

Annexure B – Detailed response on standard agreements

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
Detailed Response – Standard Access Agreements						
1	Nature and Scope of Access Rights	<p>Clause 3.2 of UT4 AHAA</p> <p>Clause 3.2 of UT4 SOAA</p>	<p>The AHAA (and other SAAs) does not expressly acknowledge that AN is required to provide the End User with the benefits, rights, services captured by the UT4 definition of “Access” on the terms of the AHAA.</p>	<p>The SAAs describe the “Access” which AN will provide to an Access Holder in accordance with its obligations under its Access Undertaking and set out all of the terms and conditions on which AN will provide such Access to the Access Holder.</p> <p>Clause 2(c) of the UT3 AHAA and SOAA was included for the benefit of AN to make clear that AN’s obligation to provide “Access” to the Access Holder does not extend beyond its obligations to the Access Holder under the UT3 AHAA and SOAA.</p> <p>A similar provision was not included in the UT4 SAAs because AN did not consider that it was necessary. AN is of the view that if AN enters into a UT4 SAA with an Access Holder, AN’s obligation to provide “Access” to the Access Holder will not extend</p>	<p>AN acknowledges stakeholders concerns and provides this further clarification to assist review.</p>	<p>The QRC does not agree with Aurizon Network’s position.</p> <p>The drafting proposed by the QRC does not seek to impose obligations on Aurizon Network outside the terms of the AHAA. The QRC’s position in relation to the nature and scope of access right is as set out in Section 5 of the QRC’s Main Submission and in the QRC’s mark-up.</p>

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				beyond its obligations to the Access Holder under the UT4 SAA.		
2	Billing and Payments - the right to set-off	Clause 5.6 of UT4 AHAA Clause 5.6 of UT4 SOAA	The AHAA (and other SAAs) does not have a reciprocal right of set-off. The approach lacks commercial balance and is unreasonable.	It is considered more likely that AN will have the ability to set-off monies owed by the Access Holders under SAAs than the reverse. However, AN agrees that it would be reasonable to have a reciprocal right of set-off and accepts the recommended drafting change.	Accept QRC's position and amend the set-off clause to make the right of set-off reciprocal.	The QRC are agreeable to a mutual set-off provision.
3	Security	Clause 6.2 of UT4 AHAA Clause 6.2 of UT4 SOAA	The Access Holder ceasing to have an Acceptable Credit Rating should be a factor AN can consider when determining if an Access Holder is required to provide Security rather than an arbitrary trigger for the provision of Security.	It is very common in commercial agreements for a party to be required to provide security if it no longer has an Acceptable Credit Rating as this is an accepted indicator of a party's financial standing and ability to meet its financial obligations. AN considers that it should be entitled to require that the Access Holder provides Security if the Access Holder ceases, at any time, to have an Acceptable Credit Rating.	AN acknowledges stakeholders concerns and provides this further clarification to assist review.	The QRC does not agree with Aurizon Network's position. The QRC's considers that Aurizon Network should always be obliged to act reasonably in requiring security (with the End User's Acceptable Credit Rating being a relevant factor in this regard). The QRC's position in relation to security is as set out in Section 5 of the QRC's Main Submission and in the QRC's mark-up.

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4	Supply Chain Rights	<p>Clause 7.4 of UT4 AHAA</p> <p>Clause 7.5 of UT4 SOAA</p>	<p>Supply Chain Rights provisions are overly prescriptive and onerous.</p> <p>The requirement that the Access Holder must hold and continue to hold Supply Chain Rights for the term places the Access Holder in an untenable position if other facility providers also impose similar pre-conditions or if Supply Chain Rights are for a lesser term.</p> <p>If an Access Holder cannot demonstrate Supply Chain Rights, the rights may be resumed, suspended or terminated. This position appears unreasonable.</p> <p>The Access Holder should only be required to demonstrate it holds or has the reasonable likelihood of obtaining Supply Chain Rights.</p>	<p>This is an extension of a provision included in UT3 (Clause 11.3(a) – Contracting for Capacity in Coal Supply Chains) which requires AN to use reasonable endeavours to contract capacity to access seekers who have secured, or are reasonably likely to secure, the contractual rights required to unload at the destination unloading facility.</p> <p>With the separation from Queensland Rail and the increasing number of private facilities being built, AN considers it appropriate and reasonable to extend the obligation in UT3 in respect of unloading facility rights to all Supply Chain Rights required by an Access Holder.</p> <p>However, having regard to industry submissions, AN agrees to revert back to a “reasonably likely” test so that an Access Holder will need to:</p> <ul style="list-style-type: none"> • hold, or have the benefit of, Supply Chain Rights; and/or • be reasonably likely to hold, or have the benefit 	<p>The Supply Chain Rights clause in each SAA to be amended to introduce a “reasonably likely” test to address concerns.</p>	<p>Whilst the QRC agrees in principle with Aurizon Network’s proposal, it cannot undertake a proper assessment until a further amended version of clause 7.4 is provided. The QRC has proposed a number of other amendments to clause 7.4 of the AHAA which Aurizon Network has not addressed in its response.</p>

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				of, Supply Chain Rights, for Train Services for the whole of the period during which the Access Holder is granted access rights in respect of the Train Services.		
5	Relationship with Operator	Clause 7.6 of UT4 AHAA	<p>Objection to AN excluding all liability from the Operator.</p> <p>Unreasonable for AN to require the Operator to give up all rights against AN, particularly where loss or damage is attributable to AN's negligence.</p>	<p>Clause 7.6 of the UT4 AHAA seeks to manage AN's potential liability exposure to an Operator (which is not a party to the AHAA).</p> <p>To the extent the Access Holder does not want to be liable for the acts and omissions of its nominated Operator, it can enter into an End User Access Agreement under which its nominated Operator is potentially directly liable to AN under a Train Operations Agreement.</p> <p>In response to the QRC's comments in relation to clause 7.6 of the UT4 AHAA, AN notes the following:</p> <ul style="list-style-type: none"> the Consequential Loss exclusion required by clause 7.6(a)(i) is the same as the Consequential Loss 	AN acknowledges stakeholders concerns and provides this further clarification to assist review.	<p>The QRC does not agree with Aurizon Network's position.</p> <p>Whilst the QRC recognises that the agreed risk profile as between the End User and the Operator in UT4 is to broadly resemble that of a contract and sub-contractor, the QRC considers a number of aspects of the AHHA to not represent a fair commercial risk allocation.</p> <p>The QRC's position in relation to Aurizon Network's relation with operators is as set out in Section 5 of the QRC's Main Submission and in the QRC's mark-up.</p>

