

Aurizon Network, October 2017 submission

---

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

---

Aurizon Network Pty Ltd

---

# User Funding – Specific Security Agreement

[*insert Extension name*]

# Contents

<b>1</b>	<b>Interpretation</b>	<b>1</b>
1.1	Extension Infrastructure Sub-Lease	1
1.2	Extension Project Agreement	1
1.3	Definitions	1
1.4	Event of Default	3
<b>2</b>	<b>Creation and discharge of security interest</b>	<b>4</b>
2.1	Creation	4
2.2	Nature of security interest	4
2.3	Priority	4
2.4	Discharge	4
<b>3</b>	<b>Representations and warranties</b>	<b>4</b>
3.1	Representations and warranties by Grantor	4
3.2	Representations and warranties repeated	5
<b>4</b>	<b>Obligations</b>	<b>5</b>
<b>5</b>	<b>Default powers</b>	<b>6</b>
5.1	Exercise of powers	6
5.2	General dealings	6
5.3	Insolvency Event	6
5.4	Ancillary powers	6
5.5	Appointment of Receivers	7
5.6	Act jointly	7
<b>6</b>	<b>Receivers</b>	<b>7</b>
6.1	Agent	7
6.2	Powers	8
6.3	Indemnity	8
<b>7</b>	<b>Exercise of default rights</b>	<b>9</b>
7.1	Mortgagee in possession	9
7.2	Exclusion of legislation	9
7.3	Default notice	9
7.4	Application of money	9
7.5	Third party dealings	10
7.6	Accounting for Remedy Proceeds	10
<b>8</b>	<b>Preservation of Secured Party's rights</b>	<b>10</b>
8.1	Continuing security	10
8.2	Preservation of Grantor's obligations	10
8.3	Reinstatement of rights of Secured Party	10
8.4	No conflict	10
8.5	Indemnity	11

<b>9</b>	<b>Attorney</b>	<b>11</b>
9.1	Appointment	11
9.2	Powers	11
9.3	General	11
<b>10</b>	<b>Secured Party's limitation of liability</b>	<b>12</b>
<b>11</b>	<b>General</b>	<b>12</b>
11.1	Disputes	12
11.2	Confidentiality	12
11.3	Notices	12
11.4	Assignment	12
11.6	PPSA	14
11.7	Further assurances	14
11.8	Dealing with Access Agreements	15
11.9	Effect of execution	15
11.10	Survival	15
11.11	Incorporated General Provisions	15
11.12	Applicable law	15
11.13	Counterparts	15
	<b>Execution</b>	<b>16</b>

## Date

## Parties

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

Aurizon Network Pty Ltd ABN 78 132 181 116 of Level 15, 175 Eagle Street, Brisbane, Queensland (Grantor)

---

## Agreed terms

### 1 Interpretation

#### 1.1 Extension Infrastructure Sub-Lease

Words or expressions which are not defined in this Deed but which are defined in the Extension Infrastructure Sub-Lease have the meaning given in the Extension Infrastructure Sub-Lease.

#### 1.2 Extension Project Agreement

Subject to clause 1.1, words or expressions which are not defined in this Deed or the Extension Infrastructure Sub-Lease but which are defined in the Extension Project Agreement have the meaning given in the Extension Project Agreement.

#### 1.3 Definitions

In this Deed:

**Access Agreement** means each Extension Access Agreement and each Specified Access Agreement (from time to time).

**Attorney** means an attorney appointed under clause 9.

**Authorised Officer** means, in respect of a Party, a person with the right to act as the agent of that Party for the purposes of this Deed, including:

- (a) a director, company secretary or attorney of that Party and the Party's lawyer; or
- (b) a person appointed by that Party as an authorised representative of that Party whose appointment is notified by the appointor to the other Party in a notice which contains the specimen signature of the appointee.

**Charged Debts** means all debts whether actual or contingent at any time owing to the Grantor together with all books or documents of account or records evidencing or recording such debts.

**Compensation Amounts** means amounts payable by the Grantor to the Secured Party under clauses [3.5(b)] and [3.6(b)] of the Extension Infrastructure Sub-Lease.

