

Part 3: Ringfencing

QRC re-draft

Part 3: Protections against conflicts of interest

Section A – General Provisions

3.1 Preamble

- (a) Aurizon Network is part of the Aurizon Group and a Subsidiary of Aurizon Holdings.
- (b) Aurizon Network provides a regulated access service, together with providing, to the extent and as permitted by this Undertaking, unregulated services in competitive markets.
- (c) Aurizon Holdings or its Subsidiaries, amongst other matters, provides Above Rail Services through one or more Related Operators.
- (d) Within the Aurizon Group, there are service groups that provide shared support services and core corporate functions to different entities that include Related Operators and Aurizon Network.
- (e) Aurizon Network is required by the TIA, amongst other things, to maintain an independent board of directors which supervises arm's-length dealings in respect of Access between Aurizon Network and any Related Operator or other Aurizon Party.
- (f) The Act includes the following:
 - (1) a requirement for Aurizon Network to negotiate in good faith with Access Seekers to reach an Access Agreement;
 - (2) an obligation on Aurizon Network in such negotiations not to unfairly differentiate between Access Seekers in a way that materially adversely affects the ability of one or more Access Seekers to compete with other Access Seekers;
 - (3) a prohibition on Aurizon Network engaging in conduct for the purpose of preventing or hindering an Access Seeker's or Access Holder's Access; and
 - (4) deeming of certain types of behaviours where Aurizon Network provides Access to itself or an Aurizon Party to constitute conduct that prevents or hinders an Access Seeker's or Access Holder's Access.
- (g) This **Part 3** is intended to:
 - (1) aid Aurizon Network's compliance with its statutory obligations, including through management of Aurizon Network's interactions with Aurizon Parties so as to minimise actual or perceived situations of conflicts of interest;
 - (2) ensure that the provision of Below Rail Services by Aurizon Network, including costs, revenues, decision-making and protection and use of information associated with providing those

services, is separated and managed independently from any other commercial activity of the Aurizon Group.

3.2 General principles of non-discrimination

- (a) Aurizon Network will not:
 - (1) engage in conduct for the purpose of preventing or hindering an Access Seeker's or Access Holder's Access;
 - (2) unfairly differentiate between Access Seekers in a way that has a material adverse effect on the ability of one or more of the Access Seekers to compete with other Access Seekers; or
 - (3) provide Access to an Aurizon Associate on more favourable terms than the terms on which Aurizon Network provides Access to competitors of the Aurizon Associate (having regard to all the terms on, and circumstances in which, Access is provided including the Access Charges and differences in the Access Rights provided).
- (b) Aurizon Network will ensure that:
 - (1) all transactions between Aurizon Network and Aurizon Associates in relation to Access are conducted on an arm's-length basis; and
 - (2) all Access Seekers and Train Operators, irrespective of whether they are an Aurizon Associate or Third Party, are provided with a consistent level of service with respect to Access and:
 - (A) In respect of Train Operators, are given on an equal opportunity to operate Train Services in accordance with corresponding Access Rights; and
 - (B) In respect of Access Seekers, are given an equal opportunity to obtain Access Rights.
- (c) Aurizon Network must ensure that Access Rights are not granted to a provider of Above Rail Services unless and except to the extent that the provider requires the Access Rights to provide Train Services to one or more specific and identified Customers.
- (d) Aurizon Network must ensure that, subject to the express provisions of the Act and this Undertaking, all decisions made under this Undertaking are consistent between all Access Seekers, Access Holders and/or Train Operators in the same circumstances.
- (e) Aurizon Network must not engage in, whether alone or with any Aurizon Associate, any activity or conduct which has the purpose of, or results in or creates, or is likely to result in or create :
 - (1) anti-competitive cost-shifting;
 - (2) anti-competitive cross-subsidies; or
 - (3) anti-competitive price or margin squeezing.

3.3 Aurizon Holdings Support Deed

- (a) Aurizon Network must ensure that at all times an Ultimate Holding Company Support Deed (**Deed**) is in full force and effect in the form set out in **schedule D**.
- (b) The Deed must include the following as requirements which the Ultimate Holding Company must ensure are met:
 - (1) provision of access to land (in accordance with paragraph (ii) of the definition of "Access" in this Undertaking), which is owned by an Aurizon Party or which an Aurizon Party has, through a lease, licence or other arrangement with the owners of the land or pursuant to the TIA, the authority to authorise access to;
 - (2) Aurizon Parties to take the steps required to allow Aurizon Network to obtain ownership of rail transport infrastructure (as defined under the TIA) in accordance with clause 3.7;
 - (3) Aurizon Parties to take the steps required to allow Aurizon Network to procure a sale or supply of electric energy in accordance with clause 2.4; and
 - (4) Aurizon Parties to comply with the arrangements prescribed in Part 3 of this Undertaking;
 - (5) Without limitation to clause 3.3(b)(4), Aurizon Parties must not:
 - (A) direct or request Aurizon Network to act in contravention of Part 3 of this Undertaking, or otherwise engage in any conduct which may prevent or hinder Aurizon Network from complying with Part 3 of this Undertaking;
 - (B) use or disclose any Confidential Information other than as permitted by this Undertaking;
 - (6) the management requirements for Aurizon Network set out in clauses 3.10, 3.11, 3.12 including without limitation the requirements set out in clause 3.12(c);
 - (7) the Ultimate Holding Company must ensure that the rail transport infrastructure the subject of the Declared Service is only ever owned by Aurizon Network;
 - (8) the consequences of the Ultimate Holding Company not complying with the Deed (as specified in Deed) are without prejudice to any remedy or action which may be available against Aurizon Network for non-compliance with the Undertaking.
- (c) In the event that at any time there is not a Deed in full force and effect or the Ultimate Holding Company fails to comply with the requirements of the Deed, then without limitation to any other action or remedy available to the QCA, whether under the Act or otherwise, this Undertaking will cease to authorise the disclosure of Protected Information to any person or entity outside of Aurizon Network until:
 - (1) The Ultimate Holding Company executes and delivers, in full force and effect, a current deed of the type required by clause 3.3(a); or

