

Schedule [#] Confidentiality Deed QRC Template

BETWEEN

Aurizon Network Pty Ltd (ACN 132 181 116) of Level 14, 305 Edward Street, Brisbane
in the State of Queensland

("Aurizon Network")

AND

("Access Seeker")

RECITALS

- A.** The Access Seeker has made or intends to make enquiries of Aurizon Network regarding the provision of Access and the parties may commence negotiation of the terms of an Access Agreement under which Aurizon Network will provide the Access Seeker with Access to the Rail Infrastructure;
- B.** In the course of the Access Seeker's enquiry and/or during the negotiations for the provision of Access to the Access Seeker and/or during the term of the Access Agreement it is envisaged that the parties will have to provide each other with Confidential Information;
- C.** This deed sets out the terms upon which the parties will disclose Confidential Information to each other.

OPERATIVE PROVISIONS

1 Definitions

1.1 Unless the context otherwise requires, and subject to Clause 1.2, terms defined in the Undertaking have the same meanings when used in this deed.

1.2 In this deed, the following words and expressions shall have the respective meanings:

“Confidential Information” means:

- (a) any information, data or other matter (‘information’) disclosed to a party by, or on behalf of, another party in contemplation of, or during the course of, the negotiations for Access in respect of which this deed was signed, or during the term of the Access Agreement that results from those Access negotiations, where:
 - (i) the disclosure of the information by the recipient might reasonably be expected to affect the commercial affairs of the owner of the Confidential Information; or
 - (ii) the information is marked confidential by a party when disclosed; and
- (b) any information or data collected by Aurizon Network or an Access Holder in the performance of an Access Agreement where the disclosure of the information by the collector might reasonably be expected to affect the commercial affairs of the other party to the Access Agreement, which party shall be deemed to be the owner of such Confidential Information,

provided that such information:

- (c) is not disclosed in relation to services other than the provision of Access to Rail Infrastructure for the purpose of operating Train Services;
- (d) is not already in the public domain;
- (e) does not become available to the public through means other than a breach of the confidentiality provisions in this deed;
- (f) was not in the other party’s lawful possession prior to such disclosure; and
- (g) is not received by the other party independently from a third party free to disclose such information, data or other matter,

and provided further that information will cease to be Confidential Information if the information has ceased to retain its confidential nature, for example:

- (h) the disclosure of the information by the recipient would no longer reasonably be expected to affect the commercial affairs of the owner of the information;
- (i) the information is now in the public domain through means other than a breach of the confidentiality provisions in this deed; or
- (j) the information has been received by the recipient independently from a third party free to disclose the information.

“Permitted Purpose” means a purpose associated with responding to an Access Application, negotiating an Access Agreement or administering an Access Agreement.

“Undertaking” means the access undertaking prepared by Aurizon Network and approved by the QCA in accordance with the Act.

2 Disclosure and Use of Confidential Information

2.1 Each party ("Recipient") undertakes to keep confidential and not disclose any Confidential Information of the other party ("Owner") 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 or the Undertaking, and to use Confidential Information of the other party only for a Permitted Purpose, unless:

- (a) the Owner provides its prior written approval, which approval shall not be unreasonably withheld; or
- (b) the disclosure and/or use 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, including any dispute resolution process under the Undertaking or the Act;
 - (v) required under any stock exchange listing requirement or rule;
 - (vi) to the Safety Regulator;
 - (vii) to the Recipient's solicitors, barristers, or accountants under a duty of confidentiality;
 - (viii) to the Recipient's banker or other financial institution, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements, if such banker or financial institution has executed a legally enforceable confidentiality deed in favour of the Owner;
 - (ix) for the purpose of facilitating Train Control directions where the disclosure of information is by Aurizon Network in the usual course of undertaking Train Control Services;
 - (x) by any person involved in clearing an incident or emergency that is preventing the operation of Train Services on the Rail Infrastructure;
 - (xi) to an infrastructure provider for infrastructure forming part of the supply chain in respect of which Access forms a part for the purpose of facilitating the coordination of the Capacity allocation process of that infrastructure provider and of Aurizon Network provided that the infrastructure provider has undertaken, in an agreement to which both Aurizon Network and the Access Seeker are a party, to keep the information disclosed by it by Aurizon Network confidential and use that information for the purpose for which it was disclosed; or
 - (xii) to a Aurizon Party provided that the disclosure is in accordance with Clause 2.4.

