Schedule I

Confidentiality Agreement

[Insert Name of Discloser]

Aurizon Network Pty Ltd

Confidentiality Agreement

Contents

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**)

Background

A   The 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).

B   This agreement provides for the disclosure of Protected Information by the Discloser to Aurizon Network.

Agreed terms

1   Definitions

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

Business Day	A day which is not a Saturday, Sunday or bank or public holiday in Brisbane.
Permitted Purpose	A purpose associated with responding to an Access Application, negotiating an Access Agreement or administering an Access Agreement.
Transaction	The execution of an Access Agreement or Train Operations Agreement (as applicable) under which Aurizon Network agrees to provide the Discloser with Access.
Undertaking	The current access undertaking submitted by Aurizon Network to the Queensland Competition Authority and approved by the Queensland Competition Authority under the *Queensland Competition Authority Act 1997* (Qld) as at the date of this agreement 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.

2 Consideration

2.1 Consideration

(a) Each party enters into this agreement 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.

2.2 No offer or acceptance for Transaction

This agreement and the disclosure of Protected Information to Aurizon Network is not an offer or acceptance of an offer to enter into the Transaction. Nothing in this agreement obliges any party to enter into the Transaction.

3 Discloser

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

4 Confidentiality

(a) Aurizon Network agrees to abide by all of its obligations under Part 3 of the Undertaking relating to Protected Information, subject to the exceptions, exclusions and permitted disclosures of Protected Information in the Undertaking and this agreement.

(b) Aurizon Network agrees:

   (i) to use Protected Information only for the Permitted Purpose and only to the extent necessary for that purpose;

   (ii) to only disclose Protected Information under clauses 3.17(b)(x) and 3.19(a)(i) of Part 3 of the Undertaking where such disclosure is necessary for the Permitted Purpose;

   (iii) that disclosure to an Aurizon Group banker or other financial institution under clause 3.17(b)(vii) of Part 3 of the Undertaking is only permitted if a legally enforceable confidentiality deed in favour of the Discloser has been executed;

   (iv) that it is deemed to be unreasonable for the Discloser to refuse to provide its approval to the disclosure by Aurizon Network of its Protected Information to engineering, environmental or other advisers, consultants or service providers under clause 3.17(b)(xiii) of Part 3 of the Undertaking where Aurizon Network enters into an agreement with the recipient of the Protected Information on the following terms:

      (A) advising the recipient that a conflict of interest may exist with respect to the recipient providing services on a related matter to a Related Operator;

      (B) specifying:

(i)   the persons employed by the recipient who may have access to the Discloser's Protected Information provided under the agreement;

(ii)   that those persons must not disclose any Third Party Access Seeker's or Third Party Access Holder's Protected Information provided under the agreement to any person outside of Aurizon Network unless otherwise agreed by the Third Party Access Seeker or Third Party Access Holder;

(iii)   if:

(a)   the external consultant or adviser is also advising a Related Operator in relation to the same or a related matter; and

(b)   Aurizon Network has not been able to reasonably avoid appointing that external consultant or independent adviser to provide advice in relation to that Protected Information,

requiring the recipient to ensure that those individuals are not, and will not for as long as the information remains Protected Information, be working for a Related Operator on the same or a related matter;

(C)   if required by the Discloser, requiring the recipient to execute a confidentiality agreement in favour of the Discloser on terms and conditions reasonably satisfactory to the Discloser; and

(D)   this clause does not apply to the disclosure or use of Protected Information in accordance with clause 3.17(c) of Part 3 of the Undertaking;

(v)   that the Discloser may, in an Access Application, give notice to Aurizon Network that it does not wish Aurizon Network to disclose its Protected Information to any one or more of the groups listed in clause 3.17(c) of Part 3 of the Undertaking. If the Discloser gives such notice to Aurizon Network, then:

(A)   upon receipt of such notice Aurizon Network may not disclose Protected Information to the groups so noted;

(B)   Aurizon Network will make reasonable efforts to suggest a reasonable alternate mechanism whereby Aurizon Network can obtain the information it requires to respond to the Access Application and the Discloser will not unreasonably withhold its agreement to this alternate mechanism;

(C)   all:

(i)   reasonable costs incurred by Aurizon Network in obtaining information by means of an alternate mechanism agreed in accordance with clause 4(b)(v)(B) may be recovered by Aurizon Network from the Discloser as a debt due and owing; and

(ii)   relevant timeframes applicable to Aurizon Network

under the Undertaking will be extended by the same number of days as equals the number of days from Aurizon Network's receipt of the Access Application to Aurizon Network's receipt of the information it requires to respond to the Access Application; and

(D)   if

(i)   the Dispute resolution process determines that no reasonable alternate mechanism exists whereby Aurizon Network can reasonably obtain the information it requires to respond to the Access Application; or

(ii)   the parties fail to agree on an alternate mechanism but do not seek resolution by the Dispute resolution process,

Aurizon Network may give a Negotiation Cessation Notice to the Discloser, in accordance with clause 4.12 of the Undertaking; and

(vi)   that disclosure to a person or business unit within the Aurizon Network under clause 3.17(b)(ix) of Part 3 of the Undertaking shall be subject to compliance with clause 3.18 of Part 3 of the Undertaking unless such persons fall within the scope of one of the other permitted disclosures set out in this agreement.

