

# Schedule I

Confidentiality ~~Agreement~~ Deed

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[Insert Name of Discloser]

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Aurizon Network Pty Ltd

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# Confidentiality ~~Agreement~~ Deed

[QRC note: The following mark up has been made in the context of Aurizon Network's draft Part 3 in the 2014 DAUU. QRC has serious remaining reservations about that draft. Therefore, the mark up is made on an assumption that appropriate amendments are made to Part 3 give appropriate level of protection to disclosers of information, in particular:

- Amend the definition of Protected Information and include a definition of Confidential Information (which includes all Protected Information) in Part 3; and
- Impose obligations on AN regarding Confidential Information and Protected Information in Part 3.

Consequently, the amendments to this document are made on the assumption that amendments are made to Part 3 to address QRC's concerns.]

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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**)

The person specified in **item 1** of **schedule 1** (**Discloser**)

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## Background

A The Discloser has made, or intends to make, enquiries of Aurizon Network regarding the provision of Access and the parties may commence and progress ~~parties have agreed to enter into this agreement to facilitate the~~ negotiations in respect of the potential granting of Access by Aurizon Network under an Access Agreement or Train Operations Agreement (as applicable).

AB In the course of those enquiries and/or negotiations for the provision of the Access and/or during the term of the Access Agreement or Train Operations Agreement (as applicable) it is envisaged that the Disclosure will provide Aurizon Network with Confidential Information.

BC This ~~agreement deed~~ sets out the terms upon which the Discloser will disclose ~~provides for the disclosure of Protected Confidential~~ Information ~~by the Discloser~~ to Aurizon Network.

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## ~~Agreed terms~~ This deed witnesses as follows:

### 1 Definitions

(a) In ~~this agreement~~ this deed the following terms have the following meanings:

<b>Business Day</b>	A day which is not a Saturday, Sunday or bank or public holiday in Brisbane.
<b>Transaction</b>	The execution of an Access Agreement or Train Operations Agreement (as applicable) under which Aurizon Network agrees to provide the Discloser <u>(or its Customer)</u> with <u>the Access in respect of which this deed was entered into.</u>
<b>Undertaking</b>	The current access undertaking submitted by Aurizon Network to the Queensland Competition Authority and approved by the Queensland Competition Authority under the <i>Queensland Competition Authority Act 1997</i>

(Qld) as at the date of this ~~agreement~~ deed and as amended or replaced from time to time.

- (b) Unless the context otherwise requires, terms defined in the Undertaking have the same meanings in this ~~agreement~~ deed.

## 2 Consideration

### 2.1 Consideration

- (a) Each party enters into this ~~agreement~~ deed for valuable consideration from the other party and receipt of the consideration is acknowledged by each party.
- (b) Without limitation to **clause 2.1(a)**, each party agrees to pay to the other party \$1.00 on demand in consideration of that other party entering into this ~~agreement~~ deed.

### 2.2 **No offer or acceptance for Transaction or obligation to disclose Confidential Information**

- (a) This ~~agreement~~ deed and the disclosure of ~~Protected Confidential~~ Information to Aurizon Network is not an offer or acceptance of an offer to enter into the Transaction.
- (b) Nothing in this ~~agreement~~ deed obliges any party to enter into the Transaction or any further agreement with the other party.
- (c) Nothing in this deed obliges the Discloser to disclose any particular Confidential Information.

## ~~3~~ **Discloser**

~~Under this agreement, the Discloser can only be an Access Seeker or a Train Operator.~~

## 4 **Confidentiality**

Aurizon Network must comply with ~~agrees to abide by~~ all of its obligations under Part 3 of the Undertaking relating to Confidential Information and Protected Information, subject to the exceptions, exclusions and permitted disclosures of Confidential Information or Protected Information in the Undertaking other than as a result of any waiver, or purported waiver, of any such obligations.

## 54 ~~Termination~~ Continuation of deed

- (a) Unless otherwise terminated by mutual consent in writing, this deed will continue in force notwithstanding:
- ~~(a) This agreement terminates on:~~
- ~~(i) the execution by the parties of:~~
    - ~~(A)(i) an Access Agreement or Train Operations Agreement (as applicable); or~~
    - ~~(B) a subsequent confidentiality agreement imposing confidentiality obligations on Aurizon Network in respect of the Protected Information;~~
  - (ii) the cessation of negotiations or discussions between the parties in respect of the Transaction, in accordance with the Undertaking; or
  - (iii) the withdrawal by the Discloser of ~~its~~ any Access Application relating to the Transaction; or
  - ~~(iii)~~ (iv) the return of all copies of the Confidential Information to the Discloser.
- ~~(b) Where termination occurs under **clause 5(a)(i)**, this agreement terminates immediately.~~
- ~~(c) Where termination occurs under **clause 5(a)(ii)** or **(iii)**, this agreement terminates immediately on the date specified in **Item 3 of schedule 1**.~~
- ~~(d) To the extent permitted by law and subject to the provisions of this agreement, neither party may terminate this agreement and in no other circumstance or event may this agreement be terminated.~~

## 5 Benefit of deed

If any Customer or Train Operator of the Discloser is specified in Item 3 of Schedule 1 (each a **third party beneficiary**), Aurizon Network acknowledges that Confidential Information disclosed under this deed may relate to or be owned by any third party beneficiary and to that extent:

- (a) Aurizon Network makes the promises under this deed for the benefit of the Discloser and each third party beneficiary;
- (b) the Discloser holds the benefit of this deed on its own behalf and for each third party beneficiary; and
- (c) references in this deed to the Discloser shall be read as references to the Discloser and the third party beneficiaries.