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

**Cost** means any cost, expense, charge, liability or disbursement.

**Cost for GST** has the meaning given in clause 11.5(h)(i).

**Debt Proceeds** means the proceeds of realisation of the Charged Debts.

**Deed** means this document.

**Direction to Pay Undertaking** has the meaning given to “SAA DTP Undertaking” in the Extension Infrastructure Sub-Lease.

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

**Encumbrance** means any interest in or right over property and anything which would at any time prevent, restrict or delay the registration of any interest in or dealing with property. It includes a Security Interest.

**Event of Default** means the occurrence of an Insolvency Event in respect of the Grantor but only while the Insolvency Event subsists.

**Extension Project Agreement** has the meaning given in the Trust Deed.

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

**Insolvency Event** means, in relation to:

- (a) a corporation, its winding up or dissolution or its administration, provisional liquidation or any process having a similar effect;
- (b) an individual, his or her bankruptcy; and
- (c) a person, any arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of that person's creditors or members or a moratorium involving any of them.

**Non PPSA Property** means:

- (a) any Secured Property which is not personal property; and
- (b) any interest of the Grantor in the Secured Property to the extent that section 8(1) of the PPSA applies.

**Notice** has the meaning given in clause 11.3.

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

**Permitted Encumbrance** means:

- (a) a charge or lien arising in favour of a Governmental Agency by operation of statute;
- (b) a repairer's lien arising in the ordinary course of business; or
- (c) a lien or charge which arises by operation of Law for unpaid taxes,

which, in any case, relates to a payment obligation that is:

- (d) not yet due for payment; or
- (e) due for payment but being contested in good faith and by appropriate proceedings that are being conducted diligently and do not involve a material risk of the foreclosure, sale, forfeiture or loss of, or material interference with, the Extension Infrastructure or any title to, use of or interest in the Extension Infrastructure (or any part of it).

**Power** means any right, power, authority, discretion, remedy or privilege conferred on the Secured Party, any Receiver or any agent or attorney of the Secured Party or any Receiver, under this Deed or by law.

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

**Receiver** means a receiver or receiver and manager appointed by the Secured Party under **clause 5.5**.

**Remedy Proceeds** means money received from the exercise of any Power.

**Revenue** has the meaning given in **clause 11.5(h)(ii)**.

**Secured Money** means all money the payment or repayment of which from time to time forms part of the Secured Obligations.

**Secured Obligations** means the obligations of the Grantor to pay the Rent, Trustee Detriment Amounts and Compensation Amounts to the Secured Party under the terms of the Extension Infrastructure Sub-Lease.

**Secured Property** means the Grantor's present and future right, title and interest in:

- (a) the right to receive the payment of the Direction to Pay Amounts under each of the Access Agreements; and
- (b) each Direction to Pay Undertaking.

**Security Interest** means a security interest under the PPSA and any interest or right which secures the payment of a debt or other monetary obligation or the compliance with any other obligation, including any retention of title to any property and any right to set off or withhold payment of any deposit or other money.

**Specified Access Agreement** has the meaning given in the Extension Infrastructure Sub-Lease.

**Supplier** has the meaning given in **clause 11.5(c)**.

**Trustee Detriment Amounts** means the Detriment Amounts payable by the Grantor to the Secured Party under the terms of the Extension Infrastructure Sub-Lease.

#### 1.4 Event of Default

An Event of Default is "continuing" or "subsists" if it has not been waived by the Secured Party or remedied.

## 2 Creation and discharge of security interest

### 2.1 Creation

The Grantor charges and grants a security interest in the Secured Property to the Secured Party to secure the performance by the Grantor of the Secured Obligations and the payment of the Secured Money.

### 2.2 Nature of security interest

- (a) Subject to **clause 2.2(b)**, this Deed constitutes:
  - (i) a Security Interest in all present and after acquired personal property; and
  - (ii) a fixed charge over any Non-PPSA Property.
- (b) To the extent that any of the Non PPSA Property consists of Charged Debts or Debt Proceeds, the charge will operate as a floating charge in respect of that property until an Event of Default occurs.
- (c) If any Secured Property becomes subject to a fixed charge under **clause 2.2(b)** the Secured Party may give the Grantor a notice stating that, from a date specified in the notice, the Secured Property specified in the notice is no longer subject to a fixed charge and is again subject to a floating charge.