- (2) The Ultimate Holding Company rectifies its failure to comply with the Deed to the satisfaction of the QCA,
as applicable.

Section B – General Provisions

3.4 Functions of Aurizon Network

- (a) The primary function of Aurizon Network is to provide and manage the Rail Infrastructure in a manner consistent with its role as a Rail Infrastructure Manager under the Rail Safety Act, and to provide and manage Access to the Rail Infrastructure.
- (b) The **Access-related Functions** performed by Aurizon Network are:
 - (1) The primary function described in clause 3.4(a) above;
 - (2) The performance of all other Below Rail Services and all matters integral to the provision of Below Rail Services;
 - (3) Development of the Undertaking, any future access undertaking as well as any pro forma or standard documentation contemplated or required by the Undertaking and any amendments to any of these;
 - (4) Reporting under and performing the Undertaking;
 - (5) Receiving and dealing with Access Applications;
 - (6) Expansions, studies for Expansions and funding agreements for expansions;
 - (7) Negotiating agreements for Expansions (including funding arrangements for Expansions) and studies for Expansions;
 - (8) Negotiating an Access Agreement, a Train Operation Agreement, a User Funding Agreement, a Rail Connection Agreement and any related agreements;
 - (9) Train control, marshalling yards, electric infrastructure, access to land;
 - (10) Performing and enforcing Access Agreements, agreements for studies for Expansions, agreements for Expansions and other agreements to which Aurizon is a party as contemplated by the Undertaking; and
 - (11) Protection of Protected Information in accordance with the Undertaking.

3.5 Obligation of Aurizon Network to perform Access-related Functions

- (a) Aurizon Network must ensure that the Access-related Functions performed by it are not transferred or delegated to, contracted out to, or otherwise undertaken by any Related Party that is:
 - (1) A Related Operator;
 - (2) An Associated Port/Rail Entity; or

- (3) The holder of a direct or indirect interest in any entity described in paragraph (1) or (2).
- (b) Subject to clauses 3.5(a), 3.5(c) and 3.5(d), Aurizon Network may contract:
 - (1) ***[insert – approved matters]***
works or services to a Related Party.
- (c) Aurizon Network must ensure that any Related Party to whom works or services are contracted as contemplated in clause 3.5(b):
 - (1) complies with Aurizon Network’s obligations under clause 3.2 and, where it receives any Protected Information, section D as if it were Aurizon Network;
 - (2) enters into a legally enforceable covenant in favour of the QCA and Aurizon Network to comply with Aurizon Network’s obligations under section D as if it were Aurizon Network in respect of any Confidential Information received, produced or created in performing the relevant works or services.
- (d) Without limitation to any other action or remedy available to the QCA, if any Related Party to whom works or services are contracted as contemplated in clause 3.5(b) fails to comply with any obligation referred to in clause 3.5(c)(1) or fails to provide the covenant referred to in clause 3.5(c)(2) QCA may by notice to Aurizon Network require that Aurizon Network ceases to engage such Related Party as a contractor for any works or services contemplated in clause 3.5(b). The QCA may, by further notice, remove such prohibition if the relevant failure is rectified to the QCA’s satisfaction and the QCA is satisfied that further failures are unlikely to occur.
- (e) Except as described and in accordance with clause 3.5(b) and 3.8(c)(1), Aurizon Network must not transfer, contract or delegate or otherwise permit the undertaking of any Access-Related Functions, services or work to or by a Related Party.
- (f) Aurizon Network must not undertake:
 - (1) any Above Rail Services;
 - (2) the operation or marketing of Train Services on the Rail Infrastructure, unless for the purpose of performing an Access-related Function or the provision of services in respect of Private Infrastructure;
 - (3) any port services or hold any direct or indirect interest in any port in Queensland, whether as or in any owner, lessee, operator, manager or otherwise and whether alone or together with others;
or
 - (4) any Above Rail Services or Below Rail Services in respect of any railway (other than rail transport infrastructure within the Central Queensland Coal Network) or hold any direct or indirect interest in any such railway, whether as or in any owner, lessee, operator, manager or otherwise and whether alone or together with others.

