



**Appendix A2**  
**Aurizon Network Summary of proposed redraft of Standard Access Agreements**  
**(includes Annexure B from QRC's January 2014 Response)**

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
<b>Clause 1: Definitions and Interpretation</b>							
1	New definition of Access	Clause 1.1					For clarity, a new definition of Access has been included which refers to the meaning given to the term Access in the Access Undertaking.
2	New definition of Access Agreement Document	Clause 1.1					A new definition of Access Agreement Document has been included to clarify what makes up an entire access agreement and what will be provided to the End User's Staff via the Website.
3	New definition of Access Interface Deed	Clause 1.1					The requirement for the Operator to enter into an Access Interface Deed is now included in the UT4 AHAA.

<sup>1</sup> Unless otherwise indicated, all references in this document to clauses and schedules are to clauses and schedules in the UT4 AHAA (and equivalent clauses in the other UT4 SAAs).

<sup>2</sup> Unless otherwise indicated, all references in this document to the Access Undertaking are to the 2013 Draft Access Undertaking (UT4).

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							See also comments in item <a href="#">778</a> .
4	Definition of Accreditation	Clause 1.1					Amendments have been made to this definition for clarity.
5	Definition of Ad Hoc Train Service	Clause 1.1	On the timing of identification of Ad Hoc Train Service, the QRC has noted that it is unclear whether an ad hoc train path could be identified as such before completion of a Month.				Once the customer goes above its Nominated Monthly Train Services for a Train Service Type, any additional train services for this Train Service Type will automatically be ad hoc. As such, no change has been included in the drafting.
6	Definition of Advanced Access Seeker	Clause 1.1	The Access Seeker needs only satisfy Aurizon Network's reasonable satisfaction and need only be reasonably likely to obtain the Supply Chain Rights.				Aurizon Network has amended the definition of Advanced Access Seeker to align with the revised definition of Supply Chain Rights.  See also comments in item <a href="#">3834</a> .

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7	Definition of Aurizon Network Cause	Clause 1.1	<p>Extended to incorporate both actions and inactions by Aurizon Network.</p> <p>Also, a reasonableness test has been introduced.</p> <p>Deletion of requirement to comply with Passenger Priority Obligations.</p>				<p>Aurizon Network has amended the definition to include the words “or inaction” in paragraph (c) of the definition.</p> <p>Aurizon Network has considered the other changes suggested by stakeholders, however has not included these changes.</p>
8	New definition of Authorised Parking	Clause 1.1					See comments in Item <a href="#">122422</a>
9	Definition of Change in Law	Clause 1.1	<p>Limitation of scope</p> <p>Changes must be material and legally binding.</p>				<p>Aurizon Network has included clarification that changes must be legally binding.</p> <p>Aurizon Network has considered the other changes suggested by the stakeholders, however has not included these changes.</p>

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10	Definition of Consequential Loss	Clause 1.1	<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 Aurizon Network’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 Aurizon Network’s definition of Consequential Loss so that paragraphs (e), (f) and (g) in Aurizon Network’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</p>	<p>Aurizon Network 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 definition of “Consequential Loss” in UT3 SAAs 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>	<p>Aurizon Network has considered the changes suggested by stakeholders, however has not included these changes.</p>

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				Consequential Loss when clearly this is not intended or appropriate.  Aurizon Network's initial drafting should be reinstated.			
11	Definition of Evaluation Period	Clause 1.1					Minor amendments have been made to this definition/clause for clarity.  Deletion of the deeming provision in (c) of the definition which provided that where such period exceeds 10 years, it is deemed to be 10 years as it is not apparent why an evaluation period should be limited to 10 years.
12	Definition of Force Majeure Event	Clause 1.1	Amended to clarify that the matters in paragraphs (c) to (m) must satisfy the requirements of paragraphs (a) and (b).  Deletion of "act of God" as an FM Event				Aurizon Network has redrafted this definition to include the principle suggested by the QRC that paragraphs (c) to (m) must satisfy the requirements of paragraphs (a) and (b).

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							Aurizon Network has considered the other change suggested by the QRC, however has not included that change.
13	New definition of Foreseeable Costs and Detriments	Clause 1.1					A new definition of Foreseeable Costs and Detriments has been included to clarify the calculation of Net Financial Effect for the purposes of clause 11.
14	Definition of Infrastructure	Clause 1.1					Minor amendments have been made to this definition for clarity.
15	New definitions of Infrastructure Lease and Infrastructure Lessor	Clause 1.1					New definitions of Infrastructure Lease and Infrastructure Lessor have been included. The new definitions are used in clause 33.4.  See also comments in item <a href="#">192493</a> .

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16	New definition of Intermediate Train Path	Clause 1.1	New definition inserted for Intermediate Train Path (term taken from the Access Undertaking).				Aurizon Network is unclear where this definition was proposed to be used in the UT4 SAAs, hence has not included any amendment.
17	Definition of Investigation Procedures	Clause 1.1	Limitation of scope to documents published on Aurizon Network's website and that are applicable to all Access Agreements.				Aurizon Network has redrafted to provide that the Investigation Procedures will be provided on its website (via a secure portal).
18	Definition of Loading Facility	Clause 1.1					Minor amendments have been made to this definition for clarity.
19	Definitions of Change in Law, Material Change and Relevant Tax	Clause 1.1	<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"> <li>narrowing the definitions of "Relevant Taxes" and "Change in Law"; and</li> <li>removing the ability for Aurizon Network to</li> </ul>	Given the way in which clause 34.1 is drafted, that clause will only allow Aurizon Network 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 Aurizon Network's obligations and	It is not intended to change the definition of "Relevant Taxes".  The definition of "Change in Law" to be amended as proposed by the QRC, except for the inclusion of the word "material" (in two places) in paragraph (e).	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	<p>Aurizon Network has redrafted the definition of Material Change to include the principle suggested by the QRC.</p> <p>See also comments in items <a href="#">97</a> and <a href="#">200</a>.</p> <p>Aurizon Network has considered the other changes suggested by</p>

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			<p>deem a change in government funding as an additional cost of performing its obligations, this is irrelevant given Aurizon Network is not a government entity.</p>	<p>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>Aurizon Network accepts the addition of the words "legally binding" in the definition of "Change in Law".</p> <p>Aurizon Network does not accept the introduction of the materiality threshold to paragraph (e) of the definition of "Change in Law" as a perceived immaterial change could have a material financial impact on Aurizon Network.</p> <p>Aurizon Network accepts the QRC's amendment to the definition of "Material Change" (i.e. the removal of the reference to government funding).</p>	<p>The definition of "Material Change" to be amended as proposed by the QRC.</p>	<p>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>	<p>stakeholders, however has not included these changes.</p>

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20	Definition of Maximum Allowable Gross Tonnage	Clause 1.1					Aurizon Network has clarified that this measurement will be included in an Authority to Travel or Train Route Acceptance.
21	Definition of Maximum Desirable Gross Tonnage	Clause 1.1					Aurizon Network has clarified that this measurement will be included in an Authority to Travel or Train Route Acceptance.
22	New definition of Maximum Gross Mass	Clause 1.1					A new definition of Maximum Gross Mass has been included. It is used where Access Charges are billed based on nominal weights.
23	New definition of New Authorisation	Clause 1.1					A new definition of New Authorisation has been included. It is used in clause 21.10.

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							See also comments in Item 142
24	New definition of Notice of Enquiry	Clause 1.1					A new definition of Notice of Enquiry has been included. It is used in clause 10.8.  See also comments in item 91.
25	Definition of Other Dwell Times	Clause 1.1					Minor amendments have been made to this definition for clarity.
26	Definition of Overload Charge	Clause 1.1					Aurizon Network has deleted this definition as it is no longer used.  See also comments in item 154.
27	New definition of PV Amount	Clause 1.1					The definition of NPV Amount was deleted and replaced with a new definition of PV Amount for clarity.

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							It is used in clause 13.3(a) and 14.4(a) – Determination of Relinquishment and Determination of Transfer Fee
28	New definition of Regenerative Brake	Clause 1.1					A new definition of Regenerative Brake has been included. It is used in clause 7.6.  See also comments in item 75.
29	Definition of Relevant Rollingstock	Clause 1.1					Minor amendments have been made to this definition for clarity.
30	Definition of Renewal	Clause 1.1					Aurizon Network has deleted this definition as it is no longer used.  See also comments in item 52.

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31	New definition of Required Information	Clause 1.1					<p>A definition of Required Information has been included. It is used in relation to Safety Related Work.</p> <p>Required Information means any information in relation to any End User's Staff engaged in Safety Related Work on the Nominated Network that Aurizon Network considers is reasonably required to be known by Aurizon Network to comply with its Accreditation and Law.</p> <p>See also comments in item 172.</p>
32	New definition of Response Notice	Clause 1.1					<p>A new definition of Response Notice has been included. It is used in clause 10.8.</p> <p>See also comments in item 91.</p>

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33	Definition of Resumable Access Rights	Clause 1.1		Aurizon Network 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.	Aurizon Network 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.	Aurizon Network has amended the definition to address the QRC's concerns in relation to reasonableness.  Aurizon Network has considered the other changes suggested by stakeholders, however has not included these changes.
34	Definition of Resumption Trigger Event, paragraph (b)	Clause 1.1		The concept of "Underutilisation Event" was introduced to address the circumstances in which an event (e.g. a mine closure) will have a sustained and permanent impact on the Access Holder's ability to utilise those Access Rights in the future and allows Aurizon Network to, where there is alternate demand,	Aurizon Network acknowledges stakeholders concerns and provides this further clarification to assist review.	Not applicable (Aurizon Network explanatory note only).	No change

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				relocate those Access Rights.			
35	Definition of Resumption Trigger Event	Clause 1.1	Period of unused Access Rights extended to four consecutive Quarters, as the reduced time is unacceptable.				Aurizon Network has reverted to the UT3 SAA test for resumption of four consecutive Quarters.  In addition, clause 8.1 has been deleted to remove the requirement for an End User to provide a notice of an Underutilisation Event.
36	Definition of Rollingstock Interface Standards	Clause 1.1					A minor amendment has been made to this definition to correct a typographical error.
37	Definition of Sectional Running Times	Clause 1.1					A minor amendment to clarify that a Sectional Running Time can be for a section which runs onto the Adjoining Network.

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38	Definition of Supply Chain Rights	Clause 1.1	Amended to clarify that Train Services will exit the network through the Unloading Facilities.  Also, a reasonableness test has been introduced.				Aurizon Network has amended the definition to align with amendments included in the redrafted \ Access Undertaking.
39	New definition of Surplus Access Rights	Clause 1.1					A new definition of Surplus Access Rights has been included. It is used in clause 11  See also comments in item 91.
40	Definition of Time at Depot	Clause 1.1					Minor amendments have been made to this definition for clarity.
41	Definition of Time at Loading Facility	Clause 1.1					Minor amendments have been made to this definition for clarity.
42	Definition of Time at Unloading Facility	Clause 1.1					Minor amendments have been made to this definition for clarity.

