

Aurizon Network Pty Ltd

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

[Unit Holders listed in Schedule 1]

[Access Seekers listed in Schedule 1]

User Funding – Extension Project Agreement

*[insert Extension
name]*

General drafting note:

See the general drafting note on the cover of the Integrated Network Deed. References to “QTH” in this Agreement will need to be considered on a transaction-by-transaction basis.

Contents

1	Interpretation	2
1.1	Definitions	2
1.2	Interpretation	11
2	Conditions precedent	13
2.1	Coming into effect of Agreement	13
2.2	Reasonable endeavours to satisfy Conditions Precedent	15
2.3	Notice in relation to satisfaction of Conditions Precedent	15
2.4	Waiver of Conditions Precedent	15
2.5	Failure of Conditions	15
3	Regulatory Asset Base	16
3.1	Inclusion into Regulatory Asset Base	16
3.2	Calculation of Construction Interest on the Capital Costs	17
4	Termination	17
4.1	No rights of termination	17
4.2	No other rights of termination	18
4.3	Access Seekers	18
4.4	No prejudice as to right to damages	18
5	Disputes	18
5.1	Notification of Disputes	18
5.2	Chief executive officer resolution	19
5.3	Expert determination	19
5.4	Parties to assist Expert	21
5.5	Decision of Expert	22
5.6	Costs	22
5.7	Determination by court	22
5.8	Injunctive relief	22
5.9	Time bar	22
5.10	References to Transaction Document	23
6	Environmental issues	23
7	Limitation of liability	24
7.1	No liability in relation to capacity	24
7.2	Exclusion of Consequential Loss under the Transaction Documents	24
7.3	Trustee's limitation of liability	24
7.4	Scope of Claim, liability or loss	25
8	Trustee and Preference Unit Holder Risk Acknowledgement	25
9	Confidentiality	26
9.1	Confidentiality obligations	26
9.2	Disclosure of Confidential Information	26
9.3	Conditions of disclosure	28

9.4	References to Transaction Document	28
10	GST	28
10.1	Construction	28
10.2	Consideration GST exclusive	28
10.3	Payment of GST	28
10.4	Timing of GST payment	28
10.5	Tax invoice	28
10.6	Adjustment event	29
10.7	Reimbursements	29
10.8	Calculations based on other amounts	29
11	Assignment	29
11.1	Assignment	29
11.2	Assignment by a Unit Holder	29
11.3	Assignment by an Access Seeker	30
11.4	Assignment by Aurizon Network	30
11.5	Assignment by Trustee	30
11.6	Charging	30
12	Notices	31
12.1	General	31
12.2	How to give a Notice	31
12.3	Particulars for giving of Notices	31
12.4	Notices by post	31
12.5	Notices by fax	31
12.6	After hours Notices	31
12.7	Process service	32
12.8	Signature to Notice	32
12.9	References to Transaction Document	32
13	Warranties	32
13.1	Warranties	32
13.2	Trustee warranties	32
13.3	Reliance	33
14	Construction Agreement Warranty	33
15	General	33
15.1	Payments	33
15.2	Waiver	33
15.3	Legal costs	34
15.4	Amendments to be in writing	34
15.5	Rights cumulative	34
15.6	Consents	34
15.7	Further assistance	34
15.8	Entire understanding	34
15.9	Relationship of Parties	35
15.10	Severability	35

15.11 Survival of representations and warranties	35
15.12 Enurement	35
15.13 Merger	35
15.14 Powers of attorney	35
15.15 Indemnity	35
15.16 References to Transaction Document	35
16 Counterparts	36
17 Survival	36
18 Stamp Duty	36
19 Applicable law	36
SCHEDULE 1 – AGREEMENT DETAILS	39
ANNEXURE A	41
ANNEXURE B	42
ANNEXURE C	43
ANNEXURE D	44
ANNEXURE E	45
ANNEXURE F	46
ANNEXURE G	47
ANNEXURE H	48
ANNEXURE I	49

Date

Parties

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

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

The parties whose names, ABNs and addresses are contained in item 1 of schedule 1 (each a **Unit Holder**)

The parties whose names, ABNs and addresses are contained in item 2 of schedule 1 (each an **Access Seeker**)

Background

- A Each Unit Holder has agreed to fund the Extension to permit the Access Seekers access (or additional access) to Aurizon Network's railway network in order to facilitate the transportation by rail of coal (or additional coal) from specific coal mines to specific unloading points nominated by the Access Seekers.
- B Aurizon Network and the Access Seekers have agreed, through the Expansion Process, that the Extension is required to enable Aurizon Network to provide each Access Seeker (or its nominated railway operator) the access (or additional access) to Aurizon Network's railway network required by each Access Seeker.
- C The Unit Holders, the Access Seekers, the Trustee and Aurizon Network have agreed to enter into the arrangements contemplated by the Trust Deed and the other Transaction Documents under which, broadly speaking, each Unit Holder will fund its respective share of the cost of designing, supplying, procuring, constructing, testing, commissioning and completion of the Extension.
- D To permit the arrangements contemplated by this Agreement and the other Transaction Documents:
- (a) on or before the Commencement Date, the Trustee and Aurizon Network entered into the Trust Deed and established the Trust, by Aurizon Network appointing the Trustee, and the Trustee agreeing to act, as trustee of the Trust;
 - (b) on the Commencement Date:
 - (i) each Preference Subscriber entered into the Unit Holders Deed and paid to the Trustee its "Initial Subscription Amount" (as defined in the Unit Holders Deed) for its Preference Units;

- (ii) the Trustee and Aurizon Network entered into the Unit Holders Deed and Aurizon Network paid to the Trustee its “Application Price” (as defined in the Trust Deed) for the Ordinary Unit; and
 - (iii) the Trustee issued the Ordinary Unit to Aurizon Network and the Preference Units to the Preference Subscribers;
 - (c) By the End Date:
 - (i) each Access Seeker and Aurizon Network will enter into an Access Agreement Specific Terms Deed;
 - (ii) each Access Seeker will enter into this Agreement;
 - (iii) the State of Queensland (represented by the department administering the *Transport Infrastructure Act 1994 (Qld)*) and QTH will enter into the Integrated Network Deed [and the Financing Side Deed];
 - (iv) QTH will enter into the Extension Infrastructure Head-Lease; and
 - (v) the Trustee, the Preference Unit Holders and Aurizon Network have entered into this Agreement and will enter into the documents listed at paragraphs (e) to [(f)] inclusive of the definition of Transaction Documents.
- E The Trustee will procure the design, supply, procurement, construction, testing and commissioning and completion of the Extension under the Construction Agreement.
- F The Trustee will lease and sublease the Extension Infrastructure to Aurizon Network under the Extension Infrastructure Sub-Lease.
- G The Extension Infrastructure will be regulated as part of Aurizon Network’s Railway Network under the Access Undertaking and the Access Legislation.
- H Each Access Seeker wishes to secure rights to access parts of Aurizon Network’s Railway Network (including the Extension Infrastructure).
-

Agreed terms

1 Interpretation

1.1 Definitions

In this Agreement (and in each Transaction Document, other than the Extension Infrastructure Head-Lease, Integrated Network Deed, the Construction Agreement and the Financing Side Deed, except to the extent of inconsistency):

Access Agreement Specific Terms Deed means, for an Access Seeker, a document titled “*User Funding – Access Agreement Specific Terms Deed: [insert Extension name]*” between that Access Seeker, the Trustee and Aurizon Network, the pro-forma of which is shown in **annexure [C]**.

Access Legislation means any State or Commonwealth legislation which regulates third party access to the Railway Network (and which initially is the *Queensland Competition Authority Act 1997* (Qld)).