### 2.3 Priority

The Parties intend that the Encumbrance created by this Deed takes priority over all other Encumbrances over the Secured Property at any time, other than any Encumbrance mandatorily preferred by law.

### 2.4 Discharge

The Secured Party must at the request of the Grantor discharge the Encumbrance created by this Deed if:

- (a) the Secured Obligations have been satisfied; and
- (b) it is not reasonably foreseeable that there could be any Secured Obligations to be satisfied in the future.

## 3 Representations and warranties

### 3.1 Representations and warranties by Grantor

The Grantor represents and warrants that:

- (a) it is a corporation validly existing under the laws applicable to it;
- (b) it is able to pay its debts as and when they fall due;
- (c) it has the power to enter into this Deed and perform its obligations under this Deed, and has obtained all necessary consents to enable it to do so;
- (d) its obligations under this Deed are enforceable in accordance with their terms;

- (e) no litigation, arbitration or administrative proceeding has been commenced before, and no judgment or award has been given or made by, any court, arbitrator, other tribunal or governmental agency against it which would have a material adverse effect on its ability to observe its obligations under this Deed;
- (f) it is not in breach or default under any agreement to which it is a party to an extent or in a manner which would have a material adverse effect on its ability to perform its obligations under this Deed;
- (g) the Grantor has, or will upon signing of the relevant Access Agreements and Direction to Pay Undertakings have, good title to the Secured Property and good right to grant the Security Interest in and to charge the Secured Property in the manner provided in this Deed;
- (h) the Secured Property is free of all Encumbrances, other than Permitted Encumbrances;
- (i) no interest, right or entitlement to receive any benefit or profit from the Secured Property has been assigned or is subject to an Encumbrance (other than a Permitted Encumbrance) in favour of any other person;
- (j) this Deed is legally binding on the Grantor and all necessary authorisations have been obtained to authorise the unconditional execution, delivery and performance of this Deed and those authorisations are valid and subsisting;
- (k) the execution, delivery and performance of this Deed and each transaction contemplated by this Deed do not violate or breach any law or any document or agreement to which it is a party or which is binding on it or any of its assets; and
- (l) the entry into and the performance of its obligations under this Deed is in its best interests and for a proper purpose.

### **3.2 Representations and warranties repeated**

Each representation and warranty in this **clause 3** will be repeated on each day while any of the Secured Money remains outstanding with reference to the facts and circumstances then subsisting, as if made on each such day.

## **4 Obligations**

Except with the prior written consent of the Secured Party, the Grantor must not:

- (a) create any Encumbrance over the Secured Property other than a Permitted Encumbrance; or
- (b) dispose of, or permit to exist, any other interest in the Secured Property.

## **5 Default powers**

### **5.1 Exercise of powers**

If an Event of Default occurs and is continuing, at the option of the Secured Party:

- (a) all Powers not previously exercisable become exercisable; and
- (b) the rights of the Grantor to deal with the Secured Property (other than through a Receiver appointed under this Deed) cease.

### **5.2 General dealings**

If an Event of Default is continuing, the Secured Party may for the purpose of ensuring that the Secured Obligations are performed:

- (a) take possession and control of the Secured Property;
- (b) quietly enjoy and otherwise deal with the Secured Property; and
- (c) exercise the rights of the Grantor and comply with its obligations in respect of the Secured Property and allow any other person to comply with the person's obligations in respect of the Secured Property.

### **5.3 Insolvency Event**

Where a debt which forms part of the Secured Property is owed (whether actually or contingently) to the Grantor, the Secured Party may, at any time while an Event of Default is continuing, prove for the debt in an Insolvency Event, receive dividends in respect of the debt and assent to any proposal for an arrangement (including a scheme of arrangement or deed of company arrangement), composition or a compromise with, or an assignment for the benefit of, creditors in respect of the debt.