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43	Definition of Train Control Direction	Clause 1.1	Aurizon Network must act reasonably and in good faith.				<p>Aurizon Network has redrafted this definition to provide for acting reasonably.</p> <p>Aurizon Network has not included an obligation to act in "good faith" because a good faith obligation is not appropriate in the context of Train Control.</p>
44	Definition of Underutilisation Event	Clause 1.1	Limited to circumstances where there is no reasonably likelihood of the End User or Operator securing alternative Supply Chain Rights.	<p>The first amendment to "Underutilisation Event" proposed by the QRC (the inclusion of the words "and 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 Aurizon Network's current position on Supply Chain Rights (clause 7.4).</p>	Accept the QRC's position and amend the definition of "Underutilisation Event" to include the words "and material adverse".	<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 (consistent with the QRC's position in relation to clause 7.4).</p>	<p>Aurizon Network has redrafted this definition as per the Proposed Change column.</p> <p>Aurizon Network has reverted to the UT3 SAA test for resumption of four consecutive Quarters.</p>

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45	Definition of Underutilised Access Rights	Clause 1.1		The amendment in paragraph (b) of the definition of "Underutilised Access Rights" is not acceptable as it creates uncertainty. Aurizon Network considers that "acting reasonably" is appropriate test in the circumstances.	Accept the 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.  It is not intended to change paragraph (b) of the definition of "Underutilised Access Rights"	The QRC agrees with Aurizon Network's proposal.	Aurizon Network has redrafted this definition as per the Proposed Change column.
46	Definition of Unloading Facility	Clause 1.1					Minor amendments have been made to this definition/clause for clarity.
47	Definition of Unreasonable	Clause 1.1	Unacceptable reference point. Proposed amendment to refer to aspects of the IRMP that are not consistent with Good Engineering Practices.				Aurizon Network has considered the changes suggested by stakeholders, however has not included that these changes.  Provided that Aurizon Network has acted reasonably, the Access Holder should not have an

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							ability to dispute an IRMP or an aspect of or amendment to an IRMP.
48	New definition of Variation Request Notice	Clause 1.1					A new definition of Variation Request Notice has been included. It is used in clause 11  See also comments in item 91.
49	New definition of Website	Clause 1.1					A new definition of Website has been included.  A new clause has also been included to provide that some of the information may be provided via secured access from the Website.
50	Reasonableness	Clause 1.2		New clause states that a party must not have regard to its own commercial interests when using reasonable endeavours.			Aurizon Network has considered the changes suggested by stakeholders, however

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							has not included these changes.
51	Rights of a Railway Operator contained in a Train Operations Agreement	Clause 1.2(e)(xvii)	Access or Access Rights does not include rights granted by Aurizon Network to a Railway Operator under a Train Operations Agreement. Is this to deal with the uncertainty regarding whether the same access rights can legally be given to two different parties?				Operational Rights granted under an UT4 TOA need to be treated separately from Access Rights that an Operator / End User holds directly under an UT4 SOAA, AHAA or EUAA given the UT4 TOA Operational Rights do not allow the Operator full rights / obligations such as Transfers. It would be inappropriate for the Operator / End User to exercise its right under the UT4 SOAA, AHAA or EUAA in respect of rights held under an UT4 TOA.  Further, in relation to the definition and use of the term "Access Holder" (which is defined by reference to someone who has been granted "access rights"), the distinction between operational rights and access rights should be

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retained to ensure that only holders of access as opposed to operational rights are picked up by the definition.

Clause 1.2(e)(xvii) should be retained as it clarifies that Operational Rights granted to a Railway Operator under an UT4 TOA are not Access Rights for the purpose of the UT4 SOAA, AHAA or EUAA (including, for example, in the definition of "Access Holder").

Paragraph (c) of the definition of "Access Rights" is required because the UT4 SOAA uses the concept of Access Right of/for a Customer.

**Clause 2: Term**

52	Renewals	Clause 2.2	Stakeholders have raised concerns around the				Aurizon Network has deleted the contractual right of renewal under this
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			<p>timeframes and process for renewal of access rights.</p> <p>End User may seek a renewal in respect of the same amount or less Access Rights.</p> <p>Aurizon Network must notify the End User of its renewal rights not more than 36 months and not less than 12 months prior to the Train Service Expiry Date.</p> <p>End of mine life must be evidenced to Aurizon Network's reasonable satisfaction.</p>				<p>clause to ensure complete consistency with the process and timeframes for renewal outlined in the Access Undertaking.</p>

**Clause 3: Access Rights**

53	Nature and Scope of Access Rights	Clause 3.2(b)	Unclear why clauses 3.2(b)(iii) to (v) need to expressly set out that the Access Holder may do any of the things set out in the clause where permitted or required to do so or where expressly permitted under another agreement.				Aurizon Network has considered the changes suggested by stakeholders, however has not included these changes.
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54	Nature and Scope of Access Rights	Clause 3.2(c)	The UT4 SAAs do not expressly acknowledge that Aurizon Network is required to provide the End User with the benefits, rights, services captured by the UT4 Access Agreement definition of "Access" on the terms of the UT4 SAAs.	<p>The UT4 SAAs describe the "Access" which Aurizon Network 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 Aurizon Network 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 Aurizon Network to make clear that Aurizon Network'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 Aurizon Network did not consider that it was necessary. Aurizon Network is of the view that if Aurizon Network enters into an UT4 SAA with an Access Holder, Aurizon Network's obligation to provide</p>	Aurizon Network 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 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>	Aurizon Network has reintroduced clause 3.2(c) based on clause 2(c) of the UT3 AHAA and SOAA.

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				“Access” to the Access Holder will not extend beyond its obligations to the Access Holder under the UT4 SAA.			
55	Operation of Ad Hoc Train Service	Clause 3.3(b)(ii)	Stakeholders have raised concerns regarding why Aurizon Network is not obliged to make the infrastructure available and use reasonable endeavours to reschedule contracted Train Services for Ad Hoc Train Services, and the application of the Network Management Principles.  Clause 3.3(b)(ii) should be expressed to be without limitation to clause 3.3(a).				See comments in items 135 and 136.  Aurizon Network has deleted clause 3.3(b)(ii) which dealt with rescheduling of Ad Hoc Train Services.
56	Ad Hoc Train Services	Clause 3.3(b)(iv)	Aurizon Network’s exclusion of liability has been deleted.				See comments in item 77.  Aurizon has deleted clause 3.3(b)(iv) as it is dealt with in the Access Interface Deed.

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57	Ad Hoc Train Services	Clause 3.3	Aurizon Network must endeavour to give the Operator a non-binding indication of the likelihood of Aurizon Network scheduling an Ad Hoc Train Service.				Aurizon Network has considered the changes suggested by stakeholders, however has not included these changes.
58	Operation of Ad Hoc Train Services	Clause 3.3(c)					Aurizon Network has included a new clause 3.3(c) for clarity.
59	Train Service Commitment Date vs. Train Service Compliance Date		Stakeholders requested clarification of the relationship between Train Service Commitment Date and the Train Service Compliance Date.				The Train Service Commitment Date is the date of first railings for each Train Service Type (i.e. Haul). The Train Service Compliance Date is the date by which Aurizon Network and the Access Holder are required to comply with all their obligations prior to commencement of Train Services, such as agreement on an Operating Plan, Interface Risk Management Plan, Rollingstock Authorisation and provision of an Access Interface Deed.

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These things are preferably completed in advance of the Train Service Commitment Date. However, if they are not completed by the Train Service Compliance Date, Aurizon Network may reduce the Access Rights for non-compliance (refer to clause 7.3(c)).

Each Train Service Type has its own Train Service Commitment Date as, in practice, new hauls are added after execution of the Access Agreement and it is clearer for each added Train Service Type to have its own Train Service Commitment Date.

The Commitment Date for the Access Agreement is the first Train Service Commitment Date.

Access Charges for each Train Service Type commence on the Train Service Commitment Date. For the avoidance of doubt, Aurizon Network

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has amended schedule 4 of the UT4 SAAs to include a provision to the effect that the Access Holder's obligation to pay Access Charges for a Train Service Type commences on the Train Service Commitment Date for that Train Service Type.

### Clause 5: Billing and payments

60	Invoice details	Clause 5.2	When providing invoices, Aurizon Network must also provide a reconciliation of Access Charges paid against total likely Access Charges for the year.				<p>Aurizon Network has considered the changes suggested by stakeholders, however has not included these changes.</p> <p>Aurizon Network has however amended clause 5.2(d) so that reasonable details of the calculation of the amounts payable under the UT4 SAAs are provided.</p>
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61	Billing and Payment	Clause 5.3(b)(ii)	Aurizon Network should not have the ability to unilaterally change the payment method for access charges				<p>Aurizon Network has included minor drafting changes such that it needs to advise an Access Holder if the payment method will change.</p> <p>Aurizon Network may make further changes to this clause to align with the direction to pay provisions in the SUFA documents.</p>
62	Unacceptable time periods	Clause 5.4	Time period for payments on resolution of dispute has been extended to ten Business Days (for both parties).				Aurizon Network amended the clause to include 20 Business Days for payment of invoices following a dispute.
63	Billing and Payment	Clause 5.4(c)(ii)(A)	No mechanism for Aurizon Network to pay monies back following resolution of a dispute where the monies owed to the Operator is greater than the next invoice (due to the credit mechanism of repayment).				Clause 5.4(c)(ii) has been amended to provide that any excess will be credited against future invoices until fully repaid (or repaid if no further invoice is to be issued).

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
64	Billing and Payments - the right to set-off	Clause 5.6	The UT4 SAAs do not have a reciprocal right of set-off. The approach lacks commercial balance and is unreasonable.	It is considered more likely that Aurizon Network will have the ability to set-off monies owed by the Access Holders under UT4 SAAs than the reverse. However, Aurizon Network agrees that it would be reasonable to have a reciprocal right of set-off and accepts the recommended drafting change.	Accept the 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.	Aurizon Network has redrafted this clause as per the Proposed Change column.  Clause 5.3(b) has also been amended as a consequence.