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				<p>exclusion in clause 2.1 of an Access Interface Deed.</p> <ul style="list-style-type: none"> Under clause 7.6(a)(ii) and (d), AN limits its liability for loss or damage suffered or incurred by an Operator to the liability that AN would have had to the End User if the loss or damage had been suffered or incurred by the End User. This ensures that AN's liability to an Operator is subject to the same exclusions and limitations on liability that apply to the End User under the UT4 AHAA. The deletion of clauses 7.6(a)(i), 7.6(a)(ii), 7.6(a)(iii), 7.6(d), 7.6(e) and 7.6(f) is not accepted on the basis that those clauses manage AN's potential liability exposure to an Operator (which is not party to an AHAA). 		
6	Resumption of Access Rights	Clause 8 of UT4 AHAA Clause 8 of	Resumption provisions are unreasonably harsh and require a more balance approached, particularly:	<p>Resumption Trigger Event, paragraph (a)</p> <p>Under the UT3 SAAs, AN could only resume Access</p>	Having regard to stakeholder concerns, AN agrees to amend paragraph (a) of the definition of "Resumption	<p>The QRC does not agree with Aurizon Network's position.</p> <p>Although the QRC appreciates Aurizon</p>

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		UT4 SOAA	<ul style="list-style-type: none"> • A narrower Underutilisation Event • Imposing obligations of reasonableness on AN in assessing the End User's use of its Access Rights • Specifying time periods under which AN must utilise its resumption rights; and • Clarifying the parties respective notice requirements <p>Asciano also expressed concerns expressed about reduced ability to access the dispute resolution provisions.</p>	<p>Rights based on past under-utilisation over four consecutive quarters. AN considers that timeframe (four consecutive quarters) to be impractical when administering the access agreements. Consequently, in the UT4 SAAs, AN proposed that it could resume access rights based on past-underutilisation over two out of any three consecutive quarters.</p> <p>Having regard to stakeholder concerns, AN agrees to revert back to the previous timeframe of four consecutive quarters but only on the basis that AN's position in relation to the definition of "Underutilisation Event" and clauses 8.1 and 8.2 is accepted.</p>	<p>Trigger Event" and paragraph (a) of "Underutilised Access Rights" to revert back to the previous timeframe of four consecutive quarters but only on the basis that AN's position in relation to the definition of "Underutilisation Event" and clauses 8.1 and 8.2 is accepted.</p>	<p>Network's willingness to amend the definition of "Resumption Trigger Event", the QRC does not accept Aurizon Network's position in relation to the definition of "Underutilisation Event" and clauses 8.1 and 8.2.</p>
				<p>Resumption Trigger Event, paragraph (b)</p> <p>The concept of "Underutilisation Event" was introduced to address the circumstances in which an event (e.g. a mine closure)</p>	<p>AN acknowledges stakeholders concerns and provides this further clarification to assist review.</p>	<p>Not applicable (Aurizon Network explanatory note only).</p>

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				will have a sustained and permanent impact on the Access Holder's ability to utilise those access rights in the future and allows AN to, where there is alternate demand, to relocate those Access Rights.		
				<p>Resumable Access Rights</p> <p>AN accepts the QRC's suggestion that a test of reasonableness apply when assessing the Resumable Access Rights arising due to the occurrence of an Underutilisation Event.</p>	AN accepts the QRC's suggestion that a test of reasonableness apply when assessing the Resumable Access Rights arising due to the occurrence of an Underutilisation Event.	Whilst the QRC agrees in principle with Aurizon Network's proposal, it cannot undertake a proper assessment until a further amended version of clause 8 is provided. The QRC has proposed a number of other amendments to clause 8 of the AHAA which Aurizon Network has not addressed in its response.
				<p>Disputes relating to Resumable Access Rights</p> <p>Having regard to stakeholders comments that the dispute right in clause 8.6 of the UT4 AHAA is too narrow, we note that clause 8.6 of AN's draft of the UT4 AHAA and SOAA allow the Access Holder to</p>	For clarity, to address stakeholder concerns, AN will include additional drafting which makes it clear that a dispute in relation to existence or extent of Resumable Access Rights includes a dispute in relation to the existence of a Resumption Trigger Event (including, if	The QRC will assess Aurizon Network's proposed drafting when the drafting foreshadowed by Aurizon Network is provided.

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				<p>dispute:</p> <ul style="list-style-type: none"> the existence or extent of Resumable Access Rights; and the reasonableness of the expectation of sustained alternative demand or AN receiving a commercial benefit. <p>Having regard to the definition of “Resumable Access Rights”, the ability of the Access Holder to dispute the existence or extent of Resumable Access Rights would allow the Operator to dispute the existence of a Resumption Trigger Event (including, if applicable, the existence of an Underutilisation Event) and the extent of the Underutilised Access Rights.</p>	<p>applicable, the existence of an Underutilisation Event).</p>	
				<p>Definition of Underutilisation Event</p> <p>The first amendment to “Underutilisation Event” proposed by the QRC (the inclusion of the words “and</p>	<p>Accept QRC’s position and amend the definition of “Underutilisation Event” to include the words “and material adverse”.</p>	<p>The QRC does not agree with Aurizon Network’s position.</p> <p>The QRC requests that the definition of “Underutilisation Event” be amended as set out in the QRC’s mark-up</p>

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				<p>material adverse”) is acceptable.</p> <p>The second amendment to “Underutilisation Event” proposed by the QRC (in relation to Supply Chain Rights) is not acceptable as it is inconsistent with AN’s current position on Supply Chain Rights (clause 7.4 of the UT4 AHAA and clause 7.5 of the UT4 SOAA).</p>		(consistent with the QRC’s position in relation to clause 7.4).
				<p>Underutilised Access Rights</p> <p>The amendment in paragraph (b) of the definition of “Underutilised Access Rights” is not acceptable as it creates uncertainty. AN considers that “acting reasonably” is appropriate test in the circumstances.</p>	<p>Accept QRC’s position and amend paragraph (a) of the definition of “Underutilised Access Rights” to revert back to the previous timeframe of four consecutive quarters.</p> <p>It is not intended to change paragraph (b) of the definition of “Underutilised Access Rights”</p>	The QRC agrees with Aurizon Network’s proposal.
				<p>Notification of Underutilisation Event</p> <p>AN considers that the End User should be obliged to notify AN of the occurrence of any Underutilisation Event</p>	<p>It is not intended to change this requirement.</p>	<p>The QRC does not agree with Aurizon Network’s position.</p> <p>The QRC considers the AHAA resumption provisions to be unreasonably harsh. The QRC supports a relaxation of</p>

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				because, given the nature of Underutilisation Events, the End User will most likely be aware of the occurrence of those events before AN. The notification requirement is not unreasonable in those circumstances.		this obligation.
				<p>Information Request Notice</p> <p>AN considers that the End User should be obliged to provide information in response to an Information Request Notice as the End User will have knowledge of the event.</p>	It is not intended to change this requirement.	<p>The QRC does not agree with Aurizon Network's position.</p> <p>The QRC considers the AHAA resumption provisions to be unreasonably harsh. The QRC supports a relaxation of this obligation.</p>
				<p>Proposed Resumption Notice</p> <p>The amendment to clause 8.3 is acceptable provided the timeframe is amended to be 40 Business Days after the end of the relevant period. This is consistent with the corresponding timeframe under the UT3 SAAs and gives AN sufficient time to consider whether there is an alternative demand for the</p>	Accept QRC's position except the timeframe to be amended to 40 Business Days after the end of the relevant period.	The QRC agrees with Aurizon Network's proposal.

