

QCA submission draft
18 December 2012

Queensland Treasury Holdings Pty Ltd

[NewCo Pty Ltd] as trustee for the [Name of Trust]

Aurizon Network Pty Ltd

User Funding – Extension Infrastructure Agreement

*[insert Extension
name]*

General drafting notes:

Clause cross references to other documents are square bracketed and highlighted in yellow and will need to be confirmed on a transaction-by-transaction basis having regard to any amendments made to those documents.

The mechanics contemplated for the timing of entry into this Agreement and the Integrated Network Deed is as follows:

- The Trustee and Aurizon Network will execute the Trust Deed;

- The relevant State parties will execute this Agreement and Integrated Network Deed;
- Each Preference Unit Holder will execute the Unit Holders Deed and (except in the case of an Aurizon Network Preference Unit Holder) an Umbrella Agreement for that Preference Unit Holder;
- Aurizon Network and the Trustee will execute the Unit Holders Deed; and
- On completion of the process described in clause 5 of the Unit Holders Deed, Aurizon Network and the Trustee will each execute the Umbrella Agreements, the Project Management Agreement, Extension Infrastructure Lease, Rail Corridor Agreement, Integrated Network Deed and this Agreement.

This template Extension Infrastructure Agreement (**CQCN EIA**) is relevant to SUFA transactions involving the construction of Extension Infrastructure which will form part of the Central Queensland Coal Network (other than the two sections of the North Coast Line which form part of the Central Queensland Coal Network). Queensland Treasury Holdings Pty Ltd is the Infrastructure Lessor in respect of the Central Queensland Coal Network (other than the two sections of the North Coast Line which form part of the Central Queensland Coal Network).

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

If a SUFA transaction will involve the construction of Extension Infrastructure which will form part of the Central Queensland Coal Network only, the relevant parties will enter into a CQCN EIA.

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

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

The entry into of an Extension Infrastructure Agreement is in the absolute discretion of Queensland Treasury Holdings Pty Ltd or Queensland Rail Limited (as applicable) on a transaction-by-transaction basis.

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

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Date

Parties

Queensland Treasury Holdings Pty Ltd ACN 011 027 295 of Level 14, 61 Mary Street, Brisbane, Queensland (**Lessor**)

[NewCo Pty Ltd] [ACN] as trustee for the **[Name of Trust]** of Level 14, Railcentre 1, 305 Edward Street, Brisbane, Queensland (**Lessee**)

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

Background

- A The Lessee wishes to procure the delivery and operation of the Extension.
 - B The Lessor agrees to lease the Extension Infrastructure to the Lessee in accordance with the terms of this Agreement.
 - C Under this Agreement the Lessor consents to the Lessee subleasing the Extension Infrastructure to the Sublessee in accordance with the terms of this Agreement.
-

Agreed terms

1 Interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise:

Additional Land means:

- (a) any land owned by the Lessee or the Sublessee; and
- (b) any rights in, over or in respect of land (including proprietary or contractual rights, rights of way, easements and rights under leases or licences) that are held by the Lessee or the Sublessee or of which the Lessee or the Sublessee has the benefit,

being land or rights that is or are reasonably required to enable:

- (c) the Extension Infrastructure to be kept in the place where it is located and to be operated as part of a fully functioning railway network; or

- (d) access to and the management, operation, repair, maintenance, alteration, modification, change and replacement of the Extension Infrastructure,

but excludes:

- (e) any rights in, over or in respect of Rail Corridor Land that are held by the Lessee or the Sublessee or of which the Lessee or the Sublessee has the benefit; and
- (f) any land or rights that comprise "Additional Land" (as that term is defined in the Infrastructure Lease) under the Infrastructure Lease.

Affected Party has the meaning given in **clause 14.1**.

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

Authorisation means:

- (a) any consent, authorisation, registration, filing, lodgement, agreement, notarisation, certificate, permission, licence, approval, authority or exemption from, by or with a Governmental Agency; or
- (b) in relation to anything which will be fully or partly prohibited or restricted by Law if a Governmental Agency intervenes or acts in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action.

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

Commencement Date means the date of this Agreement.

Contamination means "contamination" as defined in the *Environmental Protection Act 1994* (Qld) where such contamination is likely to cause or does cause "unlawful environmental harm" (as that term is defined in the *Environmental Protection Act 1994* (Qld)).

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

Default Rate means a rate equivalent to 2% per annum above the one month base lending rate published by the National Australia Bank (or such other bank as the Lessor may, after consultation with the other Parties, determine from time to time, acting reasonably) during any period in which an amount payable under this Agreement remains unpaid.

Defect has the meaning given in the Project Management Agreement.

Defects Rectification Period has the meaning given in the Project Management Agreement.

Defects Register has the meaning given in the Project Management Agreement.

Effective Date means the date on which both conditions precedent in **clause 2(a)** have been notified by the Sublessee and Lessee to the Lessor as being satisfied in accordance with **clause 2(b)** and **2(c)** (respectively).

Extension means the new rail infrastructure, and/or modifications and/or upgrades of and/or additions to existing rail infrastructure, generally described in **schedule 1**.

Extension Infrastructure means:

- (a) the Railway Transport Infrastructure, and all parts, accessories and equipment that are incorporated or installed in, or attached to, such Railway Transport Infrastructure, that are deemed to be Extension Infrastructure by virtue of the operation of **clause 3.1(b)**; and
- (b) any assets that are deemed to be Extension Infrastructure by virtue of the operation of **clause 3.1(c)** or **3.1(d)**,

but does not include:

- (c) the Leased Infrastructure;
- (d) any replacements of, or modifications, alterations, additions or changes to, the Extension Infrastructure (as defined in **paragraphs (a)** and **(b)**) that are installed on a temporary basis pending completion of permanent repairs or the installation of permanent replacement parts (for these purposes, if a replacement or modification continues to be in place for more than 24 months, it will not be considered to be installed on a temporary basis);
- (e) any Replaced Parts;
- (f) any Removed Obsolete Parts;
- (g) any Other Extension Infrastructure;
- (h) any Redundant Extension Infrastructure; or
- (i) any Extension Infrastructure (as defined in this definition) which the Lessee and the State agree may be removed by the Lessee under **clause 12.1**.

Force Majeure Event has the meaning given in **clause 14.1**.

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

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

Guarantee means the deed poll guarantee in the form shown in **schedule 3**.

Guarantor means [Aurizon Holdings Limited (ABN 14 146 335 622)].

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.

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

Insolvency Event means, in relation to the Lessee:

- (a) the Lessee stops or suspends or threatens to stop or suspend payment of all or a class of its debts (other than in accordance with a right of it to do so);
- (b) the Lessee is insolvent within the meaning of section 95A of the Corporations Act;
- (c) a court is required by reason of section 459C(2) of the Corporations Act to presume that the Lessee is insolvent;
- (d) the Lessee fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act);
- (e) an administrator is appointed over all or any of the Lessee's assets or undertaking;
- (f) a controller within the meaning of section 9 of the Corporations Act or similar officer is appointed to all or any of the Lessee's assets or undertaking;
- (g) an application or order is made (and, in the case of an application, is not stayed, withdrawn or dismissed within 30 Business Days), proceedings are commenced, a resolution is passed or proposed in a notice of meeting or an application to a court or other steps are taken (other than frivolous or vexatious applications, proceedings, notices or steps) for the Lessee's winding up or dissolution or for the Lessee to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them (in each case, other than to carry out a reconstruction or amalgamation while the Lessee is solvent); or
- (h) any event occurs which, under the laws of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above.

Integrated Network Deed means the deed entitled "*User Funding – Integrated Network Deed: [insert Extension name]*" between [insert name of Lessee] as trustee of the [insert name of Trust], Aurizon Network Pty Ltd (ABN 78 132 181 116), the State of Queensland (represented by the Department administering the *Transport Infrastructure Act 1994* (Qld)) and Queensland Treasury Holdings Pty Ltd (ACN 011 027 295) entered into on or about the date of this Agreement.

Land Lease means the lease of land between the State of Queensland (represented by the Department of Transport and Main Roads), as sublessor,

and Aurizon Network Pty Ltd (ABN 78 132 181 116), as sublessee, dated 1 July 1995.

Land Lessor means the State of Queensland in its capacity as the sublessor under the Land Lease.

Land Licence means a licence granted, in accordance with clause 20.3(a) of the Land Lease, by the Sublessee to the Lessee under which the Lessee has access to and use of certain Rail Corridor Land for the purpose of, among other things, constructing, modifying, operating, maintaining, inspecting, repairing, replacing, altering and removing the Extension.

Law means:

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

Lease End Date means the date on which this Agreement is terminated in accordance with **clause 11**.

Leased Infrastructure means the "Infrastructure" (as defined in the Infrastructure Lease) leased by the Lessor from time to time under the Infrastructure Lease (and, for the avoidance of doubt, includes all parts, accessories and equipment that are incorporated or installed in, or attached to, the Extension Infrastructure, and any replacements of, and modifications, alterations, additions or changes to, the Extension Infrastructure that are deemed to be "Infrastructure" by virtue of the operation of **clause 3.5(a)**).

Lessee Additional Land means Additional Land which is owned or held by the Lessee.

Lessee Railway Assets means Railway Assets which are owned or held by the Lessee.

Lessee's Associates means any officer, employee, agent, contractor, consultant, adviser, licensee or invitee of the Lessee but does not include the Lessor or the Lessor's Associates, the Sublessee or the Sublessee's Associates, or any person other than those mentioned exercising any right of access to the Extension Infrastructure under any Law.

Lessor's Associates means any officer, employee, agent, contractor, consultant, adviser or invitee of the Lessor but does not include the Lessee or the Lessee's Associates, the Sublessee or the Sublessee's Associates, or any person other than those mentioned exercising any right of access to the Extension Infrastructure under any Law.

Loss means any and all losses, actions, claims, suits, liabilities, damages, compensation, costs, expenses, diminution in value or deficiencies of any kind or character, including all interest and other amounts payable to third parties, all liabilities on account of taxes and all legal (on a full indemnity basis) and other expenses reasonably incurred in connection with investigating or defending any claims or actions, whether or not resulting in any liability and all amounts paid in settlement of claims or actions, but does not include any consequential or indirect losses, or losses of profit, contract, opportunity, revenue or production, unless expressly provided otherwise.

Major Authorisation means accreditation as a railway manager under the *Transport Infrastructure Act 1994* (Qld) or as a rail infrastructure manager under the *Transport (Rail Safety) Act 2010* (Qld), or a similar or equivalent Authorisation that is required for the purpose of managing or operating a railway that includes the Extension Infrastructure.

Nominating Party means:

- (a) the Lessor during:
 - (i) the period commencing on the date which is ten years prior to the expiry of the Term and ending on the expiry of the Term (assuming that the Term will end at the same time as the "Term" (as defined in the Infrastructure Lease) will expire); or
 - (ii) any period:
 - (A) commencing upon the occurrence of an event or circumstance that, with the passage of time or the giving of a notice by the lessor under the Infrastructure Lease or both, would result in the occurrence of a "Lessor Termination Event" (as defined under the Infrastructure Lease); and
 - (B) if the applicable "Lessor Termination Event" (referred to in **paragraph (a)(ii)(A)** of this definition) does not occur, ending at the time that the applicable "Lessor Termination Event" is no longer capable of occurring as a result of the occurrence of the applicable event or circumstance; and
- (b) the Sublessee other than during a period referred to in **paragraph (a)** of this definition.

Non-Available Extension Infrastructure means Extension Infrastructure which has been commissioned under the Project Management Agreement but the proper operation of which requires the commissioning of other assets that were to be commissioned under the Project Management Agreement but have not been commissioned under the Project Management Agreement as at the date of termination of the Project Management Agreement.

Notice has the meaning given in **clause 19**.

Obsolete Part means any part of the Extension Infrastructure that is no longer required for the effective, safe and efficient operation of the Extension Infrastructure as part of a fully functioning rail network.

Other Extension Infrastructure means the assets leased by the Lessor from time to time under an Other Extension Infrastructure Agreement.

Other Extension Infrastructure Agreement means an agreement, other than this Agreement, between (among others) the Lessor and the Sublessee which contains an acknowledgement and agreement in the form of **clause 1.4**.

Other Integrated Network Deed has the meaning given in the Integrated Network Deed.

Parties means collectively the Lessor, the Lessee and the Sublessee, and **Party** means 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).

Permitted Use means use of the Extension Infrastructure:

- (a) for the purpose of the Sublessee managing and operating a railway;
- (b) for purposes ancillary to the Sublessee managing and operating a railway; and
- (c) for other lawful purposes (including, to the extent the Extension Infrastructure is located on Rail Corridor Land, purposes that are consistent with the permitted use of that Rail Corridor Land under the Land Lease) provided that such use would not preclude or materially impede the Extension Infrastructure being used to manage and operate a railway.