## Clause 6: Security

65	Security	Clause 6	No guidance when Security is required at the commencement of the agreement – concern that the decision to require Security will be done in a discriminatory way.				The initial requirement for Security forms part of the negotiation process for the access rights under the Access Undertaking. Hence, if there is an allegation in relation to unfair discrimination, a complaint can be lodged with the QCA under the Access Undertaking and the QCA will have the power to investigate. Typically, Aurizon Network would require Security if
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Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
							the End User / Operator does not have an Acceptable Credit Rating or has a history of defaulting in its obligations under access agreements / train operations agreements.
66	Unacceptable time periods	Clause 6.1	Date for providing Security has been extended to any time prior to the Commitment Date.				Aurizon Network has amended this clause to allow for the provision of Security on or before the date which is 10 Business Days prior to the Commitment Date.
67	Security	Clause 6.2	The Access Holder ceasing to have an Acceptable Credit Rating should be a factor Aurizon Network 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.  Aurizon Network considers that it should be entitled to require that the Access	Aurizon Network 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	Aurizon Network has considered the changes suggested by stakeholders, however has not included these changes.

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
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Holder provides Security if the Access Holder ceases, at any time, to have an Acceptable Credit Rating.

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.

**Clause 7: Operation of Train Services**

68	Commencement of Train Services	Clause 7	Stakeholders raised concern about the number of additional items that is required to be satisfied by the Access Holder prior to being able to operate a Train Service as compared to the UT3 SOAA.				As between the UT3 SAAs and UT4 SAAs, the only additional requirements to be satisfied by the Access Holder prior to commencement of Train Services are: <ul style="list-style-type: none"> <li>• requirement to hold or have the benefit of Supply Chain Rights as opposed to access to Private Facilities;</li> <li>• requirement to have an Authority to Travel or Train Route Acceptance.</li> </ul>
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Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
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Previously the Access Holder was required to have agreements for Private Facilities (i.e. loading and unloading facilities) prior to operations. Aurizon Network has extended the requirement to be to hold or have the benefit of Supply Chain Rights which include rights to access to an Adjoining Network for Through-Running Train Services.

The requirement to have a valid Authority to Travel or Train Route Acceptance is not a new requirement for Access Holders and forms part of the Rollingstock Authorisation process. Aurizon Network has included this requirement into clause 7 for clarity and consistency.

Additionally the separate process for the addition of a new Train Service Type is intended to reflect how Access Agreements are administered in practice

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
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and also provides for the fact that not all the requirements are required.

Amendments to IRMP, Operating Plans etc. for the addition of a new Train Service Type are only needed on an as required basis and reflect current accepted practice. As such, no change has been made to the drafting.

69	Limitations on right to terminate	Clause 7.2	<p>Aurizon Network's right to terminate will not apply where the End User's breach of clause 7.2(a) was due to Aurizon Network's breach of clause 7.2(b).</p> <p>A notice given under clause 7.2(c) must state that it is given under that clause.</p> <p>Aurizon Network must give written notice to the End User to terminate the AHAA.</p>				<p>Aurizon Network has redrafted this clause to include the principles suggested by stakeholders.</p>
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Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
70	Restrictions on operating Train Services	Clause 7.3	The restriction on operating Train Services is limited to those Train Services that have been added or varied.  If the End User fails to comply with clause 7.3(a), Aurizon Network must remove the variation to a Train Service Type rather than reducing Access Rights.				Aurizon Network has amended clause 7.3(c) to address non-compliance obligations following a variation to an existing Train Service Type.
71	Commencement of Train Services - Access Interface Deed	Clause 7.4 (UT4 SOAA only)	Concern raised by stakeholders about the requirement to enter into an Access Interface Deed for each Train Service Type				An Access Interface Deed for a new Train Service Type is only required where the Customer has not previously entered into an Access Interface Deed under the relevant UT4 SOAA with Aurizon Network (see clause 7.4(a)(ii) of the UT4 SOAA). As such, not changes have been made to the drafting.
72	Access Interface Deed	Clause 7.4 (UT4 SOAA only)	Customer signing Access Interface Deed should be a condition precedent to agreement and not expose				Signing of an Access Interface Deed is a condition precedent to commencement of Train

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			Operator to relinquishment fee under clause 7.4(e)(iii).				<p>Services (refer to Train Service Compliance Date). This is consistent with current UT3 SOAA practice to have an Access Interface Deed Date.</p> <p>Aurizon Network has removed the requirement to pay a Relinquishment Fee. If an Operator cannot get a signed Access Interface Deed and satisfy this condition precedent to operations, Aurizon Network may reduce the Access Rights held by the Operator in respect of the relevant Train Service Type.</p>
73	Supply Chain Rights	Clause 7.4	<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</p>	This is an extension of a provision included in clause 11.3(a) of the UT3 Access Undertaking which requires Aurizon Network to use reasonable endeavours to contract capacity to access seekers who have secured, or are reasonably likely to secure, the contractual rights required	The Supply Chain Rights clause in each UT4 SAA to be amended to introduce a "reasonably likely" test to address concerns.	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	<p>Aurizon Network has redrafted this clause as per the Proposed Change column.</p> <p>In addition, Aurizon Network has provided further clarity around the process for the Access Holder to demonstrate that it holds or has the</p>

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			<p>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>to unload at the destination unloading facility.</p> <p>With the separation from Queensland Rail and the increasing number of private facilities being built, Aurizon Network considers it appropriate and reasonable to extend the obligation in the UT3 Access Undertaking in respect of unloading facility rights to all Supply Chain Rights required by an Access Holder.</p> <p>However, having regard to industry submissions, Aurizon Network agrees to revert back to a “reasonably likely” test so that an Access Holder will need to:</p> <ul style="list-style-type: none"> <li>• hold, or have the benefit of, Supply Chain Rights; and/or</li> <li>• be reasonably likely to hold, or have the benefit of, Supply Chain Rights,</li> </ul> <p>for each Train Service Type for the whole of the period during which the Access Holder is granted access</p>		<p>number of other amendments to clause 7.4 of the AHAA which Aurizon Network has not addressed in its response.</p>	<p>benefit of the Supply Chain Rights. Including an assumption that if the Access Holder has an option granted in its favour to renew or extend the term of Supply Chain Rights that such option to renewal or extend is exercised.</p> <p>Aurizon Network has considered the other changes suggested by stakeholders, however has not included these changes.</p>

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
				rights in respect of that Train Service Type.			
74	Multiple Operators	Clause 7.5	The AHAA will not be amended where the End User removes a nominated Operator but there is an additional existing Operator appointed for that Train Service Type.				Aurizon Network has considered the changes suggested by stakeholders, however has not included these changes.
75	Use of Regenerative Brakes	New clause 7.6					Aurizon Network has included a new provision relating to the operation of Rollingstock with regenerative capabilities on the network.
76	Electricity supply	New clause 7.7					Aurizon Network has included a new provision relating the provision of electric energy to a Railway Operator.
77	Relationship with Operator	Clause 7.8 (previously clause 7.6)	Objection to Aurizon Network excluding all liability from the Operator.	Clause 7.6 seeks to manage Aurizon Network's potential liability exposure to	Aurizon Network acknowledges stakeholders concerns	The QRC does not agree with Aurizon Network's position.	Aurizon Network has amended this provision to provide for the Operator to

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		(UT4 AHAA only)	Unreasonable for Aurizon Network to require the Operator to give up all rights against Aurizon Network, particularly where loss or damage is attributable to Aurizon Network's negligence.	<p>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 UT4 End User Access Agreement under which its nominated Operator is potentially directly liable to Aurizon Network under an UT4 Train Operations Agreement.</p> <p>In response to the QRC's comments in relation to clause 7.6 of the UT4 AHAA, Aurizon Network notes the following:</p> <ul style="list-style-type: none"> <li>• The Consequential Loss exclusion required by clause 7.6(a)(i) is the same as the Consequential Loss exclusion in clause 2.1 of an Access Interface Deed.</li> <li>• Under clause 7.6(a)(ii) and (d), Aurizon Network limits its liability for loss or damage</li> </ul>	and provides this further clarification to assist review.	<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 UT4 AHAA do not represent a fair commercial risk allocation.</p> <p>The QRC's position in relation to Aurizon Network's relationship with Operators is as set out in Section 5 of the QRC's Main Submission and in the QRC's mark-up.</p>	sign an Access Interface Deed which will govern the contractual relationship between the Operator and Aurizon Network in relation to the utilisation of the Access Rights. The Access Interface Deed will be contained in schedule 12.

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suffered or incurred by an Operator to the liability that Aurizon Network would have had to the End User if the loss or damage had been suffered or incurred by the End User. This ensures that Aurizon Network'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 Aurizon Network's potential liability exposure to an Operator (which is not party to an AHAA).

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
<b>Clause 8: Resumption of Access Rights</b>							
78	Resumption of Access Rights	Clause 8	<p>Resumption provisions are unreasonably harsh and require a more balance approached, particularly:</p> <ul style="list-style-type: none"> <li>• a narrower Underutilisation Event</li> <li>• imposing obligations of reasonableness on Aurizon Network in assessing the End User's use of its Access Rights</li> <li>• specifying time periods under which Aurizon Network must utilise its resumption rights; and</li> <li>• clarifying the parties respective notice requirements.</li> </ul> <p>One of the stakeholders has also expressed concerns expressed about reduced ability to access the dispute resolution provisions.</p>	<p><b>Resumption Trigger Event, paragraph (a)</b></p> <p>Under the UT3 SAAs, Aurizon Network could only resume Access Rights based on past under-utilisation over four consecutive quarters. Aurizon Network considers that timeframe (four consecutive Quarters) to be impractical when administering the access agreements. Consequently, in the UT4 SAAs, Aurizon Network 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, Aurizon Network agrees to revert back to the previous timeframe of four consecutive Quarters but only on the basis that Aurizon Network's position</p>	<p>Having regard to stakeholder concerns, Aurizon Network agrees to amend paragraph (a) of the definition of "Resumption 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 Aurizon Network's position in relation to the definition of "Underutilisation Event" and clauses 8.1 and 8.2 is accepted.</p>	<p>The QRC does not agree with Aurizon Network's position.</p> <p>Although the QRC appreciates Aurizon 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>Aurizon Network has deleted clause 8.1, however has retained clause 8.2. See comments in item 79.</p> <p>Aurizon Network has also redrafted the relevant definitions. See comments in items <a href="#">3333</a>, <a href="#">3434</a> and <a href="#">3535</a>.</p> <p>Aurizon Network has considered the other changes suggested by stakeholders, however has not included these changes.</p>

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
				in relation to the definition of "Underutilisation Event" and clauses 8.1 and 8.2 is accepted.			
79	Notification of Underutilisation Event	Clause 8.1		Aurizon Network considers that the End User should be obliged to notify Aurizon Network of the occurrence of any Underutilisation Event because, given the nature of Underutilisation Events, the End User will most likely be aware of the occurrence of those events before Aurizon Network. The notification requirement is not unreasonable in those circumstances.	It is not intended to change this requirement.	The QRC does not agree with Aurizon Network's position.  The QRC considers the UT4 SAAs resumption provisions to be unreasonably harsh. The QRC supports a relaxation of this obligation.	Aurizon Network has deleted this clause.
80	Obligation to notify Aurizon Network of Resumption Trigger Event	Clause 8.1 (previously clause 8.2)	If requested by Aurizon Network, the End User is may, but is not required to provide information relating to a Resumption Trigger Event.  The time frame to respond to such a request has been	Aurizon Network 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.	It is not intended to change this requirement.	The QRC does not agree with Aurizon Network's position.  The QRC considers the UT4 SAAs resumption provisions to be unreasonably harsh. The QRC supports a	Aurizon Network has considered the changes suggested by stakeholders, however has not included these changes.