3.6 Line Diagrams

- (a) The Line Diagrams indicate those parts of the Queensland rail network that are Rail Infrastructure.
- (b) During the Term, Aurizon Network must review and amend the Line Diagrams as necessary, at intervals of no greater than six (6) months, to reflect changes that have been made to the configuration or ownership of the Queensland rail network and will publish on the Website:
 - (1) the current version of the Line Diagrams; and
 - (2) a description of the changes made since the immediately preceding version of the Line Diagrams.
- (c) Unless approved by the QCA, Aurizon Network will not:
 - (1) assign or transfer ownership of, or lease, existing or new Rail Infrastructure from Aurizon Network to any one or more Aurizon Party; or
 - (2) remove existing Rail Infrastructure (except where such Rail Infrastructure is already identified in the Line Diagrams for future removal) or amend the Line Diagrams to identify any existing Rail Infrastructure for future removal, except where the change:
 - (A) is minor or administrative in nature;
 - (B) does not reflect a permanent reduction in Existing Capacity that would affect an Access Holder's Access other than in accordance with an Access Agreement or this Undertaking (for example, where level crossings are removed or reconfigurations of track are undertaken); or
 - (C) is approved by the QCA.
- (d) Where the QCA or an Access Seeker or Access Holder is reasonably of the opinion that Line Diagrams prepared and published in accordance with Clause 3.6(b):
 - (1) do not indicate those parts of the Queensland rail network that are Rail Infrastructure; or
 - (2) reflect a change to Rail Infrastructure that contravenes Clause 3.6(c), the QCA or that Access Seeker or Access Holder may request in writing that Aurizon Network review and, if necessary, amend the Line Diagrams in accordance with Clause 3.6(b).
- (e) Where Aurizon Network receives a request under Clause 3.6(d), Aurizon Network must:
 - (1) if the QCA made the request, review the Line Diagrams and make any necessary amendments to the Line Diagrams within thirty (30) days after receiving that request; and
 - (2) if an Access Seeker or Access Holder made the request:
 - (A) notify the QCA in writing of that request;
 - (B) review the Line Diagrams; and

- (C) within thirty (30) days after receiving the request, give the QCA and the Access Seeker or Access Holder written notice of whether Aurizon Network accepts the matters set out in the request and, if so, the action that Aurizon Network proposes to take; and
 - (D) undertake any required amendments to the Line Diagrams within fourteen (14) days after:
 - (i) where the matter has not been referred to Dispute resolution under Clause 10.1 and Aurizon Network has accepted the matters set out in the request, the giving of the notice under Clause 3.6(e)(2)(C); or
 - (ii) if the matter is referred to Dispute resolution under Clause 10.1, the resolution of the Dispute in favour of the Access Seeker or Access Holder.
- (f) An Access Seeker or Access Holder may refer a Dispute in relation to the Line Diagrams to the Dispute resolution process under Clause 10.1, but only if:
- (1) such a Dispute exists after Aurizon Network has notified that party in accordance with Clause 3.6(e)(2)(C); or
 - (2) Aurizon Network has failed to comply with Clause 3.6(e)(2).

3.7 Transfer of rail transport infrastructure from Aurizon Party

- (a) If an Access Seeker is reasonably of the opinion that rail transport infrastructure (as defined under the TIA) that is owned by an Aurizon Party forms part of the Declared Service, then the Access Seeker may make a request in writing that Aurizon Network obtain ownership of the relevant rail transport infrastructure and amend the Line Diagrams accordingly.
- (b) In considering a request made in accordance with Clause 3.7(a), Aurizon Network must obtain ownership of the relevant rail transport infrastructure and amend the Line Diagrams accordingly if, in Aurizon Network's reasonable opinion, this is appropriate having regard to the following principles:
 - (1) subject to Clauses 3.7(b)(4) and 3.7(b)(5), the ownership of rail transport infrastructure (as defined under the TIA), as between Aurizon Network and other Aurizon Parties, should be allocated in a way that enables Aurizon Network to operate as a stand alone provider of the Below Rail Services, except in relation to stations and platforms;
 - (2) the existing market shares of Related Operators should not be a factor in the allocation of ownership of rail transport infrastructure (as defined under the TIA) between Aurizon Network and other Aurizon Parties;
 - (3) subject to Clauses 3.7(b)(4) and 3.7(b)(5), ownership of rail transport infrastructure (as defined under the TIA), as between Aurizon Network and other Aurizon Parties, should be allocated in a way that reasonably allows for Access Seekers to undertake activities associated with Access Rights;

- (4) any Private Infrastructure should connect directly to Rail Infrastructure, except where the agreement between an Aurizon Party and the Private Infrastructure manager explicitly accepts that the Private Infrastructure connects to track managed by the Aurizon Party; and
 - (5) any facility that is owned or leased by a Third Party and is accessible from track managed by an Aurizon Party (referred to as a "Private Facility") should be accessible from Rail Infrastructure, except where the agreement between the Aurizon Party and the Private Facility manager explicitly accepts that the Private Facility is accessible from track managed by the Aurizon Party.
- (c) Aurizon Network is not required to obtain ownership of the relevant rail transport infrastructure and amend the Line Diagrams accordingly unless:
- (1) if ownership of the rail transport infrastructure was with Aurizon Network, the use of the rail transport infrastructure would form part of the Declared Service;
 - (2) if the rail transport infrastructure is not required to operate a Train Service directly between an origin and a destination, access to the rail transport infrastructure satisfies the criteria in section 76(2) of the Act;
 - (3) if the rail transport infrastructure relates to the Central Queensland Coal Network, the value of the rail transport infrastructure is included in the Regulatory Asset Base; and
 - (4) if the rail transport infrastructure relates to the Central Queensland Coal Network, it is included in a Coal System and the System Forecasts, System Allowable Revenue, Reference Tariffs and any other relevant matters for the Coal System are reviewed and amended to take account of the rail transport infrastructure (including taking into account any Incremental Costs associated with the rail transport infrastructure);
- (d) If an Access Seeker disagrees with the results of Aurizon Network's consideration of its request under Clause 3.7(a), it may refer the issue to the Dispute resolution process set out in Clause 10.1.