Policy means an insurance policy effected or required to be effected in accordance with **clause 9**.

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

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

Project Management Agreement means the agreement entitled "*User Funding – Project Management Agreement*" between **[insert name of Lessee]** as trustee of the **[insert name of Trust]** and Aurizon Network Pty Ltd (ABN 78

132 181 116) entered into on or about the date of this Agreement.

Rail Corridor Land means any land that is leased pursuant to the Land Lease.

Rail Land means any land on, above or under which Extension Infrastructure is located.

Railway Assets means any assets (including contractual and other rights) of the Lessee or the Sublessee that are reasonably required to enable the Extension Infrastructure to be operated as part of a fully functioning railway network, but does not include:

- (a) the Leased Infrastructure;
- (b) any "Railway Assets" or "Additional Land" (as those terms are defined in the Infrastructure Lease) under the Infrastructure Lease; or
- (c) any Other Extension Infrastructure.

For the avoidance of doubt, Railway Assets may include:

- (d) assets other than Railway Transport Infrastructure, such as freight centres and depots, maintenance depots, workshops and associated railway track and works that are used to manage and operate the railway network;
- (e) such intellectual property rights as are used in connection with the management and operation of the railway network of which the Extension Infrastructure forms a part; and
- (f) contractual rights and other rights to use assets referred to in **paragraphs (d) and (e)**.

Railway Transport Infrastructure means facilities necessary for operating a railway, including:

- (a) railway track and works built for the railway (such as cuttings, drainage works, excavations, land fill and track support earthworks); and
- (b) things that are associated with the operation of the railway (such as bridges, communication systems, marshalling yards, notice boards, notice markers and signs, overhead electrical power supply systems, over-track structures, platforms, power and communication cables, service roads, signalling facilities and equipment, stations, train operation control facilities, tunnels and under-track structures),

but does not include:

- (c) freight centres and depots;
- (d) maintenance depots;
- (e) office buildings or housing;
- (f) rolling stock or vehicles that operate on a railway;
- (g) workshops; or

- (h) any railway track, works or other thing that is part of anything mentioned in paragraphs (c) to (g).

Redundant Extension Infrastructure has the meaning given in **clause 13.2(d)(i)**.

Related Body Corporate has the meaning given in the Corporations Act.

Removed Obsolete Part means any Obsolete Part that has been permanently removed from the Extension Infrastructure.

Rent means the rent payable in accordance with **clause 5.1** during the Term.

Replaced Part means any part, accessory or other equipment that is:

- (a) permanently removed from the Extension Infrastructure; and
- (b) replaced with another part, accessory or other equipment which restores the condition of the Extension Infrastructure to at least the condition it was in immediately prior to the replacement (assuming that the Extension Infrastructure was in the condition required to be maintained under this Agreement at that time).

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 thing which gives a creditor priority to other creditors with respect to any asset; and
- (b) 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.

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

Sublease has the meaning given in **clause 3.2(a)**.

Sublessee Additional Land means Additional Land which is owned or held by the Sublessee.

Sublessee Railway Assets means Railway Assets which are owned or held by the Sublessee.

Sublessee's Associates means any officer, employee, agent, contractor, consultant, adviser, licensee or invitee of the Sublessee but does not include the Lessor or the Lessor's Associates, the Lessee or the Lessee's Associates, or any person other than those mentioned exercising any right of access to the Extension Infrastructure under any Law.

Sub-sublessee has the meaning given in **clause 15.3(b)**.

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

Term means the period commencing on the Effective Date and ending on the Lease End Date.

Transferee Extension Infrastructure Agreement has the meaning given in clause 15.2(e).

Trust means the trust constituted under the Trust Deed.

Trust Deed means the trust deed between the [insert name of Lessee] and QR Network (as ordinary subscriber) entitled “*User Funding – Trust Deed of [Name of Trust]*” dated [insert date].

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

1.2 Interpretation

The following rules apply unless the context requires otherwise:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (c) “includes” means includes without limitation;
- (d) no rule of construction will apply to the disadvantage of one Party on the basis that that Party put forward the documents comprising this Agreement;
- (e) words in the singular include the plural and vice versa;
- (f) words importing one gender will include every gender;
- (g) references to clauses and schedules are references to clauses of, and schedules to, this Agreement;
- (h) a requirement for a Party to obtain the consent or approval of another Party requires the first Party to obtain the consent or approval in writing; and
- (i) a reference to:
 - (i) a person includes any company, partnership, joint venture, trust, unincorporated association, corporation or other body corporate and a government or statutory body or authority;
 - (ii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified, consolidated, re-enacted or replaced;
 - (iii) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;

- (iv) a right includes a benefit, remedy, discretion and power;
- (v) time is to local time in Brisbane;
- (vi) \$ or dollars is a reference to Australian currency;
- (vii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
- (viii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmission; and
- (ix) a Party includes that Party's successors according to law and permitted assigns and any person to whom it novates its rights and obligations.

1.3 Survival

In addition to this **clause 1.3**, the following clauses survive the termination of this Agreement: **clauses [#]** and **[#]**.

1.4 Acknowledgement

The Parties acknowledge and agree that this Agreement is an "Other Extension Infrastructure Agreement" (as defined in an Other Extension Infrastructure Agreement).

2 Condition precedent

- (a) This Agreement (except for this **clause 2** and **clauses [#]** and **[#]** **[Drafting note: for example clause 18 (Confidentiality)]**) is of no force or effect, unless and until:
 - (i) the Sublessee delivers to the Lessor an original copy of the Guarantee duly executed by the Guarantor; and
 - (ii) the Lessee applies the Initial Unit Call Amount for each Preference Unit Holder in paying up Preference Units under the Unit Holders Deed.
- (b) The Sublessee must notify the other Parties promptly, and in any event within two Business Days, of the condition precedent in **clause 2(a)(i)** being satisfied.
- (c) The Lessee must notify the other Parties promptly, and in any event within two Business Days, of the condition precedent in **clause 2(a)(ii)** being satisfied.

3 Lease and sublease

3.1 Lease

- (a) In consideration for the grant of the lease contemplated by this Agreement, the Lessee must pay the Lessor the sum of \$1.00 but only if demanded in writing by the Lessor.
- (b) The Lessee must ensure that, as from the time that any Railway Transport Infrastructure (and any parts, accessories and equipment that are incorporated or installed in, or attached to, such Railway Transport Infrastructure) comprising the Extension is commissioned for use, or otherwise first able to be used, as part of the Extension, that Railway Transport Infrastructure (and such parts, accessories and equipment) is owned wholly by the Lessee free from all Security Interests (other than Permitted Liens), in which case, with effect from that time, the Lessee hereby transfers ownership of that Railway Transport Infrastructure (and such parts, accessories and equipment) to the Lessor free from all Security Interests (other than Permitted Liens), and that Railway Transport Infrastructure (and such parts, accessories and equipment) is hereby leased by the Lessor to the Lessee under this Agreement separately from the land on, under or above which that Extension Infrastructure is situated.
- (c) The Lessee must ensure that all parts, accessories and equipment that are incorporated or installed in, or attached to, the Extension Infrastructure, and any replacements, modifications, alterations, additions or changes that are made to the Extension Infrastructure, to rectify any Defect in the Extension Infrastructure recorded in the Defects Register, are, upon being incorporated, installed, attached or made (as the case may be), owned wholly by the Lessee free from all Security Interests (other than Permitted Liens), in which case, with effect from their incorporation, installation, attachment or making, the Lessee hereby transfers ownership of them to the Lessor free from all Security Interests (other than Permitted Liens), whereupon they are deemed to be Extension Infrastructure and are hereby leased by the Lessor to the Lessee under this Agreement separately from the land on, under or above which that Extension Infrastructure is situated.
- (d) The Sublessee must ensure that all parts, accessories and equipment that are incorporated or installed in, or attached to, the Extension Infrastructure, and any replacements, modifications, alterations, additions or changes that are made in respect of the Extension Infrastructure:
 - (i) to repair or maintain the Extension Infrastructure in accordance with **clause 6.1(a)**; or
 - (ii) to replace any Extension Infrastructure that is lost or destroyed, are, upon being incorporated, installed, attached or made (as the case may be), owned wholly by the Sublessee free from all Security Interests (other than Permitted Liens), in which case, with effect from their incorporation, installation, attachment or making, the Sublessee hereby transfers ownership of them to the Lessor free from all Security Interests

(other than Permitted Liens), whereupon they are deemed to be Extension Infrastructure and are hereby leased by the Lessor to the Lessee under this Agreement separately from the land on, under or above which that Extension Infrastructure is situated.

- (e) **Clause 3.1(d)** only applies to any parts, accessories and equipment that are incorporated or installed in, or attached to, the Extension Infrastructure, and any replacements of, and modifications, alterations, additions or changes to, the Extension Infrastructure for the purpose referred to in **clause 3.1(d)(ii)** to the extent that the parts, accessories, equipment, replacements, modifications, alterations, additions or changes restore the functionality of the Extension Infrastructure to the functionality that existed immediately prior to the Extension Infrastructure being lost or destroyed (and, for avoidance of doubt, **clause 3.5(a)** applies to any parts, accessories and equipment that are incorporated or installed in, or attached to, the Extension Infrastructure, and any replacements of, and modifications, alterations, additions or changes to, the Extension Infrastructure, to the extent that the parts, accessories, equipment, replacements, modifications, alterations, additions or changes provide new or additional functionality).

3.2 Sublease

- (a) The Lessor hereby consents to the Lessee subleasing the Extension Infrastructure to the Sublessee, immediately upon the leasing of that Extension Infrastructure by the Lessor to the Lessee under this Agreement, on terms (a **Sublease**) that are not inconsistent with the rights and obligations of the Lessee and the Sublessee under this Agreement or the Integrated Network Deed, and under which:
 - (i) the Lessee and the Sublessee expressly acknowledge the rights of the Lessor under this Agreement and the Integrated Network Deed and that their rights are subject and subordinate to the rights of the Lessor under this Agreement and the Integrated Network Deed; and
 - (ii) the Sublease terminates at the same time as this Agreement terminates.
- (b) The Parties acknowledge and agree that:
 - (i) the Sublease will form part of an agreement between the Lessee and the Sublessee which extends to matters other than just the Sublease;
 - (ii) a reference to the Sublease in this Agreement is a reference only to those terms of such agreement between the Lessee and Sublessee which give effect to the Sublease and is not a reference to any other terms of such agreement; and
 - (iii) a reference to the termination of the Sublease in this Agreement is a reference to the termination of the operation of those terms of

such agreement between the Lessee and Sublessee which give effect to the Sublease, whether or not such agreement in its entirety has been terminated.

- (c) Except as provided in **clause 3.2(d)**, or with the prior written consent of the Lessor, the Lessee must not:
 - (i) create or allow to subsist a Security Interest (other than a Permitted Lien) over any of its rights under the Sublease; or
 - (ii) assign or transfer all or any of its rights or obligations under the Sublease.
- (d) The Lessee:
 - (i) may assign and transfer all (but not part only) of its rights and obligations under the Sublease to a person to whom it assigns or transfers at the same time all (but not part only) of its rights and obligations under this Agreement, the Integrated Network Deed and any Land Licence; and
 - (ii) must assign and transfer all of its rights and obligations under the Sublease to a person to whom it assigns or transfers any of its rights or obligations under this Agreement, the Integrated Network Deed or any Land Licence.
- (e) Except as provided in **clause 3.2(f)**, or with the prior written consent of the Lessor (such consent not to be unreasonably withheld or delayed or given subject to unreasonable conditions), the Sublessee must not:
 - (i) create or allow to subsist a Security Interest (other than a Permitted Lien) over any of its rights under the Sublease; or
 - (ii) assign or transfer all or any of its rights or obligations under the Sublease.
- (f) The Sublessee:
 - (i) may assign and transfer all (but not part only) of its rights and obligations under the Sublease to a person to whom it assigns or transfers at the same time all (but not part only) of its rights and obligations under this Agreement, the Integrated Network Deed and any Land Licence; and
 - (ii) must assign and transfer all of its rights and obligations under the Sublease to a person to whom it assigns or transfers any of its rights or obligations under this Agreement, the Integrated Network Deed or any Land Licence.
- (g) The Lessor agrees and acknowledges to each other Party that:
 - (i) certain obligations are imposed directly on, and certain rights are granted directly to, the Sublessee under this Agreement while the Sublease is on foot;

- (ii) except as provided in **clause 3.2(g)(iii)**, the obligations imposed directly on, and the rights granted directly to, the Sublessee under this Agreement are only obligations and rights of the Sublessee to the extent that, and only for so long as, the Sublease is on foot;
 - (iii) if the Sublease terminates for any reason, the obligations imposed directly on, and the rights granted directly to, the Sublessee under this Agreement will (except for the obligation contained in **clause 15.2(e)**) be deemed to be novated and transferred to the Lessee and will be the obligations and rights of the Lessee on and from the date the Sublease terminates; and
 - (iv) each of the Lessee and the Sublessee is responsible (and only responsible) for and liable only for those obligations expressly imposed on that Party under this Agreement.
- (h) The Lessee agrees and acknowledges to each other Party that:
- (i) except as provided in **clause 3.2(h)(ii)**, the obligations imposed directly on, and the rights granted directly to, the Sublessee under this Agreement are only obligations and rights of the Sublessee to the extent that, and only for so long as, the Sublease is on foot; and
 - (ii) if the Sublease terminates for any reason, the obligations imposed directly on, and the rights granted directly to, the Sublessee under this Agreement will (except for the obligation contained in **clause 15.2(e)**) be deemed to be novated and transferred to the Lessee and will be the obligations and rights of the Lessee on and from the date the Sublease terminates.