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
			extended to 20 Business Days.			relaxation of this obligation.	
81	Proposed Resumption Notice	Clause 8.2 (previously clause 8.3)	If the Resumption Trigger Notice is based on the Operator failing to operate at least 85% of Train Services, Aurizon Network may not give a Proposed Resumption Notice more than 20 Business Days after the end of the relevant four Quarters.	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 Aurizon Network sufficient time to consider whether there is an alternative demand for the relevant access rights.	Accept the 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.	Aurizon Network has redrafted this clause as per the Proposed Change column.
82	Details of response to Proposed Resumption Notice	Clause 8.3 (previously clause 8.4)	The End User's notice must demonstrate the extent and likelihood of the End User and the Operator using the Underutilised Access Rights.				Aurizon Network has redrafted this clause to include the principle suggested by stakeholders.
83	Resumption Notice	Clause 8.4 (previously clause 8.5)		Aurizon Network accepts the QRC's proposed amendments in clause 8.5(a) in principle but considers that the drafting	Accept the QRC's proposed amendments to clause 8.5 in principle	The QRC will assess Aurizon Network's proposed drafting when the drafting foreshadowed by	Aurizon Network has redrafted this clause and the definition of Resumable Access Rights

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
				<p>requires modification. For example, the “reasonable likelihood” test in clauses 8.5(a)(ii) and (iii) introduces uncertainty.</p> <p>Aurizon Network accepts the QRC’s amendments in clauses 8.5(b) and (d).</p>	but the proposed drafting requires modification.	Aurizon Network is provided.	<p>as per the Proposed Change column.</p> <p>See also comments in item 33.</p>
84	Disputes relating to Resumable Access Rights	Clause 8.5 (previously clause 8.6)		<p>Having regard to stakeholders comments that the dispute right in clause 8.6 is too narrow, Aurizon Network notes that clause 8.6 allows the Access Holder to dispute:</p> <ul style="list-style-type: none"> <li>the existence or extent of Resumable Access Rights; and</li> <li>the reasonableness of the expectation of sustained alternative demand or Aurizon Network receiving a commercial benefit.</li> </ul> <p>Having regard to the definition of “Resumable Access Rights”, the ability of the Access Holder to dispute the existence or</p>	For clarity, to address stakeholder concerns, Aurizon Network 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 applicable, the existence of an Underutilisation Event).	The QRC will assess Aurizon Network’s proposed drafting when the drafting foreshadowed by Aurizon Network is provided.	Aurizon Network has redrafted this clause as per the Proposed Change column.

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				extent of Resumable Access Rights would allow the Access Holder 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.			
85	Dispute in relation to Resumption Notice	Clause 8.5 (previously clause 8.6)	Time period for notice of a dispute has been extended to 20 Business Days.	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 has considered the changes suggested by stakeholders, however has not included these changes.

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
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Aurizon Network in its response.

### Clause 9: Reduction of Conditional Access Rights due to Capacity Shortfall

86	Reduction of Conditional Access Rights due to Capacity Shortfall	Clause 9	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 Aurizon Network, Aurizon Network will be deemed to be in breach of the agreement.	<p>Where Aurizon Network has entered into a commercial arrangement with an Access Holder in respect of an Expansion, Aurizon Network's liability to the Access Holder for a Capacity Shortfall due to Aurizon Network's act or omission will be dealt with under those arrangements.</p> <p>Where Aurizon Network has funded an Expansion and its act or omission has resulted in a Capacity Shortfall, clause 8.10.3 of the Access Undertaking requires Aurizon Network to fund the Shortfall Expansion to remedy the Capacity Shortfall.</p> <p>Consequently, Aurizon Network does not consider that it is appropriate that it</p>	Aurizon Network 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 UT4 SAA 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.	<p>Aurizon Network has included minor drafting changes for clarification of the effective date of a variation where there is a dispute raised.</p> <p>Aurizon Network has considered the changes suggested by stakeholders, however has not included these changes.</p>
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Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
				be liable to an Access Holder under an UT4 SAA for a Capacity Shortfall due to an act or omission of Aurizon Network and does not accept the QRC's amendments to clause 9.			
87	Reason for Capacity Shortfall	Clauses 9.4, 9.5 and 9.6	<p>Aurizon Network must identify, and include in the Capacity Assessment Notice, the reason for the Capacity Shortfall. If the reason is caused by an act or omission of Aurizon Network then Aurizon Network is in breach of the UT4 SAA.</p> <p>The time to determine whether there is a Capacity Shortfall must be no longer than six months.</p> <p>Disputes may be raised in relation to the reason for the Capacity Shortfall.</p>				<p>Aurizon Network has considered the changes suggested by stakeholders, however has not included these changes.</p> <p>See also comments in item 86.</p>

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**Clause 10: Reduction of Nominated Monthly Train Services if Maximum Payload exceeded**

88	Reduction of Nominated Monthly Train Services if Maximum Payload exceeded	Clause 10	Concerned about the introduction of clauses 10 and 11 allowing Aurizon Network to reduce an Operator's Nominated Monthly Train Services if a maximum payload is exceeded by the Operator or increased by Aurizon Network.				<p>Clause 10 applies where an Operator has been consistently using a larger Maximum Payload whereas clause 12 provides a link that, where enhancements can be achieved via changes such as increase in payload, there is a compensation mechanism in place.</p> <p>Aurizon Network believes both mechanisms assist in the efficient use of the supply chain and ensures that, where Access Holders hold on to additional paths than necessary, they can be provided to other access seekers.</p> <p>It will also be a useful avenue for Operators where they do move to larger payloads and wish to relinquish paths without penalty. Aurizon Network has made amendments to</p>
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Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
							these provisions as outlined in item 91.
89	Reduction of Nominated Monthly Train Services if Maximum Payload exceeded	Clause 10	No objection to the drafting but want to better understand the rationale for its inclusion. The view is that the rationale included appears inconsistent with the effect of the drafting in clause 10 of the UT4 SAA.	<p>Aurizon Network will only use this mechanism to increase the Access Holder's Maximum Payload and reduce its Nominated Monthly Train Services if it has an alternative demand for the additional capacity generated by the reduction to the Nominated Monthly Train Services.</p> <p>Aurizon Network 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</p>	Aurizon Network to propose drafting that would require it to consider a request from an Access Holder to increase the Maximum Payload and reduce the Access Holder's Nominated Monthly Train Services (subject to certain conditions being satisfied).	The QRC will assess Aurizon Network's proposed drafting when the drafting foreshadowed by Aurizon Network is provided.	Aurizon Network has redrafted this clause as per the Proposed Change column.

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
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is no alternative demand for that additional capacity).

This concept is similar to the QRC's proposed new clause 11.1 of the UT4 AHAA.

90	Purpose of "no prejudice" clause	Clause 10.7	The QRC has noted that the purpose of this clause in light of suspension and other rights is unclear.				Aurizon Network has an ability, for example through the approval of Rollingstock Configurations, to manage the payload of train services operating on the network. Hence, this clause aims to ensure none of these other provisions are overridden.
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#### Clause 11: End User Initiated increase to Maximum Payload

91	End User Initiated increase to Maximum Payload	New Clause 11	The End User may request an increase to its Nominal Payload and Aurizon Network must respond within 20 Business Days.				Aurizon Network has included a new clause 11 to address stakeholders' request.
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Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
<b>Clause 12: Reduction of Nominated Monthly Train Services if Nominal Payload increased</b>							
92	Reduction of Nominated Monthly Train Services if Nominal Payload increased	Clause 12 (previously clause 11)	Stakeholders requested that the provision allow the Access Holder to request that the Nominal Payload be increased. Also 14 months does not reflect the sufficient procurement lead time for Operators to make changes to its Rollingstock fleet. A more appropriate lead time is minimum 18 months.	<p>Aurizon Network would only provide a Notice of Intention to Increase Nominal Payload following consultation with industry 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 Aurizon Network through those processes.</p> <p>Please note Aurizon Network'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</p>	<p>Aurizon Network to include a requirement for it to undertake consultation with industry prior to it issuing a Notice of Intention to Increase Nominal Payload under clause 11.</p> <p>Aurizon Network accepts, in principle, the QRC's proposed amendments to clauses 11.9 and 11.11 subject to drafting modifications.</p>	<p>The QRC does not agree with Aurizon Network's position.</p> <p>The QRC appreciates Aurizon Network's willingness to 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>	<p>Aurizon Network has redrafted this clause as per the Proposed Change column. In addition, Aurizon Network has revised the timeframe for the implementation of the proposed change from a minimum of 14 months to a minimum of 18 months or as otherwise agreed.</p> <p>See also comments in item 91</p> <p>Aurizon Network has considered the other changes suggested by stakeholders, however has not included these changes.</p>

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
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clause 11 of the UT4 AHAA, Aurizon Network notes the following:

- Aurizon Network 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).
- Aurizon Network does not accept the QRC's proposed 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).
- Aurizon Network does not accept the QRC's proposed amendment to clause 11.2(c) because it imposes a constraint on Aurizon Network's ability to explore

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				<p>opportunities to create capacity at the lowest capital cost.</p> <ul style="list-style-type: none"> <li>Aurizon Network accepts, in principle, the QRC's proposed amendments to clauses 11.9 and 11.11.</li> </ul>			
93	Restrictions on Aurizon Network seeking increase to Nominal Payload	Clause 12.2	<p>The QRC has noted that the reasons for Aurizon Network seeking an increase to the Nominal Payload must be constrained in some way.</p> <p>Aurizon Network must not give more than one Notice of Intention to Increase Nominal Payload for a particular Train Service Type in 12 months.</p>				<p>Aurizon Network has considered the changes suggested by stakeholders, however has not included these changes.</p> <p>Given the new obligation to consult with relevant stakeholders about options for increasing the capacity of the network (whether by an expansion and/or the use of larger trains), Access Holders will have prior expectation that the notice will be issued in due course. Aurizon Network does not wish to have any constraints on its ability to explore opportunities to</p>

