement is nominated as a Specified Access Agreements under this **clause 8.3** on and from the date the notice is given, provided that:

- (i) the Access Regulator may only nominate an Other Relevant Access Agreement to be a Specified Access Agreement if Aurizon could have nominated the Other Relevant Access Agreement to be a Specified Access Agreement under this **clause 8.3**;

- (ii) the Access Regulator must only nominate the Other Relevant Access Agreement, or the combination of Other Relevant Access Agreements, which results, or which together result, in, at the time that such nomination or nominations take effect, the Total DTP Access Charge Amount being:

- (A) equal to the Threshold Amount; or
- (B) if **clause 8.3(g)(ii)(A)** is not possible, greater than the Threshold Amount by the smallest possible amount; and

- (iii) if the Access Regulator is not able to comply with the request under **clause 8.3(f)** because there are insufficient Other Relevant Access Agreements which are able to be nominated as Specified Access Agreements, then the Access Regulator may nominate as many Other Relevant Access Agreements to be Specified Access Agreements as it is able to nominate at that time.

- (h) For the purpose of estimating the Total DTP Access Charge Amount and Threshold Amount for the purpose of this **clause 8.3**, Aurizon and the Access Regulator (as applicable) may make reasonable assumptions about future events provided that those assumptions, to the extent applicable, are adopted consistently in estimating both the Total DTP Access Charge Amount and the Threshold Amount.
- (i) The nomination, by the Access Regulator, of an Other Relevant Access Agreement to be a Specified Access Agreement as contemplated in this **clause 8.3** will only be effective if the nomination by the Access Regulator was in accordance with the requirements of this **clause 8.3**.
- (j) Aurizon must:
  - (i) seek to include a SAA DTP Provision in each standard form of access agreement which it submits for approval by the Access Regulator after the Commencement Date;
  - (ii) seek to include a SAA EISL DTP Provision in all :
    - (A) access agreements [that provide for the grant of access to the Railway Network](#); and
    - (B) CITS agreements [that provide for the provision of transportation services utilising the Railway Network](#),entered into after the Commencement Date; and

- (iii) if a SAA DTP Provision is included in an access agreement or a CITS agreement entered into after the Commencement Date, not agree with the other parties to the access agreement or CITS agreement (as the case may be) to remove that provision, or to vary that provision so that it ceases to be a SAA DTP Provision.

#### **8.4 Direction to Pay Account**

- (a) Prior to the Initial Rent Month, the Trustee must establish, and maintain during the remainder of the Term, a separate bank account (**Direction to Pay Account**), in the name of the Trustee, for the purpose of receiving payments which Aurizon directs, or is deemed to direct, Extension Access Agreement Customers and Specified Access Agreement Customers to pay under this **clause 8**.
- (b) The Trustee must:
  - (i) not deposit funds into the Direction to Pay Account; and
  - (ii) use reasonable endeavours to ensure that the only funds (excluding interest earned on funds in the Direction to Pay Account) deposited into the Direction to Pay Account are amounts which Aurizon directs Extension Access Agreement Customers and Specified Access Agreement Customers to pay into the Direction to Pay Account under this **clause 8**.
- (c) Promptly after:
  - (i) the due date for payment of a Direction to Pay Amount for a Month for an Extension Access Agreement or Specified Access Agreement (as notified by Aurizon to the Trustee under **clause 8.5**); and
  - (ii) if the Direction to Pay Amount referred to in **clause 8.4(c)(i)** is not paid (in whole or in part) into the Direction to Pay Account by the due date for payment but is subsequently paid (in whole or in part) into the Direction to Pay Account – the date of such late payment,the Trustee must give Aurizon a Notice specifying:
  - (iii) the amount (if any) paid into the Direction to Pay Account by the Extension Access Agreement Customer or Specified Access Agreement Customer for that Extension Access Agreement or Specified Access Agreement; and
  - (iv) if applicable, the date of payment of that amount into the Direction to Pay Account.
- (d) If the amount paid into the Direction to Pay Account during the last Month in which Rent is payable by Aurizon to the Trustee under this Agreement exceeds the Rent for that Month (as specified in the Monthly Invoice for that Month), then, within five Business Days after the end of that Month, the Trustee must pay to Aurizon the amount by which the amount paid into the Direction to Pay Account during that Month exceeds the Rent for that Month (as specified in the Monthly Invoice for that Month).
- (e) If, at any time:
  - (i) the total amount paid by an Extension Access Agreement Customer or a Specified Access Agreement Customer into the Direction to Pay Account exceeds the total of the amounts which that Extension Access Agreement Customer or Specified Access Agreement Customer has been directed to pay into the Direction to Pay Account in accordance with **clause 8.1** or **8.2** at that time; and
  - (ii) the total amount paid by an Extension Access Agreement Customer or a Specified Access Agreement Customer to Aurizon is less than the total of the amounts which that Extension Access Agreement Customer or Specified

Access Agreement Customer has been directed to pay to Aurizon in accordance with **clause 8.1** or **8.2** at that time,

then:

- (iii) the Trustee acknowledges and agrees that it has no entitlement to the Excess Payment;
  - (iv) subject to **clause 8-28.4(e)(v)**, the Trustee must pay to Aurizon the amount of the Excess Payment; and
  - (v) provided Rent continues to be payable by Aurizon to the Trustee under this Agreement, the amount of the Excess Payment is only payable to Aurizon by way of a deduction in accordance with **clause 7.6(bc)**.
- (f) In **clause 8-28.4(e)**, **Excess Payment** means:
- (i) if the amount referred to in **clause 8-28.4(e)(i)** is greater than or equal to the amount referred to in **clause 8-28.4(e)(ii)**, the amount referred to in **clause 8-28.4(e)(ii)**; or
  - (ii) ~~if the amount referred to in **clause 8.2(e)(ii)** is less than the amount referred to in **clause 8.2(e)(i)** otherwise,~~ the amount referred to in **clause 8-28.4(e)(iii)**.