### **5.4 Ancillary powers**

The Secured Party may at any time while an Event of Default is continuing:

- (a) execute any deed or other document as attorney for the Grantor for the purpose of exercising any of the Powers;
- (b) on behalf of the Grantor, commence, defend, prosecute, settle, discontinue and compromise litigation, administrative or arbitral proceedings in relation to the Secured Property;
- (c) enter into and execute and deliver documents and agreements in respect of the exercise of the Powers;
- (d) on behalf of the Grantor, give receipts for and release, waive, vary, settle, compromise, discount or write off any actual or contingent debt or other monetary obligation from time to time forming part of the Secured Property;
- (e) delegate to any person any Power (including this right of delegation);
- (f) exercise all or any of the Powers conferred on a Receiver, or which would be conferred on a Receiver if appointed, as if those Powers had been expressly conferred on the Secured Party; and

- (g) do anything incidental or conducive to the exercise of any of its Powers.

## **5.5 Appointment of Receivers**

The Secured Party may at any time while an Event of Default is continuing:

- (a) either before or after it has taken possession of the Secured Property appoint:
  - (i) any one or more persons to be a receiver or receiver and manager of the Secured Property or a part of it; and
  - (ii) a different receiver or receiver and manager for different parts of the Secured Property;
- (b) if more than one person is appointed as Receiver of any property, empower them to act jointly or jointly and severally;
- (c) remove the Receiver, appoint another in his or her place if the Receiver is removed, retires or dies, and reappoint a Receiver who has retired or been removed; and
- (d) fix the reasonable remuneration of the Receiver.

## **5.6 Act jointly**

The Secured Party and each Receiver may exercise any of the Powers in conjunction with the exercise of similar powers by the holder of any other Encumbrance over the Secured Property or by any receiver or receiver and manager appointed by that other holder and may, subject to not exceeding the Powers, enter into and give effect to agreements and arrangements with that other holder, receiver or receiver and manager as the Secured Party of the Receiver thinks fit.

# **6 Receivers**

## **6.1 Agent**

- (a) Subject to **clauses 6.1(b) and 6.1(c)**, a Receiver is the agent of the Grantor who alone is responsible for the Receiver's acts and omissions and remuneration.
- (b) A Receiver is the agent of the Secured Party if the Grantor is being wound up when the Receiver is appointed.
- (c) A Receiver who is the agent of the Grantor becomes the agent of the Secured Party on:
  - (i) the Secured Party giving notice to that effect to the Grantor and the Receiver; or
  - (ii) a resolution being passed or an order being made for the winding up of the Grantor.
- (d) If a Receiver becomes the agent of the Secured Party under **clause 6.1(c)(i)**, the Receiver will revert to being the agent of the Grantor

on the Secured Party giving notice to that effect to the Grantor and the Receiver.

- (e) If a Receiver becomes the agent of the Secured Party under **clause 6.1(c)(ii)**, the Receiver will revert to being the agent of the Grantor on an approval of the liquidator of the Grantor or of the Court being given under section 420C(1) of the Corporations Act but only to the extent contemplated under section 420C(3) of the Corporations Act in consequence of that approval.

## 6.2 Powers

- (a) A Receiver has the right in relation to any Secured Property in respect of which the Receiver is appointed, unless limited by the terms of the Receiver's appointment, to exercise:
  - (i) the rights set out in **clauses 5.2, 5.3 and 5.4** as if those clauses referred to the Receiver instead of the Secured Party, including
    - (A) to perform, observe, carry out, enforce, exercise or refrain from exercising, the Grantor's rights and powers under any:
      - (1) Access Agreement to the extent to which those rights and powers relate directly or indirectly to the Direction to Pay Amounts; and
      - (2) Direction to Pay Undertaking;
    - (B) to obtain the benefit of, and vary or rescind the provisions of any:
      - (1) Access Agreement to the extent to which those provisions relate directly or indirectly to the Direction to Pay Amounts; and
      - (2) Direction to Pay Undertaking; and
  - (ii) all of the powers granted to a receiver of property of a corporation under section 420 of the Corporations Act.
- (b) The Secured Party may by notice to a Receiver at the time of a Receiver's appointment or any subsequent times as the Secured Party thinks fit give to, or remove from, a Receiver all or any of the rights referred to in **clause 6.2(a)**.