3.3 Extension Infrastructure to be used only for the Permitted Use

- (a) The Sublessee must only use the Extension Infrastructure for the Permitted Use.
- (b) The Sublessee must obtain, keep current and comply with all Authorisations, and otherwise comply with all Laws, that are required to be obtained, kept or complied with by the Sublessee in order for the Sublessee to use the Extension Infrastructure for the Permitted Use.
- (c) The Lessee must obtain, keep current and comply with all Authorisations, and otherwise comply with all Laws, that are required to be obtained, kept or complied with by the Lessee in order for the Sublessee to use the Extension Infrastructure for the Permitted Use.
- (d) The Lessor must not unreasonably withhold (and must not impose unreasonable conditions upon) any consent necessary for the Sublessee or Lessee (as the case may be) to apply for, retain or keep current any Authorisation referred to in **clauses 3.3(b)** or **3.3(c)** or to comply with any Law.
- (e) Any consent given by the Lessor under **clause 3.3(d)** does not:

- (i) limit or otherwise affect the Lessee's or the Sublessee's obligations under any Authorisation or Law;
- (ii) restrict or fetter the exercise by the Lessor or a Governmental Agency of any rights, powers or discretions, or any regulatory power; or
- (iii) act as an estoppel, representation or warranty or create an agreement of any kind, in relation to the matters referred to in **clauses 3.3(e)(i) or 3.3(e)(ii)**.

3.4 Use of network unit

- (a) To the extent that the Sublessee is entitled under this Agreement to use, or to authorise another person to use, Extension Infrastructure that is a "network unit" (as that term is defined in the *Telecommunications Act 1997* (Cth)), the Sublessee must ensure that such use does not cause the owner of the network unit to contravene section 42 of the *Telecommunications Act 1997* (Cth).
- (b) Nothing in this **clause 3.4** obliges the Lessor to become a licensed carrier to obtain the benefit of a nominated carrier declaration under the *Telecommunications Act 1997* (Cth), nor obtain the benefit of a Ministerial determination under section 51 of the *Telecommunications Act 1997* (Cth), in respect of any such network unit.

3.5 "Infrastructure" under Infrastructure Lease

- (a) Subject to **clauses 3.1(b), 3.1(c) and 3.1(d)**, the Sublessee must ensure that all parts, accessories and equipment that are incorporated or installed in, or attached to, the Extension Infrastructure, and any replacements, modifications, alterations, additions or changes that are made in respect of the Extension Infrastructure are, upon being incorporated, installed, attached or made (as the case may be), owned wholly by the Sublessee free from all Security Interests (other than Permitted Liens), in which case, with effect from their incorporation, installation, attachment or making, the Sublessee hereby transfers ownership of them to the Lessor free from all Security Interests (other than Permitted Liens), whereupon, unless otherwise agreed in writing between the Lessor and Sublessee, they are deemed to be "Infrastructure" (as defined under the Infrastructure Lease) and are hereby leased by the Lessor to the Sublessee under the Infrastructure Lease separately from the land on, under or above which that Infrastructure is situated.
- (b) For the avoidance of doubt, **clause 3.5(a)** applies to all parts, accessories and equipment that are incorporated or installed in, or attached to, the Extension Infrastructure, and any replacements, modifications, alterations, additions or changes that are made in respect of the Extension Infrastructure:

- (i) to rectify any Defects in the Extension Infrastructure (other than Defects recorded in the Defects Register);
- (ii) as the Sublessee considers necessary or desirable in the proper conduct of its business.

4 Exclusion of warranties

The Lessee and the Sublessee each acknowledge and agree that:

- (a) it has not relied on any promise, representation, warranty or undertaking given by or on behalf of the Lessor or the State other than a promise, representation, warranty or undertaking that is expressly set out in this Agreement and the Integrated Network Deed;
- (b) it accepts the Extension Infrastructure in its condition, age, capacity, quality, suitability and fitness current as at the date it is leased to the Lessee under this Agreement, with all defects and faults (if any), and no promise, representation, warranty or undertaking has been given by or on behalf of the Lessor or the State as to those matters; and
- (c) all conditions, representations and warranties relating to the Extension Infrastructure (whether express, implied, statutory, collateral or otherwise), other than those expressly set out in this Agreement, are excluded to the maximum extent permitted by law.

5 Rent and other payments

5.1 Rent

The Lessee must pay to the Lessor, by way of Rent, \$1.00 per annum but only if demanded in writing by the Lessor.

5.2 Other payments

Each of the Lessee and the Sublessee must duly and punctually pay all other money payable by it under this Agreement during the Term.

5.3 Payment of Rent and other payments

All payments to be made by a Party to the Lessor under this Agreement must be made:

- (a) in immediately available and irrevocable funds to such bank account as the Lessor may notify to that Party from time to time; and
- (b) net of all duties and statutory charges and without any set off, deduction or withholding.

5.4 Default interest

- (a) A Party must pay to the Lessor interest on any amount payable by it to the Lessor which remains unpaid at the end of the date on which that

amount is due for payment under this Agreement (including interest payable under this **clause 5.4**).

- (b) Interest will accrue at the Default Rate on the outstanding amount on a daily basis from (and including) the date on which the amount became due and payable to the date the amount is paid in full both before and after judgment (as a separate and independent obligation).
- (c) The right to require payment of interest under this **clause 5.4** is without prejudice to any other rights and remedies of the Lessor in respect of any failure to make any payment due and payable under this Agreement.

5.5 Abatement

Despite any law to the contrary, the obligation of the Lessee to pay Rent will not abate for any reason.

6 Operation, repair, maintenance and removal

6.1 Operation, repair and maintenance

- (a) The Sublessee must manage, operate, repair and maintain the Extension Infrastructure:
 - (i) in accordance with Good Operating Practice;
 - (ii) in accordance with all applicable Laws and the requirements of all relevant Authorisations, including in so far as such Laws and Authorisations:
 - (A) relate to safety, environmental matters, matters in respect of trade waste and dangerous goods and the health and safety of people in the vicinity of the Extension Infrastructure; or
 - (B) impose obligations on the Lessor or the Lessee (as applicable) in relation to the management, operation, repair or maintenance of the Extension Infrastructure and the performance of those obligations by the Sublessee is not prohibited by the Law or Authorisation;
 - (iii) in accordance with all notices, orders and directions lawfully given by any Governmental Agency (including in so far as they impose obligations on the Lessor or the Lessee (as applicable) and the performance of those obligations by the Sublessee is not prohibited by Law); and
 - (iv) in a manner and to the extent necessary to comply in all material respects with the requirements specified in any insurance policy required to be maintained under this Agreement.
- (b) The Lessee must promptly provide the Sublessee with all information (including details of any obligations imposed on it in relation to the Extension Infrastructure and its operation and management and any

notice, direction or order given by any Governmental Agency) reasonably required by the Sublessee for the purpose of the Sublessee complying with its obligations under **clause 6.1(a)**.

6.2 Interference with adjoining land

The Lessee and the Sublessee must each use all reasonable endeavours to minimise interference with land that adjoins the Rail Land provided that this **clause 6.2** does not:

- (a) apply to any land owned or occupied by the Lessee or the Sublessee (as applicable);
- (b) limit or otherwise affect the Lessee's or the Sublessee's (as applicable) obligations under any Authorisation or Law;
- (c) prevent the Sublessee from operating the railway network of which the Extension forms a part in a commercial, proper and businesslike manner; or
- (d) require the Sublessee to undertake any measures that are not in accordance with Good Operating Practice.

6.3 Outgoings

The Sublessee must pay all charges, taxes (including land tax) and rates which are payable in respect of the Extension Infrastructure or services provided for the Extension Infrastructure except for taxes on the revenues or capital gains of the Lessor.

6.4 Improvements

- (a) The Sublessee must, at its own expense, make all alterations, modifications, changes and additions to the Extension Infrastructure as and when required by any applicable Law or Authorisation.
- (b) Subject to the other provisions of this **clause 6**, the Sublessee may, at its own expense, make any alterations, modifications, changes or additions to the Extension Infrastructure as the Sublessee considers necessary or desirable in the proper conduct of its business.
- (c) All alterations, modifications, changes and additions to the Extension Infrastructure made under clauses **6.4(a)** or **6.4(b)** must be made in a good and workmanlike manner and in accordance with Good Operating Practice.
- (d) For the avoidance of doubt, the Sublessee may make any alterations, modifications, changes and additions to the Extension Infrastructure under clauses **6.4(a)** or **6.4(b)** as it thinks fit without reference to, or the consent of, the Lessor or Lessee.

6.5 Replaced Parts and Obsolete Parts

- (a) Upon the permanent removal of a Replaced Part from the Extension Infrastructure, and the replacement of it by another part, accessory or

other equipment which restores the condition of the Extension Infrastructure to at least the condition it was in immediately prior to the replacement (assuming that the Extension Infrastructure was in the condition required to be maintained under this Agreement at that time), title to that Replaced Part is hereby transferred to the Lessee or its nominee and the Lessee or its nominee may deal with that Replaced Part as it thinks fit.

- (b) If the Lessee or Sublessee reasonably considers that part of the Extension Infrastructure is an Obsolete Part, then the Lessee or Sublessee may remove that Obsolete Part from the Extension Infrastructure.
- (c) Upon the permanent removal of an Obsolete Part from the Extension Infrastructure, title to that Removed Obsolete Part is hereby transferred to the Lessee or its nominee and the Lessee or its nominee may deal with that Removed Obsolete Part as it thinks fit.
- (d) As soon as reasonably practicable after being notified of the permanent removal of an Obsolete Part from the Extension Infrastructure, the Lessor must procure the release and discharge of all Security Interests over all or any of its right, title and interest in the Removed Obsolete Part.

7 Records, information and inspection

7.1 Records

- (a) The Sublessee must:
 - (i) prepare and keep (or ensure the preparation and keeping of) all records and reports in respect of the Extension Infrastructure, the Rail Land, the Railway Assets and the Additional Land that are required to be prepared and kept by the Lessee, the Sublessee or any of their Related Bodies Corporate under applicable Laws and Authorisations in accordance with the requirements of those Laws and Authorisations; and
 - (ii) maintain copies of all Authorisations that are required by Law to be held for the purposes of managing and operating the Extension Infrastructure and using the Rail Land and the Additional Land for the purpose of the Sublessee managing and operating a railway.
- (b) The Sublessee must maintain (or ensure the maintenance of):
 - (i) a complete and current set of 'as built' plans and specifications and line diagrams in relation to the Extension Infrastructure and the Railway Assets, and their configuration and design;
 - (ii) a complete and current set of records relating to the operation, maintenance, use and condition of the Extension Infrastructure, the Rail Land, the Railway Assets and the Additional Land; and

- (iii) all relevant handbooks, training, maintenance and operating manuals and instructions, information processes and timetables with respect to the Extension Infrastructure and the Railway Assets,

in each case in accordance with Good Operating Practice.

- (c) The documents referred to in **clause 7.1(b)** must be held by the Sublessee or otherwise be accessible by or under the control of the Sublessee until 12 months after the Lease End Date, unless already delivered to the Lessor or otherwise specified or directed by the Lessor.

7.2 Information

The Sublessee must, within a reasonable period after any request by the Lessor, provide the Lessor and its authorised representatives with, and allow them to make copies of:

- (a) information on the location, condition and operation of any Extension Infrastructure, and information on the condition and use of any Rail Land, which requests must not, unless the circumstances require, be more frequent than once in every three years; and
- (b) any other information that the Lessor reasonably requires for the purposes of determining the Lessee's or the Sublessee's (as applicable) compliance with this Agreement.