Access Regulator means any body with responsibility for regulating third party access to the Railway Network under the Access Legislation (and which initially is the Queensland Competition Authority).

Access Seeker means a party whose name, ABN and address is contained in **item 2 of schedule 1**.

Access Undertaking means an access undertaking, policy, code or other similar document applicable to any aspect of access to the Railway Network which has been approved by the Access Regulator in accordance with the Access Legislation.

Agreement means this document, including the schedules.

Auditor, in respect of a Transaction Document, has the meaning given in the applicable Transaction Document.

Aurizon Network Land Acquisition Costs means costs incurred by Aurizon Network (in its own capacity) in acquiring land or an interest in land for the purposes of the Extension (whether before or after the date of this Agreement).

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

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

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

Capital Costs has the meaning given in **clauses 3.1(a)(i)** and **3.1(a)(ii)**.

Charge has the meaning given in **clause 11.6(d)**.

Chargee has the meaning given in **clause 11.6(d)**.

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

Commencement Date means the date on which the Trustee first issues a Preference Unit in accordance with the terms of the Trust Deed and Unit Holders Deed.

Condition Precedent means each condition precedent detailed in the table in **clause 2.1**.

Condition Precedent Satisfaction Date means the date of the satisfaction or waiver of the last Condition Precedent outstanding.

Confidential Information of a Disclosing Party means:

- (a) the terms of this Agreement and each of the Transaction Documents;
and
- (b) information disclosed (whether before or after the date of this Agreement) by, or on behalf of, the Disclosing Party to the Recipient which:
 - (i) is by its nature confidential or commercially sensitive;
 - (ii) is identified by the Disclosing Party as confidential or commercially sensitive;
 - (iii) the Recipient knows, or ought reasonably to know, is confidential or commercially sensitive; or
 - (iv) relates to the business, operations or financial affairs of the Disclosing Party or a Related Body Corporate of it,

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

- (c) are or become public knowledge other than by:
 - (i) breach of this Agreement or any of the Transaction Documents or by a breach of confidentiality by the Recipient or any third party to whom the Recipient has disclosed the information; or
 - (ii) breach of confidentiality by:
 - (A) the “Independent Certifier”, the “Principal's Engineer” or the “Financier’s Engineer” (each as defined in the Construction Agreement);
 - (B) an Auditor under a Transaction Document;
 - (C) an Expert; or
 - (D) an expert appointed under the Extension Infrastructure Head-Lease, Integrated Network Deed and the Construction Agreement;
- (d) are in the possession of the Recipient or a Related Body Corporate of it without restriction in relation to disclosure before the date of receipt; or
- (e) have been independently developed or acquired by the Recipient or a Related Body Corporate of it.

Consequential Loss means:

- (a) any loss of profits or loss of production;
- (b) any loss of whatever nature concerning supply of product from a mine to any third party or to make product available to transport;
- (c) loss of business opportunities;
- (d) loss of or damage to goodwill or reputation;
- (e) loss of or damage to credit rating; and

- (f) loss or damage that does not naturally, according to the usual course of things, flow from a breach of contract,

but does not include, and the exclusion in **clause 7.1** does not apply to, any of the following Claims to the extent that the Party would in the absence of this definition be entitled to recover them at law:

- (g) any costs or expenses incurred by the Party in connection with mitigating the effects of any breach of the Transaction Documents by the other Party (including implementing a workaround solution in respect of or otherwise mitigating any failure of a Party to comply with the requirements (including warranties) of the Transaction Documents provided that if a loss arising from the breach of the Transaction Documents is itself not recoverable because it is a Consequential Loss, the costs or expenses incurred in mitigating that loss shall also be treated as (non-recoverable) Consequential Loss;
- (h) a Loss (including a Loss arising out of a Claim by a third party) in respect of:
 - (i) the cost of repairing, replacing or reinstating any real or personal property of any person (including a Party) that has been lost, damaged or destroyed; or
 - (ii) personal injury to or death of any person;
- (i) in respect of any personal injury Claim, special loss or economic loss as those terms are used in the context of personal injury Claims;
- (j) any liquidated damages for which the Party is liable under a Transaction Document; and
- (k) any fines or penalties imposed by a governmental or regulatory body for failure by the Party to comply with the Law as a result of the other Party's failure to comply with the requirements of the Transaction Documents, and any costs or expenses incurred by the first Party in dealing with any actions, investigations, inquiries or proceedings by a governmental or regulatory body in respect of such failures or breaches.

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

Contamination of land, air or water means the presence in, on or under that land, air or water of a substance (whether a solid, liquid, gas, odour, heat, sound, vibration or radiation) at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land, air or water in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the Environment, or could otherwise give rise to a risk of non-compliance or breach of any Environmental Law or Environmental Authorisation.

Construction Agreement means the agreement entitled "*User Funding – Design and Construct Contract: [insert Extension name]*" between Aurizon Network and the Trustee, in the form shown in **annexure [D]**.

Construction Interest on the Capital Costs means the amount calculated in accordance with the formula in **clause 3.2**.

Construction Period has the meaning given in the Unit Holders Deed.

Contractor has the meaning given in the Construction Agreement.

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

Cost has the meaning given in **clause 10.8(a)**.

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

Date of Practical Completion has the meaning given to “date of practical completion” in the Construction Agreement.

Disclosee has the meaning given in **clause 9.3**.

Disclosing Party has the meaning given in **clause 9.1(a)**.

Dispute has the meaning given in **clause 5.1(a)** and includes a matter referred to an Expert for determination under this Agreement.

Dispute Notice has the meaning given in **clause 5.1(a)**.

Dispute Resolution Process means the dispute resolution process under **clause 5**.

Effective Date means the date of this Agreement.

End Date means [insert longstop date for the conditions precedent].

Environment means the physical, biological and social aspects and conditions of a particular area, including:

- (a) land, water, air, atmosphere, climate, living organisms and other matter, things made or altered by humans, ecosystems and social groupings;
- (b) the social, economic and cultural aspects of a thing specified in **paragraph (a)** of this definition; and
- (c) the interaction of any 2 or more things specified in **paragraphs (a)** and **(b)** of this definition.

Environmental Authorisation means a licence, consent, approval, permit, authorisation, certificate of registration or other concession issued by a Government Authority and any agreement, which is required, obtained or entered into in respect of any of the properties or any Activity pursuant to an Environmental Law.

Environmental Law means the common law and the principles and doctrines of equity, any constitution or legislation in force from time to time within the Commonwealth of Australia or any State or Territory of the same, any rule, regulation, ordinance, bylaw, rule, ruling, guideline, statutory instrument, decree, order, direction or notice made and in force from time to time under any such legislation, and any other similar measure (and the expressions lawful and unlawful shall be construed accordingly) in so far as they relate to components of the earth, including:

- (a) land, air and water; and
- (b) any layer of the atmosphere; and
- (c) any organic or inorganic matter and any living organism; and
- (d) human-made or modified structures and areas,

and includes interacting natural ecosystems that include components referred to **paragraphs (a) to (d)**. of this definition.

Expansion Process means **[part 8]** of the Access Undertaking.

Expert has the meaning given in **clause 5.2(b)**.

Extension has the meaning given in the Unit Holders Deed.

Extension Infrastructure means the “Total Extension Infrastructure” (as defined in the Extension Infrastructure Sub-Lease) (from time to time).

Extension Infrastructure Head-Lease means the agreement entitled “*User Funding – Extension Infrastructure Head-Lease: [insert Extension name]*” between QTH, Aurizon Network and the Trustee, in the form shown in **annexure [G]**.

