

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

[Independent Trustee]

Aurizon Network Pty Ltd

User Funding - Trust Deed of [Name of Trust]

[Note: The initial Trustee will need to be an entity that meets all of the requirements for a replacement Trustee as set out in clause 15.6 of this Trust Deed.]

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Date

Party

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

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

Background

- A This Deed is the trust deed of **[Name of Trust]**.
 - B Aurizon Network proposes to subscribe for one Ordinary Unit in the Trust on establishment of the Trust.
 - C Aurizon Network has appointed the Trustee, and the Trustee has agreed to act, as the first trustee of the Trust.
-

Agreed terms

1 Interpretation

1.1 Definitions

In this Deed:

Accounting Standards means:

- (a) the Accounting Standards as defined in the Corporations Act; and
- (b) other generally accepted accounting principles and practices in Australia which are not inconsistent with the accounting standards referred to in **paragraph (a)**.

Application Price of a Unit means the price payable in accordance with **clause 10**.

Assets means all the property, rights and income of the Trust, but excludes:

- (a) application money or property in respect of which Units have not yet been issued;
- (b) proceeds of redemption which have not yet been paid;
- (c) any amount to which a Unit Holder is presently entitled; and
- (d) uncalled amounts on Partly Paid Units.

Associate has the meaning given in the Corporations Act.

Aurizon Preference Unit Holder means:

- (a) a Preference Unit Holder that is Aurizon Network or a Related Body Corporate of Aurizon Network; or
- (b) where Aurizon Network has transferred its Ordinary Unit (or an interest in its Ordinary Unit) under clause [12.2] of the Unit Holders Deed, an Ordinary Unit Holder or a Related Body Corporate of the Ordinary Unit Holder.

Books Closing Date has the meaning given in **clauses 12.8(c)(iv)12.8(c)(iv)** or **12.8(d)(iv)**, as applicable.

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

Call means:

- (a) while the Unit Holders Deed is in force, a "Unit Call" (as defined in the Unit Holders Deed); and
- (b) otherwise, a notice from the Trustee to a Unit Holder (in accordance with **clause 9.2**) requiring the Unit Holder to pay part or all of the Unit Holder's Uncalled Amount.

Call Amount:

- (a) while the Unit Holders Deed is in force, means a "Unit Call Amount" (as defined in the Unit Holders Deed); and
- (b) otherwise has the meaning given in **clause 9.2(a)(i)**.

Call Notice has the meaning given in **clause 9.2(a)**.

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

Class means a class of Units, and if there are no separate classes of Units on issue all Units are taken to be Ordinary Units.

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

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

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but does not include:

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

- (i) the cost of repairing, replacing or reinstating any real or personal property of any person (including a Unit Holder) that has been lost, damaged or destroyed; or
- (ii) personal injury to or death of any person;

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

~~(g)(c)~~ the payment by the Trustee to a Unit Holder of any amount which represents the Unit Holder's share of any Distributable Sum.

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

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

Deed means this document.

Distributable Amount has the meaning given in **clause 12.4(a)**.

Distributable Income for a Distribution Period means the distributable income of the Trust for that Distribution Period determined in accordance with **clause 12.2**.

Distributable Sum has the meaning given in **clauses ~~12.8(c)(iv)~~~~12.8(e)(iv)~~ or 12.8(d)(iv)**, as applicable.

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Distribution Account means the account established under **clause 12.6(a)**.

Distribution Calculation Date means the last day of a Financial Year and such other day or days as the Trustee determines.

Distribution Period means:

- (a) for the first distribution period, the period from the commencement of the Trust to the next Distribution Calculation Date;
- (b) for the last distribution period, the period from the day after the preceding Distribution Calculation Date to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the period from the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date or any other interim date that the Trustee may determine.

Due Date of a Call has the meaning given in **clause ~~9.2(a)(ii)~~~~9.2(a)(ii)~~**.

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Eligible Investor means:

- (a) a person that:
 - (i) is a Wholesale Client;

- (ii) is an "Australian Resident" (as defined in *Income Tax Assessment Act 1997* (Cth)); and
 - (iii) is not a unit trust; or
- (b) Aurizon Network Pty Ltd ABN 78 132 181 116, or a Related Body Corporate of Aurizon Network Pty Ltd,

but, unless approved by the Trustee in accordance with **clause 6.9**, does not include:

- (c) any "exempt entity" (as defined in section 995-1 of the *Income Tax Assessment Act 1997* (Cth)); or
- (d) any person referred to in section 102MD of the *Income Tax Assessment Act 1936* (Cth).

Drafting Note:

Wholly owned Related Body Corporate

Ownership of Preference Units by a Related Body Corporate of the party to a linked Umbrella Agreement will be considered on a transaction-by-transaction basis provided that both the Related Body Corporate and the party to the linked Umbrella Agreement are members of the same wholly-owned group during the Construction Period. If ownership of Preference Units by a Related Body Corporate is permitted, the Unit Holders Deed would be amended to include a "change in control" restriction during the Construction Period (the purpose of which would be to prevent, during the Construction Period, the Preference Units being held by a Preference Unit Holder that is not a member of the same wholly-owned group as the party to the linked Umbrella Agreement). The Unit Holders Deed would also be amended to include consequences for an unauthorised "change in control" which would include the suspension of the Preference Unit Holder's voting rights and rights to distributions.

Industry Note: Industry's position is that there should be no 'stapling' of Preference Units to access rights after the Construction Period. This would enable, for example, Preference Units to be held by third party investors (which is a key purpose of SUFA) or by 'related bodies corporate' who may have something less than 100% ownership. If this is accepted, there is no need for 'change in control' restriction.

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Exempt entity or section 102MD fund

*Ownership of Preference Units by an exempt entity (as defined in section 995-1 of the *Income Tax Assessment Act 1997* (Cth)) or a section 102MD (of the *Income Tax Assessment Act 1936* (Cth)) fund would be determined on a transaction-by-transaction basis and only permitted if it did not cause the Trust or the Trustee to be taxed as a company.]*

Expert has the meaning given in the Unit Holders Deed.

Extension Infrastructure Head-Lease has the meaning given in the Unit Holders Deed.

Extension Infrastructure Sub-Lease has the meaning given in the Unit Holders Deed.

Financial Year means:

- (a) when the Trust commences, the period from the day of commencement of the Trust to the next 30 June or such other day determined by the Trustee;
- (b) when the Trust is terminated, the period which commences on the day after the preceding Financial Year ended and which ends on the day the Trust is wound up; and
- (c) in all other circumstances, a period of 12 Months ending on 30 June or such other date determined by the Trustee.

Fully Paid Unit means a Unit on which the Application Price has been fully paid has the meaning given in clause 8.1(b).

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

GST has the meaning given in the GST Law.

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

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

Initial Subscription Date means the date on which the first Units in the Trust are issued to a Unit Holder.

Insolvency Event means, in relation to the Trustee, the happening of any of the following events:

- (a) it is, or states that it is, unable to pay all of its debts as and when they become due and payable, or it has failed to comply with a statutory demand as provided in section 459F(1) of the Corporations Act;
- (b) an application or order is made for the winding up or dissolution, or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution, of the Trustee (other than for the purposes of reconstruction or amalgamation whilst solvent), and the application is not dismissed, the order is not set aside, or the resolution is not withdrawn (as applicable), within 30 days;
- (c) an administrator, provisional liquidator or liquidator, or person having a similar or analogous function under the laws of any relevant jurisdiction, is appointed in respect of the Trustee, or any action is taken to appoint any such person, and the appointment or action is not stayed, withdrawn or dismissed within 30 days;
- (d) a "controller" (as defined in the Corporations Act) is appointed in respect of any property of the Trustee;
- (e) it is deregistered under the Corporations Act;

- (f) a distress, attachment or execution is levied or becomes enforceable against any property of the Trustee;
- (g) it enters into, or takes any action to enter into, an arrangement (including a scheme of arrangement or deed of company arrangement other than a solvent scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of its creditors or members or a moratorium involving any of them; or
- (h) anything analogous to, or of a similar effect to, anything described above under the law of any relevant jurisdiction occurs in respect of it.

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

Law includes any law or legal requirement, including common law, in equity, under statute, regulation or by-law, any condition of any authorisation, and any decision, directive, guidance, guideline or requirements of any Governmental Agency.

Loss means any loss, liability, cost, charge, expense, diminution in value or deficiency of any kind or character which the Trustee pays, suffers or incurs or is liable for including:

- (a) liabilities on account of Tax (other than any Tax assessed to the Trustee directly as a result of the Trustee making a determination under **clause 12.5** to accumulate Distributable Income);
- (b) interest and other amounts payable to third parties; and
- (c) legal costs (on a full indemnity basis) and other expenses reasonably incurred in connection with investigating or defending any Claim, whether or not resulting in any liability and all amounts paid in settlement of any Claim.

Month means a calendar month.

Net Distributable Amount for a Distribution Period means the "Preference Income" (as defined in the Unit Holders Deed) for that Distribution Period less the tax payable by the Trust on that "Preference Income".

Net Income means the amount calculated by the Trustee (or caused to be calculated) as the "net income" for each Financial Year in accordance with section 95(1) of the Tax Act.

Nominated Retirement Date has the meaning given in **clause 15.1, 15.2(a), 15.2(b), 15.3, 15.4(a) or 15.4(b)** (as applicable).

Notice has the meaning given in **clause 23.123.1**.

Ordinary Resolution means a resolution of the relevant class of Units where the required majority is a simple majority of the votes cast by Unit Holders that are entitled to vote.

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Ordinary Unit means a Unit that has the rights, powers, obligations, liabilities and restrictions attaching to an Ordinary Unit under this Deed and, while the Unit Holders Deed is in force, the Unit Holders Deed.

Ordinary Unit Holder means a person that holds recorded on the Register as a holder of Ordinary Units (including persons jointly registered).

Other Transaction Documents means:

- (a) the Unit Holders Deed;
- (b) the Project Management Agreement;
- (c) the Extension Infrastructure Sub-Lease;
- (d) the Rail Corridor Agreement;
- (e) each Umbrella Agreement;
- (f) the Extension Infrastructure Head-Lease; and
- (g) the Integrated Network Deed.

Paid Up Amount of a Unit, at any time, means the amount that:

- (a) the Unit Holder has paid in respect of the Application Price; and
- (b) the Trustee has applied in paying up the Unit as at that time,

less the amount of any capital returned to the Unit Holder pursuant to **clause 9.4(a)**.

Partly Paid Unit means a Unit on which the Application Price has not been (or deemed to have been) fully paid.

Preference Unit means a Unit in respect of which the terms of issue are as set out in **clause 7.17.4**.

Preference Unit Holder means a person recorded on the Register as a holder of Preference Units (including persons jointly registered).

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

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

Redemption Price of a Unit means the price calculated in accordance with **clause 11.2**.

Register means the register of Unit Holders kept by the Trustee showing the number and class of Units held by each Unit Holder.

Registered Scheme means a trust which is registered as a managed investment scheme under Chapter 5C of the Corporations Act.

Related Body Corporate has the meaning given in section 50 of the Corporations Act.

Reserve Account has the meaning given in **clause 12.9(a)**.

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Special Resolution means a resolution of the relevant Class of Units where the required majority is 75% of the votes cast by Unit Holders that are entitled to vote.

Specified Date for a Call has the meaning given in clause 9.5(a)(i)(B).

Stamp Duty includes any duty or stamp duty and any transaction or registration duty or similar charge imposed by any Governmental Agency, and includes any interest, fine, penalty, charge or other amount in respect of the above but excludes GST.