3.8 Staffing of Aurizon Network

- (a) Aurizon Network must ensure that:
- (1) Access-related Functions are only performed by persons who are employed by Aurizon Network or who are officers of Aurizon Network except:
 - (A) as otherwise permitted in accordance with clauses 3.5(b), 3.8(b) or (c); or
 - (B) where approved by the QCA;
 and provided that Aurizon Network must notify the QCA of relevant details as soon as reasonably practicable;
 - (2) persons employed by Aurizon Network (or persons undertaking work or services for Aurizon Network pursuant to a contract as

contemplated in clause 3.5(b)) work only for Aurizon Network unless undertaking functions or activities in accordance with clauses 3.8(c)(2);

- (3) persons employed by Aurizon Network do not undertake any work:
 - (A) of a nature described in clause 3.5(f); or
 - (B) at the direction of a Related Party of a type described in clause 3.5(a)(1), 3.5(a)(2) or 3.5(a)(3); and
 - (4) its employees and all other persons who perform any Access-related Function or other function or activity for Aurizon Network comply with the requirements of clause 3.2 and Section D in respect of Confidential Information and Protected Information as if they were Aurizon Network.
- (b) Nothing in clauses 3.8(a)(1), 3.8(a)(2) or 3.8(a)(3) restricts or prevents:
- (1) an employee of Aurizon Network undertaking any function or activity; or
 - (2) a person other than an employee of Aurizon Network undertaking any Access-related Functions,

in order to respond to an emergency or natural disaster provided that Aurizon Network must notify the QCA of relevant details as soon as reasonably practicable and subject to the requirements of clause 3.8(a)(4).

- (c) Aurizon Network may:
- (1) source or delegate **[insert approved matters]** it requires to the Aurizon Group business unit having responsibility therefore; and
 - (2) permit its employees and contractors to undertake **[insert approved matters]** for the Aurizon Group business unit having responsibility therefore,

provided that Aurizon Network must ensure that such work does not have any actual or potential adverse impact on any Third Party's Access (including enquiries or negotiations for Access) or Aurizon Network's compliance with its obligations under this Undertaking in respect of any Confidential Information.

- (d) Aurizon Network must:
- (1) ensure that there are no secondments of employees between Aurizon Network and another Aurizon Party except for specific secondments approved by the QCA;
 - (2) use all reasonable endeavours not to initiate, procure or encourage the movement of staff, directors, contractors, employees or secondees (whether temporarily or permanently) between Aurizon Network and a Related Party of a type described in clause 3.5(a) provided that, for the avoidance of doubt, this clause does not prevent Aurizon Network from supporting personnel movements to or from Aurizon Network for promotion;
 - (3) ensure that any employee, director, contractor, secondee moving from undertaking work for Aurizon Network to another Aurizon

- Party or Aurizon Group business unit undertakes exit training and signs an exit certificate in accordance with clause 3.21; and
- (4) notify the QCA of all movements of directors, contractors, employees, secondees and other staff (whether temporary or permanently) between Aurizon Network and a Related Party.

3.9 Accounting separation

- (a) Aurizon Network must develop, on an annual basis, the financial statements in accordance with the methodology and format set out in the Costing Manual and otherwise in accordance with Part 10. The financial statements will be prepared for Aurizon Network's business in respect of the Below Rail Services and all other Access-related Functions regulated by this Undertaking and will not include information relating to any other business conducted by Aurizon Network.

Section C – Management of Aurizon Network

3.10 Aurizon Network board of directors

Without limitation to the TIA:

- (a) a person who is a director of an Aurizon Party must not be a director of Aurizon Network; and
- (b) there must be at least 3 directors of Aurizon Network who are “eligible persons” for the purposes of section 438G of the TIA.

3.11 The Network Executive Team

- (a) Aurizon Network will be managed by a team comprising:
 - (1) Aurizon Network's Executive Officer and his or her direct reports; and
 - (2) any other person nominated by Aurizon Network's Executive Officer,
(Network Executive Team).
- (b) Aurizon Network must ensure that Related Operators, Aurizon Parties which are Associated Port/Rail Entities, other Aurizon Parties holding a direct or indirect interest in the foregoing (other than the Ultimate Holding Company) (and any directors, officers or employees thereof) do not participate in the process for the appointment of Aurizon Network's Executive Officer or in the appointment of any other person to the Network Executive Team.