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relevant access rights.

Resumption Notice

AN accepts the QRC's proposed amendments in clause 8.5(a) in principle but considers that the drafting requires modification. For example, the "reasonable likelihood" test in clause 8.5(a)(ii) and (iii) introduces uncertainty.

AN accepts the QRC's amendments in clauses 8.5(b) and (d).

Accept QRC's proposed amendments to clause 8.5 in principle but the proposed drafting requires modification.

The QRC will assess Aurizon Network's proposed drafting when the drafting foreshadowed by Aurizon Network is provided.

Dispute in relation to Resumption Notice

The amendment to the timeframe in clause 8.6 is not acceptable because, having regard to the extensive process already provided for in clause 8, 10 Business Days is sufficient time to dispute a resumption.

It is not intended to change this clause.

The QRC does not agree with Aurizon Network's position.

The QRC cannot undertake a proper assessment of Aurizon Network's clause 8 until a further amended version is provided reflecting both Aurizon Network's proposed changes (outlined above) and responding to the other amendments to clause 8 proposed by the QRC and not addressed by Aurizon Network in its response.

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7	Reduction of Conditional Access Rights due to Capacity Shortfall	Clause 9 of UT4 AHAA Clause 9 of UT4 SOAA	Proposed changes to those provisions so in circumstances where the Conditional Access Rights are reduced due to a Capacity Shortfall caused by an act or omission of AN, AN will be deemed to be in breach of the agreement.	<p>Where AN has entered into a commercial arrangement with an Access Holder in respect of an Expansion, AN's liability to the Access Holder for a Capacity Shortfall due to AN's act or omission will be dealt with under those arrangements.</p> <p>Where AN has funded an Expansion and its act or omission has resulted in a Capacity Shortfall, clause 8.10.2(g)(ii) of the UT4 Access Undertaking requires AN to fund the Shortfall Expansion to remedy the Capacity Shortfall.</p> <p>Consequently, AN does not consider that it is appropriate that it be liable to an Access Holder under an SAA for a Capacity Shortfall due to an act or omission of AN and does not accept the QRC's amendments to clause 9.</p>	AN acknowledges stakeholders concerns and provides this further clarification to assist review.	The QRC does not agree with Aurizon Network's position. To the extent that clause 9 applies and there is a Capacity Shortfall, Aurizon Network will be in breach of the AHAA by failing to provide the access conditional upon the relevant expansion. The QRC considers it to be reasonable to include an acknowledgment to this effect.
8	Reduction of Nominated Monthly Train Services if Maximum Payload exceeded	Clause 10 of UT4 AHAA Clause 10 of UT4	No objection to the drafting but want to better understand the rationale for its inclusion - view is that the rationale included appears inconsistent	AN will only use this mechanism to increase the Access Holder's Maximum Payload and reduce its Nominated Monthly Train	AN to propose drafting that would require it to consider a request from an Access Holder to increase the Maximum Payload and	The QRC will assess Aurizon Network's proposed drafting when the drafting foreshadowed by Aurizon Network is provided.

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		SOAA	with the effect of the drafting in clause 10 of the AHAA	<p>Services if it has an alternative demand for the additional capacity generated by the reduction its Nominated Monthly Train Services.</p> <p>AN would accept an amendment which would require it to consider a request from an Access Holder to increase the Access Holder's Maximum Payload and reduce its Nominated Monthly Train Services subject to certain conditions being satisfied (including, for example, the Access Holder paying a relinquishment fee for the additional capacity generated by the reduction in its Nominated Monthly Train Services where there is no alternative demand for that additional capacity).</p> <p>This concept is similar to the QRC's proposed new clause 11.1 of the UT4 AHAA.</p>	reduce the Access Holder's Nominated Monthly Train Services (subject to certain conditions being satisfied).	
9	Reduction of Nominated Monthly Train Services if Nominal Payload increased	Clause 11 of UT4 AHAA Clause 11	Consider allowing the Access Holder to request that the Nominal Payload be increased	AN would only provide a Notice of Intention to Increase Nominal Payload following consultation with industry	AN to include a requirement for it to undertake consultation with industry prior to it issuing a Notice of Intention to	<p>The QRC does not agree with Aurizon Network's position.</p> <p>The QRC appreciates Aurizon Network's willingness to</p>

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		of UT4 SOAA		<p>about options for increasing the capacity of the network (whether by an expansion and / or the use of larger trains). Industry will be able to make suggestions to AN through those processes.</p> <p>Please note AN's comments in relation to clause 10 (above) that it would accept an amendment to clause 10 which would require it to consider a request from an Access Holder to increase the Access Holder's Maximum Payload and reduce its Nominated Monthly Train Services subject to certain conditions being satisfied.</p> <p>In response to the QRC's comments in relation to clause 11 of the UT4 AHAA, AN notes the following:</p> <ul style="list-style-type: none"> • AN does not accept the QRC's proposed amendment in clause 11.1 on the basis that the amendment would be more appropriately dealt with in clause 10 (see comments above). • AN does not accept the QRC's proposed 	<p>Increase Nominal Payload under clause 11.</p> <p>AN accepts, in principle, the QRC's proposed amendments to clauses 11.9 and 11.11 subject to drafting modifications.</p>	<p>amend clauses 11.9 and 11.11 however contends that its proposed mark-up of clauses 11.1 and 11.2 is appropriate. The QRC will assess Aurizon Network's proposed drafting of clauses 10 and 11 when the drafting foreshadowed by Aurizon Network is provided.</p>

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				<p>amendment to clause 11.2(a) and notes that it would only give a Notice of Intention to Increase Nominal Payload following consultation with industry (such as through the Network Development Plan or Expansion process).</p> <ul style="list-style-type: none"> AN does not accept the QRC's proposed amendment to clause 11.2(c) because it imposes a constraint on AN's ability to explore opportunities to create capacity at the lowest capital cost. AN accepts, in principle, the QRC's proposed amendments to clauses 11.9 and 11.11. 		
10	Relinquishment of Access Rights – Relinquishment Fee	<p>Clause 12 of UT4 AHAA</p> <p>Clause 12 of UT4 SOAA</p>	Included an obligation for AN to notify the Access Holder if AN identified an opportunity to enter into an Access Agreement that would result in the lessening of the Access Holder's Relinquishment Fee and to not unreasonably delay	AN accepts, in principle, the QRC's proposed amendments in clause 12 (other than new clause 12.2(e) which is already addressed in clause 14.2).	AN accepts, in principle, the QRC's proposed amendments in clause 12 (other than new clause 12.2(e) which is already addressed in clause 14.2).	The QRC agrees with Aurizon Network's proposed changes subject to clause 14.2 being amended such that it is consistent with proposed clause 12.2(e).

