

Aurizon Network Pty Ltd

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

~~[Access Seeker]~~

User Funding – Access Agreement Specific Terms Deed

[insert Extension name]

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Date

Parties

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

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

[Access Seeker] [ACN][insert] of [insert] (Access Seeker)

Background

- A The Trustee will procure the design, supply, procurement, construction, testing and commissioning and completion of the Extension under the Construction Agreement.
 - B The Trustee will lease and sublease the Extension Infrastructure to Aurizon Network under the Extension Infrastructure Sub-Lease.
 - C The Extension Infrastructure will be regulated as part of Aurizon Network's Railway Network under the Access Undertaking and the Access Legislation.
 - D The Access Seeker wishes to secure rights to access parts of Aurizon Network's Railway Network (including the Extension Infrastructure).
 - E Under this Deed, the Access Seeker and Aurizon Network agree to enter into an access agreement under which Aurizon Network will grant the Access Seeker access to Aurizon Network's Railway Network (including the Extension Infrastructure).
-

Agreed terms

- 1 Interpretation
 - 1.1 **Extension Project Agreement**

In this Deed, except to the extent a term is defined in **clause 1.2** or otherwise expressed to the contrary, capitalised terms have the meaning given in the Extension Project Agreement.

1.2 Definitions

In this Deed:

Access Agreement means Aurizon Network's standard access agreement (or if more than one standard access agreement, any of them – but does not include a standard train operations deed), as approved by the Access Regulator as at the time that the access agreement is entered into, or deemed to be entered into, under an Access Agreement Specific Terms Deed, as completed and modified by Aurizon Network in accordance with an Access Agreement Specific Terms Deed.

Access Agreement Term for an Access Agreement entered into, or deemed to be entered into, under **clause 3** means a term ending ten years after the Commitment Date for the Access Agreement (or other period agreed in writing between Aurizon Network and the Access Seeker).

[Drafting note: This definition may need to be updated depending upon the types of standard access agreements in place at the time this Deed is entered into.]

Access Charges means access charges invoiced by Aurizon Network under an Access Agreement.

Access Period means each year (or part year) specified in **part 1** of **schedule 1**.

[Drafting note: The Access Periods specified in part 1 of schedule 1 will typically be yearly periods during the Access Agreement Term but shorter Access Periods may be specified (most likely to during a ramp-up phase at the start of the Access Agreement Term).]

Access Rights means the rights of access to the Railway Network granted, or to be granted, by Aurizon Network under an access agreement.

Access Seeker Segments means those sections of the railway corridor described as such in **schedule 2**.

Assign means to assign, novate, transfer, part possession with, license, charge, mortgage, become trustee of, grant an option or other right over or otherwise deal with or encumber and **Assignment** and **Assignee** shall have comparable meanings.

Commitment Date has the meaning given in **item 4** of **part 2** of **schedule 1**.

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

Cost has the meaning given in **clause 6.5(h)(i)**.

Date for Practical Completion has the meaning given to "date for practical completion" in the Construction Agreement.

Deed means this document, including the **schedules**.

Default Access Agreement has the meaning given in **clause 3.3(b)**.

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

Due Date means the latest Date for Practical Completion for all of the Separable Portions to be carried out on, in, under or over the Access Seeker Segments. [Drafting note: to be reviewed on a transaction by transaction basis.]

Extension Project Agreement means the agreement entitled “User Funding – Extension Project Agreement: [insert Extension name]” between the Trustee, the Access Seeker, Aurizon Network and others.

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

Insolvency Event in relation to the Access Seeker means the happening of any of the following events in relation to the Access Seeker:

- (a) it is unable to pay all its debts as and when they become due and payable or it has failed to comply with a statutory demand as provided in section 459F(1) of the Corporations Act;
- (b) a meeting is convened to pass a resolution to place it in voluntary liquidation or to appoint an administrator unless the resolution is withdrawn within 10 Business Days or the resolution fails to pass;
- (c) an application is made to a court for it to be wound up and the application is not dismissed within 10 Business Days after it is made;
- (d) the appointment of a liquidator, provisional liquidator or controller (as defined in the Corporations Act) of any of its assets if that appointment is not revoked within 10 Business Days after it is made;
- (e) it resolves to enter into or enters into any form of arrangement (formal or informal) with its creditors or any of them, including a deed of company arrangement; or
- (f) any similar event occurs in respect of the Access Seeker under the laws of any jurisdiction other than Australia.