7.3 Inspection

- (a) The Sublessee must permit the Lessor and its authorised representatives, at reasonable times and having given the Sublessee reasonable notice, to inspect any Extension Infrastructure.
- (b) When exercising its rights under **clause 7.3(a)**, the Lessor and its authorised representatives:
 - (i) must not interfere with the Sublessee's operations or business;
 - (ii) will be subject to the same limitations upon and conditions of access as apply to any third party visitor to the place where the relevant Extension Infrastructure is located; and
 - (iii) must comply with all safety requirements and other reasonable directions of the Sublessee in relation to such access.
- (c) The Lessor must not, unless the circumstances require, carry out inspections under **clause 7.3(a)** more frequently than once every three years.

7.4 Access to third parties

The Lessee and Sublessee must each:

- (a) use its best endeavours to ensure that the Lessor and its authorised representatives are provided with access to such information as is

maintained by third parties and which the Lessor is entitled to have access to, or copies of, under this Agreement; and

- (b) ensure that any contractual arrangements between it and any third party acknowledge the Lessor's rights of access under **clause 7.4(a)**.

7.5 Notification

The Sublessee must promptly notify the Lessor in writing of:

- (a) any material loss or material damage to the Extension Infrastructure, the Rail Land, any Railway Assets or any Additional Land;
- (b) any suspension, cancellation, revocation, surrender or expiry of the accreditation of the Sublessee as a railway manager under the *Transport Infrastructure Act 1994* (Qld) or as a rail infrastructure manager under the *Transport (Rail Safety) Act 2010* (Qld), or of a similar Authorisation that is required for the purpose of the Sublessee managing and operating a railway;
- (c) any circumstances likely to be or cause any material danger, risk or hazard to the Extension Infrastructure, the Rail Land, any Railway Assets or any Additional Land or to any persons on or in the vicinity thereof; and
- (d) any notification from a Governmental Agency or an insurer under a policy of insurance required to be taken out under this Agreement which indicates that the Lessee or the Sublessee may not be complying with this Agreement.

7.6 Asset register

- (a) The Sublessee must maintain and keep current an asset register that sets out:
 - (i) all of the assets that are leased to the Lessee, identifying each such asset by an asset identification number and an asset description; and
 - (ii) for each such asset referred to in paragraph **7.6(a)(i)**:
 - (A) the date it first became leased to the Lessee under this Agreement; and
 - (B) its accounting book cost, depreciation, accumulated depreciation and accounting book written down value as at the immediately preceding 30 June.
- (b) The Sublessee must:
 - (i) by 31 July in each year;
 - (ii) within 30 days of being requested to do so during any year (the Lessor only being entitled to make one such request each year);
 - (iii) within 120 days after the completion of the whole of the Extension; and

- (iv) within 120 days after the completion of any substantial alteration, modification, change or addition to the Extension Infrastructure, provide the Lessor and its authorised representatives with, and allow them to make copies of, the asset register referred to in **clause 7.6(a)**.
- (c) The Lessee and Sublessee acknowledge and agree that the Lessor will be entitled to disclose information provided to the Lessor under **clause 7.6(b)** to the auditors of the Lessor and such auditors are entitled to, and will, rely on that information.
- (d) The Lessee and Sublessee agree that the asset register referred to in **clause 7.6(a)** will be conclusive, as between them, as to the assets leased to the Lessee under this Agreement.

7.7 Defects Register

- (a) The Sublessee must:
 - (i) by 31 July in each year (until the next 31 July occurring after the end of the Defects Rectification Period, the Lessor only being entitled to make one such request each year);
 - (ii) within 30 days of being requested to do so during any year (until the end of the year during which the Defects Rectification Period ends);
 - (iii) within 30 days after the end of the Defects Rectification Period, provide the Lessor and its authorised representatives with, and allow them to make copies of, the Defects Register current at the time provided to the Lessor.
- (b) The Lessee and Sublessee agree that the Defects Register provided to the Lessor under **clause 7.7(a)** will be conclusive, as between them, at the time it is provided to the Lessor.

7.8 No release from liability or responsibility

The Lessee and the Sublessee each acknowledge and agree that, by being provided with information under this **clause 7** or exercising its rights under this **clause 7**, the Lessor is not to be taken as:

- (a) accepting any liability or responsibility in relation to; or
- (b) relieving the Lessee or the Sublessee from its responsibility for, the performance of, or compliance with, the Lessee's and the Sublessee's (as applicable) obligations under this Agreement or the Land Lease.

8 Title and quiet enjoyment

8.1 Lessor's title

- (a) Each of the Lessee and the Sublessee acknowledge that it has no rights in relation to the Extension Infrastructure as against the Lessor other than the rights under this Agreement and the Integrated Network Deed, and the rights conferred on it by applicable Laws or Authorisations.
- (b) The Lessor must, if requested by a Party and at the expense and risk of that Party, exercise its rights and entitlements in or in relation to the Extension Infrastructure to assist that Party in respect of any matter relating to the Extension Infrastructure where all of the following apply:
 - (i) the Party is unable to act itself by reason of the Lessor's interest in or in relation to the Extension Infrastructure;
 - (ii) the matter to be undertaken by the Party is one not forbidden by or otherwise inconsistent with the terms of this Agreement or the Integrated Network Deed; and
 - (iii) either:
 - (A) in exercising such rights or entitlements the Lessor assumes or incurs no obligation or present or contingent liabilities to any other person (including the Lessee and the Sublessee) for which the Lessor is not fully insured under an insurance policy taken out by the Sublessee and of which the Lessor has the benefit; or
 - (B) the Lessor is, to the reasonable satisfaction of the Lessor, fully indemnified by the Party in respect of the obligations and liabilities referred to in **clause 8.1(b)(iii)(A)** and the liability of that Party under such indemnity is the subject of such security in favour of the Lessor as the Lessor may reasonably require.

8.2 Protection of title

- (a) The Lessee and Sublessee must each, to the extent reasonably practicable having regard to its legal capacity and its rights and obligations under this Agreement:
 - (i) safeguard and protect the property, title and rights of the Lessor in and in relation to the Extension Infrastructure; and
 - (ii) not do or permit to be done any act, omission or thing which might jeopardise the property, title or rights of the Lessor in or in relation to the Extension Infrastructure.
- (b) The Lessee and Sublessee each must not, and must not seek to, partition the Extension Infrastructure or its interest in the Extension Infrastructure.

8.3 Quiet enjoyment by the Sublessee

- (a) Subject to **clause 8.3(b)**, if the Sublessee duly and punctually observes and performs the terms, covenants and conditions in this Agreement and the Integrated Network Deed which the Sublessee is required to observe and perform, the Sublessee will and may peacefully possess and enjoy the Extension Infrastructure for the Term without any interruption or disturbance from the Lessor or the Lessee or any other person or persons lawfully claiming by, from, or under the Lessor or Lessee save only where an interruption or disturbance results from:
 - (i) the exercise by either the Lessor or the Lessee of such rights as are expressly or impliedly conferred on it under this Agreement or the Integrated Network Deed or are conferred by Law; or
 - (ii) the exercise by the Land Lessor of such rights as are conferred on it under the Land Lease or the Integrated Network Deed, or are conferred by Law, in relation to Rail Corridor Land or in relation to any activities undertaken on, or any things that are located on, under or over, Rail Corridor Land.
- (b) The Sublessee acknowledges and agrees that the Land Lessor is entitled to exercise such rights as are expressly or impliedly conferred on it under the Land Lease or the Integrated Network Deed, or are conferred by Law, in relation to Rail Corridor Land or in relation to any activities undertaken on, or any things that are located on, under or over, Rail Corridor Land.

9 Insurance

9.1 Required insurance policies

The Sublessee must, with effect from the earlier of 30 Business Days after the Effective Date and commencement of physical construction of the Extension:

- (a) effect and subsequently maintain throughout the Term, insurance policies with an insurance company or companies approved by the Australian Prudential Regulation Authority (or its successor) to underwrite insurance business in Australia and which has a public rating of at least 'A' by Standard & Poors or such other rating from a reputable rating agency which is equivalent to a rating of 'A' by Standard & Poors; or
- (b) provide the Lessor with evidence to the reasonable satisfaction of the Lessor that the Sublessee has sufficient financial capacity and internal 'self-insurance' strategies,

to cover (to the extent required in accordance with Good Operating Practice):

- (c) the replacement or reinstatement of the Extension Infrastructure;

- (d) public liability risks in connection with the Extension Infrastructure and the Rail Land; and
- (e) the Lessee's and Sublessee's liabilities under this Agreement and the Integrated Network Deed, including all risks of an insurable nature in respect of which the Lessee or the Sublessee is obliged to indemnify the Lessor under this Agreement or the Integrated Network Deed,

in the manner and to the extent reasonably determined by the Lessor.

9.2 Requirements for Policies

To the extent **clause 9.1(a)** applies, the Sublessee must:

- (a) ensure that the Lessee, the Lessor and (where the Rail Land includes Rail Corridor Land) the Land Lessor are each noted (or dealt with in such manner as may be equivalent to noting) on each Policy as an insured party;
- (b) ensure, where legally possible, that each Policy provides that all insuring agreements and endorsements shall operate in the same manner as if there were a separate policy of insurance covering each insured party;
- (c) ensure, where legally possible, that each Policy provides that the insurer waives all rights, remedies or relief which it might become entitled to by subrogation against any insured parties, and that failure by any insured party to observe and fulfil the terms of the Policy shall not prejudice the insurance in regard to any other insured party;
- (d) ensure, where legally possible, that each Policy contains a non-imputation clause providing that any non-disclosure or misrepresentation (whether fraudulent or otherwise), any breach of a term or condition of the Policy, or any fraud or other act, omission or default by one insured party, will not affect another insured party, unless those acts or omissions were made with the connivance or actual knowledge of the other insured party;
- (e) ensure that the amount of any excess or deductible payable by an insured party in respect of a claim under each Policy will not exceed the amount determined by two experienced insurance brokers, one of whom must be nominated by the Lessor, as customary for similar policies;
- (f) ensure that each Policy waives all claims for insurance premiums, levies, stamp duties, charges or commissions against the Lessor or the Land Lessor;
- (g) ensure that all Policy conditions, alterations, exclusions and endorsements which may have a material adverse effect on the Lessor's interests under this Agreement or the Integrated Network Deed, or the Land Lessor's interests under the Land Lease, have been first approved in writing by the Lessor (such approval not to be unreasonably withheld or delayed);

- (h) upon request by the Lessor (such requests not to be made more than once in any 12 month period) produce to the Lessor annual certificates of currency of Policies taken out pursuant to this **clause 9** by the earlier of 30 Business Days after the Effective Date and commencement of physical construction of the Extension and on every anniversary of the Effective Date;
- (i) not do or permit to be done, or bring or keep or permit to be brought or kept, on the Rail Land or the Additional Land, anything which may materially prejudice or affect or render void or voidable, a Policy;
- (j) use its best endeavours to ensure that the Policies taken out pursuant to this **clause 9** contain provisions, reasonably acceptable to the Lessor, which provide that a notice of claim given by the Lessor or the Land Lessor to an insurer shall be accepted by the insurer as a notice of claim given to the insurer by the Sublessee; and
- (k) review the Policies required by this **clause 9** from time to time but at least every two years, to ensure reasonably adequate indemnity is maintained.

9.3 Notification and provision of information

- (a) To the extent **clause 9.1(a)** applies, the Sublessee must immediately notify the Lessor in writing of any occurrence or incident likely to give rise to a claim under the Policies which may materially adversely affect the interests of the Lessor or the Land Lessor.
- (b) To the extent that **clause 9.1(b)** applies, the Sublessee must:
 - (i) on request from the Lessor from time to time provide the Lessor with evidence to the Lessor's reasonable satisfaction of the current financial capacity of the Sublessee; and
 - (ii) immediately inform the Lessor of any change in the Sublessee's financial capacity which may materially adversely affect the Sublessee's ability to 'self-insure' in accordance with this **clause 9** in respect of any of the matters referred to in **clause 9.1**, whereupon the Sublessee must effect external insurance as required by **clause 9.1(a)**.

9.4 Failure to insure

If the Sublessee is unable or fails to procure or maintain the policies of insurance which it is required to procure or maintain under this **clause 9** and is unable to satisfy the Lessor (acting reasonably) as to its financial capacity to 'self-insure', the Lessor may (without derogation from its rights under this Agreement or the Integrated Network Deed or the Land Lessor's interests under the Land Lease or rights under the Integrated Network Deed), but is not obliged to, procure in its own name and/or the name of the Land Lessor such insurance policies as may in the Lessor's discretion be required to insure against the risks contemplated by this **clause 9** and the Sublessee must on

demand reimburse the Lessor for any premiums and other reasonable costs paid by the Lessor to obtain those policies.