## 8.5 Notice of directions to pay

Promptly after Aurizon gives all of the directions to pay for a Month to Extension Access Agreement Customers and Specified Access Agreement Customers (if applicable) under **clauses 8.1** and **8.2**, Aurizon must give the Trustee a Notice specifying:

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

## 8.6 Application of Total Direction to Pay Amount

- (a) The Total Direction to Pay Amount for a Month will be taken to have been paid by Aurizon to the Trustee by the due date for payment of the Monthly Invoice for that Month for the purpose of **clause 7.1(b)** (regardless of whether or not an Extension Access Agreement Customer or Specified Access Agreement Customer actually paid the applicable Direction to Pay Amount for that Month into the Direction to Pay Account as directed by Aurizon by the due date for payment).
- (b) After the Monthly Invoice Date for a Month, Aurizon must calculate whether there is an Overpayment Amount for that Month.
- (c) If, under **clause 8.6(b)**, Aurizon calculates that there is an Overpayment Amount for a Month, then:
  - (i) Aurizon must give the Trustee a notice specifying reasonable details of the Overpayment Amount for that Month; and
  - (ii) the Overpayment Amount for that Month is taken to be due and payable on and from the Monthly Invoice Date for that Month however, notwithstanding **clause 7.3**, no interest will accrue or will be payable in respect of an Overpayment Amount.

- (d) The Overpayment Amount for a Month is only payable by way of a deduction in accordance with **clause 7.6(bc)**.

## 8.7 Rent Shortfall Adjustment Amount

If an Extension Access Agreement Customer or Specified Access Agreement Customer does not pay the whole or part of the Direction to Pay Amount for a Month (**relevant Month**) into the Direction to Pay Account as directed under **clauses 8.1** and **8.2** within three months after the due date for payment of such Direction to Pay Amount (**relevant non-payment**), then, promptly after the end of that three month period, Aurizon must calculate:

- (a) the Rent Shortfall Adjustment Amount for the relevant non-payment for the relevant Month in accordance with the following formula:

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

where:

RSAA = The Rent Shortfall Adjustment Amount for the relevant non-payment for the Month

$R_i$  = The Rent for the relevant Month (calculated in accordance with the Rent Calculation Methodology using the same inputs as originally used to calculate the Rent for the relevant Month subject only to the non-payment of "S" (as defined in the formula in this **clause 8.7(a)**) being taken into account for the purpose of such recalculation)

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

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

- (b) the Rent Reduction Amount for the relevant non-payment for the relevant Month in accordance with the following formula:

$$RRA = S - RSAA$$

where:

RRA = The Rent Reduction Amount for the relevant non-payment for the relevant Month

S = The amount of "S" (as defined in the formula in **clause 8.7(a)**)

RSAA = The Rent Shortfall Adjustment Amount for the relevant non-payment for the relevant Month calculated in accordance with **clause 8.7(a)** as a consequence of the non-payment of "S" (as defined in the formula in **clause 8.7(a)**)

For the avoidance of doubt, there will be more than one Rent Shortfall Adjustment Amount and Rent Reduction Amount for any relevant Month in circumstances in which there are more than one relevant non-payment in respect of a relevant Month.

**8.8 Late Payment Adjustment Amount**

If Aurizon is required to calculate a Rent Shortfall Adjustment Amount under **clause 8.7** and, after the end of the three month period referred to in **clause 8.7**, the relevant Extension Access Agreement Customer or Specified Access Agreement Customer pays the whole or part of the Direction to Pay Amount for the relevant Month referred to in **clause 8.7** into the Direction to Pay Account, then, promptly after each such payment (*relevant late payment*), Aurizon must calculate:

- (a) the Late Payment Adjustment Amount for the relevant late payment for the relevant Month in accordance with the following formula:

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

where:

- LPAA = The Late Payment Adjustment Amount for the relevant late payment for the relevant Month
- LPA = The amount of the relevant late payment
- S = The amount of the Direction to Pay Amount for the relevant Month which the relevant Extension Access Agreement Customer or Specified Access Agreement Customer (as applicable) did not pay into the Direction to Pay Account within three months after the due date for the payment of such Direction to Pay Amount into the Direction to Pay Account
- RSAA = The Rent Shortfall Adjustment Amount for the relevant Month calculated in accordance with **clause 8.7(a)** as a consequence of the non-payment of "S" (as defined in the formula in this **clause 8.8(a)**)

- (b) the Rent Increase Amount for the relevant late payment for the relevant Month in accordance with the following formula:

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

where:

- RIA = The Rent Increase Amount for the relevant late payment for the relevant Month
- LPA = The amount of the relevant late payment
- S = The amount of "S" (as defined in the formula in **clause 8.8(a)**)
- RRA = The Rent Reduction Amount for the relevant late payment for the relevant Month calculated in accordance with **clause 8.7(b)** as a consequence of the non-payment of "S" (as defined in the formula in **clause 8.8(a)**)

For the avoidance of doubt, there will be more than one Late Payment Adjustment Amount and Rent Increase Amount for any relevant Month in circumstances in which there are more than one relevant late payment in respect of a relevant Month.

## 9 Calculation of Rent

### 9.1 Objective

The Parties agree that the amount of the Rent for a Month payable by Aurizon to the Trustee under this Agreement is intended to be calculated so as to achieve the objective set out in **schedule 1 (Objective)**.