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			the negotiation (and execution) of that access agreement.			
11	Transfers by Access Holder	Clause 13 of UT4 AHAA Clause 13 of UT4 SOAA	Seeking changes to the transfer provisions to make them more efficient. Primarily the ability for Access Holders to pre-approve a Transfer within a cluster.	New provision dealing with short term transfers AN accepts that the UT4 SAAs should permit short term transfers but considers that short term transfers should be addressed separately to long term / permanent transfers. AN proposes including a new provision (in addition to the existing transfer provision which addresses long term / permanent transfers) to address short term transfers. AN anticipate that the new provision to address short term transfers will provide an expedited process.	New provision dealing with short term transfers AN to include a new provision to specifically addresses short term transfers.	The QRC will assess Aurizon Network's proposed drafting when the drafting foreshadowed by Aurizon Network is provided.
				Amendments to existing transfer provision dealing with long term / permanent transfers On the basis that there will be a separate provisions dealing	Amendments to existing transfer provision dealing with long term / permanent transfers With respect to long term / permanent transfers, AN to	The QRC will re-assess the long term/permanent transfers provisions after reviewing Aurizon Network's proposed short term transfers provision.

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				<p>with short term transfers, AN does not accept most of the QRC's amendments to the existing transfer provision.</p> <p>Specifically, AN does not accept the QRC's proposed amendments:</p> <ul style="list-style-type: none"> • to clause 13.1(a) but accepts an obligation to act in a diligent and timely manner in dealing with a transfer; • to clause 13.1(c)(i)(B). AN would typically require a minimum notice period of three months (but may agree to a lesser period on a case-by-case basis); and • to clause 13.2 (including the formatting/renumbering amendments which are not shown in mark-up). In particular, AN needs to have the ability to vary the Access Charge Rate as a consequence of the transfer to ensure that the transferee is paying for its use of the network; • clause 13.6. The intention 	<p>amend clause 13 as noted in the previous column.</p>	

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				<p>of the QRC's proposed clause is not clear to AN. If that clause is intended to address short term transfers, then AN will consider the QRC's proposed drafting in clause 13.6 in developing the proposed new provision addressing short term transfers.</p> <p>AN accepts, in principle, the QRC's amendments to clause 13.3.</p> <p>AN accepts, in principle, the QRC's amendments to clause 13.4 but considers that the issue addressed by those amendments should be addressed in a new provision addressing short term transfers.</p> <p>AN does not accept the amendment to clause 13.5 as each transfer is conditional upon the payment of the applicable Transfer Fee (see clause 13.3(a)).</p>		
12	Train control	Clause 16.2 and definition of	Obligation to act in good faith	AN does not accept the QRC's amendment which would require AN to act in	It is not intended to change this clause.	The QRC notes Aurizon Network's concern and proposes that Aurizon

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		<p>“Train Control Direction” of UT4 AHAA</p> <p>Clause 17.2 and definition of “Train Control Direction” of UT4 SOAA</p>		<p>“good faith” because a good faith obligation is not appropriate in the context of Train Control where AN will be required to provide directions for safety reasons.</p>		<p>Network’s obligation to act reasonably and in good faith be subject to Aurizon Network’s safety obligations.</p>
13	Compliance with AN’s Accreditation	<p>Clause 17.6 of UT4 AHAA</p> <p>Clause 18.6 of UT4 SOAA</p>	<p>Onerous on the Access Holder to interpret and be aware of the terms and conditions of AN’s Accreditation.</p> <p>Amendments so that it is limited to the extent the Access Holder has been notified of those terms and conditions.</p>	<p>AN relief from breach if complying with Accreditation</p> <p>The clause is intended to ensure that in the limited circumstances that an obligation in the SAAs conflicts with AN’s obligations under its Accreditation, it will not be in breach of the SAA by complying with its obligations under its Accreditation.</p> <p>To make this clearer, AN proposes the amendments to clause 17.6(a) of the UT4 AHAA and 18.6(a) of the UT4 SOAA outlines in the next</p>	<p>AN proposes to vary clause 17.6(a) of the UT4 AHAA and 18.6(a) of the UT4 SOAA to make clear that the relief from non-compliance with the AHAA/SOAA will only apply “to the extent that” the relevant act or omission is required for the purposes specified in clause 17.6(a)(i) and (ii) of the UT4 AHAA and 18.6(a)(i) and (ii) of the UT4 SOAA. This clause will only apply where there is a conflict between its obligations under the AHAA/SOAA and its obligations under its Accreditation.</p>	<p>The QRC does not agree with Aurizon Network’s position.</p> <p>The drafting proposed by the QRC does not change the intention of clause 17.6. Aurizon Network should not avoid liability for breaching the agreement where the breach is caused by its own negligence or a breach of the Accreditation Network.</p>

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				column.		
				<p>Access Holder's obligation in respect of AN's Accreditation</p> <p>In relation to clauses 17.8(b) of the UT4 AHAA and 18.6(b) of the UT4 SOAA, AN proposes additional drafting to make it clear that the Access Holder must not do, or fail to do, anything which the Access Holder knows, or should reasonably have know, would jeopardise AN's Accreditation.</p> <p>AN does not accept the QRC's proposed new clause 17.6(c) of the UT4 AHAA.</p>	<p>Consistent with the QRC's proposed amendments, AN proposes to vary clause 17.6(b) of the UT4 AHAA and 18.6(b) of the UT4 SOAA consistent with the QRC's proposed amendments to clause 17.6(b) of the UT4 AHAA so that it imposes an obligation on the Access Holder to not do, or fail to do, anything which the Access Holder knows, or should reasonably have known, would be likely to result in the circumstances specified in clauses 17.6(b)(i) and (ii) of the UT4 AHAA and 18.6(b)(i) and (ii) of the UT4 SOAA.</p> <p>It is not intended to accept the QRC's proposed clause 17.6(c) of the UT4 AHAA.</p>	<p>The QRC does not agree with Aurizon Network's position.</p> <p>The QRC considers it reasonable for the obligation on the End User to be aware of the terms and conditions of Aurizon Network's accreditation to be limited to the extent to which the terms and conditions have been notified to the End User.</p>
14	Approval of Operating Plans	<p>Clause 18.7 of UT4 AHAA</p> <p>Clause 19.7 of</p>	<p>Opposed to the deemed refusal framework in the Operating Plan approval process.</p> <p>The Access Holder should be able to engage the dispute or</p>	AN accepts, in principle, the QRC's proposed amendment to clause 18 of the UT4 AHAA and 19 of the UT4 SOAA.	AN accepts the QRC's position and will amend clauses 18 of the UT4 AHAA and 19 of the UT4 SOAA accordingly.	The QRC will assess Aurizon Network's proposed drafting when the drafting foreshadowed by Aurizon Network is provided.