State means the State of Queensland.

Subscription Agreement means a document entered into by the Trustee and an applicant for Units, under which the applicant applies for a specified number and class of Units and agrees to pay the Application Price for them. Under a Subscription Agreement, the Application Price may be payable either in full on or before issue of the Units or by way of instalments in accordance with clause 8.1(a)8.4(a). For the avoidance of doubt, the Unit Holders' Deed will be a Subscription Agreement.

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Supplier has the meaning given in clause 22.322.3.

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Tax includes:

- (a) any tax, levy, impost, deduction, charge, rate, compulsory loan, withholding or duty by whatever name called, levied, imposed or assessed under the Tax Act or any other Law in Australia or elsewhere;
- (b) unless the context otherwise requires, Stamp Duty or GST;
- (c) any interest, penalty, charge, fine or fee or other amount of any kind assessed, charged or imposed on or in respect of anything listed in paragraph (a) or (b) above.

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

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

Tax Return means any Tax return or similar document relating to the Tax affairs of any entity required to be prepared and lodged under a Tax Law.

Trigger Event means the Trustee:

- (a) has breached any of its material obligations under this Deed or the Unit Holders Deed, and failed to remedy that breach within ~~30-14~~ days from notice in writing from the Ordinary Unit Holder or the Preference Unit Holders; or

- (b) has breached any of its material obligations under this Deed or the Unit Holders Deed on three or more occasions in any 12 month period, whether or not those breaches were remedied; or
- (c) has been the subject of an Insolvency Event; or
- (d) has committed fraud.

Trust means the trust constituted under this Deed.

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

Unanimous Resolution means a resolution of the relevant Class of Units where the required majority is 100%.

Uncalled Amount means, in respect of a Unit, the Application Price of the Unit less the Paid Up Amount of the Unit.

Unit means an undivided share in the beneficial interest in the Trust.

Unit Holder means a person recorded on the Register as a holder of Units (including persons jointly registered).

Unit Holders Deed means the document titled "User Funding – [Name of Trust] Subscription and Unit Holders Deed" to be entered into between the Trustee and the subscribers for the initial Units.

Wholesale Client has the meaning given by section 761G of the Corporations Act.

1.2 Interpretation

Unless expressed to the contrary, in this Deed:

- (a) headings are for convenience only and do not affect the interpretation of this Deed;
- (b) where the day on or by which any thing is to be done is not a Business Day, it must be done on or by the preceding Business Day;
- (c) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded;
- (d) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (e) "includes" means includes without limitation;
- (f) no rule of construction will apply to the disadvantage of one party on the basis that that party put forward the documents comprising this Deed;
- (g) words in the singular include the plural and vice versa;
- (h) words importing one gender will include every gender;
- (i) references to clauses and schedules are references to clauses of, and schedules to, this Deed; and
- (j) a requirement for a person to obtain consent or approval of another person requires that person to obtain the consent or approval in writing;

- (k) a reference to:
 - (i) a person includes any company, partnership, joint venture, unincorporated association, corporation or other body corporate and a government or statutory body or authority;
 - (ii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified, consolidated, re-enacted or replaced;
 - (iii) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (iv) a right includes a benefit, remedy, discretion and power;
 - (v) time is to local time in Brisbane, Queensland;
 - (vi) \$ or dollars is a reference to Australian currency;
 - (vii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
 - (viii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmission; and
 - (ix) a party includes that party's successors according to law and permitted assigns and any person to whom it novates its rights and obligations.

1.3 Unit Holders Deed overrides

- (a) While the Unit Holders Deed is in force:
 - (i) if there is any inconsistency between the provisions of this Deed and those of the Unit Holders Deed, the provisions of the Unit Holders Deed prevail; and
 - (ii) all provisions of this Deed are read as being subject to the Unit Holders Deed.
- (b) **Clause 1.3(a)** is not limited by the fact that a provision of this Deed is stated to be subject to the Unit Holders Deed and other provisions of this Deed (apart from this **clause 1.3**) are not expressly stated to be subject to the Unit Holders Deed.

2 Constitution of the Trust

2.1 Appointment of Trustee

Aurizon Network appoints the Trustee, and the Trustee agrees to act, as the trustee for the Unit Holders upon the terms of this Deed.

2.2 Declaration of trust

The Trustee declares that the Trustee holds, and must at all times hold, the Assets on trust for the Unit Holders.

2.3 Assets held separately

To the extent that the nature of an Asset permits, the Assets must be:

- (a) clearly identified as property of the Trust; and
- (b) held separately from the assets of the Trustee and the assets of any other person.

3 Commencement and effect of Deed

3.1 Commencement

The Trust commences on the date Units are first issued.

3.2 Trust Deed enforceability

This Deed is to be legally enforceable by the Unit Holders against the Trustee and by the Trustee against each Unit Holder and all persons claiming through a Unit Holder as if they were parties to this Deed.

4 Name of Trust

The Trust is called **[Name of Trust]** or by such other name as the Trustee determines from time to time.

5 Principal objective of Trust

The principal objective of the Trust is to:

- (a) design, supply, procure, construct, commission and complete new rail infrastructure, and/or modifications and/or upgrades of and/or additions to existing rail infrastructure, as agreed between the Trustee and the Unit Holders;
- (b) lease (or sublease, as applicable) that infrastructure; and
- (c) generate returns for the Preference Unit Holders by deriving rent from the lease (or sublease, as applicable) of that infrastructure.

6 Units

6.1 Nature of Units

- (a) The beneficial interest in the Trust is divided into Units.
- (b) Subject to the rights, obligations or restrictions attaching to any particular Unit or Class, a Unit confers an interest in the Assets as a whole, subject to the liabilities of the Trust.
- (c) A Unit does not confer an interest in a particular Asset.

- (d) At any time, all the Units in a Class are of equal value.
- (e) All Units are Ordinary Units unless otherwise specified in their terms of issue.

6.2 Fractions of Units

- (a) The Trustee may issue Units in fractions of a Unit calculated to up to four decimal places.
- (b) Where any calculation performed under this Deed would result in the issue of a fraction of a Unit, otherwise than where the Trustee has offered the issue of Units in fractions of up to four decimal places:
 - (i) the number of Units to be issued will be rounded downwards to the nearest whole Unit; and
 - (ii) any excess amount resulting from this rounding down is an Asset.
- (c) The provisions of this Deed relating to Units and Unit Holders apply to fractions of Units in the proportion which the fraction bears to one Unit.

6.3 Consolidation and division of Units

- (a) Units may be consolidated or divided as determined by the Trustee.
- (b) Where the Trustee consolidates or divides Units of the same Class, it must ensure that all Units of the Class are consolidated or divided on the same basis.
- (c) Where the Trustee consolidates or divides the Units in one Class, it must ensure that the consolidation or division is fair and equitable as between all Classes.

6.4 Rights attaching to Units

- (a) A Unit Holder holds a Unit subject to the rights and obligations attaching to that Unit.
- (b) Except as otherwise set out in this Deed, each Unit Holder must not:
 - (i) interfere with any rights or powers of the Trustee under this Deed;
 - (ii) purport to exercise a right in respect of an Asset, or claim any interest in an Asset (for example, by lodging a caveat affecting an Asset); or
 - (iii) require an Asset to be transferred to the Unit Holder (or any other person).

6.5 Joint holders

Persons registered jointly as a Unit Holder hold as joint tenants and not as tenants in common:

- (a) unless the Trustee otherwise agrees; or
- (b) unless specifically provided otherwise in clauses [11.2(b)(i) and 24.2(b)] of the Unit Holders Deed.

6.6 Transfer of Units

- (a) A Unit Holder may transfer Units only:
 - (i) to an Eligible Investor; and
 - (ii) with the prior consent of the Trustee (which may not be unreasonably withheld).
- (b) Transfers must be in a form approved by the Trustee (acting reasonably) and, if the Trustee requires, be lodged with the Trustee duly stamped.
- (c) A transfer is not effective until recorded in the Register.
- (d) While the Unit Holders Deed is in force, the Trustee must not register a transfer of Units unless:
 - (i) the transferee has become a party to, and agreed to be bound by, the Unit Holders Deed; and
 - (ii) the transfer is in accordance with the Unit Holders Deed.

(e) Notwithstanding any other provision of this Deed, whilst the Unit Holders Deed is in force, the Trustee:

(i) may not withhold or delay its consent to; and

(ii) must register,

any transfer to an Eligible Investor which is in accordance with the Unit Holders Deed.

~~(e)~~(f) The Trustee will not register a transfer of Units if in the Trustee's opinion, the transfer would contravene **clause 6.6(a)(i)**.

6.7 Issue of additional Units

Subject to **clause 6.8**, where the Trustee has issued Units in any Class, the Trustee may issue additional Units in that Class:

- (a) to all existing Unit Holders of that Class proportionately to their respective existing holdings or in proportions agreed between them; or
- (b) to an Eligible Investor that is not an existing Unit Holder of that Class, with the approval of:
 - (i) a Special Resolution of the Unit Holders holding Ordinary Units; and
 - (ii) where there are Preference Units on issue, a Unanimous Resolution of the Unit Holders holding Preference Units.

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6.8 Restrictions on issue of additional Units

The Trustee must not while the Unit Holders Deed is in force, issue Units of any Class to any person that is not an existing Unit Holder unless the applicant has become a party to, and agreed to be bound by, the Unit Holders Deed.

6.9 Eligible Investors

- (a) Notwithstanding paragraphs (c) and (d) of the definition of Eligible Investor for the purposes of this Deed and subject to clause 6.9(c), the Trustee may approve a person to be an Eligible Investor for the purposes of the Deed.
- (b) Subject to clause 6.9(d), if the Trustee proposes to approve a person as an Eligible Investor, the Trustee must:
 - (i) notify the Unit Holders and provide reasonable particulars regarding the proposal; and
 - (ii) consider whether approving the person as an Eligible Investor may result in the Trust being taxed in a similar manner to a company and in doing so consider:
 - (A) any submissions made to the Trustee by Unit Holders, provided that such submissions are made within the time period set by the Trustee (in its absolute discretion) having regard to the circumstances, time and manner in which it is proposed that the person become an Eligible Investor; and
 - (B) any advice obtained by the Trustee from external taxation advisers.
- (c) If, after taking into account the matters referred to in clause 6.9(b)(ii) (where applicable), the Trustee, in its absolute discretion, forms the opinion that the approval of a person as an Eligible Investor would result in the Trust being taxed in a similar manner to a company, the Trustee must not approve that person under clause 6.9(a).
- (d) Clause 6.9(b) does not apply to the process contemplated by clause 7.7 of the Unit Holders Deed.

7 Classes of Units

7.1 Preference Units

- (a) Subject to this Deed, the Trustee may issue Preference Units to which the following rights, powers, obligations, liabilities and restrictions attach:
 - (i) the Preference Units have the right to receive distributions of Distributable Income in priority to Ordinary Units;
 - (ii) the only voting rights are as expressly provided in this Deed or the terms of issue; and

(iii) unless otherwise expressly provided for in this Deed, the Preference Units have no right to receive a return of capital from the Trust.

(b) While the Unit Holders Deed is in force and subject to this Deed, the Trustee may issue Preference Units, the terms of issue of which must be as set out in this Deed and the Unit Holders Deed and as summarised in schedule [10] of the Unit Holders Deed.