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							create capacity at the lowest capital cost.
94	Amendment to formulas	Clauses 12.3 and 12.4	Stakeholders requested an amendment such that Revised Nominal Payload may be specified in the Notice of Intention to Increase Nominal Payload or Notice of Enquiry (to align with proposed new clause 11.1)				<p>Aurizon Network has considered the changes suggested by stakeholders, however has not included these changes.</p> <p>See also comments in item 91 in relation to the ability for an Access Holder to request to increase the Nominal Payload.</p>
95	Disputes about Revised Nominal Payload	Clause 12.4	Stakeholders believe the Nominal Payload should be able to be disputed, as there may be an optimal solution for both above and below rail (acknowledging optimisation of locomotive power).				<p>Aurizon Network has amended clause 12 to require that, before giving a Notice of Intention to Increase Nominal Payload, it must consult with the Access Holder about the proposed Revised Nominal Payload, the impact of the change, the Net Financial Effect of the change and the time required to give effect to the change. However,</p>

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							following such consultation, Aurizon Network considers that it should be responsible for nominating the Revised Nominal Payload.
96	Disputes regarding Response Notices	Clause 12.4	Stakeholders requested an amendment to this clause to incorporate Response Notices.				Aurizon Network has considered the changes suggested by stakeholders, however has not included these changes.  See also comments in item 91 in relation to the ability for an Access Holder to request to increase the Nominal Payload.
97	Amending timeframe to incorporate disputes	Clause 12.5	Timeframe for response by the End User has been amended to incorporate circumstances where there is a dispute.				Aurizon Network has redrafted this clause to include the principle suggested by stakeholders.
98	Information to be excluded from a	Clause 12.8	Any further estimate of the Net Financial Effect must				Aurizon Network has redrafted this clause to

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	further estimate of the Net Financial Effect		not include any increased costs or detriments that the Operator should have anticipated such costs or detriments at the time that the original estimate of the Net Financial Effect was submitted.				include the principle suggested by stakeholders.  See also comments in item 13.
99	Determination of compensation	Clause 12.10	If there is a dispute, Aurizon Network must pay the amount determined under the dispute resolution process.  If there is no dispute, Aurizon Network must pay the amount of the Operator's estimate.				Aurizon Network has redrafted this clause to include the principles suggested by stakeholders.  See also comments in item 98.
<b>Clause 13: Relinquishment of Access Rights</b>							
100	Relinquishment	Clause 13	Stakeholders raised concern with removal of obligation of Aurizon Network to pursue opportunities that would result in a lessening of a relinquishment fee.				This obligation remains but has been moved from previous clause 3.3(i) of the UT3 AHAA to clause 15.2. As such, Aurizon Network has not included

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
							any amendments to this provision.  See also comments in item 102.
101	Timing	Clause 13.1	Minimum time period deleted.				Aurizon Network has amended clause 13.1(c)(ii) to remove the 3 month minimum time period.
102	Relinquishment of Access Rights – Relinquishment Fee	Clause 13 (previously clause 12)	Included an obligation for Aurizon Network to notify the Access Holder if Aurizon Network 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 the negotiation (and execution) of that access agreement.	Aurizon Network 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).	Aurizon Network 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).	Aurizon Network has redrafted this clause as per the Proposed Change column.  See also comments in item 100.
103	Payment of Relinquishment Fee	Clause 13.2	Aurizon Network must also notify the End User of the Relinquishment Fee on request by the End User.				Aurizon Network has redrafted this clause to include the principles

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			<p>If the amount of the Relinquishment Fee increases, Aurizon Network must accept the initial payment and seek payment of the additional amount.</p> <p>Aurizon Network must notify the End User of a possibility to enter into a new Access Agreement (thus lowering the Relinquishment Fee) and must not unreasonably delay that execution process.</p>				<p>suggested by stakeholders.</p> <p>See also comments in items 100 and 102.</p>
104	Aurizon Network's Assumptions	Clause 13.3	<p>Assumptions by Aurizon Network must be reasonable and Aurizon Network must provide written reasons for its assumptions in relation to the Relinquishment Fee.</p> <p>The End User may dispute the calculation of the Relinquishment Fee.</p>				<p>Aurizon Network has redrafted this clause to include the principles suggested by stakeholders.</p> <p>Aurizon Network has made amendments to clause 13.3(a)(ii) to clarify that in assuming the relevant Train Services were not operated for calculation of the Relinquishment Fee, it is also assumed the non-</p>

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operation was for a reason other than Aurizon Network Cause.

Amendments have also been made to clause 13.3(b)(iii) to provide that where Aurizon Network must notify the End User of all assumptions made by Aurizon Network in calculating the Relinquishment Fee, such notification does not require Aurizon Network to breach any duty of confidentiality owed to a third party.

**Clause 14: Transfer of Access Rights by End User**

105	Transfers	Clause 14	Requests clarity on Ancillary Access Rights				Ancillary Access Rights has been designed to facilitate Transfers occurring. Where a Transfer occurs further out from the transferring Origin, that additional corridor is deemed to be
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Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
							Ancillary Access Rights. The Transferee is given priority over those Ancillary Access Rights over other Access Seekers, provided Aurizon Network is not already in genuine negotiations with another Access Seeker for access to those same access rights. No amendments to drafting have been included.
106	Transfers by Access Holder	Clause 14	<p>Seeking changes to the transfer provisions to make them more efficient.</p> <p>Primarily the ability for Access Holders to pre-approve a Transfer within a cluster.</p>	<p>Aurizon Network 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.</p> <p>Aurizon Network proposes including a new provision (in addition to the existing transfer provision which addresses long term / permanent transfers) to address short term transfers.</p>	Aurizon Network 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.	Aurizon Network is developing a capacity trading mechanism in conjunction with stakeholders. No drafting changes have been included in the UT4 SAAs at this point. The mechanism will need to be incorporated at the conclusion of consultation with stakeholders.

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
				Aurizon Network anticipates that the new provision to address short term transfers will provide an expedited process.			
107	Aurizon Network's treatment of Notices of Intention to Transfer	Clause 14.1	<p>Obligation on Aurizon Network to act expeditiously and diligently in dealing with a transfer.</p> <p>Aurizon Network must also be reasonable in the form that it requires for the Notice of Intention to Transfer.</p>				Aurizon Network is developing a "short form access request" which will outline the information required to process a request for transfer of access rights. Aurizon Network has included an obligation in a new clause 14.6 to act in a diligent and timely manner in dealing with a Transfer.
108	Timing of relinquishment	Clause 14.2	<p>End User will be taken to have relinquished the Nominated Access Rights on entry into the Transferee Access Agreement.</p> <p>Variations to the UT4 AHAA need only reasonably address the relinquishment.</p> <p>Transferee's obligation to demonstrate that it has</p>				<p>Aurizon Network has included minor changes dealing with demonstration of Supply Chain Rights.</p> <p>Aurizon Network has considered other changes suggested by stakeholders, however has not included these changes. For example,</p>

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
			Supply Chain Rights only applies to the commencement of operations and it has no obligation to demonstrate that it will continue to hold such Supply Chain Rights.				Aurizon Network 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.
109	Payment of Transfer Fee	Clause 14.3	<p>Aurizon Network must also notify the End User of the Transfer Fee on request by the End User.</p> <p>If the amount of the Relinquishment Fee increases, Aurizon Network must accept the initial payment and seek payment of the additional amount.</p> <p>A Transfer Cancellation Notice does not limit the End User's right to submit further Transfer Notices.</p>				Aurizon Network has redrafted this clause to include the principles suggested by stakeholders.
110	Aurizon Network's Assumptions	Clause 14.4	<p>Reasonableness obligations have been inserted throughout the clause.</p> <p>Aurizon Network must provide written reasons for</p>				Aurizon Network has redrafted this clause to include the principles suggested by stakeholders

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
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its assumptions made in respect of the Transfer Fee.

Further clarity is provided around the calculation of the three year period.

The End User may dispute the calculation of the Transfer Fee.

Aurizon Network has also made amendments to clause 14.4(a) to clarify that in assuming the relevant Train Services were not operated for calculation of the Relinquishment Fee, it is also assumed the non-operation was for a reason other than Aurizon Network Cause.

Amendments have also been made to clause 14.4(b)(iii) to provide that where Aurizon Network must notify the End User of all assumptions made by Aurizon Network in calculating the Relinquishment Fee, such notification does not require Aurizon Network to breach any duty of confidentiality owed to a third party.

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
111	Timing of Transfer	Clause 14.5	Nominated Access Rights will be transferred on the Transfer Date.				<p>Aurizon Network has considered the changes suggested by stakeholders, however has not included these changes.</p> <p>Aurizon Network considers that each Transfer should be conditional upon the payment of the applicable Transfer Fee (see clause 14.3(a)).</p>
112	Right to seek pre-approval of a Transfer	(new)	End User may seek pre-approval of a Transfer.				See comments in item 106.
113	Amendments to existing transfer provision dealing with long term / permanent transfers	Clause 14 (previously clause 13)		<p>On the basis that there will be a separate provisions dealing with short term transfers, Aurizon Network does not accept most of the QRC's amendments to the existing transfer provision.</p> <p>Specifically, Aurizon Network does not accept the QRC's proposed amendments:</p>	With respect to long term / permanent transfers, Aurizon Network to amend clause 13 as noted in the previous column.	The QRC will re-assess the long term/permanent transfers provisions after reviewing Aurizon Network's proposed short term transfers provision.	<p>Aurizon Network has redrafted this clause as per the Proposed Change column.</p> <p>See also comments in items 106, 107 and 108.</p>

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
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- 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). Aurizon Network 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, Aurizon Network 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 of the QRC's proposed clause is not clear to Aurizon Network. If that clause is

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				<p>intended to address short term transfers, then Aurizon Network will consider the QRC's proposed drafting in clause 13.6 in developing the proposed new provision addressing short term transfers.</p> <p>Aurizon Network accepts, in principle, the QRC's amendments to clause 13.3.</p> <p>Aurizon Network 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>Aurizon Network 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>			

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
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**Clause 15: Reduction Factor**

114	Right to dispute the Reduction Factor	Clause 15.1	<p>Aurizon Network's assumptions in relation to the Reduction Factor must be reasonable.</p> <p>The End User may dispute the calculation of the Reduction Factor.</p>				<p>Aurizon Network accepts in concept the ability of the Access Holder to refer a dispute in relation to the calculation of the Reduction Factor to an expert. The dispute provisions have been included in clauses 13.3 and 14.4 respectively, as the Reduction Factor forms part of the Relinquishment Fee and Transfer Fee.</p>
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**Clause 14 SOAA**

115	Consequential Loss Exclusions	Clauses 14.2(i) and 32.3 (UT4 SOAA only)	<p>Consequential loss exclusion should not be removed from operation in the additional circumstances that have been included (Clause 14.2(i) – Transfers and Clause 32.3 – Third Party Indemnities)</p>				<p><b>Clause 14.2(i)</b> – This clause was relocated from clause 7.3.7(b)(v) of the UT3 Access Undertaking. Clause 14.2(i) of the UT4 SOAA reflects the position under clause 7.3.7(b)(v) of the UT3 Access Undertaking. The reference to “including</p>
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Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
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Consequential Loss" in clause 14.2(i) is appropriate in that the Customer would be liable to indemnify Aurizon Network for all costs, expenses and losses incurred by it (without any exclusion for consequential losses, however described) under an undertaking contemplated by clause 7.3.7(b)(v) of the UT3 Access Undertaking. Consequently, the liability that a Customer may have to Aurizon Network under an undertaking contemplated by clause 7.3.7(b)(v) of the UT3 Access Undertaking has not been expanded under clause 14.2(i) of the UT4 SOAA.