[Drafting note: To be amended on each transaction to reflect the then current language from Access Agreements agreed with the Regulator]

GST has the meaning given in the GST Law.

GST Law has the meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Nominated Access Rights for an Access Period means the Access Rights specified in **part 1 of schedule 1** for that Access Period.

Notice has the meaning given in **clause 6.3**.

Parties means collectively Aurizon Network, the Trustee and the Access Seeker, and **Party** means any one of them.

Pro Forma Access Agreement means an Access Agreement between Aurizon Network and the Access Seeker which is taken to be modified and completed in accordance with **clause 3.2**, provided that:

- (a) the date of the Access Agreement which is taken to be completed under **clause 3.2** will be the Due Date; and
- (b) the Nominated Access Rights which are taken to be included in the Access Agreement under **clause 3.2** will be the Nominated Access Rights for each Access Period during the Access Agreement Term to the extent that the Nominated Access Rights for each Access Period during the Access Agreement Term are not otherwise the subject of an Access Agreement referred to in **clause 3.1**.

Railway Operator has the meaning given in the Access Undertaking.

Revenue has the meaning given in **clause 6.5(h)(ii)**.

Separable Portion has the meaning given to "separable portion" in the Construction Agreement.

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

[Train Service Commitment Date](#) has the meaning given in [item 4 of part 2 of schedule 1](#).

1.3 Interpretation

Unless expressed to the contrary, the provisions of clause [\[1.2\]](#) of the Extension Project Agreement apply to this Deed.

2 Term

- (a) Other than for **clause 2(b)** (which commences on the date of this Deed), this Deed commences on the Condition Precedent Satisfaction Date and will continue until the date that:
 - (i) an Access Agreement or Access Agreements for the whole of the Nominated Access Rights for each Access Period during the Access Agreement Term and which meet the requirements of **clause 3.1(a)** have been entered under **clause 3.1(a)**; or
 - (ii) an Access Agreement is deemed to be entered into under **clause 3.3**.
- (b) For the avoidance of doubt, this Deed will automatically terminate, without the need for any Party to give notice to any other Party, if:
 - (i) the Extension Project Agreement has not been executed by all of the parties to it on or before the End Date; or
 - (ii) the Extension Project Agreement is terminated in accordance with clause [\[2.5\]](#) of the Extension Project Agreement.

3 Access Agreement

3.1 Entry into Access Agreement

- (a) Within the six Month period ending on the Due Date:
- (i) the Access Seeker and Aurizon Network must enter into an Access Agreement for the Access Agreement Term for the whole of the Nominated Access Rights for each Access Period during the Access Agreement Term;
 - (ii) the Access Seeker must procure a Railway Operator to enter into an Access Agreement with Aurizon Network for the Access Agreement Term for the whole of the Nominated Access Rights for each Access Period during the Access Agreement Term; or
 - (iii) the Access Seeker must ensure that any number or combination of Access Agreements are entered into with Aurizon Network for the Access Agreement Term which together are for the whole of the Nominated Access Rights for each Access Period during the Access Agreement Term.
- (b) Aurizon Network must use all reasonable endeavours to assist the Access Seeker to comply with **clause 3.1(a)**.
- (c) If the Access Seeker has complied with **clause 3.1(a)** but the Due Date is subsequently varied to reflect a delay to the Date for Practical Completion, the Access Seeker is deemed to have satisfied this **clause 3.1(a)** despite the Access Agreement being entered into more than 6 Months prior to the Due Date.