7.2 Other Classes

In addition to Preference Units issued under **clause 7.1**, the Trustee may, subject to this Deed and with the approval of:

- (a) a Special Resolution of the Unit Holders holding Ordinary Units; and
- (b) where there are Preference Units on issue, a Unanimous Resolution of the Unit Holders holding Preference Units,

issue Units of different Classes, with different proprietary and other rights and different liabilities as provided in this Deed or specified in the terms of issue or, subject to the Trustee's duties and the terms of issue of each Class of Units, at any time categorise any Units into a Class.

7.3 Other Class rights

- (a) Except to the extent specified in this Deed or the terms of issue of Units of a Class, all Units will rank pari passu.
- (b) A separate Class does not constitute a separate trust.

8 Partly Paid Units and Calls – general provisions

8.1 Partly Paid Units

- (a) The Trustee may issue Partly Paid Units in respect of which the Application Price is payable in instalments, by paying the Initial Subscription Amount and by making instalment payments:
 - (i) in response to Calls; or
 - (ii) as prescribed in the terms of issue of the Units.
- (b) Units are Fully Paid Units on and from the time that:
 - (i) the Application Price of the Units has been paid in full; or
 - (ii) the full amount of the outstanding liability of the Unit Holders of those Units to pay to the Trustee any Uncalled Amount is extinguished under **clause 8.5**.

8.2 Lien

- (a) The Trustee has a first and paramount lien on the Units registered in the name of a Unit Holder where:
 - (i) the Trustee has issued Partly Paid Units and a Call is due but unpaid on those Units; or

- (ii) the Application Price of Units is payable by instalments and an instalment is due but unpaid on those Units.
- (b) The lien is in respect of the amount of the Calls or instalments due and unpaid at any time, and interest and expenses incurred because that amount is not paid.

8.3 Lien on distributions

The lien under **clause 8.2** extends to all distributions of Distributable Income from time to time payable in respect of the Units.

8.4 Liability of joint holders

Joint holders of Partly Paid Units are jointly and severally liable to pay all amounts due and payable on the Partly Paid Units held by them.

8.5 Extinguishment of liability on Calls

- (a) The Trustee may agree to extinguish the liability of a Unit Holder holding Partly Paid Units to pay to the Trustee any amount unpaid on the Partly Paid Units held by that Unit Holder.
- (b) While the Unit Holders Deed is in force, the liability of a Preference Unit Holder to pay to the Trustee any amount unpaid on the Partly Paid Units held by that Unit Holder will be extinguished at the time, and in the circumstances, contemplated in clause **[5.9(b)]** of the Unit Holders Deed.
- (c) For the avoidance of doubt, if the liability of a Preference Unit Holder to pay to the Trustee any amount unpaid on the Partly Paid Units is extinguished in accordance with the provisions of the Unit Holders Deed, the subsequent termination of the Unit Holders Deed will not affect that extinguishment.

8.6 Uncalled Amount on winding up of the Trust

On the winding up of the Trust, a holder of Partly Paid Units has no liability to the Trust in respect of its Uncalled Amount except to the extent of Calls made prior to the date specified by the Trustee as the date the winding up commenced.

9 Calls and failure to pay Calls

9.1 Unit Holders Deed applies to Calls for Preference Units

While the Unit Holders Deed is in force, the rights, powers and obligations of the Trustee and the Preference Unit Holders in relation to making Calls, paying Calls and failure to pay Calls are governed by the Unit Holders Deed and this **clause 9** does not apply.

9.2 Calls

- (a) At any time after the issue of a Partly Paid Unit, the Trustee may make a Call on part or all of any Uncalled Amount by notice in writing to the Unit Holder (**Call Notice**) specifying:
 - (i) the amount of the Call (**Call Amount**); and

- (ii) the date the amount must be paid (**Due Date**).
- (b) A Unit Holder that receives a Call Notice must pay the Call Amount no later than the Due Date.
- (c) The Trustee may determine the time at which payments made by a Unit Holder in response to a Call Notice are applied in paying up the Unit Holder's Partly Paid Units, which may be later than the Due Date.
- (d) The Trustee may:
 - (i) revoke a Call at any time before the Call Amount is applied in paying up the Unit Holder's Partly Paid Units (including after the Call Amount has been paid), in which case:
 - (A) if the Call Amount has been paid, that amount will be refunded by the Trustee to the Unit Holder;
 - (B) if the Call Amount has not been paid, the amount of the Call will cease to be payable; and
 - (C) in either case, the amount of the Uncalled Amount will be adjusted accordingly; or
 - (ii) postpone a Call or extend the time for payment of a Call.

9.3 Application of Call Amounts

- (a) The Trustee must make Calls and apply Call Amounts only in furtherance of the objectives of the Trust and in payment of expenses of the Trust.
- (b) To the extent that any Call Amounts received are not immediately required for the purposes referred to in **clause 9.3(a)**, the Trustee may invest those amounts in any form of cash or cash style investment or similar short term investment (for example, financial institution deposits or cash management trusts).

9.4 Return of amounts paid in response to Call

- (a) The Trustee must return to the Unit Holder any Call Amount paid in response to a Call which the Trustee determines is not required for the purpose of the Call.
- (b) Any amount returned by the Trustee under **clause 9.4(a)**, must be deducted from the Unit Holder's Paid Up Amount and added to the Unit Holder's Uncalled Amount.

9.5 Failure to pay a Call or instalment

- (a) If a Unit Holder fails to pay a Call or an instalment in respect of any Partly Paid Units on or before the Due Date:
 - (i) the Trustee must give a notice to that Unit Holder not later than five Business Days after the Due Date that:
 - (A) requires payment of the amount and any interest payable under **clause 9.5(a)(ii)**; and

- (B) specifies a further due date for payment which is not earlier than two Business Days after the date of service of the notice (**Specified Date**); and
 - (ii) interest will accrue on the outstanding amount until that amount, together with the interest thereon, has been paid, at a rate of interest determined by the Trustee or as set out in the terms of issue of the Units.
- (b) If the requirements of any notice issued under **clause 9.5(a)(i)** are not complied with by the defaulting Unit Holder by the Specified Date:
 - (i) all voting rights and entitlements to the distribution of Distributable Amounts in connection with the Partly Paid Units are suspended;
 - (ii) the Trustee may, at any time following the Specified Date while the Call or instalment remains unpaid, apply any distribution which is or may otherwise become payable to the defaulting Unit Holder under this Deed towards any amounts then owing by the defaulting Unit Holder (including accrued interest and all costs and expenses incurred by the Trustee in relation to the unpaid Call); and
 - (iii) the Partly Paid Units of the defaulting Unit Holder are liable to be forfeited under **clause 9.6**.
- (c) At any time while a Call or instalment remains unpaid, the Trustee may agree to extend the time for payment or waive or permit the remedy of any default by a defaulting Unit Holder.
- (d) Upon the remedy of a default at any time prior to the forfeiture of the Units under **clause 9.6**, the Unit Holder's voting rights and entitlements to distributions shall be restored.

9.6 Forfeiture of Partly Paid Unit

- (a) If any part of a Call or instalment remains unpaid after the Specified Date (or such later date as the Trustee may agree under **clause 9.5(c)**), and the Trustee has not waived the default by the defaulting Unit Holder in accordance with **clause 9.5(c)**, then any Partly Paid Units in respect of which the notice under **clause 9.5(a)(i)** has been given may be forfeited at such time as the Trustee determines.
- (b) For the avoidance of doubt, a forfeiture of Units under this **clause 9.6** is not a disposal of Units, and the Units remain the property of the Unit Holder subject to the restrictions set out in this **clause 9** until the Units are sold or otherwise disposed of in accordance with this **clause 9**.
- (c) Where Units are forfeited, all entitlements to the distribution of Distributable Income and capital in connection with the forfeited Units, which have not been paid before forfeiture, must be applied in accordance with **clauses 9.12** and **9.13** as if they formed part of the proceeds of sale of the forfeited Units.

9.7 Unit Holder's rights on forfeiture

Without affecting the obligations and liability of a Unit Holder, and the rights of the Trustee, from the date of forfeiture of any Units of a Unit Holder:

- (a) the Unit Holder has no Claim against the Trustee or the Trust in respect of the forfeited Units; and
- (b) the Trustee must hold the forfeited Units on trust for the Unit Holder.

9.8 Sale of forfeited Units

- (a) The Trustee may offer the forfeited Units for sale (as agent for the holder of the forfeited Units).
- (b) Forfeited Units may be sold or otherwise disposed of to an Eligible Investor.

9.9 Cancellation of forfeiture

At any time before sale or disposition under **clause 9.8**, the forfeiture of Units may be cancelled on such terms as the Trustee thinks fit, and will be cancelled when the Unit Holder pays to the Trustee the full amount owing in respect of such forfeited Units. In such circumstances, the Trustee must issue to the Unit Holder a statement signed by an authorised officer of the Trustee confirming that the forfeiture of such Units has been cancelled and confirming the date of such cancellation.

9.10 Continuing liability of former holder

The former holder of a Partly Paid Unit that has been forfeited or transferred remains liable to pay to the Trustee on demand:

- (a) all money that at the date of forfeiture, transfer or sale was payable by such former holder to the Trustee in respect of the forfeited, transferred or sold Partly Paid Unit; and
- (b) all costs incurred in connection with the forfeiture, transfer or sale, including any costs incurred in connection with any proceedings brought against the former holder to recover the Call or instalment.

9.11 Evidence of forfeiture

A statement signed by an authorised officer of the Trustee that:

- (a) a Partly Paid Unit has been forfeited on a stated date; and
 - (b) no forfeiture of Units has been cancelled in accordance with **clause 9.9**,
- is conclusive evidence of that fact as against all persons claiming to be entitled to the forfeited Units.

9.12 Proceeds of sale of forfeited Unit

- (a) Where Units are forfeited pursuant to **clause 9.6**, the Trustee may:
 - (i) receive the consideration, if any, given for the forfeited Units on the sale or disposal; and

- (ii) execute a transfer of such Units in favour of the person to whom the Units are sold or disposed of and that person must then be registered as the holder of those Units.
- (b) The person acquiring the Units:
 - (i) is not obliged to ensure that any part of the money that has been paid for the Units is paid to the former holder of the Units; and
 - (ii) will not be affected by any irregularity or invalidity in the proceedings in relation to the forfeiture, sale or disposal of the Units.

9.13 Application of proceeds of sale of forfeited Units

- (a) Where forfeited Units are sold or disposed of, the Trustee must deduct from the consideration received:
 - (i) all money that, at the date of forfeiture, was payable to the Trustee in respect of the forfeited Units;
 - (ii) all costs incurred in connection with the forfeiture, including any costs incurred in connection with any proceedings brought against the former holder to recover the Call or instalment; and
 - (iii) all amounts that have been or will be incurred for commissions, Taxes, transfer fees and other usual charges, if any, on the sale or disposal of the Units.
- (b) The Trustee may retain the amounts deducted as Assets, but the balance remaining (if any) must be paid to the Unit Holder whose Units were forfeited.

9.14 Trustee not liable

The Trustee is not liable to any former or current holder of Units for any Loss (including Consequential Loss) incurred in relation to the sale or disposal of the forfeited Units.

10 Application for and issue of Units

10.1 Units issued on Initial Subscription Date

Units issued on the Initial Subscription Date will be issued for an Application Price of **[\$1.00]** per Unit.

10.2 Subsequent Unit issues

- (a) Any Units issued after the Initial Subscription Date will be offered at an Application Price determined by the Trustee and set out in the application form or Subscription Agreement for the Units.
- (b) The Application Price may be rounded as the Trustee determines. Any excess application money or property which results from rounding becomes an Asset of the Trust.