## 6 Notices

### 6.1 Form of Notice

Any notice, demand, invoice, process or other communication relating to ~~this agreement~~[this deed](#) (**Notice**) must be in writing in English and may be given by an agent of the sender and may, if agreed by Aurizon Network, be in electronic form.

### 6.2 Method of giving Notices

A Notice may be given by being:

- (a) personally delivered to a party;
- (b) left at the party's current delivery address for service;
- (c) sent to the party's current postal address for service by pre-paid ordinary mail;
- (d) sent by facsimile transmission to the party's current facsimile number for service; or
- (e) if agreed by Aurizon Network, sent by email to the party's current email address for service.

### 6.3 Particulars for giving of Notices

The particulars for giving of Notices are detailed in **item 2 of schedule 1**, or as most recently notified to the party sending the Notice.

### 6.4 Notice by post

Subject to **clause 6.7**, a Notice is given if posted:

- (a) within Australia to an Australian postal address, three Business Days after posting; or
- (b) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, 10 Business Days after posting.

### 6.5 Notice by fax

Subject to **clause 6.7**, a Notice is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

### 6.6 Notice by email

Subject to **clause 6.7**, a Notice is given if sent by email, on the next Business Day after being sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.

### 6.7 After hours Notice

If a Notice is given:

- (a) after 5:00pm in the place of receipt; or

- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9:00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

## 7 General

### 7.1 Acknowledgement

Aurizon Network acknowledges and agrees that:

- (a) the Discloser may take legal proceedings against Aurizon Network and/or any third party if there is any actual, threatened or suspected breach of this deed or a breach by a Aurizon Party of a confidentiality deed or confidentiality provisions contained in another arrangement with Aurizon Network pursuant to which the Confidential Information was disclosed to it; and
- (b) damages may be inadequate compensation for breach of this deed and, subject to the court's discretion, the Discloser shall be entitled to specific performance of this deed and may restrain, by an injunction or similar remedy, any conduct or threatened conduct which is or will be a breach of this deed.

### 7.17.2 Variation

No provision of ~~this agreement~~this deed may be varied other than in writing executed by the parties to ~~this agreement~~this deed.

### 7.27.3 No assignment

No party may assign, transfer, charge or deal in any other way with the benefit of any right (or agree to do so), or create or declare (or agree to do so), or allow to arise, any trust in respect of the benefit of any right conferred by or arising under ~~this agreement~~this deed without the prior consent in writing of the other party.

### 7.37.4 Costs

The parties agree to pay their own legal and other costs and expenses in connection with the preparation, execution and completion of ~~this agreement~~this deed.

### 7.47.5 Counterparts

~~This agreement~~This deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one agreement.

### 7.57.6 Effect of execution

~~This agreement~~This deed is not binding on any party unless it or a counterpart has been duly executed by each person named as a party to ~~this agreement~~this deed.



## **7.67.7 Construction**

In ~~this agreement~~this deed:

- (a) any schedule and annex to it is an integral part of it and any reference to ~~this agreement~~this deed includes a reference to that schedule and annex;
- (b) the headings in it are used for ease of reference only and are not to be taken into account for the purposes of construing it;
- (c) any reference to it or any other agreement, contract, document or instrument includes any variation or replacement of any of them;
- (d) any references to any clause, schedule, annex and provision are references to that clause, schedule, annex and provision contained in it; and
- (e) the words 'including', 'include' and 'includes' are to be construed as if followed by the words 'without limitation'.
- (f) a reference to a person includes any company, partnership, joint venture, unincorporated association, corporation or other body corporate and a government or statutory body or authority;
- (g) words in the singular include the plural and vice versa; and
- (h) if a word or phrase is defined its other grammatical forms have corresponding meanings.

## **8 Governing law and jurisdiction**

~~This agreement~~This deed is governed by the laws applicable in Queensland and each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland and any court competent to hear appeals from any of those courts.

# Schedule 1

## Reference Schedule

Item	Description	Details
1	Discloser	Name: [insert] ABN: [insert] Address: [insert]
2	Particulars for giving Notices	<b>Aurizon Network</b> Delivery address: [insert] Postal address: [if there is no PO box, insert 'Same as delivery address'] Facsimile: [insert] Email address: [insert] Attention: [insert] <b>Discloser</b> Delivery address: [insert] Postal address: [if there is no PO box, insert 'Same as delivery address'] Facsimile: [insert] Email address: [insert] Attention: [insert]
3	<del>Termination date</del> <u>Third party beneficiaries</u>	<del>The date that is [insert] months after an event in clause 5(a)(ii) or (iii) occurs.</del> <u>[insert – eg if Discloser is Train Operator and there is no separate confidentiality deed with End User, or for a Customer of the Discloser if there is no separate confidentiality deed with the Customer.]</u>

# Execution

**Executed** as an agreement.

**[Appropriate execution blocks to be inserted]**