Extension Infrastructure Sub-Lease means the agreement entitled “*User Funding – Extension Infrastructure Sub-Lease: [insert Extension name]*” between Aurizon Network and the Trustee, in the form shown in **annexure [E]**.

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

Financing Side Deed means a deed referred to in clause **[15.6(b)]** of the Integrated Network Deed.

First Party has the meaning given in **clause 15.1(b)**.

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

Gross Negligence means any negligence whether solely or in conjunction with another tortfeasor arising from the conduct of a Party in connection with the Transaction Documents and involving such wanton and reckless conduct as constitutes a sufficiently thoughtless or unprofessional nature as to show a lack of regard for the harmful, foreseeable and avoidable consequences which result from such conduct.

GST has the meaning given in the GST Law.

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

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

Integrated Network Deed means the deed entitled “*User Funding – Extension Infrastructure Head-Lease: [insert Extension name]*” between the Trustee, Aurizon Network, the State and QTH, in the form shown in **annexure [H]**.

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

- (a) 2%; and
- (b) the Commonwealth Bank of Australia's "Corporate Overdraft Reference Rate" (monthly charging cycle) quoted by the Commonwealth Bank of Australia on its public website for the last trading day of the previous Month (or in the event that such a rate is not so quoted at or in respect of any relevant date, such other similar rate as is quoted by a major commercial bank as agreed by the Parties or, failing agreement, as determined by an Expert under **clause 5.3**).

Landholder means the party that is the "Landholder" under the Rail Corridor Agreement.

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

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

Liability means any liability (whether actual, contingent or prospective).

Loss means any Liability, loss, damage, judgment, cost, charge, expense, diminution in value or deficiency of any kind or character which a Party pays, suffers or incurs or is liable for, howsoever arising, including:

- (a) interest and other amounts payable to third parties; and
- (b) 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.

Notice has the meaning given in **clause 12.1**.

Ordinary Unit has the meaning given in the Trust Deed.

Parties means collectively Aurizon Network, the Trustee, each Unit Holder and, subject to **clause 4.3(b)**, each Access Seeker, and **Party** means any one of them.

Permitted Lien means:

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

interference with, the Extension Infrastructure or any title to, use of or interest in the Extension Infrastructure (or any part of it).

PPSA means the *Personal Property Securities Act 2001* (Cth).

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

Preference Unit has the meaning given in the Trust Deed.

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

Price Sensitive Information means any information which Aurizon Network is under a contractual or other obligation (including an equitable obligation of confidence) not to disclose.

Proceedings has the meaning given in **clause 5.7(b)(ii)**.

QTH means Queensland Treasury Holdings Pty Ltd ACN 011 027 295.

Rail Corridor Agreement means the agreement entitled “*User Funding – Rail Corridor Agreement: [insert Extension name]*” between Aurizon Network and the Trustee, in the form shown in **annexure [F]**.

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

Railway Network means Aurizon Network’s central Queensland coal railway network (and includes the Extension).

Rail Safety Act means the *Transport (Rail Safety) Act 2010* (Qld).

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

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

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

Removed Obsolete Part has the meaning given in the Extension Infrastructure Head-Lease.

Rent has the meaning given in the Extension Project Agreement.

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

Revenue has the meaning given in **clause 10.8(b)**.

Second Party has the meaning given in **clause 15.1(b)**.

Security Documentation has the meaning given in the Unit Holder Deed.

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

- (a) any security interest within the meaning of section 12(1) of the PPSA;
- (b) any thing which gives a creditor priority to other creditors with respect to any asset; and

- (c) retention of title other than in the ordinary course of day-to-day trading and a deposit of money by way of security,

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

Segment has the meaning given in the Unit Holders Deed.

Specific Security Agreement means the agreement entitled “*User Funding – Specific Security Agreement: [insert Extension name]*” between Aurizon Network and the Trustee, in the form shown in **annexure [1]**.

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.

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

Supplier has the meaning given in **clause 10.3**.

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; and
- (c) any interest, penalty, charge, fine or fee or other amount of any kind assessed, charge or imposed on or in respect of anything listed in **paragraph (a)** or **(b)** of this definition.

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.

Transaction Documents means:

- (a) this Agreement;
- (b) the Trust Deed;
- (c) the Unit Holders Deed;
- (d) subject to **clause 4.3(a)**, each Access Agreement Specific Terms Deed;
- (e) the Construction Agreement;
- (f) the Extension Infrastructure Sub-Lease;
- (g) the Rail Corridor Agreement;

- (h) the Extension Infrastructure Head-Lease;
- (i) the Integrated Network Deed;
- (j) the Specific Security Agreement; and
- (k) the Security Documentation required to be provided by each Unit Holder to the Trustee under clause [4.2] of the Unit Holders Deed;
- (l) the Financing Side Deed (if entered into under clause [15.6(b)] of the Integrated Network Deed),

and **Transaction Document** means any one of them.

[Drafting note: The definition of Transaction Documents may need to be revised if there is more than one Extension Infrastructure Head-Lease and Integrated Network Deed.]

Trust has the meaning given in the Trust Deed.

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

Trust Deed means the trust deed made by the Trustee entitled “*User Funding – Trust Deed of [Name of Trust]*”, in the form shown in **annexure [A]**.

Trustee Permitted Security Interest means a Security Interest granted in accordance with clause [15.6] of the Integrated Network Deed.

Unit has the meaning given in the Trust Deed.

Unit Holders Deed means the deed entitled “*User Funding – [Name of Trust] Subscription and Unit Holders Deed*” between the Trustee, Aurizon Network and the Preference Unit Holders, in the form shown in **annexure [B]**.

Wilful Default means an intentional act or omission constituting a breach of:

- (a) the terms of the Transaction Documents; or
- (b) a duty or obligation arising under any of them.

Works has the meaning given in to “the Works” in the Construction Agreement.

1.2 Interpretation

Unless expressed to the contrary, in this Agreement:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) where the day on or by which any thing is to be done is not a Business Day, it must be done on or by the preceding Business Day;
- (c) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded;
- (d) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (e) “includes” means includes without limitation;

- (f) no rule of construction will apply to the disadvantage of one Party on the basis that that Party put forward the documents comprising this Agreement;
- (g) if the documents comprising this Agreement contain any ambiguity, discrepancy or inconsistency, then the following order of precedence will apply to resolve that ambiguity, discrepancy or inconsistency:
 - (i) this Agreement excluding the schedules; and
 - (ii) the schedules;
- (h) words in the singular include the plural and vice versa;
- (i) words importing one gender will include every gender;
- (j) references to clauses and schedules are references to clauses of, and schedules to, this Agreement;
- (k) a requirement for a Party to obtain the consent or approval of another Party requires that Party to obtain the consent or approval in writing; and
- (l) a reference to:
 - (i) a person includes any company, partnership, joint venture, unincorporated association, corporation or other body corporate and a government or statutory body or authority;
 - (ii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified, consolidated, re-enacted or replaced;
 - (iii) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (iv) a right includes a benefit, remedy, discretion and power;
 - (v) time is to local time in Brisbane, Queensland;
 - (vi) \$ or dollars is a reference to Australian currency;
 - (vii) this Agreement or any other document includes the document as novated, varied or replaced and despite any change in the identity of the Parties;
 - (viii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmission; and
 - (ix) a Party includes that Party's successors according to law and permitted assigns and any person to whom it novates its rights and obligations.

2 Conditions precedent

2.1 Coming into effect of Agreement

This **clause 2** and **clauses 1**, **[x]** and **[x]** come into effect on the Effective Date. The remainder of this Agreement comes into effect upon all of the conditions precedent listed in the second column of the following table being satisfied or waived in accordance with **clause 2.4**.