10.3 Application for Units

A person who wishes to subscribe for Units must lodge an application for Units by executing a Subscription Agreement or a form approved by the Trustee.

10.4 Person must be Eligible Investor

The Trustee must reject an application for Units lodged by a person who is not an Eligible Investor.

10.5 Payment of Application Price

- (a) On acceptance of an application for Units the applicant must pay the Application Price set out in the application form or Subscription Agreement for the Units.
- (b) The Application Price for Units is payable either in full on or before issue of the Units or by way of instalments in accordance with **clause 8.1(a)**, in accordance with the terms of issue of the Units or the terms of the applicable Subscription Agreement.

10.6 Issue date

Units are taken to be issued when:

- (a) the Trustee accepts the application for Units; or
- (b) the Trustee receives the initial instalment of the Application Price, whichever happens later.

10.7 Uncleared funds

Units issued against application money paid other than in cleared funds are void if the funds are not subsequently cleared within one Month of receipt of the application.

11 Redemption / repurchase procedures

11.1 Redemption of Units

- (a) The Trustee may redeem or repurchase any Units:
 - (i) by giving notice to the Unit Holder that the Units are to be redeemed or repurchased on a date specified in the notice; or
 - (ii) at the request of the Unit Holder, on a date determined by the Trustee.
- (b) While the Unit Holders Deed is in force, the Trustee must not redeem or repurchase any Units except in accordance with the Unit Holders Deed.
- (c) The Trustee may deduct from the proceeds of redemption or repurchase any money due and payable to the Trustee by the Unit Holder.
- (d) The Trustee is not obliged to pay any part of any Redemption Price out of the Trustee's own funds, and may decide to purchase or arrange for the purchase of Units the subject of a redemption offer or request.

11.2 Redemption Price

- (a) The Redemption Price for Preference Units is determined in accordance with terms of issue of the Preference Units.
- (b) The Redemption Price for Ordinary Units is the fair value of the Ordinary Units, determined taking into account the rights attaching to any Preference Units (if any) on issue at the time of the redemption of the Ordinary Units.

11.3 Redemption Price including Distributable Income

- (a) The Trustee may determine the extent, if any, to which any component of the Redemption Price of a Unit comprises a distribution of Distributable Income of the Trust.
- (b) The Trustee must notify a person whose Units have been redeemed, within 90 days after the end of the relevant Financial Year, of that amount of Distributable Income.
- (c) The Unit Holder is presently and absolutely entitled to Distributable Income determined to be a component of the Redemption Price.

11.4 Payment

- (a) The Trustee may only satisfy a redemption of Preference Units by the payment of cash.
- (b) The Trustee may satisfy a redemption of Ordinary Units by payment of cash, settlement in kind or transfer of Assets to the Unit Holder in specie.
- (c) If a redemption of Ordinary Units is satisfied by a transfer of Assets to the Unit Holder in specie, the value of the Assets transferred will be calculated at market value, as determined by the Trustee, and the expenses incurred in transferring the Assets will be borne by that Unit Holder.

11.5 Cancellation of Units on redemption

On a redemption of Units the Trustee must cancel the Units redeemed and alter the Register to reflect the cancellation.

12 Distributions

12.1 Receipts, provisioning and categories

- (a) The Trustee must receive and collect all income of the Trust.
- (b) The Trustee may determine whether any item is income or capital of the Trust.
- (c) The Trustee may maintain any reserves or provisions the Trustee considers appropriate.
- (d) The Trustee may apportion or keep separate accounts of the different categories and sources of income that relate to different types of

investments of the Trust, and the costs, charges and expenses attributable to each of those types of income.

12.2 Determination of Distributable Income

- (a) The Trustee may determine the Distributable Income for each Distribution Period by way of a standing determination of principles for calculating the Distributable Income, the application of which is capable of independent verification, and may change the principles from time to time.
- (b) Unless the Trustee determines otherwise or the Unit Holders Deed provides otherwise, the Distributable Income of the Trust for a Distribution Period is equal to the amount of the Net Income of the Trust for that Distribution Period, calculated as if that Distribution Period was a Financial Year.
- (c) For the avoidance of doubt, the preparation of the financial statements in accordance with the Accounting Standards of itself is not to be regarded as a determination of the method for calculating the Distributable Income of the Trust pursuant to this **clause 12.2**.

12.3 Present entitlement

- (a) Subject to **clauses 12.3(b), 12.3(c) and 12.5(a)** and clauses **[14.3 and 14.5]** of the Unit Holders Deed and any other preferential rights of a Class in respect of Distributable Income, each Unit Holder on the Register at close of business on a Distribution Calculation Date is presently and absolutely entitled to a share of the Distributable Income for that Distribution Period:
 - (i) pro rata to the number of Units they respectively hold as at that time; or
 - (ii) where there are Partly Paid Units on issue, pro rata in the proportion that the total Paid Up Amounts of that Unit Holder's Units bears to the aggregate Paid Up Amounts of all Units on issue.
- (b) At any time before a Distribution Calculation Date, other than the last day of a Financial Year, the Trustee may determine that no Distributable Income is to be distributed on that Distribution Calculation Date, in which case no Unit Holder has a present entitlement on that Distribution Calculation Date to a share of Distributable Income for that Distribution Period.
- (c) The Ordinary Unit Holders will not be presently entitled to any Distributable Income at any time that Preference Units are on issue.

12.4 Distributable Amount

- (a) The Distributable Amount for a Distribution Period is the Distributable Income for that Distribution Period which the Trustee determines to distribute, together with any amount the Trustee determines to distribute

to the Unit Holders as a capital amount or distribution of a Reserve Account in respect of that Distribution Period.

- (b) The Trustee must distribute to a Unit Holder that Unit Holder's entitlement to the Distributable Amount (after any accumulations under **clause 12.5** and any deductions under **clause 12.7**) on or before the date which is 14 Business Days after the end of the Distribution Period.

12.5 Trustee may accumulate income

- (a) At any time before the end of a Distribution Period, the Trustee may accumulate the Distributable Income for that Distribution Period.
- (b) The Trustee may at any time resort to the accumulated Distributable Income and distribute all or part of that accumulated Distributable Income as a distribution of Distributable Income.
- (c) While the Unit Holders Deed is in force, the Trustee must accumulate Distributable Income and distribute accumulated Distributable Income in accordance with the Unit Holders Deed.

12.6 Distribution Account

- (a) The Distributable Amount is to be transferred to an account (**Distribution Account**), and ceases to be an Asset as at close of business on the Distribution Calculation Date.
- (b) The Distributable Amount held in the Distribution Account must be held by the Trustee on trust for distribution among the persons entitled to that Distributable Amount.
- ~~(c)~~ The Trustee may invest the Distributable Amount held in the Distribution Account, pending payment of the Distributable Income, in:
 - ~~(i)~~ such whilst the Unit Holders Deed is in force, investments permitted under the Unit Holders Deed; and
 - ~~(e)(ii)~~ otherwise, such investments as the Trustee sees fit (including a bank account).
- (d) Income earned from the investment of the Distributable Amount held in the Distribution Account is income of the Trust.

12.7 Deduction of Tax and other amounts

- (a) The Trustee may deduct the following amounts from a Unit Holder's share of the Distributable Amount:
 - (i) Tax paid, or which the Trustee anticipates will be payable, by the Trustee on account of, or in respect of, the Unit Holder on the amount of the Distributable Income otherwise distributable to that Unit Holder;
 - (ii) a charge made by a person on account of Tax imposed in respect of amounts received from that Unit Holder or paid to the Unit Holder during the Distribution Period; and

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(iii) any other amount the Trustee is required by law to deduct, and all amounts deducted must be applied in reimbursing the Trust for any corresponding amount paid or reimbursed out of the Trust or reimbursing the Trustee for the payment of the Tax to the person or authority entitled to the Tax.

- (b) A Unit Holder is only entitled to be paid the Unit Holder's share of the Distributable Amount less the amount the Trustee determines to deduct under clause 12.7(a).

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12.8 Trust taxed like a company

- (a) If in respect of a Financial Year the Trust is taxed in a similar manner to a company, this **clause 12.8** applies instead of **clauses 12.2 to 12.7**.
- (b) If this **clause 12.8** applies, the Trustee determines that each of 31 March, 30 June, 30 September and 31 December is a Distribution Calculation Date.
- (c) While the Unit Holders Deed is in force, this **clause 12.8(c)** applies:
- (i) As soon as practicable after the end of the Distribution Period, the Trustee must determine the Net Distributable Amount (plus such other amount as the Trustee determines) of the Trust in respect of the Distribution Period.
- (ii) The Trustee must provide for, and pay from the Assets when appropriate, all Tax payable by the Trust in respect of the Distribution Period.
- (iii) The Unit Holders do not have a present entitlement at the end of a Distribution Period to the Net Distributable Amount (plus such other amount as the Trustee determines) of the Trust in respect of the Distribution Period.
- (iv) In respect of each Distribution Period, the Trustee may, subject to **clause 12.8(e)**, determine to pay the Net Distributable Amount (plus such other amount as the Trustee determines) for that Distribution Period as a distribution in respect of the Distribution Period (each a **Distributable Sum**) to the Unit Holders on the Register on any date determined by the Trustee (**Books Closing Date**) provided that the Books Closing Date is not more than 30 Business Days after the end of the Distribution Period.
- (v) In respect of a Distributable Sum:
- (A) the Trustee must take all necessary or desirable steps in relation to distributions, including the franking of the distributions to the maximum extent permitted under the Tax Act; and
- (B) the Trustee must take any steps or actions as may reasonably be required in order to comply with the requirements of the Tax Act.

- (vi) Each Unit Holder on the Register at close of business on a Books Closing Date is, subject to clause **12.8(e)**, entitled to a share of the Distributable Sum, pro rata in the proportion that the total Paid Up Amounts of that Unit Holder's Units bears to the aggregate Paid Up Amounts of all Units on issue as at that time.
- (d) This **clause 12.8(d)** applies where **clause 12.8(c)** does not apply:
 - (i) As soon as practicable after the end of the Distribution Period, the Trustee must determine the income of the Trust in respect of the Distribution Period. Unless the Trustee determines otherwise prior to the end of the Distribution Period, income will be calculated in accordance with normal accounting principles.
 - (ii) The Trustee must provide for, and pay from the Assets when appropriate, all Tax attributable to the income of the Trust.
 - (iii) Unit Holders do not have a present entitlement at the end of a Distribution Period to the income of the Trust.
 - (iv) The Trustee may, from time to time determine to pay an amount as a distribution in respect of the Distribution Period (each a **Distributable Sum**) to the Unit Holders on the Register on any date determined by the Trustee (**Books Closing Date**).
 - (v) In respect of a Distributable Sum:
 - (A) the Trustee may take all necessary or desirable steps in relation to distributions, including the franking of the distributions; and
 - (B) the Trustee must take any steps or actions as may reasonably be required in order to comply with the requirements of the Tax Act.
 - (vi) Each Unit Holder on the Register at close of business on a Books Closing Date is entitled to a share of the Distributable Sum, pro rata to the number of Units they respectively hold as at that time.
- (e) The Ordinary Unit Holders will not be entitled to any part of the Net Distributable Amount or a share of the Distributable Sum at any time that Preference Units are on issue.

12.9 Reserve Account

- (a) If determined by the Trustee, any net realised and unrealised capital gains or losses of the Trust may be separated from the other receipts, profits and gains of the Trust and credited to an account (**Reserve Account**).
- (b) The Trustee may distribute to the Unit Holders from time to time, as at a date determined by the Trustee, an amount equal to so much of the net realised capital gains credited to a Reserve Account as the Trustee may determine.