### 9.2 Rent Calculation Methodology

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

### 9.3 Calculation of Rent

- (a) The Rent for a Month will be the amount calculated in accordance with the Rent Calculation Methodology (as varied from time to time under this **clause 9**).
- (b) For the purpose of calculating the Rent for a Month, any Direction to Pay Amount for the Month which Aurizon has directed an Extension Access Agreement Customer or Specified Access Agreement Customer to pay into the Direction to Pay Account under **clauses 8.1 and 8.2** will be taken to have been paid by the Extension Access Agreement Customer or Specified Access Agreement Customer (as applicable) into the Direction to Pay Account by the due date for payment (regardless of whether or not the amount was actually paid into the Direction to Pay Account as directed by the due date for payment).

### 9.4 Variations to Rent Calculation Methodology

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

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

### 9.5 Good faith negotiations

- (a) If a Party gives a Variation Notice, the Parties must promptly (and in any event within ten Business Days) negotiate in good faith to endeavour to agree in writing the variations to the Rent Calculation Methodology, to the extent necessary, so that the Rent Calculation Methodology achieves, or will in the future achieve, the Objective.
- (b) For the purposes of the negotiations referred to in **clause 9.5(a)**, the Parties must:
  - (i) act fairly, reasonably and honestly;
  - (ii) work together and cooperate with each other; and
  - (iii) meet regularly with each other or as otherwise reasonably required by either of them.

### 9.6 Determination of Rent Calculation Methodology Dispute

~~(a)~~ — If, within one month after a Party gives a Variation Notice to the other Party, the Parties have not agreed on variations to the Rent Calculation Methodology:

- ~~(a)~~ ~~(i)~~ a **Disputedispute (Rent Calculation Methodology Dispute)** will be taken to exist between the Parties; and
- ~~(b)~~ ~~(ii)~~ either Party may refer the Rent Calculation Methodology Dispute;

(i) if the Rent Calculation Methodology Dispute relates to a present or future failure to achieve the Objective specified in item 1 of schedule 1 – to an Expert for determination under the Expert Process; or

(ii) if the Rent Calculation Methodology Dispute relates to a present or future failure to achieve the Objective specified in item 2 of schedule 1 – for determination in accordance with clause 9.8.

### **9.7 Determination of Rent Calculation Methodology Dispute during regulatory period**

(a) This clause 9.7 applies in respect of a Rent Calculation Methodology Dispute which relates to a present or future failure to achieve the Objective specified in item 1 of schedule 1.

(b) If a Party refers the Rent Calculation Methodology Dispute to an Expert for determination under the Expert Process then, subject to **clause 9.69.7(c)**, the Parties must jointly appoint the Access Regulator as the expert to determine the Rent Calculation Methodology Dispute.

(c) If:

(i) the Access Regulator does not accept the appointment as the expert to determine the Rent Calculation Methodology Dispute; or

(ii) the Parties agree to have the Rent Calculation Methodology Dispute determined by an expert other than the Access Regulator,

then the Rent Calculation Methodology Dispute will be determined by an Expert appointed in accordance with the Expert Process.

(d) If a Rent Calculation Methodology Dispute is referred to an Expert other than the Access Regulator for determination in accordance with the Expert Process, the Expert must apply the principles which it considers, acting reasonably, would be applied by the Access Regulator if it were appointed as the expert to determine the Rent Calculation Methodology Dispute.

(e) Unless otherwise agreed between the Parties, in determining a Rent Calculation Methodology Dispute, the Expert (whether or not the Access Regulator) must determine:

(i) the extent to which the Rent Calculation Methodology fails, or will in the future fail, to achieve the Objective; **and**

(ii) the variations to the Rent Calculation Methodology (if any) required so that the Rent Calculation Methodology (once varied) will achieve the Objective; **and**

(iii) the date on which such variations will take effect.

(f) If the ~~expert~~Expert determines any variations to the Rent Calculation Methodology in accordance with **clause 9.69.7(e)**, the Rent Calculation Methodology will be taken to be varied as and with effect from the date, determined by the Expert.

### **9.8 Determination of Rent Calculation Methodology Dispute following regulatory period**

(a) This clause 9.8 applies in respect of a Rent Calculation Methodology Dispute which relates to a present or future failure to achieve the Objective specified in item 2 of schedule 1.

(b) Within 20 Business Days after the referral of the Rent Calculation Methodology Dispute is taken to exist between the Parties under clause 9.6(a):