2.2 For the purposes of Clause 2.1(a), it is deemed to be unreasonable for Aurizon Network to refuse to approve the disclosure of its Confidential Information by an Access Seeker to that Access Seeker's external consultant/s, independent adviser/s or Customer/s where the Access Seeker enters into a contract with the recipient of the Confidential Information on the following terms:

- (a) specifying the persons employed by the recipient who may have access to any Aurizon Network Confidential Information provided under the contract;
- (b) specifying that those persons must not disclose any Aurizon Network Confidential Information provided under the contract to any other person unless otherwise agreed by Aurizon Network; and
- (c) if required by Aurizon Network, requiring the recipient to execute a confidentiality deed in favour of Aurizon Network on terms and conditions reasonably satisfactory to Aurizon Network.

2.3 For the purposes of Clause 2.1(a), it is deemed to be unreasonable for the Access Seeker to refuse to approve the disclosure of its Confidential Information by Aurizon Network to Aurizon Network's external consultant/s or independent adviser/s where Aurizon Network enters into a contract with the recipient of the Confidential 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 Access Seeker's Confidential Information provided under the contract; and
 - (ii) that those persons must not disclose any Third Party Access Seeker's or Third Party Access Holder's Confidential Information provided under the contract 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 independent advisor 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 advisor to provide advice in relation to that Confidential Information,

requiring 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 on the same or a related matter;
- (c) if required by the Access Seeker, requiring the recipient to execute a confidentiality deed in favour of the Access Seeker on terms and conditions reasonably satisfactory to the Access Seeker.
- (d) This Clause 2.3 does not apply to the disclosure or use of Confidential Information in accordance with Clause 2.4.

2.4 (a) Notwithstanding any other provision of this Clause 2.4, Aurizon Network may disclose the Access Seeker's Confidential Information to:

- (i) individuals within Aurizon Network; and
- (ii) the Chief Executive Officer, the Chief Financial Officer and the Aurizon board of directors of Aurizon and Aurizon Network's Ultimate Holding Company, and persons providing clerical or administrative assistance to any of them including any Company Secretary and Assistant Company Secretary.

- (b) Subject to Clause 2.4(c), Aurizon Network may disclose the Access Seeker's Confidential Information to persons
- (i) **[insert relevant Aurizon departments]**
- provided that disclosure to each recipient is limited to the extent necessary to carry out a Permitted Purpose.
- (c) The Access Seeker may, in an Access Application, give notice to Aurizon Network that it does not wish Aurizon Network to disclose its Confidential Information to any one or more of the groups listed in Clause 2.4(b). If the Access Seeker gives such a notice to Aurizon Network, then:
- (i) upon receipt of such notice Aurizon Network may not disclose Confidential Information to the groups so noted;
- (ii) 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 Access Seeker will not unreasonably withhold its agreement to this alternate mechanism;
- (iii) all 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
- (iv) if
- (A) 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
- (B) 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 Access Seeker, in accordance with the Undertaking.
- (d) Aurizon Network may disclose the Access Seeker's Confidential Information to a Related Operator where:
- (i) the Access Seeker approves such disclosure; or
- (ii) such disclosure is required for the purpose of facilitating the performance of Field Incident Management or Yard Control services, provided that any disclosure is limited to the extent required for that purpose.
- (e) Subject to Clause 2.4(g), if, for a Permitted Purpose, Aurizon Network wishes to disclose the Access Seeker's Confidential Information to an employee or group of a Aurizon Party) not specified in Clauses 2.4(a), (b) or (d), or to a group specified in Clause 2.4(b) on an issue not specified in that clause, Aurizon Network must:
- (i) obtain the consent of the Access Seeker prior to making the disclosure; and
- (ii) only disclose the Confidential Information to that employee or group to the extent necessary for the Permitted Purpose.
- (f) If, Aurizon Network seeks the consent of the Access Seeker for the disclosure of Confidential Information pursuant to Clause 2.4(e):

