
[Insert Name of Discloser]

Aurizon Network Pty Ltd

Confidentiality | ~~Agreement~~ Deed

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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** ([CounterpartyDiscloser](#))

Background

A The [Discloser wishes to disclose Confidential Information](#) ~~parties have agreed to enter into this agreement to facilitate the exchange of information between Aurizon Network in connection with the Transaction for the Purpose and the Counterparty.~~

B [Aurizon Network agrees that the This agreement provides for the disclosure of Confidential Information is provided to it subject to and on the terms of this deed and that it will not use or disclose the Confidential Information except as provided in this deed](#) ~~between the Counterparty and Aurizon Network.~~

[This deed witnesses as follows:](#)

Agreed terms

1 Definitions

(a) In this [agreement deed](#) the following terms have the following meanings:

Business Day	A day which is not a Saturday, Sunday or bank or public holiday in Brisbane.
Purpose	The purpose for which the Confidential Information is to be used set out in item 2 of schedule 1 .
Transaction	The transaction for which the owner of the Confidential Information Discloser agrees to permit the Recipient with Aurizon Network access to the Confidential Information, as set out in item 3 of schedule 1 .
Undertaking	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</i>

Authority Act 1997 (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 [deed 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.~~

~~2.21.2~~ [No offer or acceptance for Transaction](#)

This [deed agreement](#) and the disclosure of Confidential Information to ~~the Recipient~~[Aurizon Network](#) under this [deed agreement](#) is not an offer or acceptance of an offer to enter into the Transaction. Nothing in this [deed agreement](#) obliges any party to enter into the Transaction.

~~32~~ [Confidentiality](#)

~~Each party~~[Aurizon Network](#):

- (a) ~~undertakes to~~[must](#) keep [strictly](#) confidential and not disclose any Confidential Information of the ~~other party~~[Discloser](#) or permit any person employed or engaged by it to disclose any such Confidential Information to any person (including other individuals employed or engaged by that party) except in accordance with this [deed agreement](#) or the Undertaking;
- (b) undertakes to [only access and](#) use the Confidential Information of the ~~other party~~[only Discloser](#) for the Purpose;
- (c) must secure and protect the Confidential Information of the ~~other party~~[Discloser](#) from unauthorised disclosure, [modification, loss,](#) access or use;
- (d) is responsible for any [access,](#) use or disclosure of Confidential Information of the ~~other party~~[Discloser](#) which is contrary to the provisions of this [deed agreement](#) by persons to whom ~~the Recipient~~[Aurizon Network](#) discloses the Confidential Information;
- (e) must take all steps as may be necessary to prevent any improper use or disclosure (~~including enforcing any confidentiality deed or confidentiality provisions contained in another arrangement under~~

~~which the Recipient disclosed that Confidential Information) of the Discloser's Confidential Information of the other party; and~~

~~(f) _____ must not copy or reduce into tangible, visible or recorded form or allow cause or permit to be copied or reduced into tangible, visible or recorded form, any Confidential Information disclosed to it by the other party Discloser except to the extent necessary to carry out the Purpose; and~~

~~(f)(g) _____ must promptly notify the Discloser if it suspects, or becomes aware of, any loss or any unauthorised use, storage, copying or disclosure of the Confidential Information.-~~

43 Exceptions

(a) ~~Clause 2(a)3(a)~~ does not apply to ~~the Recipient Aurizon Network~~ under this ~~deed agreement~~ if the ~~owner of the Confidential Information Discloser~~ provides its prior written approval, which approval must not be unreasonably withheld.

~~(b) _____ Clause 3(a) does not apply to the Counterparty if the disclosure is:~~

~~(i) _____ required or compelled by any Law;~~

~~(ii) _____ required or compelled by any order of a court;~~

~~(iii) _____ required or compelled by notice validly issued by any Authority;~~

~~(iv) _____ necessary for the conduct of any legal proceedings, dispute resolution process or audit under the Undertaking, the Act or an agreement entered with Aurizon Network;~~

~~(v) _____ if the process in **clause 4(e)** is observed, required under any stock exchange listing requirement or rule;~~

~~(vi) _____ necessary for the effective response to an emergency or natural disaster or for clearing an incident or emergency that is preventing the operation of Train Services on the Rail Infrastructure; or~~

~~(vii) _____ to the Safety Regulator.~~

~~(e)(b) _____ Clause 2(a)3(a)~~ does not apply to Aurizon Network if the disclosure is permitted by **clause 3.13** of the Undertaking and Aurizon Network complies with the process set out in that clause permitting disclosure of Confidential Information.