3.2 Completion and modification of Access Agreement

- (a) If:
- (i) the Access Seeker wishes to enter into an Access Agreement under **clause 3.1(a)(i)**, then the Access Seeker irrevocably authorises and directs Aurizon Network; and/or
 - (ii) the Access Seeker nominates a Railway Operator to enter into an Access Agreement under **clause 3.1(a)(ii)**, then the Access Seeker must procure the nominated Railway Operator to irrevocably authorise and direct Aurizon Network,
- to:
- (iii) complete the applicable Access Agreement by inserting the date of the applicable Access Agreement;
 - (iv) complete the applicable Access Agreement by including a term equal to the Access Agreement Term;
 - (v) complete the applicable Access Agreement to include the applicable Nominated Access Rights for each Access Period during the Access Agreement Term;

- (vi) complete and include in the applicable Access Agreement all schedules and attachments referred to in, or contemplated by, the applicable Access Agreement; and
 - (vii) modify and otherwise complete the terms of the applicable Access Agreement in accordance with **part 2 of schedule 1**.
- (b) Aurizon Network must act reasonably and in good faith in completing and modifying any Access Agreements under this **clause 3.2**.
 - (c) The Access Seeker must (and must procure its nominated Railway Operator, if applicable, to) act reasonably and in good faith in its dealings with Aurizon Network in relation to the completion and modification of any Access Agreements entered into under this **clause 3.2**.

[Drafting note: As an alternative to the approach contemplated under clauses 3.1 and 3.2, a near complete version of the applicable Access Agreement (modified in accordance with schedule 1) could be annexed to this Deed. This clause 3 could be amended to provide for the Access Seeker to enter into that version of the Access Agreement after any incomplete matters have been completed by Aurizon Network. This clause 3 (and associated definitions) would need to be amended to give effect to that alternative approach.]

3.3 **Default Access Agreement**

- (a) This **clause 3.3** applies if (and only if) an Access Agreement or Access Agreements which meet the requirements of **clause 3.1(a)** have not been entered into on or by the Due Date.
- (b) A document in the form of the Pro Forma Access Agreement (**Default Access Agreement**):
 - (i) is taken to be in full force and effect on and from the Due Date as an access agreement between Aurizon Network and the Access Seeker for the Access Agreement Term; and
 - (ii) binds Aurizon Network and the Access Seeker on and from the Due Date,

whether or not Aurizon Network and the Access Seeker have properly executed that document.
- (c) Promptly after:
 - (i) the Due Date, Aurizon Network must deliver a copy of the Default Access Agreement to the Access Seeker; and
 - (ii) the copy of the Default Access Agreement is delivered to the Access Seeker, the Access Seeker must duly execute a copy of the Default Access Agreement and deliver it to Aurizon Network.

4 Termination

4.1 Termination by Aurizon Network or the Access Seeker for Insolvency Event and automatic termination

- (a) Aurizon Network may immediately terminate this Agreement by notice to the Access Seeker and the Trustee if an Insolvency Event occurs in respect of the Access Seeker and continues for a period of at least 40 Business Days.
- (b) The Access Seeker may immediately terminate this Agreement by notice to the Aurizon Network and the Trustee if an Insolvency Event occurs in respect of Aurizon Network and continues for a period of at least 40 Business Days.
- (c) This Agreement will automatically terminate, without the need for any Party to give notice to any other Party, on the date that the Trust is wound up in accordance with the Trust Deed and Unit Holders Deed.

4.2 No other rights of termination

Except as provided in **clauses 2(b)** and **4.1** and despite any rule of law or equity to the contrary, no Party may terminate, rescind or treat as repudiated, or obtain any order with the effect of terminating or rescinding, this Deed.

4.3 No prejudice as to right to damages

Subject to **clause 5**, nothing in this **clause 4** prejudices in any way a Party's right to Claim and recover damages for any breach of this Deed by the another Party.

5 Limitation of liability

5.1 Trustee's limitation of liability

- (a) Aurizon Network and the Access Seeker acknowledge that the Trustee enters into this Deed 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 [13.2] of the Extension Project Agreement which are given by the Trustee in its personal capacity).
- (b) A liability of the Trustee arising under, or in connection with, this Deed is limited to and can be enforced against the Trustee only to the extent to which the Trustee is entitled to be indemnified out of the Trust for the liability and the liability can be satisfied out of property of the Trust.
- (c) The limitation of liability in this **clause 5.1** will not apply to any liability of the Trustee to the extent that the liability is not satisfied out of the property of the Trust because there is a reduction in the Trustee's right of indemnity as a result of the Trustee committing:
 - (i) fraud;

- (ii) Gross Negligence;
- (iii) Wilful Default;
- (iv) breach of trust; or
- (v) breach of the Trust Deed or the Unit Holders Deed.