3.12 Management separation from Related Operators and Associated Port/Rail Entities

- (a) Aurizon Network's Executive Officer:
 - (1) must have direct management responsibility to the board of directors of Aurizon Network and the managing director of Aurizon Holdings, and no one else; and

- (2) must not be the same individual as the managing director of Aurizon Holdings.
- (b) Aurizon Network's Executive Officer or any other person appointed to the Network Executive Team:
 - (1) must not have direct or indirect management responsibility for a Related Operator, an Associated Port/Rail Entity or any Aurizon Party having a direct or indirect interest in a Related Operator or Associated Port/Rail Entity;
 - (2) may have direct management responsibility for an Aurizon Group business unit that is not (and does not have a direct or indirect interest in) a Related Operator, an Associated Port/Rail Entity or any Aurizon Party having a direct or indirect interest in a Related Operator or Associated Port/Rail Entity; and
 - (3) must have an independent management reporting line that does not include any person with direct or indirect management responsibility for a Related Operator, an Associated Port/Rail Entity or any Aurizon Party having a direct or indirect interest in a Related Operator or Associated Port/Rail Entity (other than the Ultimate Holding Company).
- (c) The Ultimate Holding Company Support Deed required by clause 3.3 will provide that, amongst other things and without limitation to clause 3.12(a):
 - (1) Aurizon Network's Executive Officer be maintained at the same or greater level of seniority within the organisational structure of the Aurizon Group, as the position of the executive manager with direct management responsibility for a Related Operator and any Aurizon Party which is an Associated Port/Rail Entity; or
 - (2) in the event there is more than one Aurizon Party being either or both a Related Operator and an Associated Port/Rail Entity, at the same or greater level of seniority within the organisational structure of the Aurizon Group as the position of the most senior executive manager with direct management responsibility for such a Aurizon Party.
- (d) A person has direct management responsibility for a Related Operator (or other Aurizon Party) when that person has the authority to make decisions about the day-to-day management and operation of a Related Operator (or Aurizon Party, as applicable), but does not include:
 - (1) a director (including a managing director) of Aurizon Holdings;
 - (2) the Chief Executive Officer of the Aurizon Group; or
 - (3) the Chief Financial Officer of the Aurizon Group.

3.13 Independent management of Access Rights

Aurizon Network will not act on directions from any Aurizon Party or any Associated Port/Rail Entity in respect of the granting or exercise of Access Rights to or by:

- (a) Any Aurizon Associate; or
- (b) a Third Party Access Seeker, Third Party Access Holder or Third Party Train Operator, otherwise than with the consent of the Third Party,

provided that nothing prevents an Aurizon Party or Associated Port/Rail Entity (**the directing entity**) providing a direction to Aurizon Network in relation to the exercise of the directing entity's Access Rights in accordance with arm's-length terms of an Access Agreement between the directing entity and Aurizon Network.

Section D – Confidentiality Provisions

Section D1 – General provisions

3.14 Definitions of Confidential Information and Protected Information

(a) **Protected Information** means:

(1) any and all communications, documents and information (whether electronic, in writing or otherwise) disclosed to Aurizon Network by or on behalf of, or obtained by Aurizon Network from, a Third Party Access Seeker (or their Customer), Third Party Access Holder (or their Customer) or a Third Party Train Operator (**Discloser**) including without limitation:

- (A) as part of, or in preparation of, an Access Application or Indicative Access Proposal (including any related discussions or disclosures);
- (B) in the course of negotiations for Access or negotiations for entering into a Train Operations Agreement;
- (C) that has been obtained under, in accordance with, or in the performance of, an Access Agreement or Train Operations Agreement; or
- (D) in the course of negotiations for an Expansion or Customer Specific Branch Line,

and which:

- (E) if disclosed by Aurizon Network, without the consent of the Discloser, might reasonably be expected to adversely affect the commercial interests of the Discloser or other owner of the information; or
- (F) is designated by the Discloser as protected or confidential; and

(2) any information or data collected by Aurizon Network in the performance of an Access Agreement which if disclosed by Aurizon Network, without the consent of the Discloser, might reasonably be expected to adversely affect the commercial interests of the Discloser or other owner of the information,

but does not include any such information that:

- (3) is in or comes into the public domain other than through a breach of confidence;
- (4) was independently developed or received by Aurizon Network and which Aurizon Network can prove was in its possession at the time of disclosure or which was otherwise known to it other than through any breach of confidence;

- (5) is aggregated with other information in a way that de-identifies the information as the Discloser's information and where the disclosure of that aggregated information:
 - (A) occurs in the ordinary course of business or so as to allow for compliance with legal, listing rule, business or other reporting requirements of the Aurizon Group; and
 - (B) would no longer reasonably be expected to affect the commercial affairs of the owner of the information.
- (b) **Confidential Information** means:
 - (1) Protected Information; and
 - (2) any and all communications, documents and information (whether electronic, in writing or otherwise) (not being Protected Information) regarding or relating to any Access-related Functions which is held, obtained or created by or on behalf of Aurizon Network where the disclosure of the information might reasonably be expected to:
 - (A) unfairly differentiate between Access Seekers (or their Customers), Access Holders (or their Customers) or Train Operators;
 - (B) afford a Related Operator or Associated Port/Rail Entity opportunity for potential unfair commercial advantage; or
 - (C) result in non-compliance (by Aurizon Network or any other person whose compliance Aurizon Network is required to ensure) with the requirements of clause 3.2.