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		UT4 SOAA	expert resolution processes in the SAA where a deemed refusal arises.			
15	Obligation to use reasonable endeavours	19.2 of UT4 AHAA 20.2 of UT4 SOAA	<p>AN may reschedule the train outside of the 48 hour period if it is unable to reschedule it within the 48 hour period and the Access Holder agrees.</p> <p>AN must use reasonable endeavours to reschedule a train regardless of the amount of notice provided by the Access Holder.</p> <p>Clauses 19.2(d)(iii) to (vi) of the UT4 AHAA and 20.2(d)(iii) and (iv) of the UT4 SOAA will only apply where AN has satisfied its obligations to use reasonable endeavours to reschedule the train.</p>	<p>The timeframe under clauses 19.2(b) of the UT4 AHAA and 20.2(b) of the SOAA should be consistent with the minimum notice period specified in the applicable system rules (once approved by the QCA), within which the Access Holder must notify Network that it is unable to operate Train Services. Currently, the applicable timeframe is 48hours.</p> <p>If the Access Holder gives AN less than the minimum notice period specified in the applicable system rules (once approved by the QCA) that it will not, or will be unable to, operate a Train Service, AN should not be obliged to use reasonable endeavours to reschedule that Train Service. If AN does not reschedule such a Train Service, then clauses 19.2(d)(iii) to (vi) of the UT4 AHAA and 20.2(d)(iii) and (iv) of the UT4 SOAA</p>	<p>AN will amend clauses 19.2(b) of the UT4 AHAA and 20.2(b) of the UT4 SOAA to provide that the timeframe is consistent with the minimum notice period specified in the applicable system rules (once approved by the QCA). '</p> <p>It is not intended to make any further amendments to this clause.</p>	<p>The QRC does not agree with Aurizon Network's position.</p> <p>The QRC requests clause 19.2(b) be amended as set out in the QRC's mark-up.</p>

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
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should apply.

16	Obligation to use reasonable endeavours	<p>Clause 19.3 of UT4 AHAA</p> <p>Clause 20.3 of UT4 SOAA</p>	<p>AN may reschedule the train outside of the 48 hour period if it is unable to reschedule it within the 48 hour period and the Access Holder agrees.</p> <p>If AN does not notify the Access Holder but does not make the Infrastructure available, it must use reasonable endeavours to reschedule the train within 48 hours.</p> <p>Clause 19.3(e) will only apply where AN has satisfied its obligations to use reasonable endeavours to reschedule the train.</p>	<p>The timeframe under clauses 19.3(b) of the UT4 AHAA and 20.3(b) of the SOAA should be consistent with the minimum notice period specified in the applicable system rules (once approved by the QCA), within which the Access Holder must notify Network that it is unable to operate Train Services. Currently, the applicable timeframe is 48hours.</p> <p>AN accepts, in principle, the QRC's amendments to clauses 19.3 of the UT4 AHAA and 20.3 of the UT4 SOAA other than:</p> <ul style="list-style-type: none"> the timeframes for the rescheduling of Train Services (as discussed above); and the replacement of the words "may not" with "will" in clause 19.3(e)(ii) of the UT4 AHAA and 20.3(e)(ii) of the UT4 SOAA. 	<p>Except as noted in the previous column, AN accepts QRC's amendments in principle subject to some modifications to the drafting.</p>	<p>The QRC will assess Aurizon Network's proposed drafting when the drafting foreshadowed by Aurizon Network is provided.</p>
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Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
17	Costs of implementing amendments to a System Wide Amendment	<p>Clause 21.6 of UT4 AHAA</p> <p>Clause 22.6 of UT4 SOAA</p>	<p>Phase “safety grounds” is not defined and too vague.</p> <p>If a System Wide Amendment requires amendment due to conduct attributable to AN or its staff the costs of that variation should be borne by AN.</p>	<p>AN accepts the QRC’s proposed amendments to clauses 21.1 of the AHAA and clause 22.1 of the UT4 SOAA whereby the words “on safety grounds” have been deleted with the words “to ensure the ongoing safe operation of the network.”</p> <p>Access Holders will be in a position to minimise the Net Financial Effect of proposed amendments to System Wide Requirements. Given that AN is obliged to compensate Access Holders for the Net Financial Effect, it is in AN’s interest to minimise the Net Financial Effect if it is in the position to do so.</p> <p>Consistent with the position in the UT3 SAAs, each party should be required to fund its own costs of implementing amendments to System Wide Requirements which are required on safety grounds.</p> <p>Consequently, AN does not accept the QRC’s proposed amendments to clauses 21.6 of the AHAA and clause 22.6 of the UT4 SOAA.</p>	<p>AN accepts the QRC’s position in relation to clauses 21.1(a)(i) of the AHAA and clause 22.1(a)(i) of the UT4 SOAA and will amend the drafting accordingly.</p> <p>AN acknowledges stakeholders concerns in relation to clauses 21.6 of the AHAA and clause 22.6 of the UT4 SOAA and provides this further clarification to assist review.</p>	<p>The QRC will assess Aurizon Network’s proposed drafting when the drafting foreshadowed by Aurizon Network is provided.</p> <p>In relation to the costs of implementing amendments to a system wide requirement, it is the QRC’s view that the costs of a variation attributable to conduct of Aurizon Network or its staff should be borne by Aurizon Network.</p>

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
18	Indemnities by Access Holders for liabilities to third parties	Clause 31.3 of UT4 AHAA Clause 32.3 of UT4 SOAA	Indemnity by Access Holder in favour of AN for liabilities to third parties is unreasonably broad.	<p>Under the UT3 SOAA, the Consequential Loss exclusion did not extend to the indemnity in clause 14.3 of the UT3 SOAA. As the indemnity in clause 14.3 of the UT3 SOAA is equivalent to the indemnity in clause 31.3 of the UT4 AHAA and 32.3 of the UT4 SOAA, the Consequential Loss exclusion should not apply to those indemnities either.</p> <p>It is important that the Consequential Loss exclusion does not apply to the indemnity in clause 31.3 of the UT4 AHAA and 32.3 of the UT4 SOAA because those indemnities are intended to cover liability suffered by AN arising from third party claims. Third party claims are Consequential Loss (see paragraph (d) of the definition of Consequential Loss). If the Consequential Loss exclusion applied to those indemnities, then AN would not be entitled to be indemnified for third party claims.</p> <p>The related amendment to clauses 32.1 of the UT4 AHAA and 33.1 is not</p>	AN acknowledges stakeholders concerns and provides this further clarification to assist review.	<p>The QRC does not agree with Aurizon Network's position.</p> <p>In the QRC's view, the Consequential Loss exclusion should apply (or not apply) equally to the indemnities given by both parties. The QRC's amendments achieve this effect (see clause 31.2). The UT3 position is unbalanced and should not be preferred.</p>