5.2 **Aurizon Network's limitation of liability**

Aurizon Network's liability to the Access Seeker in respect of a Claim arising out of, or in any way related to, a Transaction Document, other than this Deed and the Extension Project Agreement, is limited to \$1.00. For the avoidance of doubt, this **clause 5.2** does not apply to any liability of Aurizon Network in respect of:

- (a) an Access Agreement or Access Agreements entered into under **clause 3.1**;
- (b) an Access Agreement entered into under **clause 3.2**; or
- (c) a Default Access Agreement.

5.3 **Application of Extension Project Agreement**

Subject to **clause 5.2**, the limitations and provisions contained in clause **[7]** (other than clause **[7.3]**) of the Extension Project Agreement apply to this Deed *mutatis mutandis*.

6 **General**

6.1 **Disputes**

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

6.2 **Confidentiality**

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

6.3 **Notices**

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

6.4 **Assignment**

- (a) Subject to the following provisions of this **clause 6.4**, the Access Seeker must not Assign its rights or obligations, or part thereof, under this Deed or the Extension Project Agreement without the prior written consent of Aurizon Network, which consent may not be unreasonably withheld.
- (b) The Access Seeker may, provided it is not in default in the performance or observance of any of its obligations under this Deed, Assign the whole

of its rights and obligations under this Deed and the Extension Project Agreement (at the same time) to:

- (i) a Related Body Corporate of the Access Seeker which is capable of performing the obligations of the Access Seeker under this Deed, the Extension Project Agreement and an Access Agreement to be entered into under **clause 3.1(a)(i)** provided that the Access Seeker will remain liable for the performance of the duties, responsibilities and obligations assumed by the Assignee and provided however that performance by the Assignee will, to the extent of its assumption, discharge the Access Seeker from liability for performance of those duties, responsibilities and obligations that are Assigned; or
- (ii) a person other than a Related Body Corporate of the Access Seeker with the prior written consent of Aurizon Network, provided that such consent will not be unreasonably withheld if Aurizon Network is satisfied that such person:
 - (A) is financially sound; and
 - (B) is otherwise capable of performing the obligations of the Access Seeker under this Deed, the Extension Project Agreement and an Access Agreement to be entered into under **clause 3.1(a)(i)**
- (c) Any Assignment by the Access Seeker of its rights or obligations under this Deed and the Extension Project Agreement will be conditional upon and will not take effect until the Assignee covenants with Aurizon Network by deed, in such terms as Aurizon Network may reasonably require, to be bound by and to perform the obligations of the Access Seeker under this Deed and the Extension Project Agreement.
- (d) Any change in shareholding of the Access Seeker altering the effective control of the Access Seeker will be deemed to be an Assignment of this Deed and the Extension Project Agreement except where:
 - (i) the Access Holder or its ultimate holding company (as that term is defined in the Corporations Act 2001) is listed on a recognised stock exchange and:
 - (A) the change in shareholding is a result of a change in shareholding of that listed entity; and
 - (B) that listed entity remains listed on that recognised stock exchange both before and after that change in shareholding; or
 - (ii) the ultimate holding company (as that term is defined in the Corporations Act 2001) of the Access Holder does not change as a result of the change in shareholding.

6.5 GST

- (a) In this **clause 6.5**:

- (i) unless there is a contrary indication, 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; and
 - (ii) references to GST payable and input tax credit entitlement include GST payable by, and the input tax credit entitlement of, the representative member for a GST group of which the entity is a member and the GST joint venture operator of any GST joint venture of which the entity is a participant.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Deed are exclusive of GST.
- (c) If GST is payable on any supply made by a Party (or any entity through which that Party acts) (**Supplier**) under or in connection with this Deed, the recipient of the supply will pay to the Supplier an amount equal to the GST payable on the supply.
- (d) The amount referred to in **clause 6.5(c)** must be paid in addition to and at the same time and in the same manner (without any set-off or deduction) that the consideration for the supply is to be provided under this Deed.
- (e) The Supplier must deliver a tax invoice or an adjustment note to the recipient of a taxable supply before the Supplier is entitled to payment of an amount under **clause 6.5(c)**, and the recipient can withhold payment of the amount until the Supplier provides a tax invoice or an adjustment note, as appropriate.
- (f) If an adjustment event arises in respect of a taxable supply made by a Supplier under this Deed, the amount payable by the recipient under **clause 6.5(c)** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier, or by the Supplier to the recipient, as the case requires.
- (g) Where a Party is required under this Deed to pay for, reimburse or contribute to an expense, loss, liability or outgoing of another Party or indemnify another Party in relation to such an expense, loss, liability or outgoing, the amount required to be paid, reimbursed or contributed by the first Party will be the sum of:
 - (i) the amount of the expense, loss, liability or outgoing less any input tax credits in respect of the expense, loss, liability or outgoing to which the other Party is entitled; and
 - (ii) if the payment, reimbursement or contribution is subject to GST, an amount equal to that GST.
- (h) If an amount of consideration payable or to be provided under or in connection with this Deed is to be calculated by reference to:
 - (i) any expense, loss, liability or outgoing suffered or incurred by another person (**Cost**), that reference will be to the amount of that