- (i) during the process of responding to an Access Application or negotiating an Access Agreement:
 - (A) where such consent has been sought during the Negotiation Period and the owner of the Confidential Information refuses its consent to the disclosure of that Confidential Information, or fails to respond to Aurizon Network's request for consent within thirty (30) 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 the Undertaking; or
 - (B) where such consent has been sought at any time during the negotiation process (including during the Negotiation Period) and the owner of the Confidential Information fails to respond to Aurizon Network's request for consent within five (5) 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 will be extended by the same number of days as the day on which a response is given exceeds the Consent Response Date; and
- (ii) during the process of administering an Access Agreement such consent shall not be unreasonably withheld.
- (g) Aurizon Network is permitted to disclose the Access Seeker's Confidential Information to Aurizon employees in **[insert relevant Aurizon departments]**, to the extent necessary for those employees to perform their duties, without obtaining the consent of the Access Seeker.
- (h) Except where Clause 2.4(a) applies, Aurizon Network may only disclose the Access Seeker's Confidential Information to a Aurizon Party:
 - (i) if Aurizon Network and the Aurizon Party have entered into a legally enforceable agreement with provisions requiring keeping confidential and not disclosing (and not permitting any person employed or engaged by that Aurizon Party to disclose) Confidential Information disclosed to the Aurizon Party by Aurizon Network; and
 - (ii) provided Aurizon Network immediately notifies the QCA and the Access Seeker of:
 - (A) any breach of such provisions of which Aurizon Network becomes aware; and
 - (B) where there is a breach, the actions Aurizon Network has taken, or proposes to take, to rectify that breach (to the extent possible) and prevent further improper use or disclosure.

2.5 For the purpose of this deed, a person who has been a consultant or contractor to either Aurizon Network or the Access Seeker for a continuous period of at least three months, who works at least an average of 30 hours per week for that party, and who is subject to confidentiality obligations in favour of that party, shall be treated as if they were an employee of that party rather than an external consultant or independent adviser of that party.

3 General Obligations

3.1 Each Recipient acknowledges and agrees that:

- (a) the Confidential Information of the Owner is confidential to the Owner and is and remains at all times the valuable and exclusive property of the Owner;
- (b) the Recipient is responsible for any use or disclosure of Confidential Information which is contrary to the provisions of this deed by persons to whom the Recipient discloses the Confidential 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 the Recipient disclosed that Confidential Information);
- (c) the Recipient 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 Confidential Information furnished to it by or on behalf of the Owner except to the extent necessary to carry out a Permitted Purpose;
- (d) this deed shall not be construed as assigning any other rights to use Confidential Information, or as granting to the Recipient any licence or other rights relating to any Confidential Information or other intellectual property rights owned by the Owner;
- (e) the Recipient shall secure and protect the Confidential Information received from the Owner from unauthorised disclosure, access or use;
- (f) the Owner may take legal proceedings against the Recipient 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
- (g) damages may be inadequate compensation for breach of this deed and, subject to the court's discretion, the Owner 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.

4 General

- 4.1 Nothing in this deed obliges either party to disclose any particular Confidential Information or enter into any further agreement with the other party if it decides, in its absolute discretion, that it is not in its commercial interests to do so.
- 4.2 Unless otherwise terminated by mutual consent in writing, this deed will continue in force notwithstanding:
- (a) any subsequent termination of any discussions or negotiations between the parties; or
 - (b) the return of all copies of the Confidential Information to the Owner.
- 4.3 This deed is personal to the parties and may not be assigned or otherwise transferred in whole or in part without the prior written consent of the other party.
- 4.4 The laws of Queensland will govern the construction and performance of this deed and the parties submit to the non-exclusive jurisdiction of the Supreme Court of Queensland. This deed constitutes the entire agreement between the parties in respect of the

Confidential Information and supersedes all previous agreements and understandings in respect of the Confidential Information. Nothing in this deed derogates from any obligation of Aurizon Network under the Undertaking with respect to the Confidential Information.

- 4.5 In this deed, references to Clauses are references to Clauses contained in this deed unless otherwise stated.

[Appropriate execution clauses to be included.]