9.5 Compliance and enforcement

- (a) The Sublessee must:
 - (i) comply with the terms of each Policy and not do or fail to do anything the consequence of which is to materially prejudice or render void or voidable its coverage under any Policy;
 - (ii) take all steps necessary or desirable to claim, and to collect or recover, money that is or (with taking such steps) would be likely to become due to it under or in respect of a Policy; and
 - (iii) do everything (including providing documents, evidence and information) necessary or desirable in the reasonable opinion of the Lessor to claim, and to collect or recover, money due to the Lessor or the Land Lessor under or in respect of each Policy.
- (b) The Lessor must do (and procure that the Land Lessor does) everything (including providing documents, evidence and information) necessary or desirable in the reasonable opinion of the Sublessee to enable the Sublessee to claim, and to collect or recover, money due to it under or respect of a Policy.

9.6 Notice of claims

The Sublessee must notify the Lessor as soon as possible of:

- (a) a cancellation of, or change in or reduction in the coverage of, a Policy;
- (b) a Policy becoming void or voidable; or
- (c) any other material circumstance or correspondence relating to a Policy.

9.7 Use of insurance proceeds

Except as otherwise agreed by the Lessor and the Sublessee, the Sublessee must use the proceeds of any Policy received by it in reinstating or replacing the Extension Infrastructure, discharging the relevant liability or making good the covered loss, as applicable.

9.8 Payment of premiums

- (a) Subject to **clause 9.8(b)**, the Sublessee must pay when due all premiums, commissions, levies, stamp duties, charges and other expenses necessary for effecting and maintaining each Policy.
- (b) If the Sublessee considers that the manner or extent of the Policies required to be effected in accordance with **clause 9.1(a)** exceeds that which a prudent lessor and a prudent lessee of the Extension Infrastructure, each bound by this Agreement and the Integrated Network Deed, would require by way of such insurances (taking into account the arrangements under which the Rail Land is made available), then the Sublessee may refer the apportionment of the costs of effecting and

maintaining such insurances as between the Lessor and the Sublessee to an independent expert for determination on the basis that:

- (i) the Lessor will be liable to contribute to so much of the costs of such insurances as is attributable to the manner and extent of insurances that is in excess of that which a prudent lessor and a prudent lessee of the Extension Infrastructure, each bound by the terms of this Agreement and the Integrated Network Deed, would require (taking into account the arrangements under which the Rail Land is made available);
- (ii) the Lessor will not be liable to contribute to any premium or other cost that is attributable to the actions or inactions of the Sublessee; and
- (iii) the Lessor will not be liable to contribute to any premium or other cost that is taken into account by the Sublessee in determining charges in respect of the use of the Extension Infrastructure.

The Lessor must promptly pay the Sublessee such portion of the costs of effecting and maintaining such insurances as the independent expert determines is payable by the Lessor as set out above.

- (c) The Sublessee must not delay in obtaining the insurances pending the outcome of the independent expert's determination as referred to in **clause 9.8(b)**.

10 Risk and indemnities

10.1 Risk

- (a) Except as otherwise expressly provided in this Agreement or the Integrated Network Deed, all things which the Lessee is required or permitted to do under this Agreement or the Integrated Network Deed are at its own risk and cost.
- (b) Except as otherwise expressly provided in this Agreement or the Integrated Network Deed, all things which the Sublessee is required or permitted to do under this Agreement or the Integrated Network Deed are at its own risk and cost.

10.2 Indemnity

- (a) To the maximum extent permitted by law, the Sublessee indemnifies and must keep indemnified the Lessor from and against all Losses of every kind that may be incurred or sustained, whether directly or indirectly, by the Lessor in respect of or arising from or in any way connected with:
 - (i) the Extension Infrastructure or any part of it or the possession, condition, management, operation, use, repair, maintenance, alteration, modification, change, addition or replacement of the Extension Infrastructure or any part of it;

- (ii) the design of, or a defect in, the Extension Infrastructure or any part of it;
 - (iii) any act, omission or negligence on the part of the Lessee or the Lessee's Associates or the Sublessee or the Sublessee's Associates;
 - (iv) any failure by the Lessee or the Sublessee to comply with its obligations under this Agreement or the Integrated Network Deed;
 - (v) any failure by the Lessee or the Lessee's Associates or the Sublessee or the Sublessee's Associates to comply with any applicable Law or Authorisation relating to the Extension Infrastructure or its possession, condition, management, operation, use, repair, maintenance, alteration, modification or replacement;
 - (vi) any Contamination to the extent caused or contributed to by the Lessee or the Lessee's Associates or the Sublessee or the Sublessee's Associates during the Term in connection with the Extension Infrastructure or its management, operation, use, repair, maintenance, alteration, modification or replacement; and
 - (vii) any death, personal injury, loss or damage suffered or sustained by any person in connection with the Extension Infrastructure or its condition, management, operation, use, repair, maintenance, alteration, modification or replacement.
- (b) The indemnity in this **clause 10** does not apply to the extent that the Loss is caused or contributed to by:
- (i) the Lessor's breach of this Agreement or the Integrated Network Deed;
 - (ii) the acts, omissions or negligence of the Lessor acting in its capacity as lessor of the Extension Infrastructure;
 - (iii) the acts, omissions or negligence of the Lessor's Associates to the extent they are acting for the Lessor in its capacity as lessor of the Extension Infrastructure; or
 - (iv) any act or omission of a person other than the Lessee or the Lessee's Associates or the Sublessee or the Sublessee's Associates where that act or omission occurs after the Lease End Date.
- (c) The Lessor must use all reasonable endeavours to mitigate the Losses that may be incurred or sustained by it and for which it is indemnified under this **clause 10.2**.
- (d) The Lessor may not recover from the Sublessee an amount that exceeds the amount of all Losses that it has incurred or sustained and for which it is entitled to be indemnified under this **clause 10**.

- (e) Subject to **clause 10.2(d)**, this indemnity does not exclude any other right of the Lessor to be indemnified by the Lessee or the Sublessee.

10.3 Insurance not to limit indemnity

No provision of **clause 9**, nor the holding of any insurance policy, limits the Sublessee's liability in relation to the indemnity contained in this **clause 10**.

10.4 No requirement for expense before enforcement of indemnity

It is not necessary for the Lessor to incur any expense or make any payment before enforcing a right of indemnity conferred by this **clause 10**.

10.5 Indemnity continuing

The indemnity contained in this **clause 10** is a continuing obligation separate and independent of the Sublessee's other obligations.

11 Termination

11.1 Lessee Insolvency Event

- (a) If an Insolvency Event in respect of the Lessee occurs and within six months following the date of occurrence of that Insolvency Event:
 - (i) the Insolvency Event has not been cured; or
 - (ii) the Lessee's rights and obligations under this Agreement have not been assigned or transferred to a person that is solvent in accordance with **clause 15.2** (including, a replacement trustee of the Trust that is solvent),

the Lessor may terminate this Agreement by notice to the other Parties with effect from a date specified in the Notice (being a date that is no earlier than the date on which the Notice is given to the other Parties).

- (b) The Lessee must promptly notify the Lessor in writing upon becoming aware of the occurrence of an Insolvency Event.

11.2 Termination or expiry of the Infrastructure Lease

If the Infrastructure Lease:

- (a) terminates prior to the expiry of the "Term" as defined in the Infrastructure Lease; or
- (b) expires in accordance with its terms,

this Agreement will terminate on the date of termination or expiration (as applicable) of the Infrastructure Lease.

11.3 Termination of the Trust or Trust Deed

- (a) Unless the Lessee has assigned and transferred all of its rights and obligations under this Agreement to another person that is not the trustee

of the Trust in accordance with **clause 15.2**, this Agreement will terminate at the same time as:

- (i) the Trust or the Trust Deed terminates;
 - (ii) the Lessee ceases to be the trustee of the Trust; or
 - (iii) the Lessee ceases to be the sole trustee of the Trust.
- (b) The Lessee must promptly notify the Lessor in writing of the occurrence of any of the events referred to in **clause 11.3(a)(i), 11.3(a)(ii) or 11.3(a)(iii)**.

11.4 Other termination events

The Lessor may terminate this Agreement by notice in writing to the other Parties with effect from a date specified in the Notice (being a date that is no earlier than the date on which the Notice is given to the other Parties) where any of the following occurs:

- (a) the Lessee or the Sublessee does not, within a period of 45 days following delivery to the Lessee or the Sublessee (as the case may be) of a written demand from the Lessor, pay to the Lessor or another person nominated by the Lessor an amount that:
 - (i) has become due and payable under this Agreement or the Integrated Network Deed; and
 - (ii) is not the subject of a bona fide dispute,where the aggregate of that amount and all other amounts that:
 - (iii) have become due and payable (and have not been paid) to the Lessor under this Agreement or the Integrated Network Deed;
 - (iv) have been the subject of a written demand from the Lessor and have not been paid within a period of 45 days following delivery of that written demand; and
 - (v) are not the subject of a bona fide dispute,exceeds \$100,000;
- (b) except as expressly permitted under this Agreement or the Integrated Network Deed, the Lessee or Sublessee:
 - (i) assigns, transfers or otherwise disposes of any of its rights or obligations under this Agreement or the Integrated Network Deed or its right, title or interest in all or any part of the Extension Infrastructure;
 - (ii) subleases, or grants a licence in respect of, its interest in all or any part of the Extension Infrastructure; or
 - (iii) creates or allows to subsist a Security Interest (other than a Permitted Lien) over its rights under this Agreement or the

Integrated Network Deed or its interest in all or any part of the Extension Infrastructure;

- (c) any Major Authorisation held by the Sublessee is suspended or cancelled and:
 - (i) is not re-instated; or
 - (ii) a new one is not issued or granted to the Sublessee, within a period of 120 days following the final completion of the exercise, or expiry, of all rights of review and appeal relating to the suspension or cancellation of the Major Authorisation (as the case may be);
- (d) without the prior written consent of the Lessor, not to be unreasonably withheld, or otherwise than as a result of a Force Majeure Event, substantially all of the Extension Infrastructure, the Leased Infrastructure and the Other Extension Infrastructure ceases to be used for the purpose of managing and operating a railway for a continuous period of 6 months after the Lessor has notified the Sublessee that it requires that cessation of use to be brought to an end; and
- (e) each of the following has occurred:
 - (i) the obligations of the Sublessee under **clauses 3.2(a) or 6.1** have been breached;
 - (ii) the Lessor has notified the Sublessee that the breach referred to in **clause 11.4(e)(i)** has occurred and has provided reasonable details of the circumstances constituting that breach to the Sublessee; and
 - (iii) the consequences of the breach have not been remedied or rectified (including by way of the payment or expenditure of all reasonable sums of money) within the later of:
 - (A) 6 months following the giving of the notice under **clause 11.4(e)(ii)**; or
 - (B) if the Sublessee provides written notice to the Lessor within 28 days of the giving of the notice under **clause 11.4(e)(ii)** that a period in excess of 6 months will be required in order to remedy or rectify the consequences of the breach, such longer period as is detailed in a plan for rectification or remedy of the breach, provided by the Sublessee to the Lessor within 3 months of the giving of the notice under **clause 11.4(e)(ii)**, which nominates a period not in excess of 12 months from the giving of the notice under **clause 11.4(e)(ii)**.

Each of the Lessee and the Sublessee must promptly notify the Lessor in writing upon becoming aware of the occurrence of any of the above events.

11.5 Termination of Sublease

If the Sublease terminates (for any reason) or expires, the Lessor may terminate this Agreement by notice to the other Parties.