Cost excluding the amount of any input tax credit entitlement of that person relating to the Cost suffered or incurred; and

- (ii) any price, value, sales, proceeds, revenue or similar amount (**Revenue**), that reference will be to that Revenue determined by deducting from it an amount equal to the GST payable on the supply for which it is consideration.

6.6 **Stamp Duty**

- (a) As between the Parties, the Access Seeker is liable for and must pay all Stamp Duty on or relating to this Deed, any document executed under it or any dutiable transaction contemplated, evidenced or effected by it.
- (b) If Aurizon Network or the Trustee pays any Stamp Duty to which **clause 6.6(a)** applies, the Access Seeker must pay that amount to Aurizon Network or the Trustee (as applicable) on demand and hereby indemnifies Aurizon Network and the Trustee for that amount.

6.7 **Survival**

This **clause 6** and **clauses 1, 4.3** and **5** survive the termination of this Deed.

6.8 **Incorporated General Provisions**

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

6.9 **Applicable law**

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

6.10 **Counterparts**

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

Executed as a deed.

Executed by **[Independent Trustee]**)
as trustee for the **[Name of Trust]** in)
accordance with section 127 of the
Corporations Act 2001 (Cth):

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

Date: / /

Executed by **Aurizon Network Pty**)
Ltd in accordance with section 127 of)
the *Corporations Act 2001* (Cth):

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

Date: / /

Executed by **[Access Seeker]** 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: / /

Schedule 1

Access Agreement (Clause 3.2)

Part 1 - Nominated Access Rights

| Access Period | Nominated Access Rights |
|---------------|-------------------------|
| [insert] | [insert] |
| [insert] | [insert] |

[Drafting note: This part 1 of schedule 1 will specify the Nominated Access Rights (expressed as train service entitlements) for each Access Period (being a year or part year) during the Access Agreement Term for any Access Agreement(s) entered into, or deemed to be entered into, under clause 3. All of the details of the train service entitlements (including origins and destinations, section run times and train configurations) that would be completed in schedule 1 of an Access Agreement will be included in part 3 of this schedule 1.]

Part 2 - Modification to terms of Access Agreement

[Drafting note: The items in this part 2 of schedule 1 may need to be amended to reflect the provisions of any standard Access Agreement in effect at the time this Deed is to be executed.]

Each:

- (a) Access Agreement between Aurizon Network and the Access Seeker (**Access Holder**); and/or
- (b) Access Agreement between Aurizon Network and the Access Seeker's nominated Railway Operator (also an **Access Holder**),

to be entered into under **clause 3** is required to be modified as follows:

| Item | Matter | Principle or requirement |
|------|----------------|--|
| 1 | Train services | The train description for the train service type for the train services to be operated by the Access Holder under the Access Agreement will be as described in part 3 of this schedule 1 . |
| 2 | Term | The term of the Access Agreement will commence on the date of execution of the Access Agreement (or such later date as |

