
Aurizon Network Pty Ltd

[Insert Customer]

Access Interface Deed

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Parties

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

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

Background

- A. The Customer and the Operator are parties to the Rail Haulage Agreement.
- B. The Railway Manager and the Operator are parties to the Access Agreement.
- C. The Parties wish to enter into this Deed to create a contractual relationship between the Railway Manager and the Customer and record their agreement in respect of circumstances in which they will be liable to each other for loss suffered in connection with the provision or utilisation of Access.

Agreed terms

1 Interpretation

1.1 Definitions

In this Deed:

Access has the meaning given in the Access Agreement.

Access Agreement means the Access Agreement [insert] between the Railway Manager and the Operator dated on or about the date of this Deed.

Access Rights means rights of access granted by the Railway Manager to the Operator under the Access Agreement which are required to enable the Operator to provide the Haulage Services.

Access Undertaking means the access undertaking submitted by the Railway Manager to the QCA and approved by the QCA under the *Queensland Competition Authority Act 1997* (Qld) as in force at the time of entering into the Access Agreement or any later version adopted by the Railway Manager and the Operator under clause 3.2 of the Access Agreement.

Business Day means a day which is not a Saturday, Sunday or public holiday in Brisbane or, if and to the extent that this Deed expressly refers to another place, in that other place.

Claim means any action, proceeding, claim, demand, damage, loss, cost, liability or expense including the costs and expenses of defending or settling any action, proceeding, claim or demand.

Consequential Loss means:

- (a) any loss of revenue, loss of profits or loss of production;

- ~~(b) — any loss of whatever nature concerning supply of product from a mine to any third party or to make product available to transport;~~
- ~~(e)(b) — loss of business opportunities;~~
- ~~(d)(c) — loss of or damage to reputation or goodwill;~~
- ~~(e)(d) — any wasted overheads or demurrage; and~~
- ~~(f)(e) — loss of or damage to credit rating; and~~
- ~~(g) — loss or damage that does not naturally, according to the usual course of things, flow from a breach of contract;~~
- ~~but Consequential Loss does not include any of the following Claims to the extent that the party would in the absence of this definition be entitled to recover them at law:~~
- ~~(h) — any costs or expenses incurred by the party in connection with mitigating the effects of any breach of the Access Agreement by the other party (including implementing a workaround solution in respect of or otherwise mitigating any failure of a party to comply with the requirements (including warranties) of the Access Agreement) provided that if a loss arising from the breach of the Access Agreement is itself not recoverable because it is a Consequential Loss, the costs or expenses incurred in mitigating that loss must also be treated as (non-recoverable) Consequential Loss;~~
- ~~(i) — a loss (including a loss arising out of a Claim by a third party) in respect of:~~
- ~~(i) — the cost of repairing, replacing or reinstating any real or personal property of any person (including a Party) that has been lost, damaged or destroyed; or~~
- ~~(ii) — personal injury to or death of any person; or~~
- ~~(j) — in respect of any personal injury claim, special loss or economic loss as those terms are used in the context of personal injury claims; or~~
- ~~(k) — any fines or penalties imposed by a governmental or regulatory body for failure by the party to comply with the Law as a result of the other party's failure to comply with the requirements of the Access Agreement, and any costs or expenses incurred by the first party in dealing with any actions, investigations, inquiries or proceedings by a governmental or regulatory body in respect of such failure or breaches.~~

Deed means this Access Interface Deed.

Financial Obligation means any obligation of the Customer to pay, or cause to be paid, an amount of money.

Gross Negligence means any act or failure to act which is in total disregard of the consequences.

Haulage Services means the haulage services provided by the Operator to the Customer under the Rail Haulage Agreement.

Infrastructure has the meaning given to the term "Rail Infrastructure" in the Access Undertaking.

Infrastructure Lease means any lease or sublease to Aurizon Network of any Infrastructure which forms part of the Nominated Network.

Infrastructure Lessor means any lessor or sublessor under an Infrastructure Lease.

Joint Venture means the unincorporated joint venture (if any) between the JV Participants specified in Item 2 of Schedule 1.

JV Participants means the entities (if any) specified in **Item 3 of Schedule 1.**

Operator means [insert].

Party means a party to this Deed.

Queensland Competition Authority or **QCA** means the authority established under the *Queensland Competition Authority Act 1997* (Qld).

Rail Haulage Agreement means the agreement between the Operator and the Customer for the provision of rail haulage services to the Customer and for which purpose the Operator requires the Access Rights.