- (i) the Trustee must appoint one expert that satisfies the requirements for an Expert in clause [5.3(f)] of the Extension Project Agreement (and must promptly notify Aurizon of the name, qualifications and experience and contact details of that expert); and
- (ii) Aurizon must also appoint one expert that satisfies the requirements for an Expert in clause [5.3(f)] of the Extension Project Agreement (and must promptly notify the Trustee of the name, qualifications and experience and contact details of that expert).
- (c) Unless otherwise agreed between the Parties, in determining a Rent Calculation Methodology Dispute, each expert appointed under **clause 9.8(b)** must determine:
  - (i) ~~if the extent to which the Rent Calculation Methodology Dispute is about the Rent Calculation Methodology failing to achieve the Objective in the future—on the date that the Rent Calculation Methodology would, but for the variations, fail, or will in the future fail, to achieve the Objective in the future; or~~
  - (ii) ~~otherwise—on the date that the Expert notifies in the Expert's determination that the variation~~the variations ~~to the Rent Calculation Methodology takes effect.~~(if any) required so that the Rent Calculation Methodology (if varied as determined by the expert) will achieve the Objective; and
  - (iii) the date on which such variations will take effect.
- (d) Clauses [5.3(f)], [5.4] and [5.6] of the Extension Project Agreement will apply to the determination of the Rent Calculation Methodology Dispute by each expert appointed under **clause 9.8(b)** as if they were an Expert for the purpose of those clauses.
- (e) Prior to the experts appointed under **clause 9.8(b)** making their determinations in relation to the Rent Calculation Methodology Dispute, the Trustee and Aurizon must procure that those experts consult with each other in relation to their respective opinions in relation to the matters to be determined by them under **clause 9.8(c)**.
- (f) If the two experts appointed under **clause 9.8(b)** determine identical variations to the Rent Calculation Methodology (including the same date on which such variations will take effect), then the Rent Calculation Methodology will be taken to be varied as, and with effect from the date, determined by the experts.
- (g) If the two experts appointed under **clause 9.8(b)** do not determine identical variations to the Rent Calculation Methodology (including the same date on which such variations will take effect), then a further Expert (**Deciding Expert**) will be appointed in accordance with the Expert Process to determine in accordance with the Expert Process which of the two determinations of the experts appointed under **clause 9.8(b)** the Deciding Expert considers most closely achieves the Objective (**Binding Determination**).
- (h) If, in the Binding Determination, the applicable expert determined any variations to the Rent Calculation Methodology in accordance with **clause 9.8(c)**, then the Rent Calculation Methodology will be taken to be varied as, and with effect from the date, determined by the applicable expert in the Binding Determination.

## 10 Records and auditing

### 10.1 Keeping of records

- (a) Aurizon must maintain full and complete records of all information which may be reasonably required by the Trustee to verify the determination of the Rent (including the regulatory value of the Total Extension Infrastructure in its Regulatory Asset Base

by asset type and by location on a basis that shows the Total Extension Infrastructure separately from other assets of the same asset type and location).

- (b) Aurizon must preserve and maintain the records referred to in **clause 10.1(a)** for a period of not less than five years following the end of the year in which the records ceased being necessary to enable calculation of the amounts payable to the Trustee under this Agreement.

## 10.2 Audit

- (a) The Trustee may appoint an independent auditor nominated by it and approved by Aurizon (**Auditor**) to carry out audits in order to verify the amounts included in Monthly Invoices, the advised Monthly Direction to Pay Amounts, the determination of Rent under this Agreement and such other matters reasonably required or relevant to the audit of the records provided under, or the administration of **clauses 7, 8, 9 and 10 (Audits)**.
- (b) Aurizon must approve any Auditor proposed by the Trustee unless Aurizon is of the opinion that the proposed Auditor has previously breached the terms of any confidentiality undertaking which has previously been given by the proposed Auditor to Aurizon.
- (c) The costs and expenses of an Auditor must be borne solely by the Trustee.
- (d) Prior to the Auditor undertaking its first Audit, the Trustee must ensure that the Auditor provides Aurizon with a signed confidentiality undertaking from the Auditor in favour of Aurizon in the form shown in **schedule 4** or in a form otherwise acceptable to Aurizon (acting reasonably).
- (e) Upon at least ten Business Days prior written request given by the Trustee (not more than once each year of this Agreement), Aurizon must:
  - (i) give the Auditor reasonable access during normal business hours to the books, accounts and records of Aurizon relevant to an Audit; and
  - (ii) otherwise provide reasonable assistance and co-operation to the Auditor in relation to the conduct of the Audit.
- (f) The Parties acknowledge and agree that, except to the extent otherwise provided in the confidentiality undertaking referred to in **clause 10.2(d)**, the Auditor will only be entitled to disclose to the Trustee:
  - (i) whether or not the Auditor verified the amounts included in Monthly Invoices and the determination of Rent under this Agreement; and
  - (ii) if the Auditor is unable to verify any amount included in a Monthly Invoice and/or the determination of Rent under this Agreement, the nature and extent of the Auditor's inability to verify the amount included in the Monthly Invoice and/or the determination of Rent under this Agreement.
- (g) The Parties acknowledge and agree that the confidentiality undertaking referred to in **clause 10.2(d)** will:
  - (i) not prevent the Auditor from disclosing the result of its Audit (other than Customer Confidential Information) to the Trustee;
  - (ii) subject to **clause 10.2(g)(iii)**, require the Auditor to keep all Customer Confidential Information confidential (including from the Trustee); and
  - (iii) permit the Auditor to disclose Customer Confidential Information to an Expert (but not the Trustee) to the extent that the expert requires access to the Customer Confidential Information for the purpose of resolving a Dispute in accordance with the Expert Process about any amount included in a Monthly

Invoice and/or the determination of Rent under this Agreement provided that the Expert has first signed a confidentiality undertaking in favour of Aurizon under which the Expert undertakes to keep the Customer Confidential Information confidential (including from the Trustee).

### **10.3 Audit of Direction to Pay Account**

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

## **11 Force majeure**

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

## **12 Termination**

### **12.1 Termination by Trustee for Insolvency Event**

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

### **12.2 Termination by Trustee for non-payment**

The Trustee may immediately terminate this Agreement by notice to Aurizon if Aurizon does not pay any money which is due for payment to the Trustee under a Monthly Invoice by the due date for payment and Aurizon does not pay that money, together with interest under **clause 7.3**, within a further period of 12 months after the Trustee gives a Notice to Aurizon requesting payment of that money.

### **12.3 Termination by Trustee after the Zero Value Date**

The Trustee may terminate this Agreement by notice (effective immediately) to Aurizon at any time after the Zero Value Date.