11.6 Effect of termination

- (a) If the Lessor terminates this Agreement under **clause 11.1, 11.4 or 11.5** or this Agreement is automatically terminated under **clause 11.2 or 11.3**:
- (i) no amount will be payable by the Lessor to any other Party except as provided under **clause 12.2** and the Integrated Network Deed; and
 - (ii) each of the following applies with effect from that time:
 - (A) except as provided in clauses **[7.4(b)], [8.5(b)], [9.1(b)]** and **[9.2(b)]** of the Integrated Network Deed, the Extension Infrastructure is deemed to be "Infrastructure" (as defined in the Infrastructure Lease) for the purposes of the Infrastructure Lease and, except to the extent the Infrastructure Lease is terminated or has expired, is deemed to be leased by the Lessor under and in accordance with the Infrastructure Lease;
 - (B) if this Agreement is automatically terminated under **clause 11.2**, the Sublessee Additional Land is deemed to be "Additional Land" (as defined in the Infrastructure Lease) for the purposes of the Infrastructure Lease; and
 - (C) if this Agreement is automatically terminated under **clause 11.2**, the Sublessee Railway Assets are deemed to be "Railway Assets" (as defined in the Infrastructure Lease) for the purposes of the Infrastructure Lease, including for the purposes of clauses 10.4, 14, 15 and 16 of the Infrastructure Lease, and even if this Agreement terminates on the same date as the Infrastructure Lease terminates or expires.
- (b) If this Agreement is automatically terminated under **clause 11.2**:
- (i) within **[#]** Business Days after the Lease End Date, the Lessee must transfer, or procure the transfer, to the Lessor or its nominee of all Lessee Railway Assets and Lessee Additional Land. Any dispute as to whether an asset, land or right is or is part of a Lessee Railway Asset or Lessee Additional Land may be referred by the Lessor or the Lessee to an independent expert for determination;
 - (ii) in consideration for the transfer to the Lessor or its nominee of the Lessee Railway Assets and the Lessee Additional Land, the Lessor must pay to the Lessee or its nominee, on the date of such transfer, the fair market value of those assets as at the Lease End

Date as agreed between the Lessor and the Lessee or, failing agreement, as determined by an independent expert;

- (iii) upon receipt of the amount payable by the Lessor to the Lessee under **clause 11.6(b)(ii)**, the Lessee must contemporaneously procure the release and discharge of all Security Interests over all or any of the transferor's right, title and interest in the Lessee Railway Assets and the Lessee Additional Land (other than Permitted Liens); and
 - (iv) the Lessee Additional Land and Lessee Railway Assets, once transferred to the Lessor, are deemed to be "Additional Land" and "Railway Assets" (respectively, as those terms are defined in the Infrastructure Lease) for the purpose of clause 10.4 of the Infrastructure Lease (if applicable).
- (c) If the Lessor terminates this Agreement under **clause 11.1, 11.4 or 11.5** or this Agreement is automatically terminated under **clause 11.3**, then within **[#]** Business Days after the Lease End Date, the Lessee must transfer, or procure the transfer, to the Sublessee of all Lessee Railway Assets and Lessee Additional Land free from all Security Interests (other than Permitted Liens). Any dispute as to whether an asset, land or right is or is part of a Lessee Railway Asset or Lessee Additional Land may be referred by the Lessor, Lessee or the Sublessee to an independent expert for determination.
- (d) Nothing in this **clause 11** prejudices in any way the Lessor's right to claim and recover damages for any breach of this Agreement by another Party.

11.7 No other termination

- (a) Except as provided in accordance with **clauses 11.1, 11.2, 11.3, 11.4 or 11.5**:
- (i) no Party may terminate or rescind or has any right to terminate or rescind or obtain any order with the effect of terminating or rescinding this Agreement; and
 - (ii) this Agreement will not terminate, be frustrated (whether at common law, by equity or by statute), be repudiated or taken to have been repudiated for any reason.
- (b) The Lessee may not surrender any part of its interest in this Agreement.
- (c) The Sublessee may not surrender any part of its interest in this Agreement.

12 Other provisions relating to termination

12.1 Removal of Extension Infrastructure

Upon termination of this Agreement under **clause 11.2(b)** and with the prior written consent of the State (given or withheld in the State's absolute discretion), the Lessee may remove such parts of the Extension Infrastructure as the Lessee and the State agree. At the time of removal of those parts, title to the assets comprising those parts is hereby transferred to the Lessee and the Lessee may deal with those assets as it thinks fit. The Lessor must procure the release and discharge of all Security Interests over all or any of its right, title and interest in any part of those assets prior to their transfer to the Lessee.

12.2 Compensation

To the extent that Extension Infrastructure is not removed or agreed to be removed in accordance with **clause 12.1**, the Lessor must pay to the Lessee or its nominee, not later than 60 Business Days after the termination of this Agreement under **clause 11.2(b)** (or such other date as they agree), an amount equal to the fair market value of that Extension Infrastructure as at the expiry of the Term as agreed between the Lessor and the Lessee or, failing agreement, as determined by an independent expert.

12.3 Work and Expenditure Program and Transition Program

- (a) This **clause 12.3** applies if the Lessor makes the election referred to in clause 13.1(b) of the Infrastructure Lease and gives written notice to the Sublessee that this **clause 12.3** applies.
- (b) No later than nine months after the Lessor gives the Sublessee a Notice under **clause 12.3(a)**, the Sublessee must provide to the Lessor a works and expenditure program for the balance of the Term (for the purposes of this **clause 12.3** it is assumed that the Term will end at the same time as the "Term" (as defined in the Infrastructure Lease) will expire as a result of the making of the election referred to in **clause 12.3(a)**) that takes into account the following matters:
 - (i) the extent to which the repair and maintenance obligations of the Sublessee under this Agreement have been satisfied as at the date of the program;
 - (ii) the condition in which the Extension Infrastructure is required to be returned at the end of the Term under clause 14.1 of the Infrastructure Lease by virtue of the application of **clause 11.6(a)(ii)(A)**; and
 - (iii) the need to adopt an allocation of expenditure, as between the Sublessee and the Lessor, on works related to the Extension Infrastructure, being works that have an effective life beyond the expiry of the Term, that has regard to:

- (A) the return on the expenditure which the Sublessee is entitled to (or could otherwise reasonably expect to) receive prior to the expiration of the Term; and
 - (B) the return on the expenditure which the Lessor will be entitled to (or could otherwise reasonably expect to) receive after the expiration of the Term.
- (c) If the Sublessee has not provided a works and expenditure program as required by **clause 12.3(b)**, or within one month of the Lessor receiving the works and expenditure program the Lessor and the Sublessee have not agreed the proposed works and allocation of expenditure, the matter must be referred to an independent expert appointed under the Infrastructure Lease or (if the Sublessee is not a lessee under the Infrastructure Lease) under **clause 17** of this Agreement. In determining the works to be carried out and the appropriate allocation of the expenditure in respect of those works as between the Sublessee and the Lessor, the independent expert must have regard to the matters set out in **clause 12.3(b)**.
- (d) The Sublessee and the Lessor must implement the works and expenditure program, and must bear their allocated expenditures on the works the subject of the program, as agreed or determined in accordance with this **clause 12.3**.
- (e) No later than 36 months prior to the expiration of the Term, the Sublessee must provide to the Lessor a transition plan that sets out the detailed actions to be taken by each of the Sublessee and the Lessor (and the Lessee in the case of the transfer of any Lessee Railway Assets and Lessee Additional Land), and the timing and process for the taking of those actions, in order to achieve an orderly and timely process for:
- (i) the return to the Lessor (or its nominee) of the Extension Infrastructure on that date;
 - (ii) the transfer to the Lessor (or its nominee) of the Railway Assets and Additional Land on that date; and
 - (iii) the taking of such other actions as are required by this Agreement in conjunction with or as a consequence of these matters,
- so as to enable the railway network of which the Extension Infrastructure forms a part to continue to be operated as part of a fully functioning railway network before, on and after that date with minimum disruption to, or deterioration in the quality of, the services provided to the users of that railway network.
- (f) If the Sublessee has not provided a transition plan as required by **clause 12.3(e)**, or within 6 months of the Lessor receiving the transition plan the Lessor and the Sublessee have not agreed the transition plan, the matter must be referred to an independent expert appointed under the Infrastructure Lease or (if the Sublessee is not a lessee under the

Infrastructure Lease) under **clause 17** of this Agreement. In determining the transition plan, the independent expert must have regard to the matters set out in **clause 12.3(e)**.

- (g) The Sublessee and the Lessor must meet:
 - (i) to discuss and agree any changes to be made to the transition plan agreed by them or determined by an independent expert; and
 - (ii) to inform each other of their respective progress in respect of their implementation of that transition plan,

from time to time as required by either of them on reasonable notice to the other until the completion of implementation of the transition plan (which may occur after the end of the Term).

- (h) From the time that is 12 months after the Lessor receives the transition plan:
 - (i) the Sublessee (and the Lessee in the case of the transfer of any Lessee Railway Assets and Lessee Additional Land) must diligently pursue the implementation of, and do all things necessary or desirable to implement, the transition plan provided to the Lessor under **clause 12.3(e)** unless or until a transition plan has been agreed by the Lessor and the Sublessee or determined by an independent expert; and
 - (ii) the Sublessee (and the Lessee in the case of the transfer of any Lessee Railway Assets and Lessee Additional Land) and the Lessor must diligently pursue the implementation of, and do all things necessary or desirable to implement, the transition plan agreed by the Lessor and the Sublessee or determined by an independent expert once it has been so agreed or determined.
- (i) In implementing the transition plan in accordance with **clause 12.3(h)**, the Sublessee must provide the Lessor with:
 - (i) such information as the Lessor reasonably requires; and
 - (ii) such access to the facilities and systems of the Sublessee, the employees and contractors of the Sublessee and its Related Bodies Corporate, the Extension Infrastructure, the Railway Assets, the Rail Land and the Additional Land as the Lessor reasonably requires,

to enable the transfer of control of the railway network of which the Extension Infrastructure forms a part to the Lessor (or its nominee) to be achieved efficiently and with minimum disruption to, or deterioration in the quality of, the services provided to the users of that railway network.

- (j) Where a works and expenditure program or a transition plan is required to be provided by the Sublessee under provisions similar to this **clause 12.3** which are included in the Infrastructure Lease or an Other Extension Infrastructure Agreement, a works and expenditure program or

transition plan prepared under this **clause 12.3** may be combined with that other program or plan and must, in any event and to the extent reasonably required, take into account that other program or plan.

- (k) If the Lessor requires, the Sublessee must cooperate with any other party to the Infrastructure Lease or an Other Extension Infrastructure Agreement in preparing and implementing a works and expenditure program or a transition plan under this Agreement.

12.4 Actions during the Term

During the Term the Lessee and the Sublessee must:

- (a) use their best endeavours to enter into agreements and arrangements (other than contracts of employment) with other persons; and
- (b) enter into agreements and arrangements between themselves, on terms and conditions that will permit, where applicable, the Sublessee to comply with:
 - (c) the terms of clauses 14.1 and 15 of the Infrastructure Lease by virtue of the operation of **clause 11.6(a)(ii)(A)**; and
 - (d) the requirements of any deed referred to in **clause 15.2(f)(ii)**.

13 Termination of the Project Management Agreement

13.1 Application of this clause

This **clause 13** applies if the Project Management Agreement is terminated for any reason prior to the commissioning of the last part of the Extension to be commissioned and, as at the date of termination of the Project Management Agreement, Extension Infrastructure which has been commissioned under the Project Management Agreement is leased to the Lessee under this Agreement.

13.2 Exclusion of parts of Extension Infrastructure

- (a) The Lessee must promptly (and in any event within three Business Days of termination of the Project Management Agreement) notify the Lessor that the Project Management Agreement has been terminated and provide details of such parts of the Extension Infrastructure as have and have not been commissioned under the Project Management Agreement.
- (b) Within 20 Business Days after the termination of the Project Management Agreement, the Nominating Party may notify the Lessee that it no longer wishes all, or particular parts, of the Non-Available Extension Infrastructure to be subject to the lease under this Agreement.
- (c) A notice given under **clause 13.2(b)** must specify:

- (i) that the Nominating Party no longer wishes the whole of the Non-Available Extension Infrastructure to be subject to the lease under this Agreement; or
 - (ii) the particular parts of the Non-Available Extension Infrastructure which the Nominating Party no longer wishes to be subject to the lease under this Agreement.
- (d) On the date that the Nominating Party gives the Lessee a Notice under **clause 13.2(b)**:
- (i) the Non-Available Extension Infrastructure specified in the Notice given under **clause 13.2(b) (Redundant Extension Infrastructure)** will immediately cease being subject to the lease under this Agreement;
 - (ii) the Lessor hereby transfers ownership of Redundant Extension Infrastructure to the Lessee free from all Security Interests (other than Permitted Liens); and
 - (iii) for the avoidance of doubt, any Extension Infrastructure (other than the Redundant Extension Infrastructure) will continue to be subject to the lease under this Agreement.
- (e) If the Lessor is the Nominating Party and specifies in the Notice under **clause 13.2(b)** that it wishes the Redundant Extension Infrastructure to be removed, the Sublessee must, or must procure, as soon as reasonably practicable, the removal of the Redundant Extension Infrastructure at the Lessee's expense.
- (f) If the Nominating Party gives the Lessee a Notice under **clause 13.2(b)**, the Nominating Party must give a copy of such Notice to the other Party at the same time such Notice is given to the Lessee.