Staff of a party, means the employees, contractors, volunteers and agents of the party and any other person under the control or supervision of the party which is involved in:

- (a) in the case of the Railway Manager, any activity associated with the Access Agreement, the Infrastructure or the provision of Access Rights; and
- (b) in the case of the Customer, any activity associated with:
 - (i) the haulage services provided by the Operator to the Customer under the Rail Haulage Agreement; or
 - (ii) _____ the Customer's mine or other production facility (if any) to which the haulage services provided by the Operator under the Rail Haulage Agreement relate.

(ii) **Wilful Misconduct** means a deliberate act or failure to act undertaken with the knowledge (or which a reasonable person would have assumed) that loss or damage would result.

1.2 Construction

In this Deed, unless expressed to the contrary:

- (a) the singular include the plural and vice versa;
- (b) a gender includes all other genders;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (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, unincorporated association, corporation or other entity, government or statutory body;
 - (ii) a person includes its legal personal representatives, successors and assigns;
 - (iii) conduct includes any omission or any representation, statement or undertaking, whether or not in writing;
 - (iv) conduct includes a benefit, remedy, discretion or power;
 - (v) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
 - (vi) the words "include", "includes" or "including" must be read as if they are followed by the words "without limitation";

- (vii) writing includes:
 - (A) any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions; and
 - (B) words created or stored in any electronic medium and retrievable in perceivable form;
- (viii) time is to local time in Brisbane, Queensland;
- (ix) "A\$", "\$" or "dollars" is a reference to the lawful currency of Australia;
- (x) this or any other document or agreement includes the document or agreement as novated, varied or replaced from time to time and despite any change in the identity of the parties;
- (xi) anything (including any amount) is a reference to the whole or part or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (xii) under a clause includes in accordance with that clause;
- (xiii) a clause or schedule is a reference to a clause or schedule (as applicable) in this Deed;
- (xiv) any legislation or any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;
- (xv) any Authority, association or body whether statutory or otherwise (**first body**) is, if the first body ceases to exist or is re-constituted, re-named or replaced or the powers or functions of the first body is transferred to any other Authority, association or body (**replacement body**), deemed to refer to the replacement body established or constituted in lieu of the first body or as nearly as may be succeeding to the powers or functions of the first body;
- (xvi) access or access rights does not include rights granted by the Railway Manager to a Railway Operator under a train operations deed; and
- (xvii) the Customer, if the Customer is comprised of more than one entity (for example, if the Customer is comprised of the participants in an unincorporated joint venture), is a reference to each entity comprising the Customer [subject to clause 5](#).

1.3 Headings

Headings do not affect the interpretation of this Deed.

2 Relations between the Parties

2.1 No liability for Consequential Loss

~~(a) A Party is The Railway Manager and the Customer are~~ not liable to the other Party and must not make any Claim against the other Party under or in connection with [this Deed](#), the Access Agreement, the Access Rights or the Infrastructure ~~in respect of for~~ any Consequential Loss whether as a result of:

- ~~(a)(i)~~ the performance, non-performance or breach of this Deed, the Access Agreement or any other obligation;
- ~~(b)(ii)~~ the standard of or any failure of or defect in the Infrastructure;
- ~~(c)(iii)~~ negligence;
- ~~(d)(iv)~~ breach of warranty or representation; or
- ~~(v)~~ any other act, omission or circumstance whatsoever.

(b) Clause 2.1(a) does not apply to exclude:

- (i) a Party's liability to the other Party for any Consequential Loss to the extent arising from that Party's Gross Negligence, Wilful Misconduct or fraud; or
- (e)(ii) a Party's right to bring a Claim against the other Party for any Consequential Loss to the extent arising from the other Party's Gross Negligence, Wilful Misconduct or fraud.