**Clause 16 Resumption, reductions, relinquishment and transfers - General**

116	Rights following termination	Clause 16.1	Termination of the AHAA is without prejudice to other rights under the AHAA that				Aurizon Network has redrafted this clause to
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Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
			are stated to survive termination. Termination is without prejudice to the rights of either party.				include the principles suggested by stakeholder.
117	Effect on entitlement to operate and Access Charge Rates	Clause 16.2	Objection to the broad matters dealt with in clause 16.2.				Clause 16.2 is for the benefit of the Access Holder and/or Operator and clarifies that where Access Rights are resumed, reduced, relinquished or transferred under the UT4 SAAs, they will not be operated under the relevant UT4 SAA and will not have Access Charges applying to it.  Minor amendments have been made to this clause for clarity.
118	Exclusions of liability	Clause 16.3	The End User's release of Aurizon Network for any liability only applies to liability under clause 16.3(a).  The End User has no obligation to ensure that the				As an Access Interface Deed will govern the contractual relationship between the Operator and Aurizon Network in relation to the utilisation of the Access Rights,

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			Operator does not bring a Claim against Aurizon Network.				changes have been made to clause 16.3 to reflect this.  See also comments in item 77.
119	Exclusions of liability	Clause 16.3	Stakeholders had an objection to the broad matters dealt with in clause 16.3, particularly the significance of the matters.				If Access Rights have been validly resumed, reduced, relinquished or transferred under the UT4 SAAs, then Aurizon Network should have no liability to the Access Holder or Operator. Clause 16.3 simply reflects that intention. Aurizon Network would be liable if it invalidly resumed, reduced, relinquished or transferred access rights under the UT4 SAAs. Amendments have been made to this clause for clarity.

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
<b>Clause 17: Day to day Train Movements</b>							
120	Train control	Clause 17.2 and definition of "Train Control Direction"	Obligation to act in good faith	Aurizon Network does not accept the QRC's amendment which would require Aurizon Network to act in "good faith" because a good faith obligation is not appropriate in the context of Train Control where Aurizon Network will be required to provide directions for safety reasons.	It is not intended to change this clause.	The QRC notes Aurizon Network's concern and proposes that Aurizon Network's obligation to act reasonably and in good faith be subject to Aurizon Network's safety obligations.	Aurizon Network has considered the changes suggested by stakeholders, however has not included these changes.  See the comments in item 121 in relation to the inclusion of an obligation for Aurizon Network to act reasonably.
121	Need for reasonableness	Clauses 17.2 and 17.3	Reasonableness limitations have been included.  Clauses are without limitation to other rights of the End User.				Aurizon Network has included in the drafting the obligation to act reasonably in clause 17.2(b).  Aurizon Network has redrafted clause 17.3 to include the principle suggested by stakeholders.

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
122	Removal at the end of Authorised Parking	New clause 17.5					<p>A new clause 17.5 has been included to allow Aurizon Network to better manage and control use of its Nominated Network.</p> <p>The clause provides that where Aurizon Network has allowed a train to be stowed or any item of Rollingstock to be temporarily parked on the Nominated Network (referred to as Authorised Parking) the Access Holder must ensure the Operator promptly removes the Train or Rollingstock within the relevant period as specified by Aurizon Network.</p> <p>If the Train or Rollingstock is not removed within the relevant period, clause 17.5(a)(ii) allows Aurizon Network to take such action as reasonably necessary to remove the Train or Rollingstock. Prior to taking such action Aurizon Network will use reasonable efforts to</p>

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consult with the Access Holder first.

Should Aurizon Network be required to take any action to remove the Train or Rollingstock it will not be liable for any damage to or loss of freight, Train or Rollingstock. Further the Access Holder is solely liable for and indemnifies Aurizon Network against all claims that may arise as a result of Aurizon Network exercising its rights of removal under clause 17.2(a)(ii).

**Clause 18: Compliance**

123	Compliance	Clause 18.2	Concerned by introduction of right of Aurizon Network to vary the Access Charge Rates to compensate for any increased risk or utilisation of capacity due to				Under the UT3 SAAs, Aurizon Network has a right to vary Base Access Charges under clause 5.6(e) of the UT3 SOAA.
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Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
			the Train Services for a Train Service Type not complying with the Train Service Description.				<p>To provide greater certainty for the parties, the extent to which Aurizon Network is entitled to vary the Access Charge Rates (referred to as Base Access Charges in the UT3 SOAA) due to non-compliance by the Operator with the Train Service Description has been more clearly described in clause 18.2(a)(iv). Aurizon Network has included drafting changes such that it is reasonable costs which are considered.</p> <p>Aurizon Network has considered other changes suggested by stakeholders, however has not included these changes.</p>
124	Limitation on obligation to comply with Authorities	Clause 18.1	The End User need only comply with lawful requirements of Authorities to the extent that such requirements have been disclosed to the End User.				Aurizon Network has considered the change suggested by stakeholders, however has not included the change.

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
125	Restrictions on limitations to Train Service Description	Clause 18.2	<p>Aurizon Network may not vary a Train Service Description where the non-compliance is attributable to another Railway Operator or Aurizon Network.</p> <p>Changes to the Access Charge Rates may only compensate Aurizon Network for reasonable increases in costs or risk or for direct increases in utilisation of the Capacity.</p>				Aurizon Network has redrafted this clause to include the principles suggested by stakeholders
126	Consistent application of principles and procedures	Clause 18.4	Stakeholders have questioned how this clause applies to cross system traffic given the reference to Coal System.				Aurizon Network has amended this clause to state that it is the relevant rules that apply to the destination of that train service. Hence, for cross system traffic, it is the destination that determines which rules apply.
127	Level of detail in information	Clause 18.5	Information must be provided on a daily, weekly, monthly and annual basis.				Aurizon Network has considered the change suggested by stakeholders, however

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							has not included the change.
128	Provision of Information	Clause 18.5	Stakeholders requested that Aurizon Network's Document Controller (refer to schedule 10) be included and a process for the management of ongoing document availability via a secure portal.				Aurizon Network has included an amendment to clause 18.5 to reflect that the provision of information may be via publication on the Website.
129	Compliance with Aurizon Network's Accreditation	Clause 18.6 (previously clause 17)	Onerous on the Access Holder to interpret and be aware of the terms and conditions of Aurizon Network's Accreditation.  Amendments so that it is limited to the extent the Access Holder has been notified of those terms and conditions.	<b>Aurizon Network relief from breach if complying with Accreditation</b>  The clause is intended to ensure that in the limited circumstances that an obligation in the UT4 SAAs conflicts with Aurizon Network's obligations under its Accreditation, it will not be in breach of the UT4 SAA by complying with its obligations under its Accreditation.  To make this clearer, Aurizon Network proposes the amendments to	Aurizon Network proposes to vary clause 17.6(a) to make clear that the relief from non-compliance with the UT4 SAAs will only apply "to the extent that" the relevant act or omission is required for the purposes specified in clauses 17.6(a)(i) and (ii). This clause will only apply where there is a conflict between Aurizon Network's obligations under the UT4 SAAs and its obligations under its Accreditation.	The QRC does not agree with Aurizon Network's position.  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.	Aurizon Network has redrafted this clause as per the Proposed Change column.  Aurizon Network has considered the other changes suggested by stakeholders, however has not included these changes.

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
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clause 17.6(a) as outlined in the next column.

130	Access Holder's obligation in respect of Aurizon Network's Accreditation	Clause 18.6 (previously clause 17)		<p>In relation to clause 17.6(b), Aurizon Network 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 known, would jeopardise Aurizon Network's Accreditation.</p> <p>Aurizon Network 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, Aurizon Network proposes to vary clause 17.6(b) 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).</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>	<p>Aurizon Network has redrafted this clause as per the Proposed Change column.</p> <p>Aurizon Network has considered the other changes suggested by stakeholders, however has not included these changes.</p>
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Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
<b>Clause 19: Operating Plan</b>							
131	Right to dispute	Clause 19.1	The End User may dispute the withholding of approval for an Operating Plan.				Aurizon Network has redrafted this clause to include the principle suggested by stakeholders.
132	Need for reasonableness	Clause 19.2	<p>Concept of reasonableness has been inserted throughout the clause.</p> <p>Aurizon Network must notify the End User where the Operating Plan ceases to be consistent with the UT4 SAA.</p> <p>The End User may dispute the withholding of approval for an amendment to an Operating Plan.</p>				Aurizon Network has redrafted this clause to include the principles suggested by stakeholders.
133	Approval of Operating Plans	Clause 19 (previously clause 18)	<p>Opposed to the deemed refusal framework in the Operating Plan approval process.</p> <p>The Access Holder should be able to engage the</p>	Aurizon Network accepts, in principle, the QRC's proposed amendment to clause 18.	Aurizon Network accepts the QRC's position and will amend clause 18 accordingly.	The QRC will assess Aurizon Network's proposed drafting when the drafting foreshadowed by	Aurizon Network has redrafted this clause as per the Proposed Change column.

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
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dispute or expert resolution processes in the UT4 SAA where a deemed refusal arises.

Aurizon Network is provided.