## 12.4 No other rights of termination

- (a) Except as provided in **clauses 2.1(b), 12.1, 12.2 and 12.3** and despite any rule of law or equity to the contrary:
  - (i) neither Party may terminate, rescind or treat as repudiated, or obtain any order with the effect of terminating or rescinding, this Agreement; and
  - (ii) this Agreement will not terminate, be frustrated (whether at common law, by equity or by statute), be repudiated or taken to have been repudiated for any reason.
- (b) Neither the Trustee nor Aurizon may surrender any part of its interest in this Agreement.

## 12.5 No prejudice as to right to damages

Subject to **clause 13**, nothing in this **clause 12** prejudices in any way a Party's right to Claim and recover damages for any breach of this Agreement by the other Party.

# 13 Limitation of liability

## 13.1 Trustee's limitation of liability

- (a) Aurizon acknowledges that the Trustee enters into this Agreement only as trustee of the Trust, and in no other capacity (other than in respect of the warranties in relation to trustee capacity in clause [13.2] of the Extension Project Agreement which are given by the Trustee in its personal capacity).
- (b) A liability of the Trustee arising under or in connection with this Agreement is limited to and can be enforced against the Trustee only to the extent to which the Trustee is entitled to be indemnified out of the Trust for the liability and the liability can be satisfied out of property of the Trust.
- (c) The limitation of liability in this **clause 13.1** will not apply to any liability of the Trustee to the extent that the liability is not satisfied out of the property of the Trust because there is a reduction in the Trustee's right of indemnity as a result of the Trustee committing fraud, Gross Negligence, Wilful Default, breach of trust or breach of the Trust Deed or the Unit Holders Deed.

## 13.2 Application of Extension Project Agreement

The limitations and provisions contained in clause [7] of the Extension Project Agreement apply to this Agreement *mutatis mutandis*.

# 14 Trustee's risk acknowledgement

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

- (a) its right to the payment of Rent under this Agreement and the quantum of the Rent payable under this Agreement is determined (in part) by Aurizon's revenue from each Coal System of which the Total Extension Infrastructure forms part;
- (b) Aurizon's revenue from each of those systems is dependent on various known and unknown risks, uncertainties and other factors (some of which are within, and some of which are beyond, Aurizon's control); and
- (c) those risks, uncertainties and other factors may cause Aurizon's actual revenue, and the actual payments to the Trustee under this Agreement, to differ from that expected by Aurizon or the Trustee.

## 15 Rail infrastructure manager

### 15.1 Rail infrastructure manager

Aurizon:

- (a) warrants that, at the date of this Agreement, it is accredited as rail infrastructure manager under the Rail Safety Act for railway operations in respect of the "Infrastructure" as defined in the State Infrastructure Lease; and
- (b) must:
  - (i) use reasonable endeavours to, at all times during the period that any Total Extension Infrastructure is leased or subleased (as applicable) to Aurizon under this Agreement, be accredited as rail infrastructure manager under the Rail Safety Act for railway operations in respect of that Total Extension Infrastructure ~~and the "Infrastructure" as defined in the State Infrastructure Lease~~; and
  - (ii) if the accreditation referred to in **clause 15.1(b)(i)** is suspended or cancelled, have that accreditation re-instated or replaced within a period of 120 days following the suspension or cancellation of that accreditation.

### 15.2 Approval of railway manager

For the purposes of section 255 of the TIA, the Parties acknowledge and agree that the terms of this Agreement and the other Transaction Documents constitute:

- (a) Aurizon's approval as railway manager of all the Works and other activities to be undertaken by or for the Trustee on the Extension Land under and in accordance with this Agreement or another Transaction Document; and
- (b) for avoidance of doubt, reasonable conditions to which that approval is subject.

## 16 General

### 16.1 Disputes

~~If any~~[Except for a Rent Methodology Calculation](#) Dispute, [if any Dispute](#) arises between the Parties under this Agreement, the Parties must follow the Dispute Resolution Process to resolve that Dispute.

### 16.2 Confidentiality

The Parties must comply with the Confidentiality Obligations in respect of Confidential Information.

### 16.3 Notices

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

### 16.4 Assignment

A Party may only assign, transfer, mortgage, charge, make the subject of a trust or otherwise deal with or encumber all or any of its rights or liabilities under this Agreement (or procure or permit any of those things) in accordance with the Extension Project Agreement.

### 16.5 GST

- (a) In this **clause 16.5**:
  - (i) unless there is a contrary indication, words and expressions which are not defined in this Agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law;