14 Force majeure

14.1 Force Majeure Event

A **Force Majeure Event** is a circumstance or event that is beyond the reasonable control of the Party claiming relief under this **clause 14 (Affected Party)**, including:

- (a) an act of God, lightning, storm, explosion, flood, landslide, bush fire or earthquake;
- (b) strikes or other industrial action, other than strikes or other industrial action involving only the employees of the Lessee, the Sublessee or a Related Body Corporate of either of them;
- (c) act of public enemy, war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion or epidemic; and
- (d) embargo, power shortage or water shortage,

the consequences of which could not have been prevented, overcome or remedied by the exercise by the Affected Party of a standard of care and diligence consistent with that of a prudent and competent person under the circumstances (including the expenditure of reasonable sums of money and the application of technology known to such a prudent and competent person). Each Party acknowledges and agrees that, in relation to a Force Majeure Event, the obligation to expend reasonable sums of money shall not require settlement of strikes or other industrial action by yielding to unreasonable demands made of it.

14.2 Claims for relief

- (a) If a Party is prevented in whole or in part from carrying out its obligations under this Agreement as a result of a Force Majeure Event, it must as soon as practicable notify the other Parties accordingly.
- (b) A Notice under this **clause 14.2** must:
 - (i) specify the relevant obligations and the extent to which the Affected Party cannot perform those obligations;
 - (ii) fully describe the Force Majeure Event;
 - (iii) estimate the time during which the Force Majeure Event will continue; and
 - (iv) specify the measures proposed to be adopted to remedy or minimise the effects of the Force Majeure Event.

14.3 Suspension of obligations

Following the giving of a Notice of a Force Majeure Event under **clause 14.2**, and while the Force Majeure Event continues, the obligations which cannot be performed because of the Force Majeure Event will be suspended other than any obligation to pay money, but only if the Affected Party has complied with its obligations under **clauses 14.2** and **14.4**.

14.4 Mitigation

The Affected Party must use all reasonable endeavours to remedy or minimise the effects of the Force Majeure Event to the extent reasonably practicable.

14.5 Effect on Term

The Term will not be extended by the period of the Force Majeure Event.

15 Security Interests and assignment

15.1 Security Interests

- (a) The Lessee must not, without the prior written consent of the Lessor, create or allow to subsist a Security Interest (other than a Permitted Lien) over any of its rights under this Agreement or over any of its right, title or interest in the Extension Infrastructure or any part of it.

- (b) The Sublessee must not, without the prior written consent of the Lessor (such consent not to be unreasonably withheld or delayed or given subject to unreasonable conditions), create or allow to subsist a Security Interest (other than a Permitted Lien) over any of its rights under this Agreement or over any of its right, title or interest in the Extension Infrastructure or any part of it.

15.2 Permitted assignments

- (a) Except as provided in this **clause 15.2** or the Integrated Network Deed, or with the prior written consent of the other Parties, no Party may assign or transfer all or any of its rights or obligations under this Agreement.
- (b) The Lessor may assign and transfer all (and not part only) of its rights and obligations under this Agreement to a person to whom it assigns or transfers at the same time all (but not part only) of its right, title and interest in the Extension Infrastructure and its rights and obligations under the Integrated Network Deed, being a person that is the State or is owned or controlled by the State, provided that such assignment is subject to the condition that, if the assignee (not being the State) ceases to be owned or controlled by the State, those rights and obligations must, on or prior to that cessation, be assigned and transferred to the State or a person that is owned or controlled by the State. Any such assignee must execute a deed under which the assignee undertakes to the Parties to be bound by the terms of this Agreement as if it were the Lessor.
- (c) The lessor under the Infrastructure Lease must not assign or transfer its rights and obligations under the Infrastructure Lease unless it assigns and transfers, at the same time to the same person, all of its rights and obligations under this Agreement.
- (d) Subject to **clause 15.2(e)**, except with the prior written consent of the Lessor (such consent not to be unreasonably withheld or delayed or given subject to unreasonable conditions), the Sublessee:
 - (i) may only assign and transfer all (and not part only) of its rights and obligations under this Agreement to a person to whom it assigns or transfers at the same time all (but not part only) of its rights and obligations under the Integrated Network Deed, each Other Extension Infrastructure Agreement and each Other Integrated Network Deed; and
 - (ii) must assign and transfer all of its rights and obligations under this Agreement to a person to whom it assigns or transfers any of its rights or obligations under the Integrated Network Deed, an Other Extension Infrastructure Agreement or an Other Integrated Network Deed.

Any such assignee must execute a deed under which the assignee undertakes to the Parties to be bound by the terms of this Agreement as if it were the Sublessee.

- (e) The Sublessee may assign and transfer to a person such of its rights and obligations under this Agreement as relate to part of the Extension Infrastructure if it assigns and transfers at the same time to that person such of its rights and obligations under:
- (i) if applicable, the Infrastructure Lease as relate to a part of the Leased Infrastructure; and
 - (ii) if applicable, an Other Extension Infrastructure Agreement as relate to a part of the Other Extension Infrastructure,

so that the relevant parts of the Extension Infrastructure, Leased Infrastructure (if applicable) and the Other Extension Infrastructure (if applicable) are, together, reasonably capable of being managed and operated, in accordance with all applicable Laws and the requirements of all applicable Authorisations, as a discrete part of a railway.

The Parties agree to give effect to an assignment and transfer under **clause 15.2(e)** by the Lessor and Lessee entering into an agreement, on the same terms and conditions of this agreement, with the assignee (as “Sublessee”) (**Transferee Extension Infrastructure Agreement**) under which the applicable part of the Extension Infrastructure will be taken to be “Extension Infrastructure” leased by the Lessor to the Lessee under, and for the purposes of, the Transferee Extension Infrastructure Agreement.

Upon the Lessor, Lessee and assignee entering into a Transferee Extension Infrastructure Agreement:

- (i) the “Extension Infrastructure” leased by the Lessor to the Lessee under the Transferee Extension Infrastructure Agreement will immediately cease being subject to the lease under this Agreement; and
 - (ii) the Transferee Extension Infrastructure Agreement will be deemed to be an Other Extension Infrastructure Agreement for the purposes of this Agreement.
- (f) Unless the Sublessee assigns and transfers all of its rights and obligations under this Agreement and all of its rights and obligations under the Infrastructure Lease at the same time and to the same person, the Sublessee must not assign or transfer any of its rights or obligations under the Infrastructure Lease unless, where required to do so by the Lessor:
- (i) the assignee has executed a deed in favour of the Lessor (on terms reasonably acceptable to the Lessor) under which the assignee agrees to be bound by the operation of **clause 11.6(a)(ii)** and to assume the obligations relating to the Extension Infrastructure, Railway Assets and Additional Land as will thereby be imposed on it under the Infrastructure Lease; and

- (ii) the Sublessee has executed a deed in favour of the Lessor and the assignee (on terms reasonably acceptable to the Lessor) under which the Sublessee agrees, on the termination of this Agreement:
 - (A) to perform, in favour of the assignee or (if this Agreement terminates on the same date as the Infrastructure Lease terminates or expires) the Lessor or its nominee, such obligations as would otherwise be imposed on the Sublessee in connection with the Extension Infrastructure, Railway Assets and Additional Land under clause 14.1(b), (c), (d), (f) and (g) of the Infrastructure Lease if the Sublessee was the lessee under the Infrastructure Lease, the favouree was the lessor under the Infrastructure Lease, the date of the assignment or transfer was the "Lease End Date" (as defined in the Infrastructure Lease), and the Extension Infrastructure, Railway Assets and Additional Land were respectively "Infrastructure", "Railway Assets" and "Additional Land" (as defined in the Infrastructure Lease); and
 - (B) to perform, in favour of the assignee or (if this Agreement terminates on the same date as the Infrastructure Lease terminates or expires) the Lessor or its nominee, such obligations as would otherwise be imposed on the Sublessee in connection with the Railway Assets and Additional Land under clause 15(b) and (c) of the Infrastructure Lease if the Sublessee was the lessee under the Infrastructure Lease, the favouree was the lessor under the Infrastructure Lease, the date of the assignment or transfer was the date that the lessee under the Infrastructure Lease is required to return and surrender the Leased Infrastructure under clause 14.1(a) of the Infrastructure Lease, and the Railway Assets and Additional Land were respectively "Railway Assets" and "Additional Land" (as defined in the Infrastructure Lease).
- (g) If the Railway Assets and Additional Land are transferred to the Lessor or its nominee in accordance with **clause 15.2(f)(ii)(B)**, clauses 15(d), (e) and 20 of the Infrastructure Lease apply as if the Sublessee was the lessee under the Infrastructure Lease, and the Railway Assets and Additional Land were respectively "Railway Assets" and "Additional Land" (as defined in the Infrastructure Lease).
- (h) Except with the prior written consent of each other Party, the Lessee:
 - (i) may only assign and transfer all (and not part only) of its rights and obligations under this Agreement to a person to whom it assigns or transfers at the same time all (but not part only) of its rights and obligations under the Integrated Network Deed, the Sublease and the Land Licence; and

- (ii) must assign and transfer all of its rights and obligations under this Agreement to a person to whom it assigns or transfers any of its rights or obligations under the Integrated Network Deed, the Sublease or the Land Licence.

Any such assignee must execute a deed under which the assignee undertakes to the Parties to be bound by the terms of this Agreement as if it were the Lessee.

- (i) An assignment or transfer under **clause 15.2(c), 15.2(d) or 15.2(e)** may only be made to a person who:
 - (i) has, or will obtain immediately following such assignment or transfer, all Authorisations necessary for the use of the Extension Infrastructure for the Permitted Use, or otherwise has, or will have immediately following such assignment or transfer, the benefit of such Authorisations where they are held by another person; and
 - (ii) has sufficient financial and technical resources available to it to enable it to perform the obligations that are assigned or transferred to it,

and if the assignment or transfer complies with all of the applicable Laws.

- (j) If the Lessee is the trustee of the Trust and is replaced by a new trustee of the Trust, the Lessee must, with effect upon the appointment of the new trustee of the Trust, assign and transfer all (and not part only) of its rights and obligations under this Agreement, the Integrated Network Deed, the Sublease and the Land Licence to the new trustee of the Trust.
- (k) On a valid assignment or transfer in accordance with the requirements of this **clause 15.2**, the Party making such assignment or transfer is released from all obligations under this Agreement to the extent those obligations are assigned or transferred in accordance with the relevant clause.

15.3 Subletting

- (a) Except as provided in **clause 3.2**, the Lessee must not sublease, or grant a licence in respect of, its interest in the Extension Infrastructure or any part of it.
- (b) Subject to **clauses 15.3(c) and 15.3(d)**, the Sublessee may sublease, or grant a licence in respect of, its interest in the Extension Infrastructure or any part of it to a person (the **Sub-sublessee**) if:
 - (i) the use of the Extension Infrastructure or that part of it (as the case may be) which is permitted under the sublease or licence is consistent with the Permitted Use;
 - (ii) the Sub-sublessee has, or will obtain immediately following the granting of such sublease or licence, all Authorisations necessary for the Sub-sublessee to use the Extension Infrastructure or that

- part of it for the use which is permitted under the sublease or licence or otherwise has, or will have immediately following the granting of such sublease or licence, the benefit of such Authorisations where they are held by another person;
- (iii) the sublease or licence prohibits the Sub-sublessee from creating or allowing to subsist a Security Interest (other than a Permitted Lien) over any of the Sub-sublessee's rights under the sublease or licence or over any of the Sub-sublessee's right, title or interest in the Extension Infrastructure or any part of it without the prior written consent of the Lessor (such consent not to be unreasonably withheld or delayed or given subject to unreasonable conditions);
 - (iv) the sublease or licence is granted in accordance with all applicable Laws;
 - (v) the sublease or licence expressly acknowledges the rights of the Lessor under this Agreement and that the rights of the Sub-sublessee under the sublease or licence are subject to and subordinate to the rights of the Lessor under this Agreement; and
 - (vi) under the sublease or licence the Sub-sublessee covenants not to do anything which would cause a breach of this Agreement on the part of the Lessee or Sublessee.
- (c) Despite any sublease or licence permitted or consented to by the Lessor under **clause 15.3(b)**, as between the Lessor and the Sublessee, the Sublessee continues to be bound to comply with all its obligations under this Agreement.
 - (d) The Sublessee must not, except with the Lessor's prior written consent, sublease, or grant a licence in respect of, its interest in any part of the Extension Infrastructure to a person where that person is or, if the sublease or licence is granted, that person will become, the holder of a Major Authorisation in respect of that part of the Extension Infrastructure in circumstances where another person holds at the same time a Major Authorisation in respect of that part of the Extension Infrastructure.

