
[insert Customer] in favour of

Aurizon Network Pty Ltd

Access Interface Deed

Access Agreement - Coal

Date

By

[insert] ABN [insert] of [insert address] (Customer)

[Drafting note: A separate Deed Poll must be executed by each of the Access Holder's Customers.]

In favour of

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

Background

- A Aurizon Network and the Access Holder are parties to the Access Agreement.
 - B Aurizon Network and the Access Holder (in its capacity as the 'Operator' under the Train Operations Deed) are also parties to the Train Operations Deed.
 - C The Access Holder (in its capacity as 'Operator') and the Customer are parties to the Rail Haulage Agreement.
 - D In accordance with the Access Agreement, this Deed records the Customer's agreement in respect of the limitations on Aurizon Network's liability to the Customer in connection with the Haulage Services.
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Agreed terms

1 Interpretation

1.1 Definitions

In this Deed:

Access Agreement means the *Access Agreement – Coal* dated [insert] between Aurizon Network and the Access Holder.

Access Holder means [insert] ABN [insert].

Deed means this deed poll.

Haulage Services means the haulage services provided by the Access Holder (in its capacity as 'Operator') to the Customer under the Rail Haulage Agreement.

Party means Aurizon Network and the Customer.

Rail Haulage Agreement means the agreement, arrangement or understanding between the Access Holder (in its capacity as 'Operator') and the Customer for

the provision of rail haulage services to the Customer and for which purpose the Access Rights and the Operational Rights are required.

Train Operations Deed means the *Train Operations Deed – Coal* dated [insert] between Aurizon Network and the Access Holder (in its capacity as ‘Operator’).

1.2 **Definitions in Access Agreement or Train Operations Deed**

Words or expressions which are not defined in this Deed but which are defined in the Access Agreement or the Train Operations Deed have the meaning given in the Access Agreement or the Train Operations Deed (as applicable).

2 **Aurizon Network’s liability to the Customer**

- (a) The Customer agrees that:
- (i) any provision in the Access Agreement (including **clauses 18 and 19** of the Access Agreement); and
 - (ii) any provision in the Train Operations Deed (including **clauses 25 and 26** of the Train Operations Deed),

which limits, excludes or qualifies a liability or obligation of Aurizon Network applies equally to limit, exclude or qualify a liability or obligation of Aurizon Network to the Customer in respect of the Haulage Services.

- (b) The Customer agrees that, to the extent that Aurizon Network’s liability to the Access Holder under the Access Agreement or the Access Holder (in its capacity as ‘Operator’) under the Train Operations Deed for any loss or damage is limited to a monetary sum, Aurizon Network’s aggregate liability to:
- (i) the Access Holder; and
 - (ii) the Customer in respect of the Haulage Services,
- for such loss or damage is limited, in aggregate, to that monetary sum.

3 **Warranties by the Customer**

3.1 **Warranties**

The Customer warrants that:

- (a) it is a corporation validly existing under the laws applicable to it;
- (b) it has the power to enter into and perform this Deed and has obtained all necessary consents to enable it to do so; and
- (c) its obligations under this Deed are enforceable in accordance with the terms of this Deed.

3.2 **Reliance on warranties**

The Customer acknowledges that Aurizon Network has entered (or will enter) into the Access Agreement in reliance upon the warranties in **clause 3.1**.

4 GST

4.1 Construction

In this **clause 4**:

- (a) words and expressions which are not defined in this Deed but which have a defined meaning in GST Law have the same meaning as in the GST Law;
- (b) **GST Law** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
- (c) references to GST payable and input tax credit entitlement include GST payable by, and the input tax credit entitlement of, the representative member for a GST group of which the entity is a member.

4.2 Consideration GST exclusive

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

4.3 Payment of GST

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

4.4 Timing of GST payment

The recipient will pay the amount referred to in **clause 4.3** in addition to, and at the same time that, the consideration for the supply is to be provided under this Deed.

4.5 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient before the Supplier is entitled to payment of an amount under **clause 4.3**. The recipient can withhold payment of the amount until the Supplier provides a tax invoice or an adjustment note, as appropriate.

4.6 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Deed, the amount payable by the recipient under **clause 4.3** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier, or by the Supplier to the recipient, as the case requires.

4.7 Reimbursements

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

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

5 General

5.1 Duty

- (a) The Customer, as between the Parties, is liable for and must pay all duty (including any fine or penalty except where it arises from ~~default by~~an act or omission of Aurizon Network) on or relating to this Deed, any document executed under it or any dutiable transaction evidenced or effected by it.
- (b) Except to the extent that Aurizon Network pays any fine or penalty that arises from ~~default by~~an act or omission of Aurizon Network, if Aurizon Network pays any duty (including any fine or penalty) on or relating to this Deed, any document executed under it or any dutiable transaction evidenced or effected by it, then the Customer must pay that amount to Aurizon Network on demand.
- (c) If the Customer pays any fine or penalty referred to in clause 5.1(a) that arises from ~~default by~~an act or omission of Aurizon Network ~~on or relating to this Deed, any document executed under it or any dutiable transaction evidenced or effected by it~~, then Aurizon Network must pay that amount to the Customer on demand.

5.2 Legal costs

The Customer must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Deed.

5.3 Amendment

This Deed may only be varied or replaced by a document executed by the Parties.

5.4 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a Party of a right relating to this Deed does not prevent any other exercise of that right or the exercise of any other right.
- (b) A Party is not liable for any loss, cost or expense of any other Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

5.5 Governing law and jurisdiction

- (a) This Deed is governed by and is to be construed in accordance with the laws applicable in Queensland.
- (b) Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts exercising jurisdiction in Queensland and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

5.6 Deed poll

This document is a deed poll. Factors which suggest otherwise are to be disregarded.

5.7 Entire understanding

- (a) This Deed contains the entire understanding between the Parties as to the subject matter of this Deed.

- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Deed are merged in and superseded by this Deed and are of no effect. No Party is liable to any other Party in respect of those matters.
- (c) The Customer has not relied on any representations made by Aurizon Network relating to the subject matter of this Deed.
- (d) Aurizon Network has not relied on any representations made by the Customer relating to the subject matter of this Deed.
- (e) No oral explanation or information provided by any Party to another:
 - (i) affects the meaning or interpretation of this Deed; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the Parties.

5.8 Construction

Unless expressed to the contrary, in this Deed:

- (a) words in the singular include the plural and vice versa;
- (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 a clause to the disadvantage of a Party merely because that Party put forward the clause or would otherwise benefit from it;
- (e) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person’s legal personal representatives, successors, assigns and persons substituted by novation;
 - (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 or power;
 - (v) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
 - (vi) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions; and
 - (vii) a clause, is a reference to a clause of this Deed.

5.9 Headings

Headings do not affect the interpretation of this Deed.

Executed as a deed poll.

Executed by [insert Customer] ABN)
[insert]:)

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

.....
Date

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