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				acceptable to AN.		
19	Limitations and Exclusions of liability - Consequential Loss	<p>Clause 1.1 of UT4 AHAA</p> <p>Clause 1.1 of UT4 SOAA</p>	<p>Definition of “Consequential Loss” lacks certainty.</p> <p>Removal of first paragraphs of definition of “Consequential Loss”.</p>	<p>The definition of “Consequential Loss” in the UT4 SAAs is essentially the same as the definition in the UT3 SAAs (with minor modifications which are not disputed by the QRC).</p> <p>The QRC has proposed deleting paragraphs (a) and (b) of AN’s definition of “Consequential Loss”. The heads of loss included in those paragraphs are very typically included within the scope of consequential loss definitions under commercial agreements.</p> <p>The QRC has also proposed amending AN’s definition of Consequential Loss so that paragraphs (e), (f) and (g) in AN’s proposed definition are no longer general exclusions to Consequential Loss. This appears to be a formatting error in the QRC’s mark-up. This has the effect of, for example, including personal injury claims as Consequential Loss when</p>	AN acknowledges stakeholders concerns and provides this further clarification to assist review.	<p>The QRC does not agree with Aurizon Network’s position.</p> <p>The definition of “Consequential Loss” in UT3 is not to be preferred. There is no settled meaning at law of “special”, “indirect”, “consequential” or “economic” loss. To ensure clarity, sub paragraphs (a) and (b) should be deleted.</p> <p>The QRC agrees that the exclusions proposed as (e), (f) and (g) should be reformatted.</p>

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				clearly this is not intended or appropriate. AN's initial drafting should be reinstated.		
20	Limitations and Exclusions of liability - Claims and exclusions in respect of Infrastructure Standard	Clause 32.3 of the UT4 AHAA Clause 33.4 of SOAA	The exclusion of liability is too broad. The SAAs impose obligations on AN broader than AN carrying out Maintenance Works and AN should be liable for claims if those obligations are not satisfied or carried out negligently.	The exclusion in clause 32.3 of the UT4 AHAA and 33.4 of the UT4 SOAA is consistent with the exclusion in clause 14.4 of the UT3 SAAs. The intention is that AN will not be liable in respect of the standard of the Infrastructure unless AN has failed to comply with its maintenance obligation under clause 24.2 of the UT4 AHAA or 25.2 of the UT4 SOAA. Those clauses impose a broad obligation on AN in relation to maintenance, repairs, renewal and replacement of the Infrastructure to enable the operation of Train Services in accordance with the SAAs.	AN acknowledges stakeholders concerns and provides this further clarification to assist review.	The QRC does not agree with Aurizon Network's position. In the QRC's view, the UT3 position should not be preferred. The QRC considers the exclusion of liability to be too broad. Aurizon Network's drafting references only Aurizon Networks obligations under clause 24.2(a) (rather than all of clause 24.2 as suggested). In any case, the AHAA imposes Infrastructure obligations on Aurizon Network broader than merely the carrying out of Maintenance Works. Aurizon Network should be liable for Claims if those other obligations are not satisfied or are undertaken negligently, rather than only for losses arising directly from a breach of clause 24.2(a)..

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
21	Limitations and Exclusions of liability - Claims and exclusions in respect of non-provision of access	<p>Clause 32.4 of the UT4 AHAA</p> <p>Clause 33.5 of the UT4 SOAA</p>	QRC wants to reduce AN's exclusions of liability for Claims in respect of non-provision of Access so AN is liable where its failure to provide is a result of its breach or negligence.	<p>Consistent with our comments in relation to clause 19.2 and 19.3 of the UT4 AHAA, the QRC's proposed amendment to clause 32.4(a) of the AHAA and 33.5(a) of the UT4 SOAA is not acceptable.</p> <p>AN accepts, in principle, the QRC's amendment to clause 32.4(b) of the UT4 AHAA and 33.5(b) of the UT4 SOAA.</p> <p>The deletion of clauses 32.4(f)(ii) and 32.4(f)(iii) of the UT4 AHAA (using the numbering in AN's draft AHAA) and 33.5(f)(ii) and 33.5(f)(iii) of the UT4 SOAA is not acceptable. AN does not agree that those clauses are inconsistent with clause 32.4(a) of the UT4 AHAA and clause 33.5(a) of the UT4 SOAA and considers that the deletion of those clauses is inconsistent with the principle that AN should not be liable for the actions of third parties.</p> <p>Using the numbering in AN's draft AHAA, the QRC's proposed amendment to clause 32.4(f)(vi)(B) of the UT4 AHAA and clause 33.5(f)(vi)(B) of the UT4</p>	AN to provide revised drafting for those amendments proposed by QRC which are accepted in principle.	<p>The QRC will assess Aurizon Network's proposed drafting when the drafting foreshadowed by Aurizon Network is provided.</p> <p>In general terms however, the QRC's position in relation to claims and exclusions in respect of the non-provision of access remains as set out in the QRC's mark-up of clause 32.4 of the AHAA.</p>

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				SOAA is not acceptable for the reasons discussed above in relation to the QRC's submission on clause 9 of the AHAA.		
22	Limitations and Exclusions of liability - Claims and exclusions in respect of delays to Train Movements	Clause 32.5 of the UT4 AHAA Clause 33.6 of UT4 SOAA	The QRC resist the carve out for delays attributable to other Railway Operators or customers of other Railway Operators as this is a matter to be factored into the scope of the obligation (to use reasonable endeavours)	AN considers that the deletion of the reference to delays attributable to other Railway Operators clauses is inconsistent with the principle that AN should not be liable for the actions of third parties. AN notes that even if it reschedules Train Services in accordance with its obligations under the UT4 AHAA or UT4 SOAA, there will inevitably be delays to Train Services. However, AN is prepared to delete clause 32.5(e)(iii) of the UT4AHAA and clause 33.6(c)(iii) of the UT4 SOAA so that the reference to delays attributable to customers of other Railway Operators or any employees, contractors, volunteers or agents of a customer of another Railway Operator is removed.	AN will delete clause 32.5(e)(iii) of the UT4 AHAA and clause 33.6(c)(iii) of the UT4 SOAA.	The QRC agrees with Aurizon Network's proposed change.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				The deletion of clause 32.5(e)(ii) of the UT4 AHAA (using the numbering in AN's draft of the UT4 AHAA) and clause 33.6(c)(ii) of the UT4 SOAA is not acceptable.		
23	Material Change	<p>Clause 1.1 of the UT4 AHAA</p> <p>Clause 1.1 of the UT4 SOAA</p>	<p>Definition of "Material Change" is unreasonably broad. The QRC proposes a limitation of scope of the definition by:</p> <ul style="list-style-type: none"> Narrowing the definitions of "Relevant Taxes" and "Changes in Law"; and Removing the ability for AN to deem a change in government funding as an additional cost of performing its obligations, this is irrelevant given AN is not a government entity 	<p>Given the way in which clauses 34.1 of the UT4 AHAA and 35.1 of the UT4 SOAA (adjustment for a Material Change) are drafted, those clauses will only allow AN to recover the Net Financial Effect of a Material Change. The definition of Net Financial Effect is limited to the net effect in financial terms of the performance of AN's obligations and exercising its rights under the Agreement.</p> <p>As a consequence, the QRC's proposed amendments to the definition of "Relevant Taxes" is not acceptable because the proposed amendment is already addressed in the existing draft.</p> <p>AN accepts the addition of the words "legally binding" in the definition of "Changes in</p>	<p>It is not intended to change the definition of "Relevant Taxes".</p> <p>The definition of "Changes in Law" to be amended as proposed by the QRC, except for the inclusion of the word "material" (in two places) in paragraph (e).</p> <p>The definition of "Material Change" to be amended as proposed by the QRC.</p>	<p>The QRC agrees with Aurizon Network's position subject to the Reference Tariff Provisions also limiting Aurizon Networks recovery in respect of Material Change to the Net Financial Effect of that Material Change.</p> <p>The QRC notes that Aurizon Network has not commented on the deletion of clause, 34.3. Given Aurizon Networks agreement to the amendment of the definition of "Material Change", the QRC also assumes clause 34.3 will be deleted.</p>