2.2 Indemnity for personal injury and property damage between Customer and the Railway Manager and duty to mitigate

- (a) Subject to clauses 2.1 and 2.4, ~~the Customer~~ each Party (**indemnifying Party**) is solely liable for and releases, indemnifies and will keep indemnified the ~~Railway Manager~~ other Party, ~~the Railway Manager's~~ its directors and ~~the Railway Manager's~~ Staff against all Claims of any nature suffered or incurred by or made or brought against the ~~Railway Manager, the Railway Manager's~~ other Party, ~~its~~ directors or ~~the Railway Manager's~~ Staff in respect of:
 - (i) ~~due to or arising out of the Access Agreement or this Deed in respect of~~ any loss of or damage to or destruction of ~~real or personal~~ property (including property of the ~~Railway Manager~~ other Party); or
 - (ii) ~~personal injury to or death of any person,~~
-in each case caused by or (to the extent of the contribution) contributed to by;
 - (iii) ~~any Wilful Misconduct by the wilful default or any deliberate,~~ or
 - (iv) ~~any~~ negligent act or omission of.
- (a) ~~the Customer~~ the indemnifying Party or the directors or Staff of the indemnifying Party in connection with this Deed, the Access Agreement or the Access Rights.
 - (b) Subject to clauses 2.1 and 2.4, the Railway Manager is solely liable for and releases, indemnifies and will keep indemnified the Customer, the Customer's directors and the Customer's Staff against all Claims of any nature suffered or incurred by or made or brought against the Customer, the Customer's directors or the Customer's Staff due to or arising out of the Access Agreement or this Deed in respect of any loss of or damage to or destruction of real or personal property (including property of the Customer) or personal injury to or death of any person in each case caused by or (to the extent of the contribution) contributed to by the wilful default or any deliberate or negligent act or omission of the Railway Manager.
 - (b) Each Party must use all reasonable endeavours to mitigate the damage, loss, cost, liability or expense in respect of which an indemnity in this Deed applies.

2.3 Extent of Aurizon Network's liability to Customer for non-Consequent Loss

Subject to clauses 2.1, 2.4 and 2.5, the Railway Manager will be liable to the Customer for any Claim to the same extent that the Railway Manager would have been liable for that Claim under the Access Agreement if the Claim was made by the Operator.

2.4 Exclusions of Liability in Access Agreement apply

For the purposes of clauses 2.2 and [2.2\(b\)2-3](#), each provision of the Access Agreement that directly or indirectly has the purpose or effect of regulating, excluding or limiting the liability of, or the making of a Claim against, the Railway Manager or the Operator (including limiting what conduct will constitute a breach and setting out when and how a Claim may be brought including any preconditions to doing so) will also operate to regulate, exclude or limit the liability of, or the making of a Claim against, the Railway Manager or the Customer by the other Party. [For the avoidance of doubt, nothing in this clause 2.4 operates to make the Customer liable or increase any otherwise existing liability, or entitle the Railway Manager to make any Claim against the Customer, for or to satisfy \(whether in full or in part\) any liability or obligation of the Operator or any act or omission of the Operator, its directors or Staff.](#)

2.5 Application of References to Operator in Access Agreement

For the purposes of applying clauses [2.2\(b\)2-3](#) and 2.4, all references to the Operator in relevant provisions of the Access Agreement will be deemed to include reference to the Customer, except to the extent that any such provision refers to or requires the Operator or the Railway Manager and the Operator to agree anything which will only be deemed to be a reference to the Customer where:

- (a) the matter to be agreed relates to the Claim or subject of the Claim by the Customer; and
- [\(b\)](#) the matter has not, prior to the Claim, been agreed by the Railway Manager and the Operator for the purposes of the Access Agreement.

[2.6 No effect on other arrangements](#)

[Nothing in this Deed, including clauses 2.1, 2.3 and 2.4, will operate to limit, exclude or qualify any liability or obligation of:](#)

- [\(a\) one Party to the other Party arising under or in connection with any agreement or deed \(other than this Deed\) to which the Railway Manager and the Customer are parties, whether alone or together with one or more other persons; or](#)
- [\(b\) any liability or obligation of the Operator to the Customer arising under or in connection with the Rail Haulage Agreement or the Haulage Services.](#)

3 Assignment

A Party must not assign its interests under the Access Agreement or the Rail Haulage Agreement (as applicable) to another person (intended assignee) unless the intended assignee has first executed and delivered to the other Party a deed of assumption, in a form acceptable to the other Party, acting reasonably, under which the intended assignee undertakes to be bound by the terms of this Deed.

4 General

4.1 Amendment

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

4.2 Entire understanding

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

4.3 Counterparts

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

4.4 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 another Party) on or relating to this Deed, any document executed under it or any dutiable transaction evidenced or effected by it.
- (b) If a Party other than the Customer 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, the Customer must pay that amount to the paying Party on demand.