- (ii) **GST Law** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
  - (iii) references to GST payable and input tax credit entitlement include GST payable by, and the input tax credit entitlement of, the representative member for a GST group of which the entity is a member and the GST joint venture operator of any GST joint venture of which the entity is a participant.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.
- (c) If GST is payable on any supply made by a Party (or any entity through which that Party acts) (Supplier) under or in connection with this Agreement the recipient of the supply will pay to the Supplier an additional amount equal to the GST payable on the supply. Subject to **clauses 16.5(d)** and **16.5(e)**, the amount referred to in this **clause 16.5(c)** must be paid in addition to and at the same time and in the same manner (without any set-off or deduction) that the consideration for the supply is to be provided under this Agreement.
- (d) The Parties agree that:
- (i) Aurizon will issue a recipient created tax invoice (**RCTI**) in respect of any taxable supply which the Trustee makes to Aurizon under or in connection with this Agreement (**Trustee Supplies**);
  - (ii) the Trustee will not issue tax invoices in respect of the Trustee Supplies;
  - (iii) the Trustee is registered for GST as at the date of this Agreement and must notify Aurizon if it ceases to be registered;
  - (iv) Aurizon is registered for GST as at the date of this Agreement and must notify the Trustee if it ceases to be registered;
  - (v) Aurizon will issue an adjustment note to the Trustee for any adjustment events that arise in relation to a supply for which a RCTI has been issued;
  - (vi) each RCTI to be issued in accordance with this Agreement is a tax invoice belonging to the class of invoices that the Commissioner of Taxation has determined in writing may be issued by the recipient of a taxable supply; and
  - (vii) the agreement in this **clause 16.5(d)** will terminate immediately if Aurizon or the Trustee cease to satisfy any of the requirements under the GST Law for issuing a RCTI.
- (e) In respect of taxable supplies to which **clause 16.5(d)** does not apply, the Supplier must deliver a tax invoice or an adjustment note to the recipient of the taxable supply before the Supplier is entitled to payment of an amount on account of GST under **clause 16.5(c)** in respect of the supplies it makes to the recipient. The recipient can withhold payment of the amount on account of GST until the Supplier provides a tax invoice or an adjustment note, as appropriate.
- (f) If an adjustment event arises in respect of a taxable supply made by a Supplier under this Agreement, the amount payable by the recipient under **clause 16.5(c)** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier, or by the Supplier to the recipient, as the case requires.
- (g) Where a Party is required under this Agreement to pay for, reimburse or contribute to any expense, loss, liability or outgoing of the other Party or indemnify another party in relation to such an expense, loss, liability or outgoing, the amount required to be paid, reimbursed or contributed by the first Party will be the sum of:

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

## **16.6 Survival**

This **clause 16** and **clauses 1, 7.3, 12.5** and **13** survive the termination of this Agreement.

## **16.7 Incorporated General Provisions**

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

## **16.8 Applicable law**

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

## **16.9 Counterparts**

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

# Schedule 1

## Objective (clause 9.1)

### 1 Objective during regulatory period

#### 1.1 Application

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

#### 1.2 Definitions

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

**20102016 Access Undertaking** means the access undertaking prepared by Aurizon and approved by the Queensland Competition Authority pursuant to the *Queensland Competition Authority Act 1997* (Qld) which commenced on ~~11~~ October ~~2010,2016~~, as at the date of this Agreement.

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

**Adjustments** has the meaning given in **item 1.3** of this **schedule 1**.

**Capital Value** means:

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

**Excluded Revenue** means:

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

**Extension Pre-Tax Allowable Revenue** means, for a System, the pre-tax amount of revenue from the relevant Pricing Component that the relevant regulated pricing regime specifies may be earned under Access Agreements from train services that use the System

Total Extension Infrastructure and that is calculated based on the Capital Value of the System Total Extension Infrastructure, as relied on by the Access Regulator for approval of that pre-tax amount of revenue (and, for the avoidance of doubt, excludes all Excluded Revenue).

[OPRA means, for a System, the operational and performance risk allowance \(or similar allowance however described\) approved by the Access Regulator in respect of any relevant commercial or regulatory risk borne by Aurizon in connection with the operation and maintenance of that System. Where OPRA is not provided for under an Access Undertaking or approved by the Access Regulator for a System under an Access Undertaking, OPRA will be taken to be zero.](#)

**Pricing Component** means a pricing component relating to parts of the Rail Network that differs from pricing components relating to other parts of the Rail Network based on differences in cost and utilisation, as approved by the Access Regulator. For example, under the ~~2010~~[2016](#) Access Undertaking:

- (a) the component of the Reference Tariff (or access charges derived from the Reference Tariff) calculated based on AT<sub>5</sub> is a Pricing Component; and
- (b) the component of the Reference Tariff (or access charges derived from the Reference Tariff) calculated based on AT<sub>2</sub>, AT<sub>3</sub> and AT<sub>4</sub> is another Pricing Component.

In this definition, AT<sub>2</sub>, AT<sub>3</sub>, AT<sub>4</sub>, AT<sub>5</sub> and Reference Tariff have the meaning given to those terms in the ~~2010~~[2016](#) Access Undertaking.

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

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

**System** means, as applicable, each relevant part of the Railway Network to which a Pricing Component applies. For example, under the ~~2010~~[2016](#) Access Undertaking:

- (a) the relevant parts of the Railway Network in an Individual Coal System for which a component of the Reference Tariff (or access charges derived from the Reference Tariff) calculated based on AT<sub>5</sub> applies is a System; and
- (b) the relevant parts of the Railway Network in that Individual Coal System for which a component of the Reference Tariff (or access charges derived from the Reference Tariff) calculated based on AT<sub>2</sub>, AT<sub>3</sub> and AT<sub>4</sub> applies is another System.

In this definition, Individual Coal System, AT<sub>2</sub>, AT<sub>3</sub>, AT<sub>4</sub>, AT<sub>5</sub> and Reference Tariff, have the meaning given to those terms in the ~~2010~~[2016](#) Access Undertaking.

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

**System Total Extension Infrastructure** means, for a System:

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

- (c) any Replaced Part or Removed Obsolete Part which forms part of the System and which has a value in the Regulatory Asset Base.

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

### 1.3 Objective

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

## 2 Objective following regulatory period

~~Drafting note: Aurizon to provide drafting, as per the Final Decision~~

### 2.1 Application

This item 2 of schedule 1 applies after the Railway Network ceases to be regulated under Access Legislation.

### 2.2 Definitions

Capital Revenue means, in respect of a Section:

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

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

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

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

**End Regulation Date** means the date on which this **item 2** of **schedule 1** commenced to apply.

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

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

- (a) the access revenue that would have been allowable to Aurizon in respect of that Section at the time of provision of the CITS had the Final Regulatory Regime continued to apply beyond the End Regulation Date, and
- (b) the revenue received by Aurizon for the provision of the CITS less the relevant Determined Other Transportation Costs, both being in respect of that Section.