| Item | Matter | Principle or requirement |
|------|--|---|
| | | agreed by the parties to the Access Agreement) and end on the "Termination Date" (as defined in item 3 of this part 2 of schedule 1). |
| 3 | Termination Date | <p>The date of termination for the Access Agreement (Termination Date) must be the earlier of:</p> <p>(a) ten years [Drafting note: Other periods to be to be specified on a transaction-by-transaction basis.] after the "Commitment Date" (as defined in item 4 of this part 2 of schedule 1); and</p> <p>(b) the date on which the Access Agreement is terminated pursuant to the provisions of the Access Agreement.</p> |
| 4 | Train Services Commitment Date for train service type and Commitment Date under Access Agreement | <p>(a) The date by which the access rights under the Access Agreement are to be available to the Access Holder (such date being the Train Service Commitment Date for the train service type for the train services, and the Commitment Date, under the Access Agreement) must be the later of:</p> <p>(i) the last to occur Date of Practical Completion of all of the Separable Portions to be carried out on, in, under or over the Access Seeker Segments;</p> <p>(ii) [insert date]; and</p> <p>[Drafting note: The above date to be specified on a transaction-by-transaction basis.]</p> <p>(iii) the date on which Aurizon Network, acting reasonably, is satisfied that any "Connecting Infrastructure" (as defined in Aurizon Network's 2016 Access Undertaking (as approved on 11 October 2016) as at the date</p> |

| Item | Matter | Principle or requirement |
|------|--------|--|
| | | <p>of this Deed) in respect of the connection of the Required Mine Specific Infrastructure to Aurizon Network's Railway Network and any other enhancements (other than the Extension) required to Aurizon Network's Railway Network have been completed,</p> <p>provided that the Train Service Commitment Date for the train service type for the train services, and the Commitment Date, under any subsequent Derivative Access Agreement entered into after the above dates to replace an expired or terminated Access Agreement will be the day following the date of the expiration or termination of the Access Agreement which the subsequent Derivative Access Agreement is replacing.</p> <p>(b) In this item 4 of part 2 of schedule 1:</p> <p>Date of Practical Completion has the meaning given to "date of practical completion" in the Construction Agreement.</p> <p>Derivative Access Agreement has the meaning given in item 6 of this part 2 of schedule 1; and</p> <p>Required Mine Specific Infrastructure means rail transport infrastructure (including any enhancements to existing rail transport infrastructure) that is either:</p> <ul style="list-style-type: none"> (i) identified as Required Mine Specific Infrastructure on the plan detailed in part 4 of this schedule 1; or (ii) not identified on the plan detailed in part 4 of this schedule 1 as being Required |

| Item | Matter | Principle or requirement |
|------|--|---|
| | | <p>Mine Infrastructure, but is other infrastructure which does not form part of the Extension but is required to connect the Access Seeker's mine to Aurizon Network's Railway Network so as to enable the Nominated Access Rights to be used by or for the Access Holder (if any).</p> |
| 5 | Direction to pay | <p>If, at the same time as Aurizon Network gives the Access Holder an invoice in respect of the Access Charges payable under the Access Agreement, Aurizon Network does not give the Access Holder a direction to pay the Access Charges payable under such invoice into one or more bank accounts nominated by Aurizon Network then, despite the Access Holder not being given a direction to pay, the Access Holder will be taken to have been given a direction by Aurizon Network to pay the whole of the amount payable under such invoice into the "Direction to Pay Account" (as defined in the Extension Infrastructure Sub-Lease).</p> |
| 6 | Modifications to be included in Derivative Access Agreements | <p>(a) Aurizon Network and the Access Holder agree that the terms of any Derivative Access Agreement will, prior to execution of the Derivative Access Agreement, be modified in accordance with this part 2 of schedule 1 as if each reference to:</p> <ul style="list-style-type: none"> (i) "Access Holder" in this part 2 of schedule 1 is a reference to the access holder under the Derivative Access Agreement; and (ii) "Access Agreement" in this part 2 of schedule 1 is a reference to the Derivative Access Agreement. <p>(b) Entry into a Derivative Access Agreement by Aurizon Network is conditional upon the Derivative</p> |