- (c) The Trustee must adjust the Reserve Account for the amount distributed.
- (d) Each Unit Holder on the Register at close of business on the date determined by the Trustee is entitled to a share of the distribution from the Reserve Account, pro rata in the proportion that the total Paid Up Amounts of that Unit Holder's Units bears to the aggregate Paid Up Amounts of all Units on issue at that time.
- (e) Any amount in a Reserve Account may be capitalised by a determination of the Trustee. The capitalisation is effected by dividing the number of Units held by Unit Holders by a proportion determined by the Trustee which takes into account the number of Units held by the Unit Holder, the amount to be capitalised and other matters determined relevant by the Trustee.
- (f) The Trustee must adjust the Reserve Account and update the Register to reflect the Units issued on a capitalisation.

12.10 Distributions of capital

- (a) Subject to any rights, powers, obligations, liabilities and restrictions applicable to a Class, the Trustee may determine to distribute capital to Unit Holders (or Unit Holders of a Class) in addition to any other distributions to be made to Unit Holders (or Unit Holders of that Class) in respect of a Distribution Period.
- (b) Subject to any rights, powers, obligations, liabilities and restrictions applicable to a Class, each Unit Holder on the Register at close of business on the date determined by the Trustee is entitled to a share of the distribution of capital:
 - (i) pro rata to the number of Units they respectively hold as at that time; or
 - (ii) where there are Partly Paid Units on issue, pro rata in the proportion that the total Paid Up Amounts of that Unit Holder's Units bears to the aggregate Paid Up Amounts of all Units on issue as at that time.

12.11 Unit Holder may direct payments

The Trustee ~~may~~must act on a direction given by a Unit Holder in such form as the Trustee requires to pay to a third party nominated in the direction all or part of the Unit Holder's entitlement to distributions of Distributable Amounts under this **clause 12** or under **clause 20** on winding up.

12.12 Fractions

If the share of Distributable Amounts for a person determined under this **clause 12** includes a fraction of a cent, the share is to be adjusted to the nearest cent below the amount calculated under this clause (as appropriate) and the fraction of the cent becomes an Asset of the Trust.

12.13 Trustee's liability for Tax

- (a) Except as provided in **clause 12.13(b)**, the Trustee:

- (i) does not incur any liability;
- (ii) is not obliged to account to anyone (including any Unit Holder or former Unit Holder); and
- (iii) is not liable for any Loss (including Consequential Loss) or damage,

as a result of the exercise of any discretion or power under this **clause 12**, or in respect of any determination of fact or law made as part of, or as a consequence of, the exercise of such discretion or power, despite any error or miscalculation in any provision made for Tax except to the extent that the Trustee has been guilty of fraud, negligence, wilful default or breach of trust.

- (b) The Trustee is personally liable to pay any Tax assessed to the Trustee directly as a result of the Trustee making a determination under **clause 12.5** to accumulate Distributable Income.

12.14 Compensation if Ordinary Unit Holder directs Trustee not to make distributions

- (a) In this **clause 12.14**, the terms “Access Regulator”, Access Undertaking” and “Preference Income” have the meaning given in the Unit Holders Deed.
- (b) If the Ordinary Unit Holder directs the Trustee not to distribute Preference Income under clause **[14.5(a)]** of the Unit Holders Deed, the Ordinary Unit Holder must pay a compensation amount to the Trustee for the benefit of the Trust, calculated in accordance with **clause 12.14(c)**, on the unpaid Preference Income accumulated each Month, for the period from the day after the Distribution Calculation Date on which that Preference Income would have been distributed had the Preference Income continued to be distributed each Month, until the Distribution Calculation Date on which distributions recommence.
- (c) The compensation amount payable by the Ordinary Unit Holder under **clause 12.14(b)** will be calculated at the rate, determined by the Trustee acting reasonably, equal to:
 - (i) the pre-tax equivalent of the then applicable weighted average cost of capital set by the Access Regulator in the Access Undertaking, expressed as a percentage per annum; **[Drafting note: The current applicable rate is 10.76 percent per annum.]**
 - (ii) **less** the average rate of earnings on investment of the Preference Income during the applicable period, expressed as percentage per annum.
- (d) The compensation amount payable by the Ordinary Unit Holder under **clause 12.14(b)** is an Asset and included in Preference Income.
- (e) Any compensation amount which has accrued which the Ordinary Unit Holder has not paid to the Trust as at each Distribution Calculation Date

will thereafter itself be considered unpaid Preference Income and require the payment of compensation in accordance with **clause 12.14(b)** until paid to the Trust.

12.15 Indemnity if Ordinary Unit Holder directs Trustee not to make distributions

The Ordinary Unit Holder must indemnify and keep indemnified the Trustee for all costs and expenses incurred or payable by the Trustee in connection with any Tax assessed to the Trustee directly as a result of the Ordinary Unit Holder directing the Trustee to accumulate, and the Trustee so accumulating, "Preference Income" (as defined in the Unit Holders Deed) under clause **[14.5(a)]** of the Unit Holders Deed.

13 Powers and duties of the Trustee

13.1 General powers of Trustee

- (a) Subject to **clause 13.1(b)**, the Trustee has all the powers over and in respect of the Trust that it is legally possible to confer on a trustee and as though the Trustee were the absolute owner of the Assets and acting in its personal capacity, including the ability to:
 - (i) borrow and raise money and incur liabilities and obligations of any kind;
 - (ii) guarantee liabilities of any person or provide indemnities in respect of such liabilities;
 - (iii) encumber or otherwise deal with any Assets;
 - (iv) institute, prosecute and compromise legal proceedings;
 - (v) undertake any activity (including carrying on or participation in a business);
 - (vi) enter into leases and subleases, whether as landlord or tenant (including for a term in excess of 21 years); and
 - (vii) exercise any right attaching to any Assets.
- (b) While the Unit Holders Deed is in force:
 - (i) the Trustee's exercise of rights, powers and discretions is subject to the approval, consent or direction of Unit Holders to the extent provided in the Unit Holders Deed;
 - (ii) the Unit Holders may give directions to the Trustee, requiring the Trustee to exercise rights, powers and discretions as directed, to the extent provided in the Unit Holders Deed;
 - (iii) all money received as payment of the Application Price of a Unit must be applied or held for subsequent application in furtherance of the principal objective of the Trust or in payment of expenses of the Trust in accordance with the Unit Holders Deed; and

- (iv) the Trustee must only invest the Assets in accordance with the Unit Holders Deed.

13.2 Trustee's duties

The Trustee must:

- (a) devote as much of the Trustee's time and attention as is reasonably required, having regard to the services provided by agents, delegates and nominees, for the management, operation and administration of the business and affairs of the Trust;
- (b) manage, operate and administer the business and affairs of the Trust in a proper and efficient manner and, subject to the provisions of this Deed and the Unit Holders Deed, in the best interests of the Unit Holders;
- (c) perform its obligations under this Deed:
 - (i) honestly; and
 - (ii) with the degree of care and diligence of a reasonable prudent person of business;
- (d) not make use of information acquired from any other person as a result of the Trustee being the trustee of the Trust in order to:
 - (i) gain an improper advantage for the Trustee or another person; or
 - (ii) cause detriment to the Unit Holders or any Class of Unit Holders; and

(e) have a reasonable basis for forming opinions;

~~(e)(f) act impartially and independently; and~~

(g) if the Trustee becomes aware of a conflict of interest of the Trustee in respect of the Trust (other than a conflict which has already been disclosed to Unit Holders (including in or under this Deed or an Other Transaction Document or in any report or notice given to the Preference Unit Holders under this Deed or an Other Transaction Document)), the Trustee must promptly maintain a written record of the conflict of interest and give notice of the nature and extent of the conflict to each Unit Holder.

13.3 Valuation of Assets

- (a) The Trustee may cause an Asset to be valued at any time.
- (b) The value of an Asset is the Asset's market value or the value determined by an independent valuation expert appointed by the Trustee.

13.4 Delegation, service providers and advisers

- (a) The Trustee may appoint any person:
 - (i) as its agent, delegate or nominee to perform some or all of its duties, with or without the power to sub-delegate; and

- (ii) to provide any service which the Trustee requires in relation to the Trust.
- (b) While the Unit Holders Deed is in force, appointments under **clause 13.4(a)** are subject to the Unit Holders Deed.
- (c) The Trustee may appoint as an adviser any person that, in the Trustee's opinion, has appropriate expertise to provide any advice which the Trustee requires in relation to the Trust.

13.5 Extent of authorisation

The Trustee may include in the appointment provisions to:

- (a) protect and assist those dealing with the agent, delegate or nominee; and
 - (b) limit the Trustee's liability,
- as the Trustee thinks fit.

13.6 Trustee's liability for agents, delegates and nominees

The Trustee is liable for the acts or omissions of any agent, delegate or nominee.

13.7 Exercise of discretions

Subject to **clause 13.1(b)**, the Trustee may decide how and when to exercise the Trustee's powers and discretions.

13.8 No exclusivity

The functions and duties of the Trustee are not exclusive, and the Trustee or any Associate of the Trustee may perform similar functions and duties for others and, without limitation, may act as a trustee or engage in any other commercial, financial or related activity.

13.9 Financial reports and audit

- (a) The Trustee must:
 - (i) maintain accounting records for the Trust, which correctly record and explain the transactions and financial position of the Trust;
 - (ii) prepare financial reports for the Trust; and
 - (iii) appoint an auditor to audit the financial reports for the Trust, and have those financial reports audited.
- (b) The Trustee must provide to the Unit Holders a copy of the audited financial reports for the Trust in respect of each Financial Year.

13.10 Ratification of Trustee action

- (a) Despite any other provision of this Deed, but subject to **clause 13.10(b)**, the Unit Holders can by:
 - (i) Ordinary Resolution of Unit Holders holding Ordinary Units; and

- (ii) where there are Preference Units on issue, Ordinary Resolution of Unit Holders holding Preference Units,

ratify any action taken by the Trustee and, once ratified, the Trustee shall have no liability to Unit Holders in respect of that action.

- (b) While the Unit Holders Deed is in force, any action of the Trustee which requires the approval, consent or direction of a particular majority of the Unit Holders pursuant to, and in accordance with, the relevant provisions of the Unit Holders Deed, can only be ratified by that same majority.

13.11 Authorisations

Industry Note: An independent trustee would already hold all necessary licences (including any AFSL) and approvals required to operate the Trust. That is part of their doing business. The Trustee should personally bear the costs of doing so and not seek to recover those costs. Industry's proposed change makes this position clear.

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The Trustee must at all times hold all necessary licences and approvals or obtain such exemptions so as to enable the Trustee to act as trustee of the Trust. All costs associated with obtaining, holding and maintaining those licences, approvals and exemptions are to be borne by the Trustee in its personal capacity (and are not payable or reimbursable out of the Assets).

14 Payments

14.1 Payment method

Payments by the Trustee to a Unit Holder can be paid in any manner the Trustee decides.

14.2 Cheques

- (a) Cheques issued by the Trustee that are not presented within six Months, or such lesser period as determined by the Trustee, may be cancelled.
- (b) Where a cheque which is cancelled was drawn in favour of a Unit Holder, the Trustee may either:
 - (i) hold the money for the Unit Holder; or
 - (ii) pay the money in accordance with the legislation relating to unclaimed money.

