

Schedule D

Ultimate Holding Company Deed

Aurizon Holdings Limited

Ultimate Holding Company Support Deed

Date:

2013

Party

Aurizon Holdings Limited ACN 146 335 622 of Level 15, 175 Eagle Street, Brisbane in the State of Queensland (**Aurizon Holdings**)

Background

- A Aurizon Network is the railway manager of certain rail transport infrastructure, access to which is provided in accordance with the Access Undertaking.
 - B In order to comply with certain obligations imposed on Aurizon Network pursuant to the Access Undertaking, Aurizon Network will require the cooperation of members of the Aurizon Corporate Group.
 - C As required by ~~Part 3~~[Clause 3.3](#) of the Access Undertaking and the QCA's decision to approve the Access Undertaking, Aurizon Network has requested that Aurizon Holdings, as Aurizon Network's ultimate holding company, enter into this Deed in favour of the QCA. Aurizon Holdings has agreed to do so.
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Agreed terms

1 Definitions

In this Deed the following terms will have the meanings set out below. All other terms shall have the meaning ascribed to them in the Access Undertaking.

Access Undertaking	The Aurizon Network Access Undertaking approved by the QCA on [insert] in accordance with Part 5 of the QCA Act (as amended from time to time in accordance with the QCA Act).
Aurizon Corporate Group	Aurizon Holdings and each of its related bodies corporate (as that term is defined in the <i>Corporations Act 2001</i> (Cth)).
Aurizon Network	Aurizon Network Pty Ltd (ACN 132 181 116).
QCA	Queensland Competition Authority

2 Term

Aurizon Holdings' obligations under this Deed will terminate upon the earlier of:

- (a) any new ultimate holding company of Aurizon Network providing a deed poll in substantially similar form to this Deed; or
- (b) expiry of the Access Undertaking.

3 Procuring Compliance by Aurizon Corporate Group

3.1 Procuring compliance with Access Undertaking

- (a) Aurizon Holdings ~~will~~must, and ~~will~~must procure that each other member of the Aurizon Corporate Group:

- (i) take all necessary steps to ensure Aurizon Network complies with its obligations in **Part 3** of the Access Undertaking;

- (ii) not direct or request Aurizon Network to act in contravention of its obligations in **Part 3** of the Access Undertaking; and

- ~~(iii)~~ (iii) in relation to Confidential Information:

- (A) ensure that each Related Party complies with the provisions of the Access Undertaking that relate to Confidential Information it receives as if it were bound by the same obligations as Aurizon Network in respect of that Confidential Information;

- (B) not ~~to~~ disclose ~~Protected Confidential~~ Information received from Aurizon Network, ~~as permitted by the Access Undertaking~~, to any third party otherwise than as permitted by the Access Undertaking or with the consent of the Access Seeker or Access Holder to which the ~~Protected Confidential~~ Information belongs or relates; and

- (C) secure, protect and take all such other steps as may be necessary to prevent any use or disclosure of Confidential Information other than as permitted by the Access Undertaking;

- (iv) ~~—~~has the authority to authorise access to land to the extent that an Access Seeker or Access Holder requires access to that land in accordance with the provision of Access under the Access Undertaking, where that land is owned by a member of the Aurizon Corporate Group, or where a member of the Aurizon Corporate Group has a lease, licence or other arrangement with the owners of the land or pursuant to the TIA;

- (v) takes steps required to allow Aurizon Network to procure a sale or supply of electric energy in accordance with **clause 2.4** of the Access Undertaking; and

- ~~(ii)~~(vi) any other action that Aurizon Holdings or a member of the Aurizon Corporate Group is required to do in order to comply with the provisions of the Access Undertaking (which may be updated from time to time), or to enable or assist Aurizon Network to comply with its obligations in respect of the Access Undertaking.
- (b) No Aurizon Corporate Group member, including Aurizon Holdings, ~~Aurizon Holdings~~ will not take any action that would cause Aurizon Network to be in breach of its obligations in the Access Undertaking.

3.2 Ownership of Rail Infrastructure

Aurizon Holdings must, and must procure that each other member of the Aurizon Group:

- (a) ensure that Rail Infrastructure is, and remains, owned by Aurizon Network for the term of this Deed; and
- (b) take all necessary steps to ensure Aurizon Network owns all Rail Infrastructure developed by Aurizon Network in accordance with **Part 8** of the Access Undertaking (except new Rail Infrastructure funded using SUFA).

3.3 Management separation

Without limiting clause 3.1(a), Aurizon Holdings undertakes that:

- (c) Aurizon Network's Executive Officer be maintained at the same or greater level of seniority within the organisational structure of the Aurizon Group, as the position of the executive manager with direct management responsibility for a Related Operator; or
- (d) in the event there is more than one Related Operator, at the same or greater level of seniority within the organisational structure of the Aurizon Group as the position of the most senior executive manager with direct management responsibility for a Related Operator.

3.23.4 Benefit of Deed

This Deed is provided in favour of the QCA.

3.33.5 Consequences of nNon-compliance

- (e) ~~The consequences of non-compliance with the obligations in **clause 3.1**, will be limited to those described in clause 3.3(b) of the Access Undertaking.~~ Nothing in this Deed prevents Access Holders, Access Seekers, Train Operators or Customers from lodging a complaint with the QCA against Aurizon Network for breach of this Deed in accordance with **Part 3** of the Access Undertaking.
- (f) Aurizon Holdings will be liable for any consequential loss suffered by any party because any member of the Aurizon Corporate Group, including Aurizon Holdings and Aurizon Network, has failed to comply with the obligations outlined in **clause 3.1** of this Deed.

4 New Ultimate Holding Company

To the extent that Aurizon Holdings ceases to be the ultimate holding company of Aurizon Network, it will be a condition precedent of completion of that sale process that Aurizon Holdings ~~will use its best endeavours to~~ procure that the new ultimate holding company of Aurizon Network enters a deed poll in substantially similar form to this Deed ~~as soon as reasonably practicable~~.

Execution

Executed as a deed.

**Executed by Aurizon Holdings
Limited**

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Director Signature

.....
Company Secretary Signature

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Name of Director (print)

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Name of Company Secretary (print)