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

**Section** has the meaning given in **item 2.3** of this **schedule 1**.

## **2.3 Objective**

### **Pricing of access**

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

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

due to the Total Extension Infrastructure ownership.

For the avoidance of doubt, Aurizon may adopt

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

### **Revenue sharing**

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

# Schedule 2

## Rent Calculation Methodology (clause 9.2)

### 1 Determination of Rent for each Month

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

$[AID_t * (AT_{2-4} \text{ Distribution Pool})] +$

$[AID_{(t-2)} * AT_{2-4} RAA_{(t-2)}] +$

$[AIE_t * AT_5 \text{ Distribution Pool}] +$

$[AIE_{(t-2)} * AT_5 RAA_{(t-2)}] +$

$\sum_{n=1}^{n=q} (AID_{(t-n)} * AC_{AT\ 2-4(t-n)} + AIE_{(t-n)} * AC_{AT\ 5(t-n)})$

### 2 Definitions

In this **schedule 2**:

**AC<sub>AT2-4(t-n)</sub>** means an amount that is one twelfth of the annual Adjustment Charge in relation to AT<sub>2-4</sub> for the relevant Individual Coal System as set by the Access Regulator for the Year n years prior intended to be adjusted in this year.

**AC<sub>AT5(t-n)</sub>** means an amount that is one twelfth of the annual Adjustment Charge in relation to AT<sub>5</sub> for the relevant Individual Coal System as set by the Access Regulator for the Year n years prior intended to be adjusted in this year.

**Adjustment Charge** has the meaning given to it in the ~~2010~~[2016](#) Access Undertaking.

**Allowable Revenue** has the meaning given to it in the [2016 Access Undertaking](#).

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

(a) zero, and

(b)  $(X - Y) / (Z - T)$

where:

**X** = the capital component of the System Allowable Revenue Amount for AT<sub>2-4</sub> attributable to the System Total Extension Infrastructure; ~~and~~

**Y** = [OPRA in relation to non-electric, to the extent it is included in X;](#)

**Z** = the capital component of the System Allowable Revenue Amount (including the portion due to the System Total Extension Infrastructure) for AT~~2-4;~~[4;](#) ~~and~~

**T** = [OPRA, to the extent it is included in Z.](#)

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

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

- (a) zero, and
- (b)  $\frac{P - Q}{R - S}$

where:

**P** = the capital component of the System Allowable Revenue Amount for AT<sub>5</sub> attributable to the System Total Extension Infrastructure; ~~and~~

**Q** = [OPRA in relation to electric, to the extent it is included in P;](#)

**R** = the capital component of the System Allowable Revenue Amount (including the portion due to the System Total Extension Infrastructure) for AT<sub>5.5</sub>; ~~and~~

**S** = [OPRA, to the extent it is included in R.](#)

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

**AT<sub>2-4</sub>** has the meaning given to it in the ~~2010~~[2016](#) Access Undertaking.

**AT<sub>2-4</sub> Distribution Pool** means AT<sub>2-4</sub> Received Amount less

- (a) any AT<sub>2-4</sub> RAA;
- (b) any AC<sub>AT2-4(t-n)</sub>; ~~and~~
- (c) any Non-Electric Operating Costs in respect of AT<sub>2-4</sub> for the relevant Individual Coal System for the month; ~~and~~

[\(d\) OPRA to the extent it is included in AT<sub>2-4</sub> Received Amount.](#)

**AT<sub>2-4</sub> Received Amount** means, in respect of a month:

- (a) the amount received by Aurizon as payment for invoices provided by Aurizon in respect of AT<sub>2-4</sub> for that month for the relevant Individual Coal System (noting that any Direction to Pay Amount will be deemed to be received, other than in the calculation of “R<sub>i</sub>” in accordance with **clause 8.7**); **plus**
- (b) the amount received by Aurizon as payment for invoices provided by Aurizon in respect of AT<sub>2-4</sub> for any previous month for the relevant Individual Coal System, not yet included in AT<sub>2-4</sub> Received Amount for any previous month.

**AT<sub>2-4</sub> RAA** means one twelfth of the annual AT<sub>2-4</sub> Revenue Adjustment Amount for the relevant Individual Coal System that is set by the Access Regulator, to the extent that the amount applies in respect of the Month for which the Rent is to be calculated.

**AT<sub>2-4</sub> Revenue Adjustment Amount** has the meaning given to it in the ~~2010~~[2016](#) Access Undertaking.

**AT<sub>5</sub>** has the meaning given to it in the ~~2010~~[2016](#) Access Undertaking.

**AT<sub>5</sub> Distribution Pool** means AT<sub>5</sub> Received Amount less

- (a) any AT<sub>5</sub> RAA;
- (b) any AC<sub>AT5(t-n)</sub>; ~~and~~
- (c) any approved Electric Operating Costs in respect of AT<sub>5</sub> for the relevant Individual Coal System for the month; ~~and~~

[\(d\) OPRA to the extent it is included in AT<sub>5</sub> Received Amount.](#)

**AT<sub>5</sub> Received Amount** means, in respect of a month:

- (a) the amount received by Aurizon as payment for invoices provided by Aurizon in respect of  $AT_5$  for that month for the relevant Individual Coal System (noting that any Direction to Pay Amount will be deemed to be received, other than in the calculation of “ $R_i$ ” in accordance with **clause 8.7**); **plus**
- (b) the amount received by Aurizon as payment for invoices provided by Aurizon in respect of  $AT_5$  for any previous month for the relevant Individual Coal System not yet included in the  $AT_5$  Received Amount for any previous month.