14.3 Electronic transfer

Industry Note: Given the small number of Preference Unit Holders, the Trustee should be required to liaise with a Unit Holder in respect of a failed EFT transaction before taking the action referred to in clause 14.3(a) or (b).

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Where the Trustee attempts to make a payment to a Unit Holder by electronic transfer of funds or any other means and the transfer is unsuccessful, the Trustee must notify the Unit Holder that the transfer was unsuccessful and seek a direction as to how the payment should be made. The Trustee must

then comply with that direction. If the Unit Holder fails to provide a direction, the Trustee may either:

- (a) hold the money for the Unit Holder; or
- (b) pay the money in accordance with the legislation relating to unclaimed money.

14.4 Payments to joint holders

A payment to any one of persons registered jointly as a Unit Holder discharges the Trustee in respect of the payment.

14.5 Tax and other amounts owing

The Trustee may deduct from any amount to be paid to a person who is, or has been, a Unit Holder, or received from a person who is, or has been, a Unit Holder:

- (a) any amount of Tax (or an estimate of Tax); or
- (b) any other amount owed by the Unit Holder to the Trustee or any other person,

which the Trustee:

- (c) is required or authorised to deduct by law or by this Deed or the Unit Holders Deed; or
- (d) reasonably considers should be deducted.

15 Retirement and replacement of Trustee

15.1 Voluntary retirement by Trustee

The Trustee may retire with effect on a date nominated by the Trustee in a notice given to Unit Holders (**Nominated Retirement Date**), provided that the Nominated Retirement Date is at least three Months after the date of the notice to Unit Holders of that retirement (or such shorter period as the Unit Holders unanimously agree).

15.2 Removal of Trustee by Ordinary Unit Holder or Preference Unit Holders without cause

- (a) The Preference Unit Holders (excluding any Aurizon Preference Unit Holder) may, by Ordinary Resolution at any time and without cause, request the Trustee to retire with effect on the date specified in the Ordinary Resolution (**Nominated Retirement Date**), and the Trustee must retire as requested, provided that the Preference Unit Holders cannot exercise the right in this **clause 15.2(a)** more than once in any period of 36 consecutive months.
- (b) The Ordinary Unit Holders may, by Ordinary Resolution at any time and without cause, request the Trustee to retire with effect on the date specified in the Ordinary Resolution (**Nominated Retirement Date**), and the Trustee must retire as requested, provided that the Ordinary Unit

Holders cannot exercise the right in this **clause 15.2(b)** more than once in any period of 36 consecutive months.

15.3 Removal of Trustee by Ordinary Unit Holder and Preference Unit Holders without cause

The Preference Unit Holders (excluding any Aurizon Preference Unit Holder) and the Ordinary Unit Holders, acting together, may by:

- (a) Ordinary Resolution of the Preference Unit Holders (including any Aurizon Preference Unit Holder); and
- (b) Ordinary Resolution of the Ordinary Unit Holders,

at any time and without cause, request the Trustee to retire with effect on the date specified in the Ordinary Resolutions (**Nominated Retirement Date**), and the Trustee must retire as requested.

15.4 Removal of Trustee by Ordinary Unit Holder or Preference Unit Holders for cause

- (a) The Preference Unit Holders (excluding any Aurizon Preference Unit Holder) may, by Ordinary Resolution at any time after a Trigger Event has occurred, request the Trustee to retire with effect on the date specified in the Ordinary Resolution (**Nominated Retirement Date**), and the Trustee must retire as requested.
- (b) The Ordinary Unit Holders may, by Ordinary Resolution at any time after a Trigger Event has occurred, request the Trustee to retire with effect on the date specified in the Ordinary Resolution (**Nominated Retirement Date**), and the Trustee must retire as requested.

15.5 Mechanism for replacement of trustee on retirement

- (a) If the Trustee retires (whether voluntarily under **clause 15.1**, or as a result of a request under **clause 15.2(a)**, **15.2(b)**, **15.3**, **15.4(a)** or **15.4(b)**), then a replacement trustee that satisfies the requirements in **clause 15.6** may be appointed by the Preference Unit Holders (excluding any Aurizon Preference Unit Holder) and the Ordinary Unit Holder, acting together, by:
 - (i) Ordinary Resolution of the Preference Unit Holders (excluding any Aurizon Preference Unit Holder); and
 - (ii) Ordinary Resolution of the Ordinary Unit Holder.
- (b) If a replacement Trustee is not appointed in accordance with **clause 15.5(a)** by the date which is 20 Business Days before the Nominated Retirement Date, then any Unit Holder may apply to the Supreme Court of Queensland for the appointment of a replacement trustee that satisfies the requirements in **clause 15.6**.
- (c) If a replacement Trustee has not been appointed on or before the Nominated Retirement Date, then the retirement of the retiring Trustee will not take effect until the appointment of the replacement trustee

(whether by the Unit Holders under **clause 15.5(a)** or by order of the Supreme Court of Queensland under **clause 15.5(b)**).

- (d) If the Unit Holders have appointed a replacement trustee in accordance with **clause 15.5(a)**, the appointment of the replacement trustee is effected by:
- (i) the replacement trustee; and
 - (ii) the retiring Trustee (or Preference Unit Holders holding more than 50% of Preference Units then on issue and the Ordinary Unit Holder),

executing a deed under which the replacement trustee agrees to assume the rights, and be bound by the obligations (other than those obligations from which the retiring Trustee is not released under **clause 15.7**), of the retiring Trustee under this Deed and the Unit Holders Deed.

15.6 Identity of Replacement Trustee

- (a) The identity of any replacement trustee under this **clause 15** must not prejudice the tax position of either the Ordinary Unit Holder or the Preference Unit Holders.
- (b) A replacement trustee under this **clause 15**:
- (i) must not:
 - (A) be Aurizon Network, an Ordinary Unit Holder or a Preference Unit Holder or a Related Body Corporate of Aurizon Network, an Ordinary Unit Holder or any Preference Unit Holder;
 - (B) subject to **clause 15.6(c)**, directly or indirectly hold shares in any Unit Holder or Related Body Corporate of any Unit Holder;
 - (C) be a company in which any Unit Holder or Related Body Corporate of any Unit Holder ~~holds any shares~~ has control (within the meaning of section 50AA of the Corporations Act); or
 - (D) have any directors or officers who are also directors or officers of any Unit Holder or Related Body Corporate of any Unit Holder; and
 - (ii) must:
 - (A) be an independent professional trustee company;
 - (B) hold the necessary licences and authorisations to be the trustee of the Trust;
 - (C) (unless it has the benefit of an applicable exemption from these requirements) satisfy the financial prudential requirements prescribed by the Australian Securities and

Investments Commission in respect of the holder of an “Australian financial services licence” (as defined in the Corporations Act) that has the authorisations necessary to act as trustee of a wholesale managed investment scheme; and

- (D) have the appropriate qualifications and experience relevant to acting as a trustee of the Trust.
- (c) For the purposes of **clause 15.6(b)(i)(B)**, shares held in a nominee or trustee capacity by an independent professional trustee company (or its nominee) are not taken into account unless the shares are held solely for the benefit of a Unit Holder or Related Body Corporate of a Unit Holder.
- (d) The Preference Unit Holders must not do anything which could cause the replacement trustee to cease to comply with this **clause 15.6**.

15.7 Release

On the replacement of a Trustee, a former trustee is released from all obligations in relation to the Trust arising after the time the former trustee retires or is removed:

- (a) but is not released in respect of any act or omission by the former trustee while acting as trustee of the Trust; and
- (b) remains liable for any Loss for which the former trustee was not entitled to be indemnified or reimbursed out of the Assets.

15.8 Former Trustee to hand over books and records

On retirement or removal, a former trustee of the Trustee must:

- (a) as soon as practicable, give the replacement Trustee any books and records in the former trustee's possession or control that this Deed requires the Trustee to keep in relation to the Trust; and
- (b) give other reasonable assistance to the replacement Trustee to facilitate the change of trustee of the Trust.

15.9 Costs for replacement trustee and retirement

- (a) Where the Trustee retires under **clause 15.1** or **clause 15.4**, the retiring Trustee is personally liable for all costs and expenses connected with the replacement of it, including negotiating and executing any legal documents to effect the replacement as contemplated under this **clause 15**, but for the avoidance of doubt the costs and expenses for which the retiring Trustee is personally liable do not include any difference between the costs of that replacement trustee and the retiring Trustee to operate, manage and administer the Trust.
- (b) Where the Trustee retires under **clause 15.2(b)**, the Ordinary Unit Holder must pay all costs and expenses connected with the replacement of it, including negotiating and executing any legal documents to effect the replacement as contemplated under this **clause 15**, but for the

avoidance of doubt the costs and expenses for which the Ordinary Unit Holder is liable do not include any difference between the costs of that replacement trustee and the retiring Trustee to operate, manage and administer the Trust.

16 Meetings of Unit Holders

16.1 Convening of meetings

- (a) The Trustee may at any time convene a meeting of Unit Holders.
- (b) A meeting may be held at one or more venues using any technology that gives the Unit Holders as a whole a reasonable opportunity to participate. All Unit Holders that participate using that technology are taken to be present at the meeting.

16.2 Unit Holder's request for meeting

- (a) The Trustee must convene and arrange to hold a meeting of Unit Holders to consider and vote on a proposed resolution on the request of any one Unit Holder.
- (b) The Trustee must convene the meeting within 15 Business Days after the request is given to the Trustee, and the meeting must be held within two Months after the request is given to the Trustee.
- (c) A meeting may be held at one or more venues using any technology that gives the Unit Holders as a whole a reasonable opportunity to participate. All Unit Holders that participate using that technology are taken to be present at the meeting.

16.3 Notice period

Unless otherwise agreed by all Unit Holders, at least ten Business Days' notice of a meeting must be given to Unit Holders.

16.4 Trustee may determine

Subject to this **clause 15.9**, the Trustee may determine the time and place at which a meeting of Unit Holders will be convened, and the manner in which the meeting will be conducted.

16.5 Quorum

- (a) The quorum for a meeting of Unit Holders is any Unit Holder or Unit Holders present in person or by proxy together holding or representing at least 50% of all Units in respect of which Unit Holders are entitled to vote.
- (b) In determining a quorum:
 - (i) a person attending personally or as a proxy or representative for a Unit Holder, and also attending as the proxy or representative of another Unit Holder, will be counted separately for each Unit Holder that the person represents (including the person themselves); and

- (ii) if a Unit Holder has appointed more than one proxy, the proxy Unit Holders will together be counted as one.

16.6 No quorum

- (a) If a quorum is not present within 15 minutes after the scheduled time for the meeting, the meeting is:
 - (i) if convened on the requisition of Unit Holders – dissolved; or
 - (ii) otherwise – adjourned to such place and time as the Trustee decides.
- (b) At any adjourned meeting, those Unit Holders present in person or by proxy or representative constitute a quorum, provided at least two Business Days' notice is given of the adjourned meeting.

16.7 Chair

- (a) The Trustee may appoint a person to chair a meeting of Unit Holders.
- (b) The decision of the chair on any matter relating to the conduct of the meeting is final.

16.8 Adjournment

The chair has power to adjourn a meeting for any reason, where a resolution is passed consenting to the adjournment.