	Condition precedent	Responsibility	Right to waive
1.	[Statutory severance in place]	[Party/ies to be specified once statutory severance regime is established]	Trustee, Aurizon Network
2.	[A private binding ruling under and for the purposes of the Tax Act which provides rulings satisfactory to the Trustee in respect of such matters or things as are raised within the Trustee's application to the ATO for that ruling.]	Trustee	Trustee
3.	[A private binding ruling under and for the purposes of the Tax Act which provides rulings satisfactory to Aurizon Network in respect of such matters or things as are raised within Aurizon Network's application to the ATO for that ruling.]	Aurizon Network	Trustee, Aurizon Network
4.	[QTH notifies the Trustee that it has obtained a private binding ruling under and for the purposes of the Tax Act which provides rulings satisfactory to QTH in respect of such matters or things as are raised within QTH's application to the ATO for that ruling.]	NA	Trustee, Aurizon Network
3.	Correspondence from the Queensland Office of State	Trustee, Aurizon Network	Trustee, Aurizon Network

	Condition precedent	Responsibility	Right to waive
	Revenue satisfactory to the parties dealing with the liability of the Transaction Documents (or the transaction which they reflect) to duty under the Duties Act (Qld).		
6.	[The Access Regulator has approved the Extension in accordance with the Expansion Process]	Trustee, Aurizon Network	Trustee, Aurizon Network
7.	[Each Unit Holder has, if required under the Unit Holders Deed, delivered its “Bank Guarantee” and “Security Documentation”, and paid its “Initial Loan Contribution”, to the Trustee in accordance with clause 4 of the Unit Holders Deed (each as defined in the Unit Holders Deed).]	Trustee, each Unit Holder	Aurizon Network
8.	[Provision to Aurizon Network of the security required under clause [5] of the Construction Agreement and the advanced payment to Aurizon Network required under clause [37.1A] of the Construction Agreement]	Trustee	Aurizon Network
9.	[Each Transaction Document (other than the Access Agreement Specific Terms Deeds) has been executed in the form annexed to this Agreement]	Trustee in respect of its execution of each applicable Transaction Document, Aurizon Network in respect of its execution of each applicable Transaction Document, each Unit Holder in respect of its execution of each applicable Transaction Document;	Trustee, Aurizon Network
10.	[Each Access Agreement Specific Terms Deed has been executed in a form not materially different (in the	Trustee in respect of its execution of each Access Agreement Specific Terms Deed, Aurizon Network in	Trustee, Aurizon Network

	Condition precedent	Responsibility	Right to waive
	Trustee's opinion, acting reasonably) to the form annexed to this Deed]	respect of its execution of each Access Agreement Specific Terms Deed, each Access Seeker in respect of its execution of its applicable Access Agreement Specific Terms Deed	

2.2 Reasonable endeavours to satisfy Conditions Precedent

Each Party specified in the third column of the table in **clause 2.1** as having responsibility for the satisfaction of a Condition Precedent (or a component of it) must use all reasonable endeavours to ensure that the Condition Precedent (or the relevant component of it) is satisfied as soon as practicable after the Effective Date and in any event before the End Date.

2.3 Notice in relation to satisfaction of Conditions Precedent

Each Party must within one Business Day after becoming aware:

- (a) of the satisfaction of any Condition Precedent, notify each other Party of the satisfaction of that Condition Precedent and provide reasonable evidence that the Condition Precedent has been satisfied; or
- (b) of a Condition Precedent becoming incapable of satisfaction, notify each other Party that the Condition Precedent has become incapable of satisfaction and provide reasonable evidence that the Condition Precedent has become incapable of satisfaction.

2.4 Waiver of Conditions Precedent

A Condition Precedent may only be waived:

- (a) if one Party is specified in the fourth column of the table in **clause 2.1** opposite that Condition Precedent, by that Party by notice to each other Party; or
- (b) if more than one Party is specified in the fourth column of the table in **clause 2.1** opposite that Condition Precedent, by written agreement between all of those Parties specified in the fourth column.

A Party entitled to waive or to agree to waive a Condition Precedent under this **clause 2.4** may do so in its absolute discretion. A Party that waives or agrees to waive a Condition Precedent is not prevented from bringing a Claim against any other party in respect of any breach of this Agreement that caused that Condition Precedent not to be satisfied.

2.5 Failure of Conditions

A Party is entitled to terminate this Agreement by notice to each other Party:

- (a) at any time before the End Date if any Condition Precedent has become incapable of satisfaction and that Condition Precedent has not been waived in accordance with **clause 2.4** within five Business Days after the

occurrence of the fact, matter or circumstance which caused that Condition Precedent to become incapable of satisfaction; or

- (b) if any Condition Precedent has not been either satisfied, or waived in accordance with **clause 2.4**, before the End Date,

except where the relevant Condition Precedent has become incapable of satisfaction, has not been satisfied, or ceases to be satisfied, as a direct result of a failure by the Party seeking to terminate to comply with its obligations under **clause 2.2**.

3 Regulatory Asset Base

3.1 Inclusion into Regulatory Asset Base

- (a) Aurizon Network must seek to include:
 - (i) the Trust Capital Costs (**Capital Costs**);
 - (ii) the Aurizon Network Land Acquisition Costs (also **Capital Costs**); and
 - (iii) the Construction Interest on the Capital Costs,into the Regulatory Asset Base as soon as reasonably practicable under the Access Undertaking.
- (b) Without limiting **clause 3.1(a)**, Aurizon Network must:
 - (i) act in the best interests of the Trust;
 - (ii) do all things which it reasonably can do (including the making of submissions to the Access Regulator) to promote and encourage the making of a decision by the Access Regulator to include the Capital Costs and Construction Interest into the Regulatory Asset Base;
 - (iii) act reasonably and in good faith and consult with the Trustee before making any submission referred to in **clause 3.1(b)(ii)** (including consulting with the Trustee about the context of any submission);
 - (iv) not do anything which would, or would be likely to, prejudice the making of a decision by the Access Regulator to include the Capital Costs and Construction Interest in the Regulatory Asset Base;
 - (v) not delay seeking the inclusion of the Capital Costs and Construction Interest in the Regulatory Asset Base;
 - (vi) if the Access Regulator makes a decision to include the Capital Costs and Construction Interest in the Regulatory Asset Base, do all things reasonable to ensure that such costs remain in the Regulatory Asset Base; and

- (vii) not do anything which would, or would be likely to, have the effect of removing all or a material part of the Capital Costs and Construction Interest from the Regulatory Asset Base.

3.2 Calculation of Construction Interest on the Capital Costs

The Construction Interest on the Capital Costs is the amount calculated in accordance with the following formula:

$$CI = \left[\sum_{x=1}^t CC_x \times (1 + R_{mth})^{t-x+1} \right] - CC$$

where:

CI	=	The Construction Interest on the Capital Costs
CC	=	The total Capital Costs incurred by the Trustee and Aurizon Network
CC _x	=	The part of the Capital Costs incurred by the Trustee and Aurizon Network in Month x
R	=	The annual interest rate (expressed as a decimal) that the Access Regulator uses to capitalise interest on costs included in the Regulatory Asset Base for the Extension
R _{mth}	=	$(1+R)^{1/12} - 1$
t	=	The number of months from the date of the first CC _x amount is incurred by the Trustee or Aurizon Network to the date the Capital Costs are included in the Regulatory Asset Base
x	=	Each month after the first CC _x is incurred (x = 1 in the first month after the first CC _x amount is incurred by the Trustee or Aurizon Network)

4 Termination

4.1 No rights of termination

This Agreement will automatically terminate, without the need for any Party to give notice to any other Party, on the date that the Trust is wound up in accordance with the Trust Deed and Unit Holders Deed.