5   General obligations

(a)   Aurizon Network acknowledges and agrees that:

(i)   the Protected Information is confidential to the Discloser and is and remains at all times the valuable and exclusive property of the Discloser;

(ii)   Aurizon Network is responsible for any use or disclosure of Protected Information which is contrary to the provisions of this agreement by persons to which Aurizon Network discloses the Protected Information, and shall take such steps as may be necessary to prevent any such improper use or disclosure (including enforcing any confidentiality deed or confidentiality provisions contained in another arrangement pursuant to which Aurizon Network disclosed that Protected Information);

(iii)   Aurizon Network shall not copy or reduce into tangible, visible or recorded form or allow to be copied or reduced into tangible, visible or recorded form, any Protected Information furnished to it by or on behalf of the Discloser except to the extent necessary to carry out a Permitted Purpose;

(iv)   this agreement shall not be construed as assigning any other rights to use Protected Information, or as granting to Aurizon Network any licence or other rights relating to any Protected Information or other intellectual property rights owned by the Discloser;

(v)   Aurizon Network shall secure and protect the Protected Information received from the Discloser from unauthorised disclosure, access or use;

(vi)   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 agreement or a breach of a confidentiality deed or confidentiality provisions contained in another arrangement with Aurizon Network pursuant to which the Protected Information was disclosed to it; and

(vii)   damages may be inadequate compensation for breach of this agreement and, subject to the court's discretion, the Discloser shall be entitled to specific performance of this agreement and may restrain, by an injunction or similar remedy, any conduct or threatened conduct which is or will be a breach of this agreement.

6   Liquidated damages

(a)   Subject to **clause 7(a)**, where the Discloser can establish that a Related Operator is in possession of the Protected Information, Aurizon Network will pay to the Discloser an amount of $10,000 by way of liquidated damages in full and final settlement of any claim that the Discloser may have against Aurizon Network in respect of the breach, unless Aurizon Network can establish that the Related Operator came into possession of the Protected Information by means other than as a result of a breach by Aurizon Network of **clause 4** or a breach by Aurizon Network of a confidentiality deed or confidentiality provisions contained in another arrangement pursuant to which the Protected Information was disclosed to it.

(b)   Any Dispute arising in connection with this **clause 6** may be referred to the QCA. The QCA's review will determine whether Aurizon Network is liable to pay the complainant the liquidated damages specified in **clause 6(a)**.

7   Compensation for loss in excess of $50,000

(a)   If the Discloser is able to establish that it has suffered more than $50,000 loss or damage as a result of a breach by Aurizon Network of **clause 4** or a breach by Aurizon Network of a confidentiality deed or confidentiality provisions contained in another arrangement pursuant to which Protected Information was disclosed to it, this agreement shall not preclude the Discloser from taking action to recover compensation from Aurizon Network in any court of competent jurisdiction. In these circumstances the parties agree that Aurizon Network shall not be liable to the Discloser for the payment of liquidated damages in accordance with **clause 4**.

58   Termination

(a)   Unless otherwise terminated by mutual consent in writing, this agreement will continue in force notwithstandingThis agreement terminates on:

(i)   the execution by the parties of:any subsequent termination of any discussions or negotiations between the parties; or

(A)   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 in respect of the Transaction, in accordance with the Undertaking; orthe return of all copies of the Protected Information to the Discloser.

(iii) the withdrawal by the Discloser of its Access Application relating to the Transaction.

(b) Where termination occurs under **clause 5(a)(i)**, this agreement terminates immediately.

69   Notices

69.1   Form of Notice

Any notice, demand, invoice, process or other communication relating to this agreement (**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.

69.2   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.

69.3   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.

69.4   Notice by post

Subject to **clause 69.7**, 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.

69.5   Notice by fax

Subject to **clause 69.7**, 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**9**.6   Notice by email

Subject to **clause 6**9**.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**9**.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.

710   General

10.1   Disclosure

Nothing in this agreement obliges the Discloser to disclose any particular Protected Information or enter into any further agreement with Aurizon Network if it decides, in its absolute discretion, that it is not in its commercial interests to do so.

710.12   Variation

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

710.23   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 without the prior consent in writing of the other party.

7.310.4   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.

10.57.4   Counterparts

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

10.67.5   Effect of execution

This agreement 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.

10.77.6   Construction

In this agreement:

(a)   any schedule and annex to it is an integral part of it and any reference to this agreement 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~~11   Governing law and jurisdiction

This agreement 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**	**Aurizon Network**		
		Delivery address:	[insert]	
		Postal address:	[if there is no PO box, insert 'Same as delivery address']	
		Facsimile:	[insert]	
		Email address:	[insert]	
		Attention:	[insert]	
		Discloser		
		Delivery address:	[insert]	
		Postal address:	[if there is no PO box, insert 'Same as delivery address']	
		Facsimile:	[insert]	
		Email address:	[insert]	
		Attention:	[insert]	
~~3~~	~~**Termination date**~~	~~The date that is [insert] months after an event in clause 5(a)(ii) or (iii) occurs.~~		

Execution

Executed as a agreement.

[Appropriate execution blocks to be inserted]