16.9 Proxies and voting

- (a) A Unit Holder may appoint another person as their proxy for any question to be considered at a meeting of Unit Holders.
- (b) An instrument appointing a proxy will be in such form as the Trustee determines.
- (c) The appointment of a proxy is valid if it is signed by or on behalf of the Unit Holder and contains the following information:
 - (i) the Unit Holder's name;
 - (ii) the Trust's name; and
 - (iii) the proxy's name or the name of the office held by the proxy.
- (d) A proxy remains valid:
 - (i) for such period as is specified in the notice of meeting; and
 - (ii) after the Unit Holder who gave the proxy goes into liquidation, unless the Trustee has received notice of that fact before the relevant meeting.
- (e) For an appointment of a proxy for a meeting to be effective, the following documents must be received by the Trustee within the period specified by the Trustee, which period must be not less than 24 hours before the meeting:
 - (i) the proxy's appointment; and

- (ii) if the appointment is by the Unit Holder's attorney – the authority under which the appointment was signed or a certified copy of the authority.
- (f) If the meeting is adjourned, an appointment of a proxy (and, if applicable, the authority or certified copy of the appointment) received by the Trustee, within the period specified in accordance with **clause 16.9(e)** before the resumption of the meeting, are effective for the remainder of the meeting.
- (g) A proxy is entitled to vote on a show of hands or on a poll.
- (h) A proxy is entitled to speak and vote for a Unit Holder under the terms of their appointment, even if the Unit Holder is present, provided that the Unit Holder is not exercising the right to speak and vote.
- (i) The Trustee may determine that the appointment of a proxy is valid even if the instrument appointing the proxy contains only some of the information required by **clause 16.9(c)**.

16.10 Representatives

- (a) A body corporate may be represented at a meeting by a person appointed in writing.
- (b) The Trustee may accept a certificate as evidence of a person's appointment as a representative of a body corporate.
- (c) The person appointed as representative of a body corporate may exercise on the body corporate's behalf the same powers as the body corporate could if the body were a natural person.
- (d) Where a representative of a body corporate attends a meeting, the body corporate is taken to be present at the meeting in person.

16.11 Trustee not obliged to enquire about appointments

The Trustee is not obliged to enquire whether the appointment of a proxy, attorney or representative has been validly made.

16.12 Voting

- (a) Voting is by a show of hands, unless a poll is duly demanded or the resolution proposed is required by this Deed or applicable law to be decided by a percentage of the number of issued Units.
- (b) A poll may be demanded by the chair, or by Unit Holders present in person or by proxy holding at least 5% of Units.
- (c) A Unit Holder's right to vote is subject to any restrictions for the time being attached to the Class of Units the Unit Holder holds.
- (d) Subject to the rights, obligations and restrictions attaching to any Class, each Unit Holder which is present in person or by proxy has:
 - (i) on a show of hands, one vote; and
 - (ii) on a poll, for each Unit held, one vote.

- (e) In the case of joint Unit Holders, only the first named in the Register may vote unless the Trustee otherwise agrees.
- (f) In the case of an equality of votes on a resolution, the chair does not have a casting vote and the resolution is not passed.

16.13 Resolutions passed at meetings

A resolution is passed at a meeting of Unit Holders:

- (a) on a show of hands (or, where a meeting is held at two or more venues using technology, the verbal equivalent) by the required majority of Unit Holders entitled to vote and present in person or by proxy and voting on the show of hands (or the verbal equivalent); or
- (b) on a poll, by the required majority of votes cast by Unit Holders entitled to vote and present in person or by proxy or representative and voting on the poll.

16.14 Signed resolutions

- (a) A resolution signed by Unit Holders holding the required majority of Units ~~Unit Holders entitled to vote~~ (or, if there is only one Unit Holder, signed by the Unit Holder) will be a resolution of Unit Holders and will be taken as having been passed at a meeting of Unit Holders and at the time when the last of the Unit Holders constituting the required majority (or, if there is only one Unit Holder, when the Unit Holder) signs the resolution.
- (b) Any approval, consent or agreement of the Unit Holders under this Deed may be given by a resolution signed by the Unit Holders (or, if there is only one Unit Holder, signed by the Unit Holder).

16.15 Required majority

Except where this Deed, the Unit Holders Deed or any applicable law provides otherwise, the “required majority” is an Ordinary Resolution.

16.16 Resolutions binding

- (a) A resolution passed in accordance with this **clause 15.9** binds all Unit Holders, whether or not they were present at the meeting.
- (b) No objection may be made to any vote cast unless the objection is made at the meeting.

16.17 Non-receipt

- (a) If a Unit Holder does not receive a notice of meeting, the meeting is still valid if:
 - (i) the Trustee gave the notice in accordance with **clause 23**; or
 - (ii) before or at the meeting, the Unit Holder waives the right to receive the notice or otherwise notifies the Trustee that the Unit Holder agrees to any act, matter or resolution proposed in the notice.

- (b) A Unit Holder's presence at a meeting waives any objection the Unit Holder may have to a failure to give notice of the meeting or the giving of a defective notice of the meeting.

16.18 Class meetings

If any meeting of the Unit Holders of a Class, or a group of Classes, is required to be held, the provisions of this clause 15.9 apply with any necessary modifications to meetings and resolutions of Unit Holders of a Class, or a group of Classes.

16.19 Variation of Class rights

Industry Note: Any variations to Preference Unit Holders' rights (or variations to the rights attaching to other Classes which may impact on Preference Unit Holders) should be subject to approval by Unanimous Resolution of the Preference Unit Holders. The greater flexibility permitted by clauses 16.19 (a) and (b) (which allow the Trustee to first determine whether – in its opinion – the change might be adverse) can continue to apply when the Unit Holders Deed is no longer on foot.

- (a) Subject to clause 16.9(d), Any proposed variation of the rights attaching to the Units in a Class of Units, which in the Trustee's opinion is adverse to the holders of those Units, is subject to approval by Unanimous Resolution of the holders of Units in that Class.
- (b) Subject to clause 16.9(d), if the proposed variation of rights attaching to Units in a Class in the opinion of the Trustee adversely affects the rights of holders of Units in another Class, the variation is also subject to approval by Unanimous Resolution of the holders of Units in that other Class.
- (c) Any proposed resolution which affects Unit Holders generally and does not specifically affect rights attaching to the Units of a particular Class requires only a Unanimous Resolution of Unit Holders without the need for a Unanimous Resolution of each Class.
- (d) Whilst the Unit Holders Deed is in force:
 - (i) any proposed variation of the rights attaching to the Preference Units (other than under clause 21.2) is subject to approval by Unanimous Resolution of the Preference Unit Holders; and
 - (ii) any proposed variation of the rights attaching to Units in any Class (other than under clause 21.2) which may in any way affect the rights or interests of Preference Unit Holders is subject to approval by Unanimous Resolution of the Preference Unit Holders.

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~~16.19~~16.20 Right to vote

All Unit Holders will have the right to vote at a meeting of Unit Holders and on resolutions in writing, except:

- (a) in respect of Units that under their terms of issue have limited voting rights; and

- (b) while the Unit Holders Deed is in force, where a Unit Holder is not entitled to vote under the Unit Holders Deed.

17 Trustee's limitation of liability and indemnity

17.1 Limitation on Trustee's liability

The Trustee has no liability to any Unit Holder in respect of a Claim arising out of, or in any way related to, the Trust, or for any Loss (including Consequential Loss) or damage suffered in any way relating to the Trust, except:

- (a) to the extent that the Trustee has been guilty of fraud, negligence, breach of trust or breach of this Deed or the Unit Holders Deed; or
- (b) for a Claim in respect of the non-payment by the Trustee of an amount that the Trustee is expressly required to pay under the terms of this Deed or the Unit Holders Deed.

17.2 Indemnity in favour of the Trustee

The Trustee is indemnified out of the Assets against any liability incurred by the Trustee, or on the Trustee's behalf, in respect of a matter relating to the Trust including a matter under an Other Transaction Document:

- (a) except to the extent that the Trustee has been guilty of fraud, negligence, breach of trust or breach of this Deed or the Unit Holders Deed;
- (b) unless this Deed specifies that the Trustee is not entitled to an indemnity for the liability; or
- (c) unless the Unit Holders Deed specifies that the Trustee is not entitled to an indemnity for the liability.

17.3 Limitation of liability for transactions

The Trustee may refuse to enter into any transaction or a contract (including a "Works Contract" (as defined in the Unit Holders Deed)) unless the Trustee's personal liability is excluded or limited to the Trustee's satisfaction.

17.4 Trustee may rely

The Trustee may take and may act upon:

- (a) the opinion or advice of lawyers in relation to this Deed or generally in connection with the Trust;
- (b) opinions, advice, statements or information from any accountants, auditors, valuers and other professional advisers consulted by the Trustee, in respect of the person's area of expertise;
- (c) statements or information provided by bankers in relation to the Trust's bank accounts;
- (d) a document that the Trustee believes in good faith to be the original or a copy of an appointment by a Unit Holder of a person to act as their agent for any purpose connected with the Trust; and

- (e) the veracity of any other document provided to the Trustee in connection with the Trust, upon which it is reasonable for the Trustee to rely, and the Trustee will not be liable for anything done, suffered or omitted by the Trustee in good faith in reliance upon such opinion, advice, statement, information or document.

17.5 Exclusion of Consequential Loss

Industry Note: It is not appropriate for a trustee to disclaim liability for Consequential Loss arising from its own gross negligence or wilful default.

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~~The Trustee's liability does not extend to any Consequential Loss suffered by a Unit Holder or any other person, except to the extent that the Trustee has been guilty of fraud or committed an act or omission which constitutes gross negligence or wilful default.~~

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18 Liability of Unit Holders

18.1 Limitation of Unit Holder's liability

Subject to **clauses 8** and **18.2**, and to the Unit Holders Deed:

- (a) the liability of a Unit Holder (in its capacity as a Unit Holder) is limited to:
- (i) the amount, if any, which remains unpaid in relation to the Unit Holder's subscription for its Fully Paid Units; or
 - (ii) the liability to pay the Uncalled Amount in relation to its Partly Paid Units **as and when due** (subject to **clause 8.1(b)**);
- (b) a Unit Holder need not indemnify the Trustee if there is a deficiency in the Assets to meet the Claim of any creditor of the Trustee in respect of the Trust; and
- (c) in the absence of a separate agreement with a Unit Holder, the recourse of the Trustee or any creditor, and any person claiming through them, is limited to the Assets.

18.2 Indemnity to Trustee for Tax and other liabilities

A Unit Holder or former Unit Holder indemnifies the Trustee:

- (a) to the extent that the Trustee incurs any liability for Tax that becomes payable by the Trustee (other than Tax properly payable by the Trustee in respect of the Trustee's taxable income or Tax which, under this Deed, is not payable out of the Assets):
- (i) after the Trust has been wound up; and
 - (ii) in respect of which the Trustee would have been entitled to indemnification under this Deed had the Tax liability arisen before the Trust was wound up (ignoring any limitation on the Trustee's

right to indemnification under this Deed other than those limitations set out in **clause 17.1**); and

- (b) to the extent that the Trustee incurs any liability as a result of an act or omission requested by that Unit Holder or former Unit Holder:
 - (i) after the Trust has been wound up; and
 - (ii) in respect of which the Trustee would have been entitled to indemnification under this Deed had the liability arisen before the Trust was wound up (ignoring any limitation on the Trustee's right to indemnification under this Deed other than those limitations set out in **clause 17.1**).