4.2 No other rights of termination

Subject to **clause 2.5** and despite any rule of law or equity to the contrary, no Party may terminate, rescind or treat as repudiated, or obtain any order with the effect of terminating or rescinding, this Agreement.

4.3 Access Seekers

On the date of the termination or expiry of an Access Agreement Specific Terms Deed:

- (a) that Access Agreement Specific Terms Deed will cease to be a "Transaction Document" for the purposes of the definition of "Transaction Documents"; and
- (b) the Access Seeker party to that Access Agreement Specific Terms Deed will cease to be a Party to this Agreement.

4.4 No prejudice as to right to damages

Subject to **clause 7**, nothing in this **clause 4** prejudices in any way a Party's right to Claim and recover damages for any breach of this Agreement by the another Party.

5 Disputes

5.1 Notification of Disputes

- (a) If any Claim, dispute or question arises under a Transaction Document (except for any Claim, dispute or question:
 - (i) in relation to any Extension Structure Tax Cost, which must be dealt with solely under clause [17] of the Unit Holders Deed;
 - (ii) under the Extension Infrastructure Head-Lease, which must be dealt with solely under clause [17] of the Extension Infrastructure Head-Lease;
 - (iii) under the Integrated Network Deed, which must be dealt with solely under clause [13] of the Integrated Network Deed; or
 - (iv) under the Construction Agreement, which must be dealt with solely under clause [42] of the Construction Agreement),

(Dispute) between the parties to the Transaction Document, any party to the relevant Transaction Document may give to each other party to the relevant Transaction Document a notice in writing (**Dispute Notice**) specifying the Dispute and referring it for resolution in accordance with this **clause 5**.
- (b) Unless otherwise expressly provided to the contrary in the relevant Transaction Document, a Dispute under a Transaction Document must be resolved in accordance with this **clause 5**.

5.2 Chief executive officer resolution

- (a) Within ten Business Days after the giving of a Dispute Notice in respect of a Dispute under a Transaction Document, the Dispute must be referred in the first instance to:
- (i) the chief executive officer of Aurizon Network (or his or her nominee);
 - (ii) the chief executive officer of the Trustee (or his or her nominee); and
 - (iii) if the Unit Holder is party to the relevant Transaction Document, the chief executive officer of the Unit Holder (or his or her nominee);
 - (iv) in relation to a Dispute under an Access Agreement Specific Terms Deed, the chief executive officer of the applicable Access Seeker (or his or her nominee),
- for resolution.
- (b) If the Dispute under a Transaction Document is not resolved within ten Business Days after the referral under **clause 5.2(a)**, or in the event that any chief executive officer appoints a nominee that is unacceptable to another party to the relevant Transaction Document, then the relevant Dispute:
- (i) must, where the relevant Transaction Document expressly requires referral to an expert; and
 - (ii) may, by agreement of the parties to the relevant Transaction Document in any other case,
- be referred for resolution by an expert (**Expert**) in accordance with **clause 5.3**.

5.3 Expert determination

Where a Dispute under a Transaction Document is referred to an Expert pursuant to **clause 5.2** or otherwise in accordance with the terms of a Transaction Document then the following provisions of this **clause 5.3** will apply:

- (a) an Expert must be appointed by agreement between the parties to the relevant Transaction Document, or in default of such appointment within ten Business Days of the requirement or right (as applicable) to refer the matter to an Expert, then the Expert is to be nominated at the request of any of the parties to the relevant Transaction Document by:
- (i) where the parties to the relevant Transaction Document agree the Dispute is purely of a technical nature, the President (for the time being) of Engineers Australia – Queensland Division;
 - (ii) where the parties to the relevant Transaction Document agree the Dispute is purely of a financial or accounting nature, the President

(for the time being) of The Institute of Chartered Accountants in Australia – Queensland Branch; and

- (iii) in any other case, the President (for the time being) of the Queensland Law Society, Inc;
- (b) if the Expert is to be nominated by a person referred to in **clause 5.3(a)** and that person declines to nominate a person as the Expert but provides a list of people that could be appointed as the Expert:
 - (i) the first person specified in that list will be taken to be nominated as the Expert;
 - (ii) if the first person specified in that list does not accept the appointment as the Expert, the next person specified in that list will be taken to be nominated as the Expert; and
 - (iii) the process specified in **clause 5.3(b)(ii)** will apply to the next and each subsequent person specified in that list until a person that is taken to be nominated as the Expert accepts the appointment as the Expert;
- (c) subject to **clause 5.3(b)**, if the Expert is to be nominated by a person referred to in **clause 5.3(a)** and the person nominated as the Expert does not accept the appointment as the Expert, then an alternative person is to be nominated as the Expert at the request of a party to the relevant Transaction Document by the same person referred to in **clause 5.3(a)**;
- (d) if the Expert is to be nominated by a person referred to in **clause 5.3(a)** the parties to the relevant Transaction Document must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of that person (including providing relevant indemnities and paying any charges or fees (which charges or fees will be borne equally by the parties to the relevant Transaction Document)) that must be satisfied or complied with as a condition of that person agreeing to nominate an Expert;
- (e) the parties to the relevant Transaction Document must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of an agreed or nominated Expert (including providing relevant indemnities and paying any charges or fees (which charges or fees will be borne equally by the parties to the relevant Transaction Document)) that must be satisfied or complied with as a condition of that person accepting the appointment as an Expert;
- (f) the Expert must:
 - (i) have appropriate qualifications and practical experience having regard to the nature of the Dispute;
 - (ii) have no interest or duty which conflicts or may conflict with his or her function as Expert, he or she being required to fully disclose

- any such interest or duty by notice to the parties to the relevant Transaction Document before his or her appointment;
- (iii) not be, or have been in the last five years, an employee of the Trustee, Aurizon Network, a Preference Unit Holder or an Access Seeker or a Related Body Corporate of the Trustee, Aurizon Network, a Preference Unit Holder or an Access Seeker;
 - (iv) not be permitted to act until he or she has given notice to the parties to the relevant Transaction Document that he or she is willing and able to accept the appointment;
 - (v) have regard to the provisions of the relevant Transaction Document and consider all submissions (including oral submissions by a party to the relevant Transaction Document provided that such oral submissions are made in the presence of the other parties to the relevant Transaction Document), supporting documentation, information and data with respect to the matter submitted by the parties to the relevant Transaction Document;
 - (vi) provide all parties to the relevant Transaction Document with a copy of his or her determination in the form of a report setting out reasonable details of the reasons for the Expert's determination within a reasonable time after his or her appointment;
 - (vii) be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties (including, if required by a party to the relevant Transaction Document, by entering into a confidentiality agreement in favour of the parties to the relevant Transaction Document); and
 - (viii) be deemed to be and act as an expert and not an arbitrator and the law relating to arbitration (including, without limitation, the *Commercial Arbitration Act 1990* (Qld)), will not apply to him or her or the determination or the procedures by which he or she may reach a determination; and
- (g) if the determination of a Dispute referred to the Expert would require the Expert to be provided with any Price Sensitive Information by Aurizon Network, the Expert must enter into a confidentiality agreement in favour of Aurizon Network requiring the Expert to keep the Price Sensitive Information confidential, including from the other parties to the relevant Transaction Document.