~~(d) _____ Prior to any disclosure under **clause 4(b)(v)**, the Counterparty must:~~

~~(i) _____ consult with Aurizon Network as to the nature and extent of the disclosure of the Confidential Information;~~

- (ii) ~~accept any requests made by Aurizon Network (acting reasonably) to limit the disclosure of the Confidential Information; and~~
- (iii) ~~to the extent reasonably possible, coordinate the disclosure of the Confidential Information with any similar disclosure by Aurizon Network that is required under any stock exchange listing requirement or rule relating to Aurizon Network.~~

(c) ~~For the purposes of **clause 3(a)4(a)** and subject to Aurizon Network complying with **clause 3(d)(ii)**, it is unreasonable for the owner Discloser of the Confidential Information to refuse to approve the disclosure of ~~that~~ Confidential Information by ~~the Recipient~~ Aurizon Network to ~~that Recipient~~ Aurizon Network's external consultants, ~~independent and professional advisers to the extent that such disclosure is reasonably necessary for Aurizon Network to perform its obligations under this deed or, if the Recipient is an Access Seeker or Access Holder, to the Recipient's Customer or Train Operator, if the Recipient enters into a contract with the recipient of the Confidential Information whic~~.~~

(d) ~~P~~rior to any disclosure of Confidential Information to an external consultant or professional adviser of Aurizon Network as contemplated in clause 3(c), Aurizon Network must:

- (i) ~~procure that the external consultant or professional adviser who will be the recipient of the Confidential Information executes a confidentiality deed in favour of the Discloser in respect of the relevant Confidential Information on terms no less onerous than this deed; and~~
- (e) ~~provide the Discloser with the executed deed described in clause 3(d)(ii).:~~
 - (i) ~~specifies:~~
 - (A) ~~the persons employed by the recipient who may have access to any Confidential Information provided under the contract; and~~
 - (B) ~~that those persons must not disclose any Confidential Information provided under the contract to any other person unless otherwise agreed by the Recipient and the owner of the Confidential Information; and~~
 - (ii) ~~requires the recipient to execute a confidentiality deed in favour of the owner of the Confidential Information on terms and conditions substantially similar to this agreement;~~
 - (iii) ~~advises the recipient that a conflict of interest may exist with respect to the recipient providing services on a related matter to a Related Operator or Related Competitor; and~~

~~(iv)(ii) requires that if the external consultant or independent advisor is also advising a Related Operator or Related Competitor in relation to the same or a related matter, the recipient to ensure that those individuals are not, and will not for as long as the information remains Confidential Information, be working for a Related Operator or Related Competitor on the same or a related matter.~~

~~(f) If consent is sought by Aurizon Network under **clause 3(a)4(a)**:~~

~~(+)(e) during the process of responding to an Access Application or negotiating an Access Agreement:~~

~~(A)(i) where such consent has been sought during the Negotiation Period and ~~the owner of the Confidential Information~~ Discloser fails to respond to Aurizon Network's request for consent within ~~five~~ ten Business Days of its receipt of Aurizon Network's written request (referred to as the **Consent Response Date**), then all relevant timeframes applicable to Aurizon Network under **Part 4** of the Undertaking will be extended by the same number of days as the day on which the response is given exceeds the Consent Response Date; or~~

~~(B) where such consent has been sought during the Negotiation Period and the ~~owner of the Confidential Information~~ Discloser unreasonably refuses its consent to the disclosure of that Confidential Information, or fails to respond to Aurizon Network's request for consent within 20 Business Days of its receipt of Aurizon Network's written request, then Aurizon Network may give a Negotiation Cessation Notice to the Access Seeker, in accordance with **clause 4.12** of the Undertaking; or~~

~~(ii) during the process of administering an Access Agreement or a Train Operations Deed, if the owner of the Confidential Information fails to respond to Aurizon Network's request for consent within twenty (20) Business Days of its receipt of Aurizon Network's written request, then consent is deemed to be given.~~

~~5 Counterparty's obligations~~

~~The Counterparty:~~

~~(a) confirms it is aware of and understands the Aurizon Network's obligations regarding Confidential Information under the Undertaking;~~

~~(b) acknowledges it may not provide the Confidential Information received from Aurizon Network to any other party, including any person employed or engaged by it, without the consent of Aurizon~~

~~Network and then only on the terms and conditions required by Aurizon Network (acting reasonably);~~

- ~~(c) — confirms it must secure and protect the Confidential Information received from Aurizon Network from unauthorised disclosure, access or use;~~
- ~~(d) — consents to Aurizon Network recording in the Confidential Information Register all information required by the Undertaking in respect of its use of the Confidential Information;~~
- ~~(e) — agrees to provide any information requested by Aurizon Network to enable it to complete the Confidential Information Register; and~~
- ~~(f) — agrees to attend any training course required by Aurizon Network (acting reasonably) in respect of the Counterparty's use and management of the Confidential Information.~~

4 Return and destruction of information

- (a) — If requested by the Discloser, Aurizon Network must immediately return to the Discloser, or destroy, delete and erase, as the Discloser directs, all original documents and copies that are or contain Confidential Information or that reproduce, are based on, utilise or relate to Confidential Information.
- (b) — Compliance by Aurizon Network with clause 4(b) does not relieve Aurizon Network from any of its other obligations under this deed.