16 Taxes and costs

- (a) The Lessee and Sublessee must pay and indemnify and keep indemnified the Lessor against any liabilities for stamp, transaction, registration and similar taxes (including fines and penalties resulting from delay or omission to pay such taxes, where such delay or omission is a result of the action or inaction of the Lessee or Sublessee) which may be payable in relation to this Agreement or the performance or enforcement of this Agreement or any payment or receipt or other transaction contemplated by it (other than in respect of any assignment or transfer of any rights or obligations of the Lessor contemplated by **clause 15.2**).

The obligations of the Lessee and Sublessee under this **clause 16(a)** bind them separately and together.

- (b) The Lessee must reimburse the Lessor on demand for all costs and expenses reasonably incurred in relation to the actual or attempted enforcement of, or actual or attempted exercise or preservation of, any rights, powers or remedies under this Agreement against the Lessee including, in each case, reasonable legal costs and expenses on a full indemnity basis.
- (c) The Sublessee must reimburse the Lessor on demand for all costs and expenses reasonably incurred in relation to the actual or attempted enforcement of, or actual or attempted exercise or preservation of, any rights, powers or remedies under this Agreement against the Sublessee including, in each case, reasonable legal costs and expenses on a full indemnity basis.
- (d) The Lessee or Sublessee (as applicable) must reimburse the Lessor's reasonable costs (including reasonable legal costs) of or associated with:
 - (i) considering, granting or refusing to grant any consent or approval requested by the Lessee or the Sublessee under the Agreement; and
 - (ii) considering, doing or refusing to do anything at the request of the Lessee or the Sublessee.

17 Dispute resolution

17.1 Dispute resolution process

- (a) If a Party considers a dispute has arisen under this Agreement, that Party may give notice of the dispute to the other Parties.
- (b) Within five Business Days of the Notice being given under **clause 17.1(a)**, a representative of each Party must confer together at least once, without third party advisers, to attempt to resolve the dispute.
- (c) If the dispute is not resolved under **clause 17.1(b)** within 15 Business Days of the Notice of the dispute being given, then the representatives must confer together to agree a form of dispute resolution.
- (d) If either:
 - (i) no form of dispute resolution is agreed within 20 Business Days of the date on which the Notice is given under **clause 17.1(a)**; or
 - (ii) the dispute is not resolved within 40 Business Days of the date on which the Notice is given under **clause 17.1(a)**,then a Party may, by written notice, refer the dispute to arbitration. Arbitration is to be before a single arbitrator in accordance with the

Commercial Arbitration Act 1990 (Qld) and a Party may be represented by a member of the legal profession.

- (e) Costs will be at the discretion of the arbitrator.
- (f) This **clause 17** does not prevent a Party from seeking an injunction or declaration from the court in the case of urgency.
- (g) The existence of a dispute does not excuse a Party from performing its obligations under this Agreement in full, nor does it prevent a Party from terminating this Agreement due to the default of another Party where such termination is otherwise in accordance with this Agreement.

17.2 Independent expert

Where this Agreement expressly provides for a dispute to be resolved by or referred to an independent expert, or the Parties agree pursuant to **clause 17.1(c)** that a dispute is best resolved by an independent expert, then the Parties must submit to the following procedure in resolving the dispute:

- (a) the Parties will choose and appoint an independent expert;
- (b) in the case of a dispute relating to railway safety matters, the independent expert must be a person with appropriate experience nominated by the 'rail safety regulator' as that concept is defined under the *Transport (Rail Safety) Act 2010* (Qld);
- (c) in any other case, in the absence of agreement by the Parties as to the independent expert within five Business Days of notice of a dispute being given, the independent expert will be appointed on the application of a Party by (unless otherwise agreed) the chairperson or other senior office bearer of the time being of the Queensland Chapter of the Institute of Arbitrators and Mediators Australia;
- (d) the independent expert must make a determination or finding on the issue in dispute as soon as practicable and in any event within 15 Business Days after the dispute is referred to it, or such longer period as agreed by the Parties;
- (e) the independent expert must act as an expert and not as an arbitrator and may adopt such procedures as he or she thinks fit so as to provide an expeditious, cost effective and fair means of determining the dispute, subject to any provisions to the contrary in this Agreement;
- (f) the independent expert is not bound by the rules of evidence and may make his or her determination on the basis of information received or his or her own expertise;
- (g) the provisions of the *Commercial Arbitration Act 1990* (Qld) will not apply to the dispute resolution proceedings under this **clause 17.2**;
- (h) in the absence of manifest error material to the determination, the independent expert's determination will be final and binding on the Parties; and

- (i) the costs of the independent expert will be borne by the Parties equally or as the independent expert may otherwise determine and each Party will bear its own costs, including legal costs, relating to the independent expert's decision.

18 Confidentiality

18.1 General obligations

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

18.2 Exceptions

A Party's obligations in **clause 18.1** do not apply to disclosures to the extent that the disclosure is:

- (a) by that Party to its legal or other professional advisers, auditors or other consultants, or employees of that Party or that Party's Related Bodies Corporate or shareholders, to the extent those persons require the information for the purposes of this Agreement (or any transactions contemplated by it) or for the purpose of advising that Party in relation thereto;
- (b) of information which is at the time lawfully in the possession of the proposed recipient of the information;
- (c) required by law or by a lawful requirement of a Governmental Agency or recognised stock exchange having jurisdiction over that Party or its Related Bodies Corporate or where such disclosure is determined by the Lessee as reasonably required for administration of the Trust;
- (d) required in connection with legal proceedings, arbitration or expert determination relating to this Agreement or for the purpose of advising that Party in relation thereto;
- (e) of information which is at the time generally and publicly available other than as a result of breach of confidence by that Party;
- (f) necessary or commercially desirable to a bona fide proposed or prospective assignee or transferee, in which case that Party must, if requested by any other Party, procure that the proposed recipient of the information executes a confidentiality deed in favour of the other Party prior to the disclosure of that information;
- (g) necessary or commercially desirable to an existing or bona fide proposed or prospective financier, in which case that Party must, if requested by any other Party, procure that the proposed recipient of the information executes a confidentiality deed in favour of the other Party prior to the disclosure of that information;

- (h) by the Lessor to the State or any Minister of the Crown in right of the State or any of its agencies or instrumentalities; or
- (i) by the Lessee to a Preference Unit Holder or a financier or prospective financier of a Preference Unit Holder, provided that the Lessee first procures that the proposed recipient of the information executes a confidentiality deed in favour of the other Parties (on terms reasonably acceptable to them) prior to the disclosure of the information.

18.3 Continuing obligation

This **clause 18** will survive the termination of this Agreement.

19 Notices

Any notice, demand, consent or other communication (**Notice**) given or made under this Agreement:

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

(i) to the **Lessor**

Business address	Level 14 61 Mary Street BRISBANE QLD 4000
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Postal address	[insert]
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Facsimile No.	[insert]
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Attention:	[insert]
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(ii) to the **Lessee**

Business address	Level 5 192 Ann Street BRISBANE QLD 4000
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Postal address	GPO Box 456 BRISBANE QLD 4001
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Facsimile No.	07 3235 3930
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Attention:	[insert]
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(iii) to the **Sublessee**

Business address	Level 5 192 Ann Street
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BRISBANE QLD 4000
Postal address GPO Box 456
BRISBANE QLD 4001
Facsimile No. [insert]
Attention: Vice President, Commercial Development

- (c) will conclusively be taken to be duly given or made:
- (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to address in another country); and
 - (iii) in the case of a fax, on receipt by the sender of a transmission control report from the dispatching machine showing the relevant number of pages and the correct destination fax machine number or name of recipient and indicating the transmission has been made without error,

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

20 General

20.1 Entire agreement

- (a) As between the Lessor and the other Parties:
- (i) this Agreement and the Integrated Network Deed together contain the entire understanding between them as to their subject matter; and
 - (ii) this Agreement and the Integrated Network Deed together set out the only conduct relied on by the Parties and supersede all prior agreements and understandings between the Parties in connection with their subject matter.
- (b) As between the Lessee and the Sublessee:
- (i) this Agreement, the Integrated Network Deed, the Sublease, the Land Licence and the Project Management Agreement together contain the entire understanding between them as to their subject matter; and
 - (ii) this Agreement, the Integrated Network Deed, the Sublease, the Land Licence and the Project Management Agreement together set out the only conduct relied on by them and supersede all prior

agreements and understandings between them in connection with their subject matter.

20.2 No waiver

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

20.3 Rights cumulative

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

20.4 Amendment

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

20.5 Further assurance

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

20.6 No merger

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

20.7 Severability of provisions

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

20.8 Lessee's limitation of liability

- (a) The Parties acknowledge that the Lessee enters into this Agreement in its capacity only as trustee of the Trust, and in no other capacity (other than in respect of the warranties in relation to trustee capacity in **clause 23.2** which are given by the Lessee in its personal capacity).
- (b) A liability of the Lessee arising under or in connection with this Agreement is limited to and can be enforced against the Lessee in its capacity as trustee of the Trust only to the extent to which the Lessee 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 20.8** will not apply to any liability of the Lessee in its capacity as trustee of the Trust to the extent that the liability is not satisfied out of the property of the Trust because there is a reduction in the Lessee's right of indemnity as a result of the Lessee committing fraud, "Gross Negligence" or "Wilful Default" (each as defined in the Trust Deed).
- (d) The Lessee must not amend the Trust Deed in any way that might reduce the scope of its entitlement to indemnity out of the Trust as specified in clause 17.3 of the Trust Deed as that provision stands at the date of the Trust Deed.

20.9 Consents

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

20.10 Counterparts

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

20.11 Relationship of Parties

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

20.12 Survival of representations and warranties

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

20.13 Enurement

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

20.14 Powers of attorney

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

21 GST

21.1 GST to be added to amounts payable

If GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This **clause 21** does not apply to the extent that the Consideration for the Taxable Supply is expressly stated to be GST inclusive.

21.2 Liability net of GST

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

21.3 Timing of payment of GST Amount

The GST Amount is payable on the earlier of:

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

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

21.4 Revenue exclusive of GST

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

21.5 Cost exclusive of GST

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

21.6 Adjustment Event

If an Adjustment Event occurs in respect of a Taxable Supply described in this **clause 21**, an adjustment must be made to any amount paid pursuant to this **clause 21**. The supplier must issue an Adjustment Note for an Adjustment Event.

21.7 GST Group

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

which the representative member of the GST Group must pay and Input Tax Credits to which the representative member of the group is entitled.

21.8 Non-monetary consideration

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

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

21.9 Definitions

- (a) Words or expressions used in this **clause 21** which are defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and related imposition Acts or, if not so defined, then which are defined in the *Consumer and Competition Act 2010* (Cth), have the same meaning in this **clause 21** unless expressly provided otherwise in **clause 1.1**.
- (b) **GST Amount**, in relation to a Taxable Supply, means the amount of GST payable in respect of that Taxable Supply.

22 Governing law and jurisdiction

- (a) This Agreement is governed by the laws of the State of Queensland.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Queensland and courts of appeal from them for determining any dispute concerning this Agreement. Each Party waives any right it has to object to an action being brought in those courts, to claim that the action has been brought in an inconvenient forum, or to claim that those courts do not have jurisdiction.
- (c) The Parties agree that none of them will institute or attempt to institute any proceedings in relation to any dispute or any matter or thing arising out of or in connection with this Agreement other than in a court in Queensland or, in respect of any proceedings in a Federal court, in the Brisbane registry of the relevant Federal court. A Party must not, without the consent of all other Parties, request that proceedings instituted in a Federal court in Queensland be heard outside Queensland.
- (d) Without preventing any other mode of service, any document in an action (including any writ of summons or other originating process or any third or other party notice) may be served on a Party by being delivered to that Party in accordance with **clause 19**.

23 Warranties

23.1 Warranties

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

23.2 Lessee warranties

The Lessee warrants that:

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

23.3 Reliance

- (a) Each Party acknowledges that each other Party has entered into this Agreement in reliance upon the warranties contained in **clause 23.1**.
- (b) The Lessee acknowledges that the other Parties have entered into this Agreement also in reliance upon the warranties contained in **clause 23.2**.

Schedule 1

Extension

[Drafting note: Description of Extension to be inserted on a transaction-by-transaction basis.]

Schedule 2

Insurances

[Drafting note: Insurance arrangements to be inserted on a transaction-by-transaction basis.]

Schedule 3

Form of Guarantee

[Drafting note: *Form of Guarantee to be inserted on a transaction-by-transaction basis.*]

Executed as an agreement.

Executed by Queensland Treasury Holdings 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 [NewCo Pty Ltd] 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: / /