5.4 Parties to assist Expert

The parties to a Transaction Document must do everything reasonably requested by the Expert to assist the Expert in determining the Dispute under the Transaction Document including producing information and materials (excluding any information or materials subject to legal professional privilege) requested by the Expert and attending any hearing convened by the Expert.

5.5 Decision of Expert

In the absence of manifest error, the decision of the Expert in respect of a Dispute under a Transaction Document is final and binding upon the parties to the relevant Transaction Document.

5.6 Costs

In respect of a Dispute under a Transaction Document:

- (a) the costs of the Expert and any advisers engaged by the Expert in respect of the Dispute will be borne equally by the parties to the relevant Transaction Document; and
- (b) each party to the relevant Transaction Document will bear its own legal costs and the costs of any advisers to it in respect of the Dispute Resolution Process under this **clause 5**.

5.7 Determination by court

- (a) If any Dispute under a Transaction Document is not otherwise resolved in accordance with this **clause 5**, then the Dispute may be referred by any party to the relevant Transaction Document to one of the courts of the State having jurisdiction, and sitting in Brisbane.
- (b) Each party to a Transaction Document irrevocably and unconditionally:
 - (i) agrees that the courts of the State, and any courts which have jurisdiction to hear appeals from any of those courts, are to have exclusive jurisdiction to settle disputes which may arise out of or in connection the Transaction Document and that accordingly any suit, action or proceeding (**Proceedings**) arising out of or in connection with the Transaction Document may be brought in, and only in, such courts;
 - (ii) waives any objection which it may have now or hereafter to the laying of the venue of any Proceedings in such courts and any Claim that any such Proceedings have been brought in an inconvenient forum; and
 - (iii) agrees that a final judgment in any Proceedings brought in such courts will be final and binding upon such party and may be enforced in the courts of any other jurisdiction.

5.8 Injunctive relief

Nothing in this Agreement or in any Transaction Document will prevent a party to a Transaction Document from seeking urgent injunctive relief from a court in respect of a Dispute under the relevant Transaction Document.

5.9 Time bar

If a party to a Transaction Document does not give a Dispute Notice under **clause 5.1(a)** in respect of a Dispute under the relevant Transaction Document within 12 Months after the date it becomes aware of the occurrence of the event or circumstance giving rise to the Dispute:

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

5.10 References to Transaction Document

A reference to "Transaction Document" in this **clause 5** (other than in **clause 5.1(a)**) does not include the Extension Infrastructure Head-Lease, the Integrated Network Deed or the Construction Agreement.

6 Environmental issues

Notwithstanding **clause 7.1** and without limiting clause [25A] of the Construction Agreement, Aurizon Network is liable:

- (a) for any Activity touching and concerning the Extension Land:
 - (i) constituting a breach of any Environmental Law or Environmental Authorisation;
 - (ii) which would or might reasonably be expected to cause (in whole or in part):
 - (A) a nuisance, death or injury to any person;
 - (B) damage to any property; or
 - (C) any Contamination;
 - (iii) constituting a breach of workplace health and safety obligations; or
 - (iv) which would entitle a Government Agency to issue a notice, order or direction under an Environmental Law or Environmental Authorisation and may require the Trustee to undertake any action or work (including, without limitation, the payment of any money) in relation to any of the Extension Land; and
- (b) for non-compliance with directions, notices and orders given or made under any Environmental Law or Environmental Authorisation or other obligations imposed by law,

to the extent that the matters set out above are not caused by:

- (c) the Trustee's failure to comply with clause [3.5(a)] of the Rail Corridor Agreement; or
- (d) the Trustee committing fraud, Gross Negligence or Wilful Default.

7 Limitation of liability

7.1 No liability in relation to capacity

Aurizon Network will not have any liability to the Trustee, a Unit Holder or an Access Seeker in respect of any Claim arising out of, or in any way related to, the level of capacity created by the Extension except for any liability Aurizon Network may have under the Access Undertaking or an Access Agreement.

7.2 Exclusion of Consequential Loss under the Transaction Documents

A Party will not be liable for any Consequential Loss:

- (a) arising under or from the Transaction Documents; nor
- (b) arising from any Claim in connection with or by reason of the Transaction Documents; and
- (c) under an indemnity given by a Party to another Party, save and except for Consequential Loss where:
 - (d) any Claim for the Consequential Loss is one which the Party is insured under an insurance policy required under the Transaction Documents and then only to the extent the Party receives the proceeds of the policy of insurance;
 - (e) any entitlement of the Party to recover a loss from another Party under another Transaction Document (subject to the terms of that Transaction Document);
 - (f) such exclusion is otherwise prohibited by law; or
 - (g) the Consequential Loss is caused or contributed to by that Party committing:
 - (i) fraud;
 - (ii) Gross Negligence; or
 - (iii) a Wilful Default.

7.3 Trustee's limitation of liability

- (a) Aurizon Network and the Unit Holder acknowledges that the Trustee enters into this Agreement only as trustee of the Trust, and in no other capacity (other than in respect of the warranties in relation to trustee capacity in **clause 13.2** which are given by the Trustee in its personal capacity).
- (b) A liability of the Trustee arising under, or in connection with, this Agreement is limited to and can be enforced against the Trustee only to the extent to which the Trustee is entitled to be indemnified out of the Trust for the liability and the liability can be satisfied out of property of the Trust.
- (c) The limitation of liability in this **clause 7.3** will not apply to any liability of the Trustee to the extent that the liability is not satisfied out of the

property of the Trust because there is a reduction in the Trustee's right of indemnity as a result of the Trustee committing fraud, Gross Negligence, Wilful Default, breach of trust or breach of the Trust Deed or the Unit Holders Deed.

- (d) Without limitation to, or derogating from, the other provisions of this **clause 7.3**, the Access Seekers acknowledge the provisions of the Construction Agreement and agree that the Trustee's liability for breach of the warranty under **clause 14** is limited to the net liquidated damages under clause [34.7] of the Construction Agreement which are actually recovered by the Trustee.

7.4 Scope of Claim, liability or loss

For the avoidance of doubt references in this **clause 7** to a Claim, liability or loss include:

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

8 Trustee and Preference Unit Holder Risk Acknowledgement

- (a) The Trustee and each Preference Unit Holder acknowledge and agree that:
 - (i) the Trustee's right to the payment of Rent under the Extension Infrastructure Sub-Lease and the quantum of the Rent payable under Extension Infrastructure Sub-Lease is determined (in part) by Aurizon Network's revenue from each Coal System of which the Extension Infrastructure forms part;
 - (ii) Aurizon Network's revenue from each of those systems is dependent on various known and unknown risks, uncertainties and other factors (some of which are within, and some of which are beyond, Aurizon Network's control, including breach of a Transaction Document by, or negligent acts and omissions of, Aurizon Network); and
 - (iii) those risks, uncertainties and other factors may cause Aurizon Network's actual revenue, and the actual payments to the Trustee under the Extension Infrastructure Sub-Lease, to differ from that expected by Aurizon Network, the Trustee or the Preference Unit Holder.

- (b) Subject to **clause 8(a)** and except as expressly provided in a Transaction Document, Aurizon Network will not be liable to the Trustee or a Preference Unit Holder in connection with quantum of Rent payable to Trustee under the Extension Infrastructure Sub-Lease being less than it might otherwise be as a result of a risk, uncertainty or other factor referred to in **clause 8(a)(ii)**.
- (c) Nothing in this **clause 8** limits Aurizon Network's liability to the Trustee under the Access Undertaking in respect of any discrimination by Aurizon Network.