65 Aurizon Network obligations

Aurizon Network agrees to comply with all obligations of Aurizon Network under Part 2 and Part 3 of the Undertaking relating to Confidential Information, ~~subject to the exceptions, exclusions and permitted disclosures of Confidential Information in the Undertaking.~~

76 Breach of deedagreement

- (a) — The ~~owner of the Confidential Information~~Discloser may take legal proceedings against ~~the Recipient~~Aurizon Network and/or any third party if there is any actual, threatened or suspected breach of this deedagreement.
- (b) — ~~The parties~~Aurizon Network acknowledges that:
 - (i) — the Confidential Information is secret and highly confidential to the Discloser;
 - (ii) — without limiting clause 9.1, the Confidential Information is the exclusive property of the Discloser and this deed does not

convey to Aurizon Network any proprietary or other interest in the Confidential Information;

(iii) disclosure of the Confidential Information in breach of this deed could cause considerable commercial and financial detriment to the Discloser;

(iv) damages may be inadequate compensation for breach of this deed agreement and, subject to the court's discretion, the owner of the Confidential Information Discloser may seek specific performance of this deed agreement and may restrain, by an injunction or similar remedy, any conduct or threatened conduct which is or will be a breach of this deed, in addition to any other remedies available at law or in equity under or independently of this deed agreement; and

(v) nothing in this deed obliges the Discloser to disclose any particular information to Aurizon Network.-

87 Termination

~~(a) This deed will agreement terminate upon the mutual written agreement of the parties. s on:~~

~~(i) the execution by the parties of:~~

~~(A) the document containing the terms of the Transaction; or~~

~~(B) a subsequent confidentiality agreement imposing confidentiality obligations on Aurizon Network in respect of the Confidential Information; or~~

~~(ii) in the case of an Access Agreement or Train Operations Deed:~~

~~(A) the cessation of negotiations in respect of the Transaction, in accordance with the Undertaking; or~~

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

~~(b) Where termination occurs under **clause 8(a)(i)**, this agreement terminates immediately.~~

~~(c) Where termination occurs under **clause 8(a)(i)(A)** or **(B)**, this agreement terminates immediately on the date specified in **Item 5 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.~~

98 Notices

9.48.1 Form of Notice

Any notice, demand, invoice, process or other communication relating to this ~~deed~~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~~the parties, be in electronic form.

9.28.2 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~~the parties, sent by email to the party's current email address for service.

9.38.3 Particulars for giving of Notices

The particulars for giving of Notices are detailed in **item 4 of Schedule 1**, or as most recently notified to the party sending the Notice.

9.48.4 Notice by post

Subject to **clause 8.79.7**, 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, ten (10) Business Days after posting.

9.58.5 Notice by fax

Subject to **clause 8.79.7**, 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.

9.68.6 Notice by email

Subject to **clause 8.79.7**, 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.

9.78.7 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.

10.9 General

10.19.1 No licence

Without limiting clause 6(b)(ii), this deed agreement does not grant the Recipient Aurizon Network any licence or other rights relating to any Confidential Information or other intellectual property rights owned by the owner of the Confidential Information Discloser.

10.29.2 Variation

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

10.39.3 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 deed agreement without the prior consent in writing of the other party.

9.4 Cumulative rights

The Discloser's rights arising from or under this deed are cumulative and do not exclude any of the Discloser's rights.

10.49.5 Costs

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

10.59.6 Counterparts

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

10.69.7 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 deed agreement.

9.8 Severance

If a provision of this deed is wholly or partly invalid or unenforceable, the provision or part must be treated as deleted from this deed. This will not affect the validity or enforceability

10.79.9 Construction

In this deed agreement:

- (a) any schedule and annex to it is an integral part of it and any reference to this deed 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 deed 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;
- (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) no provision of this deed will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this deed;
- (h) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
- (g)(i) words in the singular include the plural and vice versa; and
- (h)(j) if a word or phrase is defined its other grammatical forms have corresponding meanings.

11.10 Governing law and jurisdiction

This deed 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	Counterparty	Name: [insert] ABN: [insert] Address: [insert]
2	Purpose	[insert] [If for negotiation of an Access Agreement or Train Operations Deed, insert: "To facilitate the negotiations in respect of the potential granting of Access by Aurizon Network under an Access Agreement or the use of that Access under a Train Operations Deed (as applicable).]
3	Transaction	[insert] [If for negotiation of an Access Agreement or Train Operations Deed, insert: "The execution of an Access Agreement or Train Operations Deed (as applicable) under which Aurizon Network agrees to provide the Counterparty with Access (under an Access Agreement) or the right to use that Access (under a Train Operations Deed).]
4	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]
5		<u>CounterpartyDiscloser</u> Delivery address: [insert] Postal address: [if there is no PO box, insert 'Same as delivery address'] Facsimile: [insert] Email address: [insert] Attention: [insert]

Item	Description	Details
6	Termination date	The date that is [insert] Months after an event in clause 8(a)(i) or (ii) occurs.

Execution

Executed as an [deed agreement](#).

[Appropriate execution blocks to be inserted]