### Clause 20: Train operations

134	Compliance with Scheduled Time	Clause 20.1	Aurizon Network should also be required to operate train services in compliance with the relevant Daily Train Plan and Scheduled Times.				<p>As Aurizon Network does not operate the Train Services, an obligation for Aurizon Network to operate Train Services in compliance with the Daily Train Plan or Scheduled Time is inappropriate.</p> <p>Aurizon Network's obligation is to provide the Infrastructure and provide the relevant Train Control Direction and reschedule in accordance with the Network Management Principles when the Infrastructure is not available at the Scheduled Times or in accordance with the Daily Train Plan. See also comments in items 135 and 136.</p>
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Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
135	Obligation to use reasonable endeavours	Clause 20.2 (previously clause 19.2)	<p>Aurizon Network 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>Aurizon Network 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) will only apply where Aurizon Network has satisfied its obligations to use reasonable endeavours to reschedule the train.</p>	<p>The timeframe under clause 19.2(b) 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 Aurizon Network that it is unable to operate Train Services. Currently, the applicable timeframe is 48 hours.</p> <p>If the Access Holder gives Aurizon Network 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, Aurizon Network should not be obliged to use reasonable endeavours to reschedule that Train Service. If Aurizon Network does not reschedule such a Train Service, then clauses 19.2(d)(iii) to (vi) should apply.</p>	<p>Aurizon Network will amend clause 19.2(b) 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>	<p>Aurizon Network has further considered the application of clause 20.2. The process for rescheduling a train service is adequately provided for in the Network Management Principles, hence Aurizon Network has removed clauses 20.2(b) to (d) to avoid potential inconsistencies.</p>

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
136	Obligation to use reasonable endeavours	Clause 20.3	<p>Aurizon Network 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 Aurizon Network 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 Aurizon Network has satisfied its obligations to use reasonable endeavours to reschedule the train.</p>	<p>The timeframe under clause 19.3(b) 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 Aurizon Network that it is unable to operate Train Services. Currently, the applicable timeframe is 48 hours.</p> <p>Aurizon Network accepts, in principle, the QRC's amendments to clause 19.3 other than:</p> <ul style="list-style-type: none"> <li>the timeframes for the rescheduling of Train Services (as discussed above); and</li> <li>the replacement of the words "may not" with "will" in clause 19.3(e)(ii).</li> </ul>	<p>Except as noted in the previous column, Aurizon Network 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>	<p>Aurizon Network has further considered the application of clause 20.3. The process for rescheduling a train service is adequately provided for in the Network Management Principles, hence Aurizon Network has removed clauses 20.3(b) to (d) to avoid potential inconsistencies.</p>
137	Unacceptable timing	Clause 20.5	<p>Aurizon Network must notify the End User as soon as it becomes aware of obstructions (rather than as</p>				<p>Aurizon Network does not accept the proposed amendment to clauses 20.5(a) and (b). In</p>

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
			soon as reasonably practicable).				practice, Aurizon Network cannot notify all End Users/Operators at the same time “as soon as it becomes aware” of the occurrence of a relevant event given the number of End Users/Operators that may need to be notified.
138	Notification	Clause 20.5(c) (previously clause 19.5(c))	Clause 19.5(c)(ii) is a repeated by reference to clause 17.1 that is the requirement to notify network of failure to comply with train control direction.				Aurizon Network has deleted the duplication from clause 20.5(c)(ii).
139	Operation of Trains and Rollingstock	Clause 20.7					Aurizon Network has amended clause 20.7 to provide that the Access Holder “... must ensure that at all times its operation of Rollingstock (including all loading and unloading of Rollingstock) on the Nominated Network is undertaken ...” in the manner required in clauses 20.7(a), (b) and (c).

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
<b>Clause 21: Authorisation of Rollingstock and Rollingstock Configurations</b>							
140	Authorisation of Rollingstock and Rollingstock Configurations	Clause 21	<p>Concerned with new regime for authorisation of Rollingstock and Rollingstock Configurations and queries the need for the establishment of another complex process that was previously in place under the UT3 SOAA.</p> <p>Concern with placing the process in the agreement as opposed to the Access Undertaking will allow Aurizon Network to negotiate differently with Operators to the benefit of some Operators over others.</p>				<p>The regime for authorisation of Rollingstock or Rollingstock Configurations reflects the current regime for assessing and authorising Rollingstock and Rollingstock Configurations onto the Infrastructure.</p> <p>The UT3 Access Undertaking process was unclear and confused with the broader IRMP process that is required to occur. The UT4 SAAs drafting aims to set out a clear regime for Operators and Aurizon Network to undertake.</p>
141	Need for reasonableness	Clause 21.6	Aurizon Network's requests must be reasonable.				Aurizon Network has redrafted this clause to include the principle suggested by stakeholders

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
142	Update of Schedule 5 for New Authorisations	Clause 21.10					A new clause 21.10 has been included to provide that where Aurizon Network has during the term of the Agreement, authorised additional Rollingstock, item 1 of Schedule 5 is deemed to be amended to include the Maximum Gross Mass and Tare Weight of the additional Authorised Rollingstock.
143	Unacceptable timing	Clause 21.11		Aurizon Network must give a Train Route Acceptance or Authority to Travel to the End User within 5 Business Days after the Rollingstock Configurations become Authorised Rollingstock Configurations (rather than 'promptly').			Aurizon Network has redrafted this clause to include the principle suggested by stakeholders
144	Evidence of cost increases	Clause 21.12		Variations can only be made as a result of reasonable and proper increases to costs.  Increased utilisation of the Capacity is not a ground to			Aurizon Network has redrafted to limit the recovery of costs to "reasonable costs".  Aurizon Network has considered other changes

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
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vary the Access Charge Rates.  
Aurizon Network must provide to the End User all information reasonably required to verify a cost claim.

suggested by stakeholders, however has not included these changes.

**Clause 22.1: Amendments to System Wide Requirements**

145	Limitations on rights to amend System Wide Requirements	Clause 22.1	Aurizon Network must act in good faith. Amending the System Wide Requirements without the consent of the End User can only occur to ensure the ongoing safe operation of the network.				Aurizon Network has redrafted clauses 22.1 and 22.6 to clarify what constitutes "safety grounds". Aurizon Network has considered other changes suggested by stakeholders, however has not included these changes.
146	Clarity	Clause 22.2	The End User must notify Aurizon Network of the impacts of a Discretionary System Amendment (rather than advise).				Aurizon Network has considered the changes suggested by stakeholders, however

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
							<p>has not included these changes.</p> <p>Consistent with the position under UT3, Aurizon Network should only be prevented from implementing a Discretionary System Amendment if the Discretionary System Amendment will materially impact on the Operator's operations to such an extent as to fundamentally frustrate the Operator's operations of Train Services over a sustained period. An Operator will be compensated for the Net Financial Effect on the Operator of a Discretionary System Amendment.</p>
147	Limitation of right to make a Discretionary System Amendment	Clause 22.3		Application of the clause has been broadened to all circumstances where the proposed amendments will materially impact the End User's operations.			Aurizon Network has considered the changes suggested by stakeholders, however has not included these changes.

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
			Aurizon Network may only make the proposed amendment where it determines that the amendment will not materially impact the Operator's operation of Train Services.				See also item 146.
148	Details of notice of financial impacts	Clause 22.4	The requirement for estimates to be sufficiently detailed to enable Aurizon Network to assess the financial impact has been deleted.				Aurizon Network has considered the changes suggested by stakeholders, however has not included these changes. See also item 146.
149	Matters to which Expert will have regard	Clause 22.5	Expert may have regard to costs associated with other entitlements of Aurizon Network under the UT4 SAA.				Aurizon Network has amended this clause to delete the words "but excluding...", under this Agreement".
150	Onus to bear costs	Clause 22.6	The requirement to use reasonable endeavours to minimise the Negative Financial Effect has been made mutual.				Aurizon Network has considered the changes suggested by stakeholders, however

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			Aurizon Network must fund all of the parties' costs where an amendment is required due to conduct attributable to Aurizon Network. In all other circumstances each party must bear its own costs.				<p>has not included these changes.</p> <p>The End User and Operator will be in a position to minimise the Net Financial Effect of the proposed amendments. Given that Aurizon Network is obliged to compensate the Operator for the Net Financial Effect, it is in Aurizon Network'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 System Wide Requirements which are required on safety grounds.</p>
151	Costs of implementing amendments to a	Clause 22.6 (previously clause 21.6)	Phase "safety grounds" is not defined and too vague. If a System Wide Amendment requires	Aurizon Network accepts the QRC's proposed amendments to clause 21.1 whereby the words "on safety grounds" have been	Aurizon Network accepts the QRC's position in relation to clause	The QRC will assess Aurizon Network's proposed drafting when the drafting foreshadowed by	See comments in item 145 in relation to the reference to "safety grounds".

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
System Wide Amendment	amendment due to conduct attributable to Aurizon Network or its staff the costs of that variation should be borne by Aurizon Network.		<p>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 Aurizon Network is obliged to compensate Access Holders for the Net Financial Effect, it is in Aurizon Network’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, Aurizon Network does not accept the QRC’s proposed amendments to clause 21.6.</p>	<p>21.1(a)(i) and will amend the drafting accordingly.</p> <p>Aurizon Network acknowledges stakeholders concerns in relation to clauses 21.6 and provides this further clarification to assist review.</p>	<p>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>	<p>Aurizon Network has considered the other changes suggested by stakeholders, however has not included these changes.</p> <p>See also comments in item 150.</p>	

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
<b>Clause 23: Weighbridge and Overload Detectors</b>							
152	Weighbridge and overload detectors	Clause 23.1 (previously clause 22.1)	The obligation on Aurizon Network in clause 22.1(b)(i) is only to make available the Weighbridge or Overload Detector. Is it reasonable with the introduction of additional reduction in access rights provisions (that include payloads) that Aurizon Network has a further obligation to ensure these are accurate?				Aurizon Network has amended clause 23.1(b)(i) to clarify what is intended by "is available" i.e. is operational, calibrated and available to weigh trains.
153	Weighbridge and overload detectors	Clause 23.2 (previously clause 22.2)	Clause 22.2 has increased the obligation from "reasonable endeavours" to "must ensure" not greater than maximum allowable gross tonnage. This seems overly prescriptive.				If a Weighbridge or Overload Detector is owned by a third party (such as a mine or port), Aurizon Network believes that the Access Holder and/or Operator should be the party specified in schedule 3 as being responsible for the Weighbridge or Overload Detector.

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
154	Timing of charging an Overload Charge	Clause 23.3	Aurizon Network may not back-charge any Overload Charges if it fails to invoice the End User for that Overload Charge in the Billing Period immediately following the Billing Period in which the determination to charge an Overload Charge was made.				Aurizon Network has removed the ability to invoice Overload Charges.
155	Right to deem malfunctions of the Weighbridge or Overload Detector	Clause 23.5	The Weighbridge or Overload Detector will only be deemed to have malfunctioned where it is not otherwise determined by the calibration testing.				Aurizon Network has redrafted this clause to include the principle suggested by stakeholders.
156	Exclusions of liability	Clause 23.6	The End User has no obligation to ensure that the Operator does not bring a Claim against Aurizon Network.				Aurizon Network has removed this provision as there is now an Access Interface Deed which will govern the contractual relationship between the Operator and Aurizon Network.  See also comments in item 77.