9 Confidentiality

9.1 Confidentiality obligations

Except as otherwise expressly provided in a Transaction Document, a Party (**Recipient**):

- (a) may use Confidential Information of another Party (**Disclosing Party**) only for the purposes of this Agreement or another Transaction Document; and
- (b) must keep confidential all Confidential Information of a Disclosing Party except for disclosures permitted under **clause 9.2**.

9.2 Disclosure of Confidential Information

Except as otherwise expressly provided in a Transaction Document, a Recipient may disclose Confidential Information of a Disclosing Party:

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

- of the Recipient under a Transaction Document who execute a confidentiality undertaking in favour of the Disclosing Party on terms reasonably acceptable to it;
- (f) to a bank or other financial institution (and its professional advisers and any security trustee or agent for it) in connection with and for the purpose of any loan or other financial accommodation sought to be arranged by, or provided to, the Recipient or a Related Body Corporate of it;
 - (g) to legal, accounting and financial or other advisers or consultants to the Recipient or a Related Body Corporate of it:
 - (i) whose duties in relation to the Recipient or the Related Body Corporate require the disclosure;
 - (ii) who are under a duty of confidentiality to the Recipient; and
 - (iii) who have been advised of the confidential nature of the Confidential Information;
 - (h) to any officers or employees of the Recipient or a Related Body Corporate of the Recipient who:
 - (i) have a need to know for the purposes of this Agreement or another Transaction Document (and only to the extent that each has a need to know); and
 - (ii) before disclosure, have been directed by the Recipient to keep confidential all Confidential Information of the Disclosing Party;
 - (i) if, and to the extent, the Recipient is required to do so by law (other than by section 275 of the *Personal Property Securities Act 2009* (Cth)) or by any rules or regulations of a recognised stock exchange (including where the disclosure is to a Related Body Corporate of the Recipient that is responsible for making such disclosures for the relevant group of companies and for the purpose of such a Related Body Corporate determining whether, and the extent to which, such a disclosure is required to be made);
 - (j) to any Governmental Agency to the extent required by law or where such disclosure is determined by the Trustee to be reasonably required for the administration of the Trust;
 - (k) if disclosure is lawfully required by the Access Regulator, or in accordance with the Access Undertaking;
 - (l) to an Auditor under a Transaction Document or an Expert or an expert appointed under the Extension Infrastructure Head-Lease, Integrated Network Deed or Construction Agreement;
 - (m) to another Party to the extent:
 - (i) expressly provided in a Transaction Document; or
 - (ii) reasonably required for the purposes of a Transaction Document.

9.3 Conditions of disclosure

If a Recipient discloses Confidential Information of a Disclosing Party to a person under **clause 9.2 (Disclosee)**, the Recipient must:

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

9.4 References to Transaction Document

A reference to "Transaction Document" in this **clause 9** and in the definition of "Confidential Information" in **clause 1.1** does not include the Extension Infrastructure Head-Lease, the Integrated Network Deed or the Construction Agreement.

10 GST

10.1 Construction

In this **clause 10**:

- (a) unless there is a contrary indication, words and expressions which are not defined in this Agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law; 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 and the GST joint venture operator of any GST joint venture of which the entity is a participant.

10.2 Consideration GST exclusive

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

10.3 Payment of GST

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

10.4 Timing of GST payment

The amount referred to in **clause 10.3** must be paid in addition to, and at the same time and in the same manner (without any set-off or deduction) that, the consideration for the supply is to be provided under this Agreement.

10.5 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient of a taxable supply before the Supplier is entitled to payment of an amount under **clause 10.3** and the recipient can withhold payment of the amount until the Supplier provides a tax invoice or an adjustment note, as appropriate.

10.6 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Agreement, the amount payable by the recipient under **clause 10.3** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier, or by the Supplier to the recipient, as the case requires.

10.7 Reimbursements

Where a Party is required under this Agreement to pay for, reimburse or contribute to any expense, loss, liability or outgoing of another Party, or indemnify another party in relation to such an expense, loss, liability or outgoing, the amount required to be paid, reimbursed or contributed by the first Party will be the sum of:

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

10.8 Calculations based on other amounts

If an amount of consideration payable or to be provided under or in connection with this Agreement is to be calculated by reference to:

- (a) any expense, loss, liability or outgoing suffered or incurred by another person (**Cost**), that reference will be to the amount of that Cost excluding the amount of any input tax credit entitlement of that person relating to the Cost suffered or incurred; and
- (b) any price, value, sales, proceeds, revenue or similar amount (**Revenue**), that reference will be to that Revenue determined by deducting from it an amount equal to the GST payable on the supply for which it is consideration.

11 Assignment

11.1 Assignment

Subject to **clauses 11.2 to 11.6** inclusive and except as expressly provided otherwise in another Transaction Document, a Party must not assign, transfer, mortgage, charge, make the subject of a trust or otherwise deal with or encumber all or any of its rights or liabilities under any Transaction Document (or procure or permit any of those things) without the prior consent of the other Parties.

11.2 Assignment by a Unit Holder

A Unit Holder may transfer all or part of its rights and obligations under any Transaction Document to a third party only in accordance with the terms of the Unit Holders Deed.

11.3 Assignment by an Access Seeker

An Access Seeker may assign, transfer, mortgage, charge, make the subject of a trust or otherwise deal with or encumber all or any of its rights or liabilities under this Agreement and the Access Agreement Specific Terms Deed to which it is party (or procure or permit any of those things) to a third party only:

- (a) contemporaneously; and
- (b) in accordance with the terms of the Access Agreement Specific Terms Deed to which it is party.

11.4 Assignment by Aurizon Network

- (a) Aurizon Network may assign all or part of its rights and liabilities under a Transaction Document in accordance with clause [15.4] of the Integrated Network Deed.
- (b) The Parties must, promptly upon demand by Aurizon Network, execute a deed of assignment and assumption or a deed of novation in a form acceptable to Aurizon Network (acting reasonably) to give effect to the transfer of any rights or liabilities of Aurizon Network permitted under this **clause 11.4**.

11.5 Assignment by Trustee

If the Trustee is replaced by a new trustee of the Trust, the Trustee must, with effect upon the appointment of the new trustee of the Trust, transfer its rights and liabilities under the Transaction Documents to the new trustee of the Trust.

11.6 Charging

- (a) A Preference Unit Holder may mortgage, charge or encumber all or any of its rights and obligations under a Transaction Document, in whole or in part, in favour of any financier, mortgagee or chargee only in accordance with the terms of the Unit Holders Deed.
- (b) Subject to **clause 11.6(c)**, the Trustee must not create or allow to subsist a Security Interest (other than a Permitted Lien) over any of its rights under the Transaction Documents or over any of its right, title or interest in the Extension Infrastructure or any part of it.
- (c) Notwithstanding **clause 11.6(b)**, the Trustee may grant a Trustee Permitted Security Interest.
- (d) Aurizon may mortgage, charge or encumber (**Charge**) all or any of its rights and obligations under a Transaction Document, in whole or in part, in favour of any financier, mortgagee or chargee (**Chargee**), provided that Aurizon, the Chargee, the Trustee and each other party to the Transaction Document (if any) must execute any reasonable form of covenant, including terms to the effect that the Trustee and each other party to the Transaction Document (if any) acknowledges the existence of the Charge, and that the Chargee must comply with the provisions of

the Transaction Document, including this **clause 11**, in the exercise of its rights under the Charge.

- (e) Aurizon must not Charge the Extension Infrastructure or any part of the Extension Infrastructure.

12 Notices

12.1 General

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

12.2 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.