| Item | Matter | Principle or requirement |
|------|------------------|---|
| | | <p>Access Agreement being consistent with the modifications provided in paragraph (a) of this item 6 of part 2 of schedule 1.</p> <p>(c) In this item 6 of part 2 of schedule 1, Derivative Access Agreement means:</p> <ul style="list-style-type: none"> (i) an access agreement entered into (or deemed to be entered into) under clause 3 of this Deed; and (ii) any access agreement entered into as a consequence of: <ul style="list-style-type: none"> (A) the renewal, replacement, transfer, assignment or novation, in whole or in part, of an access agreement referred to in paragraph (c)(i) or this paragraph (c)(ii) of this item 6 of part 2 of schedule 1; and (B) the transfer, in whole or in part, of the access rights under an access agreement referred to in paragraph (c)(i) or this paragraph (c)(ii) of this item 6 of part 2 of schedule 1, <p>despite the identity of the parties to such access agreement being different to the parties to an access agreement referred to in paragraph (c)(i) or this paragraph (c)(ii) of this item 6 of part 2 of schedule 1.</p> |
| 7 | Right of renewal | <p>(a) Where:</p> <ul style="list-style-type: none"> (i) all or any part of the Access Holder's Access Rights are to expire; (ii) the Access Holder either: <ul style="list-style-type: none"> (A) has no Customer; or (B) where the Access Holder |

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| | | <p>has a Customer, that Customer has nominated the Access Holder in writing to Aurizon Network for the purpose of the requirement under this item 7 of part 2 of schedule 1; and</p> <p>(iii) the Access Holder wishes to continue to hold equivalent Access Rights (based on the expiring Access Rights immediately prior to that expiry), subject to paragraph (b) of this item 7 of part 2 of schedule 1, for a further term:</p> <p>(A) (C) commencing immediately after the expiring Access Rights are to expire; and</p> <p>(B) (D) that is the lesser of ten years and the remaining life of the relevant mine (as evidenced to Aurizon Network's satisfaction (acting reasonably) by the Access Holder),</p> <p>(a Renewal),</p> <p>the Access Holder may submit an Access Application to Aurizon Network at least 12 Months but no more than 60 Months prior to the expiry of the relevant Access Rights.</p> <p>(b) For the purpose of paragraph (a)(iii) of this item 7 of part 2 of schedule 1, Aurizon Network must disregard any change to the origin or destination from the relevant expiring Access Rights in considering whether the relevant Access Rights are equivalent Access Rights so long as Train Services for the Renewal:</p> <p>(i) continue to have substantially</p> |

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| | | <p>the same Train Paths as the Train Services under the relevant existing Access Rights. For clarity, the Renewal may include a longer haul than those existing Train Services;</p> <p>(ii) do not adversely affect the ability of the Access Holder or other persons to use their Access Rights under their respective Access Agreements;</p> <p>(iii) have an origin which is located in the same Track Segment as the origin of the Train Services under the relevant existing Access Rights; and</p> <p>(iv) are not in excess of the relevant existing Access Rights. For clarity, the Train Services for the Renewal may include a longer haul than the existing Train Services and will not be considered to be in excess of the existing Access Rights if paragraphs (i), (ii) and (iii) above are satisfied.</p> <p>(c) If an Access Application submitted under paragraph (a) of this item 7 of part 2 of schedule 1 is not a Renewal Application, then this item 7 of part 2 of schedule 1 will not apply to the Access Application (and, for the avoidance of doubt, it will be considered in accordance with the Access Undertaking in force at the time of such Access Application if, and to the extent that, it is required to be considered under that Access Undertaking).</p> <p>(d) Subject to paragraph (e) of this item 7 of part 2 of schedule 1, if an Access Application submitted under paragraph (a) of this item 7 of part 2 of schedule 1 is a Renewal</p> |

| Item | Matter | Principle or requirement |
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| | | <p>Application, then, Aurizon Network will enter into an access agreement (on the terms of the applicable then standard access agreement modified as a “Derivative Access Agreement” in accordance with item 6 of this part 2 of schedule 1, and with a term consistent with paragraph (a)(iii) of this item 7 of part 2 of schedule 1) to give effect to the Renewal under the Renewal Application.</p> <p>(e) Paragraph (d) of this item 7 of part 2 of schedule 1 will not apply to a Renewal Application submitted after the date that the Extension Infrastructure Sub-Lease expires or terminates (for any reason).</p> <p>(f) For the avoidance of doubt, if an Access Holder makes an Access Application for access rights in addition to the Access Rights sought under a Renewal Application, then:</p> <p>(i) this item 7 of part 2 of schedule 1 will not apply to that Access Application;</p> <p>(ii) that Access Application will not prejudice the Access Holder’s rights under this item 7 of part 2 of schedule 1 in respect of a Renewal Application; and</p> <p>(iii) that Access Application will be considered in accordance with the Access Undertaking in force at the time of that Access Application if, and to the extent that, it is required to be considered under that Access Undertaking.</p> <p>(g) In this item 7 of part 2 of schedule 1, Renewal Application means an Access Application submitted under, and within the time required in, paragraph (a) of this item 7 of part</p> |