19 Remuneration and expenses of Trustee

19.1 Trustee remuneration

- (a) The Trustee is entitled to a fee for services as Trustee of an amount, and payable at such times, as set out in **schedule 1**, as varied from time to time with the agreement of the Trustee and as approved by:
 - (i) where there are no Preference Units on issue, a Special Resolution of Unit Holders holding Ordinary Units; and
 - (ii) where there are Preference Units on issue, a Special Resolution of Unit Holders holding Preference Units.
- (b) The Trustee fee may be paid out of income of the Trust and, to the extent necessary, from Calls. The Trustee may also negotiate to receive fees separately from Unit Holders.
- (c) The Trustee may accept lower fees than, or waive the entire fee that, the Trustee is entitled to receive under this Deed, or may defer payment for any period. Where payment is deferred, the fee accrues daily (without interest) until paid.

19.2 Expenses

All costs and expenses incurred by the Trustee in connection with the Trust are payable or reimbursable out of the Assets. This includes the costs and expenses connected with the following:

- (a) this Deed and the formation of the Trust;
- (b) the acquisition, disposal, custody and any other dealing with Assets;
- (c) the investigation, negotiation, acquisition, registration, custody, holding, or other dealing with property in which the Trust has a direct or indirect interest (or attempting or proposing to do so) and the receipt, collection or distribution of Distributable Amounts or other Assets;
- (d) the administration of the Trust (including expenses in connection with the Register and any dealings with Units), the Assets and the liabilities of the Trust, but not including internal administrative and overhead costs and

expenses of the Trustee (for example, salaries, rent and office maintenance);

- (e) convening and holding meetings of Unit Holders, the implementation of any resolutions of Unit Holders, and communications with Unit Holders;
- (f) Tax (other than any Tax assessed to the Trustee directly as a result of the Trustee making a determination under **clause 12.5** to accumulate Distributable Income);
- (g) the engagement of advisers;
- (h) accounting and Tax Laws compliance and administration for the Trust, whether conducted by the Trustee itself or by third parties, and the preparation and audit of the Tax Returns and accounts of the Trust;
- (i) termination of the Trust;
- (j) the retirement or removal of the Trustee and the appointment of a replacement;
- (k) any court proceedings, arbitration or other dispute concerning the Trust including proceedings against the Trustee, except to the extent that the Trustee is found by a court to have committed fraud, negligence, breach of trust or breach of this Deed or the Unit Holders Deed; and
- (l) complying with any law, and any request or requirement of a regulatory authority, in relation to the Trust.

20 Duration and termination of the Trust

20.1 Date of commencement of wind up

The winding up of the Trust is to commence on the first to occur of:

- (a) a date determined by the Trustee and approved by:
 - (i) Special Resolution of Unit Holders holding Ordinary Units; and
 - (ii) Unanimous Resolution of the Unit Holders holding Preference Units, where:
 - (A) there are Preference Units on issue; and
 - (B) each Preference Unit Holder has paid at least one instalment of the Application Price in addition to the Initial Subscription Amount;
- (b) the date required under the Unit Holders Deed; and
- (c) the date on which the Trust terminates in accordance with another provision of this Deed or by law.

20.2 Wind up on changes to Tax Law

If, at any time, legislation is enacted the result of which is that the Trustee is liable to pay any income tax (other than withholding tax or Tax of a similar nature) on the income of the Trust, other than income not distributed to Unit

Holders, the Trustee may call a meeting of the Unit Holders to consider winding up the Trust or taking any other measures proposed by the Trustee, and the Trustee may then commence winding up the Trust or take any other measure if the meeting so decides by:

- (a) Special Resolution of Unit Holders holding Ordinary Units; and
- (b) where there are Preference Units on issue, Unanimous Resolution of the Unit Holders holding Preference Units.

20.3 Perpetuity restriction on issue and redemption of Units

The perpetuity period applicable to the Trust is the period of 80 years from the day prior to the commencement of the Trust. Despite any other provisions in this Deed, no Units may be issued or redeemed after the 80th anniversary of the day preceding the day the Trust commenced, unless that issue or redemption would not offend the rule against perpetuities, or any other rule of law or equity. The specification of a perpetuity period in this **clause 20.3** does not require that the Trust terminate on the expiration of that period.

20.4 Realisation of Assets

As soon as practicable after the date on which the winding up of the Trust commences, the Trustee must sell or realise the Assets in such manner as the Trustee considers appropriate.

20.5 Final distribution

Subject to the rights of any Class and **clause 20.12**, the proceeds from realisation must be distributed among the Unit Holders pro rata to the number of Units they hold as at the date of commencement of the winding up of the Trust.

20.6 Distribution to Ordinary Unit Holder

- (a) The Trustee may satisfy the distribution of a Unit Holder holding Ordinary Units by payment of cash, settlement in kind or transfer of Assets in specie to the Unit Holder.
- (b) If the payment is satisfied by a transfer of Assets in specie, the value of the Assets transferred will be calculated at market value, as determined by the Trustee, and the expenses incurred in transferring the Assets will be borne by that Unit Holder.
- (c) Any distribution to Unit Holders holding Units of any Class other than Ordinary Units must be by payment of cash in accordance with **clause 14**.

20.7 Postponement of realisation

The Trustee may postpone the sale or realisation of any Asset for as long as the Trustee thinks it is desirable to do so in the interests of Unit Holders. The Trustee is not responsible for any Loss (including Consequential Loss) attributable to the postponement except to the extent that the Loss is caused by the Trustee's fraud, negligence, breach of trust, breach of this Deed or breach of the Unit Holders Deed.

20.8 Retention of property

- (a) The Trustee may retain for as long as the Trustee thinks fit sufficient Assets as may be required to meet any outgoings or liabilities (actual or contingent) in respect of the Trust.
- (b) If any Asset retained is ultimately found not to be required, then subject to **clause 20.6(a)** the Asset must be sold or realised and the proceeds distributed to the Unit Holders in accordance with this **clause 20**.

20.9 Continuation of powers

The powers, duties and rights of the Trustee (including the rights to remuneration and to indemnities under this Deed or the law) continue following commencement of the winding up to the extent to which they are not inconsistent with this **clause 20**.

20.10 Cancellation of Units

Unless the Trustee determines otherwise, all Units in the Trust will be cancelled and taken to be redeemed from the date of the final distribution under **clause 20.5**.

20.11 Audit

If required by law at the time the Trust is wound up, the Trustee will provide for an independent review or audit by a registered company auditor of the final accounts of the Trust after termination.

20.12 Partly Paid Units

- (a) Subject to **clause 20.12(b)** and the rights of any Class, on a distribution under **clause 20.5** each Unit Holder holding a Partly Paid Unit is entitled to receive a fraction of the distribution payable in respect of a Fully Paid Unit, the fraction to be determined by dividing the Paid Up Amount of the Partly Paid Unit by its Application Price.
- (b) Where on a winding up there are Preference Units on issue:
 - (i) each Preference Unit Holder is entitled to the unpaid amount of any Distributable Income attributed to that Unit Holder's Units as at commencement of the winding up; and
 - (ii) the Preference Units are not entitled to any other distribution.

21 Amendments to this Deed

21.1 Trustee may amend

The Trustee may, by deed, amend this Deed with the approval of:

- (a) a Special Resolution of Unit Holders holding Ordinary Units, or of Unit Holders holding Units of a Class that is affected by the amendment; and
- (b) where there are Preference Units on issue, Unanimous Resolution of the Unit Holders holding Preference Units.

(b) **Industry Note:** Whilst it is considered highly unlikely that clause 21.2 would ever be triggered, Industry's position is that any changes to the trust deed that might reasonably be expected to adversely affect commercial and financial outcomes for the Preference Unit Holders should remain subject to their approval. In practice, we expect that the parties would seek to enter into arrangements outside the Trust Deed (eg side agreements or amendments to Other Transaction Documents) to protect themselves against mandatory changes to the Trust Deed.

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21.2 Registered Scheme

Each Unit Holder acknowledges that if the Trust is required by law to become a Registered Scheme, or in the Trustee's opinion becoming a Registered Scheme is desirable to avoid any adverse consequences as a result of a change to law:

- (a) the Trustee must promptly notify the Unit Holders of the change to law; and
- (b) the Trustee may, by deed, make any amendment to this Deed that the Trustee considers necessary or desirable in order to allow the Trust to become a Registered Scheme without the approval of a resolution of Unit Holders under **clause 21.1** provided that for so long as the Unit Holders Deed is in force, those amendments do not affect the commercial and financial outcomes of the Unit Holders Deed in conjunction with this Deed and the Other Transaction Documents in a manner which prejudices or is likely to prejudice the Preference Unit Holders.

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22 GST

22.1 Construction

In this **clause 22**:

- (a) words and expressions which are not defined in this Deed but which have a defined meaning in GST Law have the same meaning as in the GST Law; and
- (b) 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.

22.2 Consideration GST exclusive

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

22.3 Payment of GST

If GST is payable on any supply made by a party (or any entity through which that party acts) (**Supplier**) under or in connection with this Deed, the recipient will pay to the Supplier an amount equal to the GST payable on the supply.

22.4 Timing of GST payment

The recipient will pay the amount referred to in **clause 22.3** in addition to, and at the same time that, the consideration for the supply is to be provided under this Deed.

22.5 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient before the Supplier is entitled to payment of an amount under **clause 22.3** and the recipient can withhold payment of the amount until the Supplier provides a tax invoice or an adjustment note, as appropriate.

22.6 Adjustments

If there is an adjustment event in relation to a supply that results in the amount of GST on a supply being different from the amount in respect of GST already recovered by the Supplier, the Supplier within 14 days of becoming aware of the adjustment event:

- (a) on giving seven days' notice, may recover from the recipient the amount by which the amount of GST on the supply exceeds the amount already recovered; and
- (b) must refund to the recipient the amount by which the amount already recovered exceeds the amount of GST on the supply, to the extent that the Supplier is entitled to a refund or credit from the Commissioner of Taxation.

22.7 Reimbursements

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

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

23 Notices

23.1 General

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

23.2 How to give a Notice

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

- (a) personally delivered;
- (b) left at the party's current business address for Notices;

- (c) sent to the party's current postal address for Notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
- (d) sent by fax to the party's current fax number for Notices.

23.3 Particulars for delivery of Notices

- (a) Particulars for the giving of Notices are initially the particulars set out in schedule 1 of the Unit Holders Deed.
- (b) A party may change its particulars for the giving of Notices by Notice to each other parties to the Unit Holders Deed.
- (c) A Notice given to a party which is signed is evidence that the Notice has been signed by a person duly authorised by the sender and that party is entitled to rely on that Notice without further inquiry or investigation.

23.4 Notices by post

Subject to **clause 23.6**, a Notice is given if posted:

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

23.5 Notices by fax

Subject to **clause ~~23.6~~ 23.6**, a Notice is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

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23.6 After hours Notices

If a Notice is given:

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

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

23.7 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this Deed may be served by any method contemplated by this **clause 23** or in accordance with any applicable law.

23.8 Notice to joint holders

A Notice may be given by the Trustee to the persons jointly registered as a Unit Holder by giving the notice to the person first named in the Register in respect of the Unit.

23.9 Signature to notice

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

24 General

24.1 Severability

- (a) Subject to **clause 24.1(b)**, if a provision of this Deed is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this Deed.
- (b) **Clause 24.1(a)** does not apply if severing the provision:
 - (i) materially alters the scope and nature of this Deed; or
 - (ii) would be contrary to public policy.

24.2 Indemnity

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

24.3 Applicable law

- (a) This Deed will be governed by and construed in accordance with the laws applicable in the State of Queensland.
- (b) Each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in Queensland and courts of appeal from them in respect of any proceedings arising out of or in connection with this 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.

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Schedule 1

Trustee fee

[insert on a case by case basis]

Execution

Executed as a deed.

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

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

Date: / /

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

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

Date: / /