12.3 Particulars for giving of Notices

- (a) Each Party's particulars for the giving of Notices are initially the particulars set out in **item 3** of **schedule 1**.
- (b) Each Party may change its particulars for the giving of Notices by Notice to each other Party.
- (c) A Notice given to a Party which is signed is evidence that the Notice has been signed by a person duly authorised by the sender and that Party is entitled to rely on that Notice without further inquiry or investigation.

12.4 Notices by post

Subject to **clause 12.6**, 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.

12.5 Notices by fax

Subject to **clause 12.6**, 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.

12.6 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.

12.7 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this Agreement may be served by any method contemplated by this **clause 12** or in accordance with any applicable law.

12.8 Signature to Notice

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

12.9 References to Transaction Document

A reference to "Transaction Document" in this **clause 12** does not include the Extension Infrastructure Head-Lease, the Integrated Network Deed or the Construction Agreement.

13 Warranties

13.1 Warranties

Each Party warrants that:

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

13.2 Trustee warranties

The Trustee warrants that:

- (a) it has full power and authority to enter into the Transaction Documents to which it is party and to perform the Trustee's obligations under the Transaction Documents;

- (b) it is the sole trustee of the Trust and no action has been taken to remove or replace the Trustee; and
- (c) it has the right to be fully indemnified out of the assets of the Trust in respect of all its obligations under the Transaction Documents, and the Trustee has not done or omitted to do anything that would result in its right of indemnity being restricted or limited in any way.

13.3 Reliance

- (a) Each Party acknowledges that each other Party has entered (or will enter) into the Transaction Documents to which it is party in reliance upon the warranties contained in **clause 13.1**.
- (b) The Trustee acknowledges that Aurizon Network has entered (or will enter) into the Transaction Documents to which the Trustee is party in reliance upon the warranties contained in **clause 13.2**.

14 Construction Agreement Warranty

The Trustee warrants to each Access Seeker that the last to occur Date of Practical Completion of all of the Separable Portions which form part of the Access Seeker Segments of such Access Seeker (as detailed in the Access Seeker Specific Terms Deed for such Access Seeker) will not be later than the Due Date under the Access Agreement Specific Terms Deed for such Access Seeker.

15 General

15.1 Payments

- (a) All payments to be made under or in connection with a Transaction Document must be paid in Australian currency, without set-off or deduction (subject to **clause 15.1(b)**), by:
 - (i) electronic payment to an account nominated by the Party entitled to receive the payment; or
 - (ii) such other method as the Party entitled to receive the payment may reasonably require from time to time.
- (b) A Party (**First Party**) may deduct from any amounts which are due and payable by the First Party to another Party under a Transaction Document (**Second Party**) any amounts which are due and payable by the Second Party to the First Party under a Transaction Document where expressly permitted or required under a Transaction Document and then only to the extent of such permission or requirement.

15.2 Waiver

- (a) Waiver of any right arising from a breach of a Transaction Document or any right arising from a default under a Transaction Document must be in writing and signed by the Party granting the waiver.

- (b) A single or partial exercise or waiver by a Party of a right relating to a Transaction Document does not prevent any other exercise of that right or the exercise of any other right.
- (c) A failure or delay in exercise, or partial exercise, of a right arising from a breach of a Transaction Document does not result in a waiver of that right.

15.3 Legal costs

Except as expressly stated otherwise in a Transaction Document, each Party must pay its own legal costs and expenses of the drafting, negotiating and execution of the Transaction Documents.

15.4 Amendments to be in writing

Except where a Transaction Document expressly provides a process for amendment or variation, an amendment or variation of a Transaction Document will only be effective if it is in writing and executed by all parties to that Transaction Document .

15.5 Rights cumulative

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

15.6 Consents

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

15.7 Further assistance

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

15.8 Entire understanding

- (a) This Transaction Documents together contain the entire understanding between the Parties as to the subject matter of the Transaction Documents.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of the Transaction Documents are merged in and superseded by the Transaction Documents and are of no effect. No Party is liable to any other Party in respect of those matters.
- (c) No oral explanation or information provided by any Party to another:
 - (i) affects the meaning or interpretation of the Transaction Documents; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the Parties.

15.9 Relationship of Parties

No Transaction Document is intended to create a partnership, joint venture or agency relationship between the Parties.

15.10 Severability

- (a) Subject to **clause 15.10(b)**, if a provision of a Transaction Document 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 the Transaction Document.
- (b) **Clause 15.10(a)** does not apply if severing the provision:
 - (i) materially alters the:
 - (A) scope and nature of a Transaction Document; or
 - (B) relative commercial or financial positions of the Parties; or
 - (ii) would be contrary to public policy.

15.11 Survival of representations and warranties

All representations and warranties in a Transaction Document will survive the execution and delivery of the Transaction Document and the completion of the transactions contemplated by it.

15.12 Enurement

The provisions of each Transaction Document will, subject as otherwise provided in the Transaction Document, enure for the benefit of and be binding on the parties to it and their respective successors and permitted novatees and assigns.

15.13 Merger

The obligations contained in each Transaction Document will continue until satisfied in full.

15.14 Powers of attorney

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

15.15 Indemnity

It is not necessary for a Party to incur expense or make a payment before enforcing any indemnity conferred by a Transaction Document.

15.16 References to Transaction Document

A reference to "Transaction Document" in this **clause 15** (other than in **clause 15.8**) does not include the Extension Infrastructure Head-Lease, the Integrated Network Deed or the Construction Agreement.

16 Counterparts

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

17 Survival

This **clause 17** and **clauses 5, 15, 16, 18** and **[#]** survive the termination of this Agreement.

18 Stamp Duty

Except as provided otherwise in another Transaction Document:

- (a) as between the Parties, the Trustee is liable for and must pay all Stamp Duty on or relating to a Transaction Document, any document executed under it or any dutiable transaction contemplated, evidenced or effected by it; and
- (b) if a Party other than the Trustee pays any Stamp Duty to which **clause 18(a)** applies, the Trustee must pay that amount to that other Party on demand and hereby indemnifies that other Party for that amount.

19 Applicable law

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

Executed as an agreement.

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

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

Date: / /

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

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

Date: / /

Executed by [Unit Holder] 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 **Access Seeker** 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: / /

Schedule 1 – Agreement details

1 Unit Holders

Name: [insert]

ABN: [insert]

Address: [insert]

Name: [insert]

ABN: [insert]

Address: [insert]

2 Access Seekers

Name: [insert]

ABN: [insert]

Address: [insert]

Name: [insert]

ABN: [insert]

Address: [insert]

3 Particulars for Notices

3.1 Trustee

Business address [insert]

Postal address [insert]

Facsimile No. [insert]

Attention: [insert]

3.2 Aurizon Network

Business address [insert]

Postal address [insert]

Facsimile No. [insert]

Attention: [insert]

3.3 Unit Holders

Name: [insert]

Business address [insert]

Postal address [insert]

Facsimile No. [insert]

Attention: [insert]

Name: [insert]

Business address [insert]

Postal address [insert]

Facsimile No. [insert]

Attention: [insert]

3.4 Access Seekers

Name: [insert]

Business address [insert]

Postal address [insert]

Facsimile No. [insert]

Attention: [insert]

Name: [insert]

Business address [insert]

Postal address [insert]

Facsimile No. [insert]

Attention: [insert]

Annexure A

Trust Deed

Annexure B

Unit Holders Deed

Annexure C

Pro-forma Access Agreement Specific Terms Deed

Annexure D

Construction Agreement

Annexure E

Extension Infrastructure Sub-Lease

Annexure F

Rail Corridor Agreement

Annexure G

Extension Infrastructure Head-Lease

Annexure H

Integrated Network Deed

Annexure I

Specific Security Agreement