| Item | Matter | Principle or requirement |
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| | | <p>2 of schedule 1 but does not include such an Access Application in respect of Access Rights that were granted to the relevant Access Holder under its existing Access Agreement as a Transferee.</p> <p>(h) Capitalised terms (other than "Access Holder", "Renewal" and "Renewal Application") used in this item 7 of part 2 of schedule 1 which are defined in Aurizon Network's 2016 Access Undertaking (as approved on 11 October 2016) have the meaning given in Aurizon Network's 2016 Access Undertaking (as approved on 11 October 2016). "Access Holder", "Renewal" and "Renewal Application" have the meaning given in this schedule 1.</p> |
| 8 | Obligation to pay 'Take or Pay' charges | <p>(a) If:</p> <p>(i) the Access Agreement is entered into under clause 3; and</p> <p>(ii) both of the following dates have occurred:</p> <p>(A) the last to occur Date of Practical Completion for all of the Separable Portions to be carried out on, in, under or over the Access Seeker Segments; and</p> <p>(B) [insert date]; and</p> <p>[Drafting note: The above date should be same as that in item 4(a)(ii) of Part 2 of this Schedule 1]</p> <p>(iii) both of the following apply:</p> <p>(A) Aurizon Network, acting reasonably, is not satisfied that any "Connecting Infrastructure" (as defined in Aurizon Network's 2016 Access Undertaking (as</p> |

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| | | <p>approved on 11 October 2016) as at the date of this Deed) in respect of the connection of the Required Mine Specific Infrastructure to Aurizon Network's Railway Network and any other enhancements (other than the Extension) required to Aurizon Network's Railway Network have been completed; and</p> <p>(B) the reason such "Connecting Infrastructure" has not been completed is not primarily attributable to any default by Aurizon Network in the performance of legally binding obligations of Aurizon Network in respect of such "Connecting Infrastructure" <u>the act or omission of the Access Holder,</u></p> <p>then, despite the Commitment Date having not occurred, the provisions of the Access Agreement relating to (but only to the extent they relate to) the Access Holder's liability for, and the calculation, invoicing and payment of, Take or Pay will be deemed to commence and apply on and from the Pre-Commitment Date until the Commitment Date as if, for the purpose of those provisions:</p> <p>(iv) the Commitment Date under the Access Agreement occurred on the Pre-Commitment Date;</p> <p>(v) all of the Train Services that the Access Holder would have been entitled to operate during that period, had the Commitment Date occurred on the Pre-Commitment Date,</p> |

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| | | <p>were unable to be operated; and</p> <p>(vi) the reason those Train Services were unable to be operated was not as a result of a Aurizon Network Cause.</p> <p>(b) In this item 8 of part 2 of schedule 1, the terms Date of Practical Completion, Commitment Date and Required Mine Specific Infrastructure each have the meaning given in item 4 of this part 2 of schedule 1.</p> <p>(c) In this item 8 of part 2 of schedule 1, the terms Aurizon Network Cause, Take or Pay and Train Service each have the meaning given in the Access Agreement.</p> <p>(d) In this item 8 of part 2 of schedule 1, Pre-Commitment Date means later to occur of the dates referred to in item 8(a)(ii) of this part 2 of schedule 1.</p> |
| 9 | Nominated Network | The “Nominated Network” under the Access Agreement will be the relevant parts of Aurizon Network’s coal system excluding privately owned or Queensland Rail Ltd owned infrastructure (other than for such infrastructure that is leased to Aurizon Network). |

Part 3 – Train Service Description

[Drafting note: The Train Service Description to be specified in the Access Agreement to be determined on a transaction-by-transaction basis.]

Part 4 – Required Mine Specific Infrastructure

[Drafting note: Insert plan detailing Required Mine Specific Infrastructure]

Schedule 2

Segments

| | Name of Segment | Description of Segment |
|----|-----------------|------------------------|
| 1. | | |
| 2. | | |

[Drafting note: *To be populated with the Segments relevant to the Access Seeker's Nominated Access Rights.***]**