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				<p>Law”.</p> <p>AN does not accept the introduction of the materiality threshold to paragraph (e) of the definition of “Changes in Law” as a perceived immaterial change could have a material financial impact on AN.</p> <p>AN accepts the QRC’s amendment to the definition of “Material Change” (ie the removal of the reference to government funding).</p>		
24	Powers to suspend	<p>Clause 37.4 of UT4 AHAA</p> <p>Clause 38.5 of UT4 SOAA</p>	Entire clause has been deleted.	AN does not accept the deletion of clause 37.4 of the UT4 AHAA or 38.4 of the UT4 SOAA on the basis that if the End User Agreements have been suspended, AN should have the corresponding right to suspend the operation of Train Services under the SAAs.	It is not intended to delete this clause.	<p>The QRC does not agree with Aurizon Network’s position.</p> <p>There may be circumstances where the suspension of an End User Agreement does not impact on the operation of Train Services. In these circumstances, Aurizon Network should not be able to suspend those Train Services.</p>
25	Limitation of liability	Clause 37.5(c) of UT4 AHAA	AN’s liability to the Access Holder will not be automatically excluded where no reasonable person in AN’s	The QRC’s proposed amendment would have the effect of making AN liable to the Access Holder for any	It is not intended to amend this clause.	The QRC agrees with Aurizon Network’s proposed change.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
		Clause 38.6(c) of UT4 SOAA	position could have formed the view that the stated grounds for suspension existed.	<p>loss or damage arising from the suspension regardless of whether or not the suspension was valid.</p> <p>AN's drafting is consistent with the position in corresponding clauses under the UT3 SAAs and reflects its intention that it should not be liable to an Access Holder where it has acted reasonably.</p>		
26	Suspension and termination	<p>Schedule 9, Part A and B of UT4 AHAA</p> <p>Schedule Part A and B of UT4 SOAA</p>	Minor amendments to Suspension Events and Termination Events in Part A and Part B of Schedule 9 to provide clarification and ensure events are reasonable and commercially sound	AN's responses to the QRC's proposed amendments to Schedule 9 are as follows:		
				<p>Schedule 9, Part A, item 1</p> <p>The introduction of the materiality threshold is not appropriate. The test is demonstration to AN's reasonable satisfaction.</p>	It is not intended to amend this item.	The QRC does not agree with Aurizon Network's position. The QRC considers the amendment necessary to ensure the suspension event listed is reasonable and commercially sound.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				<p>Schedule 9, Part A, item 2</p> <p>The introduction of the materiality threshold is not appropriate as all relevant information needs to be provided before the operation of a Train Service.</p>	<p>It is not intended to amend this item.</p>	<p>The QRC does not agree with Aurizon Network's position. The QRC considers the amendment necessary to ensure the suspension event listed is reasonable and commercially sound.</p>
				<p>Schedule 9, Part A, item 3</p> <p>AN accepts the inclusion of the words "in a material respect" instead of the word "materially"</p> <p>AN accepts the deletion of the words "in Aurizon Network's reasonable opinion" in paragraph (u).</p>	<p>Include the words "in a material respect" instead of the words "materially".</p> <p>Delete the words "in Aurizon Network's reasonable opinion" in paragraph (u).</p>	<p>The QRC agrees with Aurizon Network's proposed change.</p>
				<p>Schedule 9, Part A, item 4</p> <p>AN accepts the QRC's proposed amendment in principle.</p>	<p>Accept QRC's position subject to modifications to the drafting.</p>	<p>The QRC will assess Aurizon Network's proposed drafting when the drafting foreshadowed by Aurizon Network is provided.</p>
				<p>Schedule 9, Part A, item 5</p> <p>AN accepts the QRC's proposed amendment.</p>	<p>To be amended as proposed by the QRC.</p>	<p>The QRC agrees with Aurizon Network's proposed change.</p>

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				<p>Schedule 9, Part B, item 1</p> <p>The time period in respect of the Suspension Event should be amended to 10 Business Days. The QRC's proposal of 20 Business Days is too long as the End User has already had at least 10 Business Days to pay the invoice.</p> <p>The time period in respect of the Termination Event should be re-instated to 20 Business Days. The QRC's proposal of 40 Business Days is too long.</p>	<p>In respect of the Suspension Event, amend time period to 10 Business Days.</p> <p>In respect of the Termination Event, amend time period to 20 Business Days.</p>	<p>The QRC does not agree with Aurizon Network's position. The QRC considers the amendment necessary to ensure the suspension event listed is reasonable and commercially sound.</p>
				<p>Schedule 9, Part B, item 2</p> <p>AN accepts the QRC's proposed amendment.</p>	<p>Accept QRC's position</p>	<p>The QRC agrees with Aurizon Network's proposed change.</p>
				<p>Schedule 9, Part B, item 4</p> <p>AN does not accept the QRC's proposed amendments to both the Suspension Event and Termination Event.</p>	<p>It is not intended to amend this item.</p>	<p>The QRC's amendment was typographical only. It is not clear to the QRC why Aurizon Network objects to this amendment.</p>
				<p>Schedule 9, Part B, item 6</p> <p>AN does not accept the QRC's proposed amendments</p>	<p>It is not intended to amend this item.</p>	<p>The QRC does not agree with Aurizon Network's position. The QRC considers the</p>