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

**$AT_5$  Revenue Adjustment Amount** has the meaning given to it in the ~~2010~~[2016](#) Access Undertaking.

**Electric Operating Costs** for a month means the portion of the “Efficient Cost” (as defined in the Access Undertaking) that is approved by the Access Regulator in respect of the Year in which that month falls that relates to electrical infrastructure, divided by 12.

**Non-Electric Operating Costs** for a month means:

- (a) the “Efficient Cost” (as defined in the Access Undertaking) that is approved by the Access Regulator in respect of the Year in which that month falls, divided by 12; less
- (b) the Electric Operating Costs for that month.

[OPRA](#) has the meaning given in [schedule 1](#).

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

**Regulatory Asset Base** has the meaning given to it in the ~~2010~~[2016](#) Access Undertaking.

**Revenue Adjustment Amount** has the meaning given to it in the ~~2010~~[2016](#) Access Undertaking.

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

**System Allowable Revenue Amount** means

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

**System Total Extension Infrastructure** has the meaning given in **item 1.2** of **schedule 1**.

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

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

‘ $t-2$ ’ means, in relation to the AID, the AIE, the  $AT_{2-4}$ RAA or the  $AT_5$ RAA as applicable, the Year 2 years prior to the Year that includes the Month in respect of which the Rent is determined.

**Year** has the meaning given to it in the ~~2010~~[2016](#) Access Undertaking.

# Schedule 3

## Calculation of Direction to Pay Amount (clauses 1.2 and 8.1)

### 1 Calculation of Direction to Pay Amount

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

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

where:

$DPA_{EAA}$	=	The Direction to Pay Amount for the relevant Extension Access Agreement for the relevant Month
$AC_{EAA}$	=	The Access Charges for the relevant Month payable to Aurizon under the relevant Extension Access Agreement
ER	=	The Expected Rent for the relevant Month
Z	=	$ER / \Sigma AC_{EAA}$
$\Sigma AC_{EAA}$	=	The sum of the Access Charges for the relevant Month payable to Aurizon under the all Extension Access Agreements

### 2 Calculation of Overpayment Amount

The Overpayment Amount for a Month is the amount calculated in accordance with the following formula (provided that if the amount is a negative number, the amount will be taken to be zero) within seven Business Days after the Monthly Invoice Date for the relevant Month:

$$OA = DTP \text{ Amount} + ERA - Rent$$

where:

OA	=	The Overpayment Amount for the relevant Month
DTP Amount	=	The sum of, for each Extension Access Agreement and Specified Access Agreement: <ul style="list-style-type: none"><li>(a) if Aurizon directed (but was not deemed under <b>clauses 8.1</b> or <b>8.2</b> (as applicable) to have directed) the Extension Access Agreement Customer or Specified Access Agreement Customer (as applicable) to pay an amount into the Direction to Pay Account for the relevant Month in accordance with <b>clause 8</b>:<ul style="list-style-type: none"><li>(i) if <b>clause 7.6</b> applied to such direction, the amount that Aurizon would have been required to direct the Extension Access Agreement Customer or Specified Access</li></ul></li></ul>

Agreement Customer (as applicable) to pay into the Direction to Pay Account in accordance with **clause 8** for the relevant Month if **clause 7.6** had not applied; or

(ii) if **clause 7.6** did not apply to such direction, the amount that Aurizon directed the Extension Access Agreement Customer or Specified Access Agreement Customer (as applicable) to pay into the Direction to Pay Account in accordance with **clause 8** for the relevant Month; and

(b) the total amount that was deemed under **clauses 8.1** or **8.2** (as applicable) to have been directed to be paid into the Direction to Pay Account for the relevant Month in accordance with **clause 8**.

ERA = The sum of the Late Payment Adjustment Amounts less the sum of the Rent Shortfall Adjustment Amounts taken into account for the purposes of calculating the Expected Rent for the Relevant Month

Rent = The Rent for the relevant Month (excluding any adjustments in **paragraphs (a)** and **(b)** of the definition of Rent)

# Schedule 4

Form of confidentiality agreement for engagement of Auditor  
(clause 10.2)

**[Drafting note: Form of confidentiality agreement for engagement of Auditor to be included in this schedule 4.]**

# Schedule 5

## Form of Direction to Pay Undertaking (clause 1.2)

**[Drafting note: Form of direction to pay undertaking to be included in this schedule 5.]**

**Executed** as an agreement.

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

.....  
Company Secretary/Director

.....  
Director

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

.....  
Name of Director (print)

Date: ..... / ..... / .....

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

.....  
Company Secretary/Director

.....  
Director

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

.....  
Name of Director (print)

Date: ..... / ..... / .....

Document comparison by Workshare Professional on Tuesday, 10 January 2017  
10:07:06 AM

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Document 2 ID	file://\prf-bnedc-01\Desktop\103118\Desktop\SUFA Documents\Aurizon Network - UT4 SUFA DAAU - Clean Word\Aurizon Network, UT4 SUFA DAAU - EISL clean.docx
Description	Aurizon Network, UT4 SUFA DAAU - EISL clean
Rendering set	Standard

**Legend:**

Insertion

~~Deletion~~

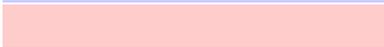
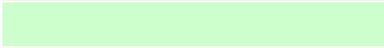
~~Moved from~~

Moved to

Style change

Format change

~~Moved deletion~~

Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

**Statistics:**

	Count
Insertions	264
Deletions	160
Moved from	2
Moved to	2
Style change	0
Format changed	0

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Total changes	428
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