3.15 Standard Form Confidentiality Deed

At any time during negotiations for Access, including during initial enquiries and prior to submission of an Access Application by a Third Party Access Seeker, either a Third Party Access Seeker or Aurizon Network may require Aurizon Network or the Third Party Access Seeker to enter into a confidentiality deed. In such circumstances, Aurizon Network and the Third Party Access Seeker will enter into a confidentiality deed in the form of set out in **[A standard CA should be developed – a sample is set out in this submission]**, unless otherwise agreed between Aurizon Network and the Third Party Access Seeker.

3.16 No requests for waiver of Undertaking and voluntary agreements not exclude Undertaking

- (a) Aurizon Network must not request or require any Third Party Access Seeker or Third Party Access Holder to waive or agree to waive any requirement or obligation on Aurizon Network under Part 3 of this Undertaking and any waiver of, or agreement to waive, any such obligation or requirement will be ineffective.
- (b) If Aurizon Network and a Third Party Access Seeker or Third Party Access Holder enter into a confidentiality agreement or deed or an Access Agreement containing confidentiality obligations in relation to the negotiation or provision of Access Rights, that agreement or deed will not exclude the

obligations and requirements of this Undertaking provided that if that agreement or deed prescribes an obligation or standard for performance of an act that is higher or more stringent than this Undertaking, Aurizon Network must perform or procure the performance of the higher or more stringent obligation or standard for that act.

3.17 Overarching commitment to information security

- (a) Notwithstanding any other provision, Aurizon Network must:
 - (1) keep Confidential Information confidential and secure;
 - (2) only use or disclose Confidential Information as permitted in accordance with this Undertaking; and
- (b) Notwithstanding any other provision in the Undertaking, including without limitation clause 3.18, Aurizon Network must not use or disclose Confidential Information where the purpose or likely result of such disclosure is that a Related Operator or Associated Port/Rail Entity will obtain an unfair commercial advantage.

Section D2 - Control framework for Confidential Information

3.18 Permitted use and disclosure

- (a) The Aurizon Network board of directors and the Network Executive Team may access and use Confidential Information to the extent necessary to discharge their duties.
- (b) Subject to paragraph 3.18(c), employees and officers of Aurizon Network may access and use Confidential Information to the extent necessary to discharge their duties concerning Access-related Functions on a need-to-know basis.
- (c) Aurizon Network must ensure that Protected Information is used only for the purpose for which it was disclosed to Aurizon Network and only to the extent necessary for that purpose.
- (d) Aurizon Network may disclose Confidential Information:
 - (1) if, but only to the extent, required or compelled by any Law;
 - (2) to those staff of an Aurizon Party (not being a Related Operator, Associated Port/Rail Entity or Aurizon Party, other than Aurizon Holdings, holding a direct or indirect in a Related Operator or Associated Port/Rail Entity) performing a finance or accounting function for Aurizon Network as referred to in clause 3.8(c)(1) for Aurizon Network as may be contained in finance and accounting information to the extent necessary to enable those staff to perform the relevant specified function, on a confidential basis;
 - (3) to the following specified management of Aurizon Holdings to the extent contained in shareholder reports:
 - (A) the Aurizon Holdings board of directors;
 - (B) the Chief Executive Officer of the Aurizon Group;
 - (C) the Chief Financial Officer of the Aurizon Group;

- (D) the Company Secretary of the Aurizon Group or any assistant Company Secretary;
- (E) the General Counsel of the Aurizon Group;
- (F) the Chief Internal Auditor of the Aurizon Group;
- (G) the Chief Information Officer of the Aurizon Group;
- (4) to a subcontractor or other person referred to in clause 3.8(a)(1) to the extent necessary to enable subcontractors to perform the relevant subcontract, on a confidential basis; or
- (5) to Third Party legal, accounting, financial, engineering, environmental or other advisers, consultants or service providers to Aurizon Network in respect of Access-related Functions to the extent Aurizon Network reasonably considers such disclosure necessary for the relevant advice or performance of the work, on a confidential basis and provided the Third Party is not also advising or otherwise working for an Aurizon Entity described in clause 3.5(a)(1), 3.5(a)(2) or 3.5(a)(3); and
- (6) in the case of Confidential Information which is Protected Information, with the written approval of the relevant Discloser.
- (e) Notwithstanding any other provision in the Undertaking, including without limitation clause 3.18(d), Aurizon Network must not disclose any Protected Information to the Marketing Division or an Aurizon Entity described in clause 3.5(a)(1), 3.5(a)(2) or 3.5(a)(3) (other than the Ultimate Holding Company if and to the extent otherwise permitted under the Undertaking) without the prior written consent of the relevant Discloser.
- (f) In this clause 3.18, “on a confidential basis” means that the Recipient covenants, in favour of Aurizon Network and, in the case of disclosure of Protected Information, the relevant Discloser, to keep the relevant information confidential and not use or disclose the information contrary to the provisions of this Section D as if it were Aurizon Network.