## 6.3 Indemnity

The Secured Party may give any indemnities to any Receiver concerning the performance of that Receiver's duties as are permitted by law. If the Secured Party is obliged to pay any money under any indemnity, that money will become part of the Secured Money.

## **7      Exercise of default rights**

### **7.1     Mortgagee in possession**

- (a) If the Secured Party, a Receiver or an Attorney exercises its Powers under this Deed or takes possession of the Secured Property, it will not be liable to account as a mortgagee in possession.
- (b) If the Secured Party has taken possession of the Secured Property, it may give up possession of the Secured Property at any time.

### **7.2     Exclusion of legislation**

Any statutory restrictions (other than mandatory restrictions) on any right of the Secured Party, a Receiver or an Attorney to lease or otherwise deal with the Secured Property do not apply to the rights of those persons under this Deed.

### **7.3     Default notice**

- (a) The Secured Party, a Receiver and an Attorney may, to the extent that any applicable law permits, exercise any Power in relation to an Event of Default that is continuing without first giving notice to the Grantor or allowing the lapse of any period of time and the Grantor and the Secured Party dispense with any requirement under any statute that notice be given by the Secured Party, a Receiver or an Attorney, as the case may be, or that it allow the lapse of any period of time before exercising a Power. A reference to a notice under this **clause 7.3** includes any notice under the PPSA (including a notice of a verification statement).
- (b) If an applicable law requires that a notice be given or a lapse of time occur before any Power can be exercised, then if no particular period of notice or lapse of time is required or a period or lapse of time is required but can be shortened by agreement, the period of notice or lapse of time is one day.

### **7.4     Application of money**

Subject to any mandatory statutory requirements and to the rights of the holder of any Encumbrance ranking in priority to, or *pari passu* with, the Encumbrance under this Deed, the Remedy Proceeds must be applied by the Secured Party, a Receiver or an Attorney in the manner and order determined by the Secured Party or, if the Secured Party does not make such a determination, as follows:

- (a) first, towards the payment or reimbursement of the costs and expenses incurred in or incidental to the exercise or enforcement of its Powers by the Secured Party, a Receiver or an Attorney;
- (b) secondly, towards the remuneration of any Receiver or Attorney;
- (c) thirdly, in payment of the Secured Money then owing, whether or not due and payable; and
- (d) fourthly, to any person entitled to the Secured Property or authorised to give receipts for that money.

## **7.5 Third party dealings**

Any person dealing with the Secured Party, a Receiver or an Attorney in relation to the exercise by any of them of a Power need not be concerned to enquire:

- (a) whether the Power is exercisable or properly exercised;
- (b) whether the Receiver or Attorney is properly appointed;
- (c) whether any money paid by it to the Secured Party, a Receiver or an Attorney is properly applied; or
- (d) as to any other matter or thing,

and the title of that person to any property acquired by it from the Secured Party, Receiver or Attorney will not be adversely affected by the Power not being exercisable or any improper appointment, exercise of the Power or application of money by the Secured Party, a Receiver or an Attorney of which it does not have actual notice.

## **7.6 Accounting for Remedy Proceeds**

The Secured Party, a Receiver or an Attorney is not obliged to account to the Grantor for any money relating to the exercise by any of them of any Power until money is actually received in immediately available funds and is not required to be disgorged.

# **8 Preservation of Secured Party's rights**

## **8.1 Continuing security**

This Deed is a continuing security for the whole of the Secured Obligations and the Secured Money and is not limited to any transaction or other thing.

## **8.2 Preservation of Grantor's obligations**

The Grantor's obligations and the Secured Party's Powers will not be affected by anything which, but for this **clause 8.2**, might abrogate, prejudice or limit them or the effectiveness of this Deed.

## **8.3 Reinstatement of rights of Secured Party**

If a transaction or payment relating to the Secured Obligations is void, voidable or otherwise unenforceable or refundable:

- (a) the Secured Party is entitled against the Grantor to all Powers under this Deed that it would have had if the transaction or payment had not occurred or been made; and
- (b) the Grantor must do all things and sign such documents necessary to restore to the Secured Party the Encumbrance under this Deed and its Powers under this Deed immediately before that transaction or payment.