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				on the basis that the End User or the Operator either ceases the relevant conduct or it does not.		amendment necessary to ensure the suspension event listed is reasonable and commercially sound.
				<p>Schedule 9, Part B, item 8</p> <p>AN does not accept the QRC's proposed amendments on the basis that the causing of Serious Environmental Harm is a material breach of the AHAA or SOAA which could have serious consequences. AN needs the capacity to suspend and, if necessary, terminate the AHAA or SOAA in such circumstances.</p>	It is not intended to amend this item.	The QRC does not agree with Aurizon Network's position. Aurizon Network not have a right to terminate for an event that only "threatens to cause" harm.
				<p>Schedule 9, Part B, item 9</p> <p>AN does not accept the QRC's proposed amendment as a failure to maintain insurance is a material breach of the AHAA or SOAA. The period to remedy the non-compliance before a suspension right is triggered is too long in those circumstances.</p>	It is not intended to amend this item.	The QRC does not agree with Aurizon Network's position. The QRC considers the amendment necessary to ensure the suspension event listed is reasonable and commercially sound.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				<p>Schedule 9, Part B, item 10</p> <p>AN does not accept the QRC's proposed amendments on the basis that failure to provide security is a material breach of the AHAA or SOAA. The period to remedy the non compliance before a suspension right and termination right is triggered is too long in those circumstances.</p>	It is not intended to amend this item.	The QRC does not agree with Aurizon Network's position. The QRC considers the amendment necessary to ensure the suspension event listed is reasonable and commercially sound.
				<p>Schedule 9, Part B, former item 13</p> <p>AN considers that the right of suspension in the case of a reasonably anticipated breach of safety requirements is an important safeguard.</p> <p>AN should not have to wait until a reasonably anticipated breach of safety requirements occurs before it can take action.</p> <p>AN also considers that it should have a right of termination in the event it exercises its right of suspension on multiple (three or more) occasions in any 12</p>	It is not intended to amend this item.	The QRC does not agree with Aurizon Network's position. The QRC does not agree with Aurizon Network having such broad powers in respect of anticipated breaches. The QRC considers the amendment necessary to ensure the suspension event listed is reasonable.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				month period.		
				Schedule 9, Part B, current item 13 (former item 14) The inclusion of the word "Days" is acceptable to AN.	Accept QRC's position.	The QRC agrees with Aurizon Network's proposed change.
27	Termination	Clause 38.6 of the UT4 AHAA and 39.6 of the UT4 SOAA	Proposed that after termination, the Access Holder should be obliged to remove rollingstock as soon as practicable rather than within a 12 hour period. This is to account for flexibility required.	In circumstances where the SAA has been terminated, it is important that the Access Holder/Operator removes Rollingstock as soon as reasonably practicable. AN considers that 12 hours is more than sufficient time for any operator to remove Rollingstock from the network. With regard to flexibility, the objective to ensure the Infrastructure is available for other Access Holders to utilise should have precedence over affording flexibility to rail operators AN could agree an extended timeframe with the Access Holder in exceptional circumstances.	It is not intended to amend this clause.	The QRC agrees with Aurizon Network's proposed change.
28	AN's liability to operators	Clauses	Deletion of non-liability to	These provisions reflect the	It is not intended to amend	The QRC does not agree with

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
	under AHAA	3.3, 7.6, 11.10(b)(ii), 15.3(c), 22.6(a)(ii), 22.6(b)(2), 25.6, 32.3, 32.4 and 32.5 of UT4 AHAA	operator provisions	<p>intention under an AHAA that AN should have no liability to a nominated Operator in circumstances where AN has validly exercised a right under the AHAA. These provisions manage AN's liability to the Operator which is not a party to the AHAA.</p> <p>If the Access Holder does not wish to accept liability for the operator, it has the option of entering into the alternate form of access instead where the Access Holder does not assume liability for the operator.</p>	these clauses.	<p>Aurizon Network's position.</p> <p>Whilst the QRC recognises that the agreed risk profile as between the End User and the Operator in UT4 is to broadly resemble that of a contract and sub-contractor, the QRC considers a number of aspects of the AHHA to not represent a fair commercial risk allocation.</p> <p>The QRC's position in relation to Aurizon Network's relation with operators is as set out in Section 5 of the QRC's Main Submission and in the QRC's mark-up.</p>
29	Equality between Access Holders	<p>Clause 45 of the UT4 AHAA</p> <p>Clause 46 of the UT4 SOAA</p>	QRC has noted that there is merit in the most favoured nation clause extending to train scheduling, and that the effectiveness of the most favoured nation provisions are limited if there is no audit right.	<p>AN does not accept the proposal that the most favoured nation clause be extended to apply to train scheduling as AN is obliged to comply with the Network Management Principles, which form part of the Access Undertaking, in undertaking train scheduling.</p> <p>While AN understands the QRC's concerns in relation to a right of audit, such a right gives rise to confidentiality</p>	It is not intended to amend this clause.	<p>The QRC does not agree with Aurizon Network's position.</p> <p>At this stage, Aurizon Network and the QRC are in disagreement about the effectiveness of the UT4 auditing and conflicts protection provisions. The QRC will further consider its position once these provisions are resolved.</p>

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				<p>issues. AN has included drafting in clause 10.3.1 of the UT4 Access Undertaking which requires AN to provide full copies of executed SAAs to the QCA.</p> <p>This obligation, along with the non discrimination provisions in the UT4 Access Undertaking, provide an Access Holder with a mechanism for ensuring non discriminatory treatment without giving rise to confidentiality issues.</p>		
30	Interpretation	Clause 1.2(e)(xvii) of UT4 TOA	<p>New provision inserted which states “access or access rights does not include rights granted by AN to a Railway Operator under a train operations Agreement.”</p> <p>The ability for a Railway Operator to operate Train Services either under an SOAA or TOA should be no different in relation to this provision.</p>	<p>The distinction between the right held by an Access Holder and Train Operator has been made on the basis that the Train Operator is only afforded operational rights rather than Access Rights. The Access Rights are granted to the End User under the End User Access Agreement who assumes the ToP liability.</p> <p>This distinction is important as under the Train Operations Agreement, a Train Operator does not have the usual rights</p>	It is not intended to amend this clause	The QRC has no comment on this issue.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				associated with Access Rights, such as the ability to transfer and relinquish Access Rights. These rights should only be held solely by the End User who assumes the ToP liability.		
31	Operation of Train Services	Clause 10.1(b) of UT4 TOA	<p>This additional provision adds an administrative burden to the parties and restricts the operation of Train Services by a Railway Operator.</p> <p>The treatment should be no different to any Railway Operator under any form of access agreement.</p>	<p>The requirement for an Operator to comply with the relevant Train Service Description unless otherwise agreed is not a new provision (see clause 4.1(d) of the UT3 TOA) and is consistent with the principle of access rights always being granted on an origin-destination basis.</p> <p>Similarly, the requirement that prior to operating a Train Service, the Operator must notify AN of the End User for whom the Operator will operate that Train Service is also contained in clause 4.1(e) of UT3 TOA.</p> <p>On the basis that AN can require this information to be provided by the Operator's Controller to the Train Controller under the Train List provided to the Train</p>	Accept QRC's position on the basis that, if required by AN on a case by case basis, AN can require the provision of this information under clause 1.2(b) of Schedule 10(Interface Coordination Arrangements).	In principle, the QRC agrees with Aurizon Network's position.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
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Controller under clause 1.2(b) of Schedule 10 (Interface Coordination Arrangements), AN is prepared to delete the requirement in clause 10.1(b).