4.5 GST

- (a) In this clause 4.5:
 - (i) 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;
 - (ii) GST Law has the same meaning given to that expression in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- (b) If GST is or will be imposed on a supply made under or in connection with this Deed by a Party (Supplier), the Supplier may, to the extent that the consideration otherwise provided for that supply is not stated to include an amount in respect of GST on the supply:
 - (i) increase the consideration otherwise provided for that supply under this Deed by the amount of that GST; or

(ii) otherwise recover from the recipient of the supply the amount of that GST.

(c) Subject to clause 4.5(d), the recipient of the supply will pay the amount referred to in clause 4.5(b) in addition to, and at the same time that, the consideration for the supply is to be provided under this Deed.

(d) The Supplier must deliver a tax invoice to the recipient of the supply before the Supplier is entitled to payment of any amount under clause 4.5(b).

4.54.6 Legal costs

Except as expressly stated otherwise in this Deed, each Party must bear its own legal and expenses relating directly or indirectly to the preparation of, and performance of its obligations under, this Deed.

4.64.7 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) No failure or delay by either Party to exercise any right or remedy under this Deed may be construed or operate as a waiver or be evidence of delay, laches or acquiescence in equity or at law in respect of such right or remedy.
- (c) A waiver or consent by any Party of any default or breach of any term of this Deed does not constitute a waiver of later defaults or breaches of the same or any other term.
- (d) A Party's election not to exercise any rights under this Deed does not prejudice any other rights which that Party may have against the other Party arising out of any failure by the other Party to comply with this Deed.
- (e) 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.

4.74.8 Computation of time

Where time is to be calculated by reference to a day or event, that day or the day of the event is excluded.

4.84.9 Governing law and jurisdiction

- (a) This Deed is governed by, and is to be construed in accordance with, the law in force in Queensland.
- (b) Each Party irrevocably and unconditionally submits to the non-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.

4.94.10 Liability

Subject to clause 5, aAn obligation of two or more persons binds them separately and together.

5 JV Participants and liability

5.1 Applicability

This clause 5 only applies if **Item 1 of Schedule 1** states that it applies.

5.2 Warranty

The Customer warrants that it enters into this Deed as agent for the JV Participants in their respective percentage interests in the Joint Venture from time to time.

5.3 JV Participants and percentage interests

- (a) The percentage interest of the JV Participants in the Joint Venture will be as notified by the Customer to the Railway Manager from time to time.
- (b) As at the date the Customer executes and delivers this Deed, the respective percentage interests of the JV Participants in the Joint Venture are as specified in **Item 3 of Schedule 1**.

5.4 Liability of JV Participants

- (a) The liability of each JV Participant under this Deed will subject to clause 5.4(c), be several in respect of Financial Obligations in proportion to their respective percentage interests.
- (b) Each JV Participant will be jointly and severally liable in respect of the performance of any obligations under this Deed that are not Financial Obligations.
- (c) Subject to clause 5.4(e), if a JV Participant is in default of a Financial Obligation and the Customer has not given notice to the Railway Manager identifying the defaulting JV Participant within 5 Business Days after the date of the Railway Manager giving notice to the Customer identifying the default, all JV Participants will be jointly and severally liable for the performance of the Financial Obligation.
- (d) Any notice given by the Customer under clause 5.4(c) is conclusive evidence that the JV Participant specified in the notice is the JV Participant that is in default and the notice binds all JV Participants.
- (e) If the Financial Obligation is a payment obligation which does not have a specified due date, then clause 5.4(c) comes into effect only if:
 - (i) the Railway Manager notified the JV Participants of the failure to comply with the Financial Obligation; and
 - (ii) the default is not remedied after a reasonable time (of at least 20 Business Days) from the date the JV Participants receive the notice under clause 5.4(e)(i).

Execution

Executed as a deed

Type Category

Executed by
Aurizon Network Pty Ltd
ABN 78 132 181 116

sign here ► _____
Company Secretary/Director

print name _____

sign here ► _____
Director

print name _____

Date: _____

Type Category

Executed by
[Insert]

sign here ► _____
Company Secretary/Director

print name _____

sign here ► _____
Director

print name _____

Date: _____

Schedule 1

Joint Venture

1 **Does clause 5.4 apply?** [yes/no]

2 **Name of Joint Venture** [insert name of Joint Venture or "Not Applicable" if no Joint Venture]

<u>3</u> <u>JV Participants and percentage interests</u>	<u>Name of JV Participant</u>	<u>Percentage Interest</u>
	<u>[insert name]</u>	<u>[insert interest]%</u>
	<u>[insert name]</u>	<u>[insert interest]%</u>
	<u>[insert name]</u>	<u>[insert interest]%</u>