3.19 Process for permitted disclosure of Confidential Information

Where there is any disclosure of Confidential Information to a person, including access to any Confidential Information (whether within Aurizon Network, another Aurizon Party or a Third Party) (**Recipient**), Aurizon Network must ensure that:

- (a) the disclosure to the Recipient is permitted under this Undertaking;
- (b) the Recipient has a legitimate reasons for requiring access to the defined category of Confidential Information, reasonable details of the reasons are recorded and access to the Confidential Information is limited such that disclosure to the Recipient is only to the extent necessary for those reasons;
- (c) Confidential Information is clearly identified as such and also if the information is Protected Information;
- (d) the Recipient has signed a declaration signifying their awareness and understanding of the Aurizon Group’s obligations regarding Confidential Information;

- (e) the Recipient, the basis on which access or disclosure is permitted under the Undertaking and the defined category of Confidential Information to which they have access is recorded in the Confidential Information Register;
- (f) if the Recipient is not within Aurizon Network, or within an Aurizon Group company to which the Ultimate Holding Company Support Deed relates, that Aurizon Network enters into a legally enforceable agreement with the Recipient, on terms that are enforceable by the owner of the Protected Information (in the case of Confidential Information that is also Protected Information) and Aurizon Network, requiring the Recipient (and any of its employees) to keep the Confidential Information confidential, and to only use it for the purpose for which it was disclosed; and
- (g) if the Recipient is not within Aurizon Network and any ongoing access to Confidential Information is to be provided, a review date is recorded in Confidential Information Register at which access or disclosure under this clause 3.19 shall expire.

Section D3 – Compliance monitoring and safeguards

3.20 Confidential Information Register

- (a) Aurizon Network must ensure that the Compliance Officer establishes and maintains a Confidential Information Register containing:
 - (1) the identity of Recipients to whom any Confidential Information has been disclosed or access to Confidential Information has been provided, the basis on which disclosure or access is permitted under the Undertaking and the defined category of Confidential Information (including if the information is also Protected Information) and other reasonable details of Confidential Information which has been disclosed or to which they have had access;
 - (2) a record of Recipients that have signed a declaration signifying their awareness and understanding of Aurizon Network's obligations regarding Confidential Information in accordance with clause 3.19(d); and
 - (3) a record of the signing of exit certificates contemplated in clause 3.21.
- (b) A Third Party Access Seeker, Third Party Access Holder or Third Party Train Operator may, upon request, view information in the register which relates to Protected Information that it has disclosed to Aurizon Network.
- (c) The QCA may, upon request, view the Confidential Information Register.

3.21 Mandatory Confidential Information training and exit certificates

- (a) Aurizon Network must ensure that all Aurizon Network employees and other persons, receiving, or having access to, Confidential Information, are made fully aware of the Aurizon Group's obligations relating to the management of Confidential Information, and complete training for this purpose as contemplated in clause 3.22.

- (b) Where Aurizon Network employee (or other person who has undertaken work for Aurizon Network, whether as a director, officer, contractor, secondee or otherwise) who has had access to Confidential Information leaves Aurizon Network to work for another Aurizon Group business unit, including for temporary secondments, Aurizon Network must ensure the person undergoes a debriefing to remind them of Aurizon Network's obligations relating to Confidential Information, and Aurizon Network will use all reasonable endeavours to ensure the person signs an exit certificate (that includes an acknowledgement of having undergone such a debriefing process). A record of exit certificates signed must be included in the Confidential Information Register.

3.22 Minimum training requirements

- (a) Consistent with the intended purpose of this **Part 3** as set out in clause 3.1(g), Aurizon Network must create, maintain and conduct, as a minimum, the following training sessions in order to promote awareness of Aurizon Network's obligations under this Part 3:
- (1) a briefing session which outlines Aurizon Network's statutory obligations under the Act and Aurizon Network's obligations under this **Part 3**:
 - (A) for employees employed by an Aurizon Group entity at the commencement of this Undertaking, within 3 months of the commencement of this Undertaking;
 - (B) for all new employees of Aurizon Group entities, within 1 month after employment commences; and
 - (C) notwithstanding clause 3.22(a)(1)(A) or clause 3.22(a)(1)(B), for all employees of Aurizon Group entities, at least once in every two years of continuous employment;
 - (2) detailed training sessions in respect of Aurizon Network's statutory obligations under the Act, Aurizon Network's obligations under this **Part 3** (including regarding the proper performance of Access-related Functions and the management of Confidential Information) and Aurizon Holdings obligations under the Ultimate Holding Company Support Deed:
 - (A) for employees employed by an Aurizon Group entity at the commencement of this Undertaking who perform Access-related Functions or receive, or have access to, Confidential Information, within 3 months of the commencement of this Undertaking;
 - (B) for all new employees of Aurizon Group entities who will who perform Access-related Functions or receive, or have access to, Confidential Information, within 1 month after employment commences; and
 - (C) notwithstanding clause 3.22(a)(2)(A) or clause 3.22(a)(2)(B), for all employees of Aurizon Group entities who perform Access-related Functions or receive, or have

access to, Confidential Information, at least once in every two years of continuous employment.

- (b) Aurizon Network must ensure that the Compliance Officer establishes and maintains a record of training attendances (as a yearly percentage of Aurizon Group employees) for publication in the annual compliance report prepared under **Part 10**.