## **8.4 No conflict**

The Secured Party and each Receiver may exercise any Power, even though the exercise of that Power involves a conflict between any duty owed to the

Grantor by the Secured Party or that Receiver and any duty owed by the Secured Party or that Receiver to any other person or the interests of the Secured Party or that Receiver. No contract will be void or voidable by virtue of that conflict of duty or interest nor will the Secured Party or Receiver be liable to account to the Grantor or any other person for any money or property as a result of that conflict.

### **8.5 Indemnity**

The Grantor will on demand indemnify and keep the Secured Party indemnified in respect of all costs, expenses, charges, liabilities, disbursements and taxes incurred by the Secured Party, any Receiver or any Attorney:

- (a) in the exercise, attempted exercise or non-exercise of any Power, unless the same is due to the negligence, breach, fraud or wilful misconduct of the Secured Party, Receiver or Attorney;
- (b) as a consequence of the occurrence or subsistence of any Event of Default; and
- (c) in respect of any act or omission for which the Secured Party, any Receiver or any Attorney is expressly exonerated by this Deed.

## **9 Attorney**

### **9.1 Appointment**

The Grantor irrevocably appoints the Secured Party and each Authorised Officer of the Secured Party individually as the Grantor's attorney with the power to do anything under **clause 9.2**.

### **9.2 Powers**

If an Event of Default is continuing an Attorney may:

- (a) do all acts and things which the Grantor is obliged to do under this Deed or which in the Attorney's opinion are necessary or expedient in connection with the Secured Property, the protection or perfection of the Secured Party's interest in the Secured Property or to enable the exercise of any Power of the Secured Party in relation to this Deed; and
- (b) appoint substitutes and otherwise delegate its powers (including this power of delegation).

### **9.3 General**

- (a) Any Attorney may exercise any Power solely for the benefit of the Secured Party, even if the exercise of the Power constitutes a conflict of interest or duty.
- (b) The Grantor by this Deed ratifies anything done or not done by the Attorney under the power of attorney.

- (c) The power of attorney is granted:
  - (i) to secure the compliance by the Grantor with its obligations to the Secured Party under this Deed and any proprietary interests of the Secured Party under this Deed; and
  - (ii) for valuable consideration (receipt of which is acknowledged) which includes the entry into of this Deed by the Secured Party at the Grantor's request.
- (d) The Grantor agrees that the power of attorney will continue in force until all actions taken under it have been completed, despite the discharge of this Deed.

## 10 Secured Party's limitation of liability

- (a) The Grantor acknowledges that the Secured Party enters into this Deed only as trustee of the Trust, and in no other capacity.
- (b) A liability of the Secured Party arising under or in connection with this Deed 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 10** 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.

## 11 General

### 11.1 Disputes

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

### 11.2 Confidentiality

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

### 11.3 Notices

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

### 11.4 Assignment

A Party may only assign, transfer, mortgage, charge, make the subject of a trust or otherwise deal with or encumber all or any of its rights or liabilities

under this Deed (or procure any of those things) in accordance with the Extension Project Agreement.

## 11.5 GST

(a) In this **clause 11.5**:

- (i) unless there is a contrary indication, words and expressions which are not defined in this Agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law; and
  - (ii) references to GST payable and input tax credit entitlement include GST payable by, and the input tax credit entitlement of, the representative member for a GST group of which the entity is a member and the GST joint venture operator of any GST joint venture of which the entity is a participant.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.
  - (c) If GST is payable on any supply made by a party (or any entity through which that party acts) (**Supplier**) under or in connection with this Agreement, the recipient or the supply will pay to the Supplier an amount equal to the GST payable on the supply.
  - (d) The amount referred to in **clause 11.5(c)** must be paid in addition to and at the same time and in the same manner (without any set-off or deduction) that the consideration for the supply is to be provided under this Agreement.
  - (e) The Supplier must deliver a tax invoice or an adjustment note to the recipient of a taxable supply before the Supplier is entitled to payment of an amount under **clause 11.5(c)**, and the recipient can withhold payment of the amount until the Supplier provides a tax invoice or an adjustment note, as appropriate.
  - (f) If an adjustment event arises in respect of a taxable supply made by a Supplier under this Agreement, the amount payable by the recipient under **clause 11.5(c)** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier, or by the Supplier to the recipient, as the case requires.
  - (g) Where a Party is required under this Agreement to pay for, reimburse or contribute to any expense, loss, liability or outgoing of another Party or indemnify another party in relation to such an expense, loss, liability or outgoing, the amount required to be paid, reimbursed or contributed by the first Party will be the sum of:
    - (i) the amount of the expense, loss, liability or outgoing less any input tax credits in respect of the expense, loss, liability or outgoing to which the other Party is entitled; and
    - (ii) if the payment, reimbursement or contribution is subject to GST, an amount equal to that GST.

- (h) If an amount of consideration payable or to be provided under or in connection with this Agreement is to be calculated by reference to:
  - (i) any expense, loss, liability or outgoing suffered or incurred by another person (**Cost for GST**), 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 for GST suffered or incurred; and
  - (ii) any price, value, sales, proceeds, revenue or similar amount (**Revenue**), that reference will be to that Revenue determined by deducting from it an amount equal to the GST payable on the supply for which it is consideration.

## 11.6 PPSA

- (a) The Secured Party is not required to give any notice under the PPSA to the Grantor or any other person and the Grantor waives the right to receive any such notice (including a notice of verification statement) unless the notice is required by the PPSA and that obligation cannot be excluded.
- (b) The Parties contract out of sections 125, 132(3)(d), 132(4) 142 and 143 of the PPSA to the extent mentioned in section 115(1) of the PPSA.
- (c) Unless expressed to the contrary, “control”, “perfection”, “personal property”, “register”, “security interest” and “verification statement” each has the meaning given in the PPSA.
- (d) The Parties agree that, to the extent permitted (despite any other provision in the Extension Infrastructure Sub-Lease), they will not disclose information of the kind described by section 275(1) of the PPSA (unless section 275(7) of the PPSA applies).

## 11.7 Further assurances

- (a) The Grantor must promptly execute all documents and do all things that the Secured Party from time to time reasonably requires to:
  - (i) effect, perfect or complete the provisions of this Deed or any transaction contemplated by it;
  - (ii) establish the priority of or reserve or create any security interest contemplated by or purported to be reserved or created by this Deed; and
  - (iii) stamp and register this Deed in any relevant jurisdiction and by any person that the Secured Party thinks fit.
- (b) Without limiting **clause 11.7(a)**, the Grantor agrees to make such amendments to this Deed, to provide such further information and to do such other things, as the Secured Party may reasonably require from time to time, to:

- (i) ensure that the Encumbrance created by this Deed is, and takes effect as, a perfected security interest over all Secured Property with the ranking contemplated by this Deed;
  - (ii) ensure that the Encumbrance created by this Deed is perfected by control to the extent possible under the PPSA; and
  - (iii) otherwise to the fullest possible extent, register, protect, perfect, record and maintain the Secured Party's position as Secured Party under the Encumbrance created by this Deed in the context of the PPSA.
- (c) The Secured Party may, at the Grantor's cost, do anything which the Grantor should have done under this Deed if the Grantor does not do so promptly.

## **11.8 Dealing with Access Agreements**

Nothing in this Deed prevents the Grantor from amending, terminating, granting waivers in respect of or otherwise dealing with any Access Agreement in any manner the Grantor thinks fit.

## **11.9 Effect of execution**

This Deed:

- (a) is binding on the Grantor even if it is not executed by the Secured Party; and
- (b) is a deed, and factors which might suggest otherwise are to be disregarded.

## **11.10 Survival**

This **clause 11.10** and **clauses 1, 10, 11.2, 11.11, 11.12 and 11.13** survive the termination of this Deed.

## **11.11 Incorporated General Provisions**

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

## **11.12 Applicable law**

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

## **11.13 Counterparts**

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

## Execution

**Executed as a deed**

**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: ..... / ..... / .....