3.23 Security measures

- (a) Without limitation to any other provision, Aurizon Network must ensure that adequate security measures (physical, electrical and otherwise) are in place to ensure that only persons as to and the extent permitted by this Undertaking have access to Confidential Information in Aurizon Network's possession or control (whether in electronic or tangible form).
- (b) Aurizon Network must ensure that its premises have in place adequate security measures to ensure that persons who are not directors or employees of Aurizon Network (including without limitation staff of Aurizon Parties) are unable to access the premises, unless:
 - (1) access to the premises is authorised by an Aurizon Network director; and
 - (2) the person is accompanied or supervised by an Aurizon Network director or employee, to the extent reasonably practicable, while in the premises.
- (c) Aurizon Network must maintain a record, including reasonable details, of all persons (other than directors or employees of Aurizon Network) who have accessed the premises.
- (d) For the purposes of this clause 3.22, at any time an employee of Aurizon Network is on secondment to another Aurizon Party, that person will be considered to be staff of the Aurizon Party.
- (e) Clause 3.23(a) does not require that Aurizon Network be located in a different building to a Related Operator.

Section E – Complaints and Waiver

3.24 Complaint handling

- (a) If a Third Party Access Seeker, Third Party Access Holder or Third Party Train Operator considers that:
 - (1) Aurizon Network has breached one or more of its obligations under this **Part 3**;
 - (2) the Ultimate Holding Company has breached the Ultimate Holding Company Support Deed; or
 - (3) an Aurizon Associate has breached a confidentiality deed or confidentiality provisions contained in another arrangement with Aurizon Network pursuant to which the Confidential Information was disclosed to it,they (the **Complainant**) may lodge a written complaint with Aurizon Network (a **CI Complaint**).

- (b) A Complainant must submit a copy of a CI Complaint to the QCA within 2 Business Days of lodging the CI Complaint with Aurizon Network.
- (c) Unless otherwise notified in writing by the Complainant, the CI Complaint and any accompanying information (whether documentary or otherwise) will be Confidential Information.
- (d) Aurizon Network must:
 - (1) promptly investigate all CI Complaints; and
 - (2) advise the Complainant and the QCA in writing of the outcome of that investigation and Aurizon Network's proposed response, if any, no later than 20 Business Days after receiving a CI Complaint.
- (e) If Aurizon Network considers that it cannot comply with clause 3.24(d) within the period provided for under clause 3.24(d)(2), Aurizon Network must submit an Extension Request to the QCA and provide a copy of that Extension Request to the Complainant.
- (f) As soon as practicable after receiving an Extension Request under clause 3.24(e), the QCA notify Aurizon Network and the Complainant of the new date by which Aurizon Network must comply with clause 3.24(d).
- (g) Where the Complainant is not satisfied with the outcome of Aurizon Network's investigation, the Complainant can apply to the QCA seeking an audit of the relevant subject of the Complaint and that audit must be conducted in accordance with **clause 10.8**. The QCA will, acting reasonably, determine whether an audit is appropriate in the circumstances.
- (h) Aurizon Network must ensure that the Compliance Officer establishes and maintains a record of Aurizon Network's Complaint handling times for publication in the annual compliance report prepared under **Part 10**.

3.25 No waiver

Aurizon Network must not seek a waiver from the QCA of all or any of Aurizon Network's obligations under this **Part 3**.

3.26 New definitions:

Access-related Functions has the meaning given in clause 3.4(b).

Associated Port/Rail Entity means an entity (other than the Ultimate Holding Company) which:

- (a) is either an Aurizon Party or in which any one or more Aurizon Party holds, or is proposing to or is reasonably likely to acquire, any direct or indirect interest; and
- (b) which owns, leases, operates, manages or controls (directly or indirectly and whether alone or together with one or more others) any port infrastructure in Queensland or any rail transport infrastructure (other than the rail transport infrastructure comprising the Central Queensland Coal Network), including without limitation any proposed development of, or investment in, any such rail transport infrastructure or port infrastructure.

Aurizon Associate means:

- (a) Aurizon Network;
- (b) An Aurizon Party; or
- (c) An Associated Port/Rail Entity, whether or not an Aurizon Party.

Central Queensland Coal Network means the rail corridors:

- (a) from the ports at Hay Point and Dalrymple Bay to Blair Athol mine, North Goonyella mine, Hail Creek mine and the junction with the Gladstone to Gregory mine corridor;
- (b) from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Gregory, Minerva and Rolleston mines;
- (c) from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Moura mine and the loading facility for Baralaba mine in the vicinity of Moura mine;
- (d) from the port of Abbot Point to Newlands mine; and
- (e) all branch lines directly connecting coal mine loading facilities to the abovementioned corridors;

CI Complaint means a complaint lodged with Aurizon Network in accordance with clause 3.24(a);

Complainant has the meaning given by clause 3.24(a);

Extension Request means a written request for an extension of time that sets out the cause or causes of Aurizon Network's delay, a proposed new compliance date and any other information the QCA may reasonably require in determining the request for an extension of time;

Line Diagrams means a diagrammatical representation of the rail network identifying:

- (a) the configuration of the rail network; and
- (b) the parts of the rail network which are managed by Aurizon Network, a Related Operator or a person other than Aurizon Network;

Third Party Access Seeker means a Third Party which is an Access Seeker and, for the purposes of Part 3, includes a Third Party who wants Access, or increased Access whether or not an Access Application has been lodged.