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
<b>Clause 24: Performance Levels</b>							
157	Right to dispute	Clause 24.2 (previously clause 23.2)	Amounts payable under clause 23.2 may be disputed by the End User.				Aurizon Network has redrafted this clause to include the principle suggested by stakeholders.
158	Obligation to negotiate	Clause 24.3	Parties must use reasonable endeavours to agree to variations to the Performance Levels and associated variations to the UT4 SAAs.  If the parties cannot agree on the variations, the matter may be referred to the dispute resolution process.				Aurizon Network has amended this clause to include an obligation in clause 24.3(b) for the parties to use reasonable endeavours to agree on varied Performance Levels.  Aurizon Network has considered the other change suggested by stakeholders, however has not included that change.

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
<b>Clause 25: Infrastructure management</b>							
159	Need for reasonableness	Clause 25.2	Operational Constraints imposed by Aurizon Network must be reasonably necessary.				<p>Aurizon Network has considered the change suggested by stakeholders, however has not included that change.</p> <p>The amendment to clause 25.2(b) proposed by stakeholders is not acceptable. Given the nature of Aurizon Network's obligation to maintain the network so that it is suitable for operation, Aurizon Network is in the best position to determine what Operational Constraints are necessary. As safety of the network is such a critical issue, any constraints on the exercise of Aurizon Network's discretion in relation to this are inappropriate.</p> <p>It should be noted that Aurizon Network will be liable for non-provision of</p>

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
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access or delays to Train Movements where it imposes an Operational Constraint in breach of this agreement.

### Clause 26: Incident management

160	Need for reasonableness	Clause 26.1	Expert must determine whether the Emergency Response Plan is reasonably compatible with the Emergency Procedures and the UT4 SAAs.				<p>Aurizon Network has considered the changes suggested by stakeholders, however has not included these changes.</p> <p>The Emergency Response Plan is either compatible or incompatible with the Emergency Procedures.</p>
161	Need for reasonableness	Clause 26.2 (previously clause 25.2)	<p>Emergency Response Plan only needs to be amended as reasonably required to address the operation of the Train Services.</p> <p>An amended Emergency Response Plan will be effective on the date that</p>				<p>Aurizon Network has redrafted this clause to include the principles suggested by stakeholders.</p>

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
			the End User has complied with clause 25.2 or on the date that the Emergency Response Plan is otherwise approved.				
162	Need for reasonableness	Clause 26.5 (previously clause 25.5)	<p>Deletion of the obligation to notify the Train Controller of suspected breaches of Safeworking Procedures in clauses 25.5(a)(i) and 25(b)(i).</p> <p>Notice only needs to be given in respect of anything that may reasonably be considered to cause or contribute to an Incident or Obstruction.</p>				<p>Deletion of the obligation to notify the Train Controller of suspected breaches of Safeworking Procedures in clauses 26.5(a)(i) and 26.5(b)(i) is not acceptable as this relates to the safety of the network and needs to be addressed as early as possible.</p> <p>Aurizon Network has amended clauses 26.5(a)(ii) and 26.5(b)(ii) to provide for reasonable consideration.</p>
163	Claims following management of Incident responses	Clause 26.6 (previously clause 25.6)	Stakeholders want clause 25.6(c)(ii) to be subject to the disputes clause in clause 5.4.				<p>Aurizon Network has amended clause 26.6(c) to provide a reference to clause 5.4.</p> <p>Aurizon Network has deleted clauses 26.6(g)</p>

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
			<p>Aurizon Network may only claim reasonable and direct costs.</p> <p>The End User has no obligation to ensure that the Operator does not bring a Claim against Aurizon Network.</p> <p>The Expert must determine whether Aurizon Network's proposed course of action is reasonable following completion of the processes set out in clauses 25.6(g) and (h).</p> <p>Aurizon Network will not be liable for any loss or damage unless the Expert determines that Aurizon Network's proposed course of action is not reasonable (rather than unreasonable).</p> <p>Industry agreements will not limit the End User's ability to recover costs.</p> <p>The End User has no obligation to ensure that the Operator does not bring a Claim against Aurizon Network.</p>				<p>and 26.6(n) as this is now covered by the Access Interface Deed which will govern the contractual relationship between the Operator and Aurizon Network. See comments in item 77.</p> <p>Aurizon Network has amended clauses 26.6(i) and 26.6(j) to include the principle suggested by stakeholders to clarify the process for disputes.</p> <p>Aurizon Network has amended clause 26.6(i) to include the principle suggested by stakeholders in relation to whether Aurizon Network's proposed course of action is not reasonable.</p> <p>Aurizon Network has considered the other changes suggested by stakeholders, however has not included these changes.</p>

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
164	Disputes – management of incidents	Clause 26.6					Aurizon Network has amended clause 26.6(h) (previously clause 25.6(i)) to mirror the requirements in clause 26.6(d) to take into account environmental impact.
165	Investigations	Clause 26.7					Minor amendments have been made to the clause to clarify that the obligation to co-operate fully with any investigation is only to the extent reasonably necessary for the conduct of the Investigation and in accordance with the Investigation Procedures.
166	Environmental notices	Clause 26.8(b) (previously clause 25.8)	If Aurizon Network is given a direction/ notice etc. by an environmental regulator under clause 25.8(a)(ii), that direction should be provided to the Access Holder and/or Operator as with the results of any audit relevant to the Operator's conduct.				Aurizon Network has amended this clause to provide that notices from the regulator will be provided to the extent relevant.

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
167	Need for reasonableness	Clause 26.8	Reasonableness obligations have been inserted throughout the clause.				Aurizon Network has deleted the words "in Aurizon Network's reasonable opinion" in clause 26.8(c) (previously clause 25.8(b)).
168	Management of environmental incidents	Clause 26.8 (previously clause 25.8)	Clause 25.8(a)(i) should be dealt with in the IRMP and this clause should reflect the circumstance where Aurizon Network becomes aware of any conduct by the End User or Operator that causes or may cause environmental harm (similar to current clause 8.7(c)) and is covered by the IRMP.				Aurizon Network has amended clause 26.8(a) to delete ", or are likely to cause or contribute to,".
169	Costs incurred for management of incidents	Clause 26.8(c) (previously clause 25.8(b))	Under clause 25.8(b), it could be interpreted that Aurizon Network may consider it reasonable to take some action because it is able to earn a margin that it would not otherwise be able to do so at a greater cost then if the Operator was able to implement a different solution. This is				Aurizon Network has amended this clause such that Aurizon Network can only recover reasonable costs.

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
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not a reasonable outcome from the Operator's perspective.

170	Unacceptable timeframe	Clause 26.9	End User must notify Aurizon Network as soon as reasonably practicable after becoming aware of the occurrence of an Environmental Incident.				Aurizon Network has redrafted this clause to include the principle suggested by stakeholders.
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#### Clause 28: End User's Staff

171	Limitation of liability	Clause 28.1	<p>Aurizon Network's exclusion of liability will not apply to the extent that the liability is caused or contributed to by the breach or negligence of Aurizon Network or Aurizon Network's Staff.</p> <p>The End User has no obligation to ensure that the Operator indemnifies Aurizon Network.</p>				<p>As an Access Interface Deed will govern the contractual relationship between the Operator and Aurizon Network in relation to the utilisation of the Access Rights, changes have been made to clause 28.1 to reflect this. See also comments in item <a href="#">7778</a>.</p> <p>It has also been clarified that the End User and the Operator (as applicable) are fully liable for health</p>
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Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
							and safety of their staff and property.
172	Need for reasonableness	Clause 28.2 (previously clause 27.2)	Aurizon Network's requests for the names of the End User's Staff must be reasonable.	Safety Related Work may be performed by any of the End User's Staff that satisfy the requirements of clause 27.2 (not just the ones whose details have been provided to Aurizon Network).			<p>Aurizon Network has amended this clause to provide that the End User must "...keep Aurizon Network advised of any Required Information in relation to all of the End User's Staff engaged in Safety Related Work on the Nominated Network ..."</p> <p>See also the comments in item 31 in relation to the definition of Required Information.</p> <p>Aurizon Network has considered the other change suggested by stakeholders, however has not included the change.</p>

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
<b>Clause 29: Interface and environmental risk management</b>							
173	Rights to vary charges	Clause 29.5	Variations can only be made as a result of reasonable and proper increases to costs (note different wording to clause 20.11).  Increased utilisation of the Capacity is not a ground to vary the Access Charge Rates.				Aurizon Network has amended this clause to include the word "reasonable".  Aurizon Network has considered the other changes suggested by stakeholders, however has not included these changes.
174	Onus of bearing costs	Clause 29.7 –	Costs are no longer expressly covered by the End User.				Aurizon Network has considered the change suggested by stakeholders, however has not included that change.
175	Need for reasonableness	Clause 29.8	Aurizon Network must act reasonably in determining whether it is not satisfied with a person nominated by the End User or Operator to be the Interface Representative.				Aurizon Network has redrafted this clause to include the principle suggested by stakeholders.

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
176	Appointment of interface representative	Clause 29.8 (previously 28.8)	The requirement in clause 28.8 for an interface representative should at least be a mutual requirement. It is completely unreasonable that Aurizon Network could remove (for whatever reason) an Access Holder's and/or Operator's interface representative because they are dissatisfied.				<p>Aurizon Network has amended this clause so that Aurizon Network can only require the replacement of an Interface Representative nominated by the Access Holder or Operator if the Interface Representative is not, or ceases to be, appropriately experienced and qualified to perform the responsibilities of an Interface Representative or if Aurizon Network considers, acting reasonably, that the Interface Representative is not discharging its responsibilities promptly when required to do so.</p> <p>Aurizon Network has included an obligation for it to notify the Access Holder or Operator of its nominated Interface Representative who must be available to efficiently and effectively perform the responsibilities of the interface representative.</p>

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
177	Obligation to contribute to costs	Clause 29.15	The End User's obligation to contribute to Aurizon Network's costs only applied to reasonable and direct costs that were incurred in respect of reasonable noise abatement measures.  Aurizon Network must act reasonably in determining whether to implement noise abatement measures.				Aurizon Network has amended the clause to include an obligation to consider reasonable costs and noise abatement measures.  Aurizon Network has considered the other change suggested by stakeholders, however has not included the change.
178	Right to attend community meetings	Clause 29.16	The End User is not required to invite Aurizon Network to community meetings (and is not required to ensure that the Operator invites Aurizon Network to community meetings).				Aurizon Network has considered the change suggested by stakeholders, however has not included the change.
179	Obligation to notify Aurizon Network	Clause 29.18	The End User is not required to have regard to the reasonable interests of Aurizon Network when rectifying non-compliance.  The End User is only required to cease conduct				Aurizon Network has deleted the words "the reasonable interests of Aurizon Network" in clause 29.18(b) on the basis that the End User

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
			<p>that is objectively causing or threatening to cause a risk to people or harm to the environment.</p> <p>The End User is only required to provide Aurizon Network with copies of material notices received from any Safety Regulator or Environmental Regulator.</p>				<p>can consider matters without limitation.</p> <p>Aurizon Network has deleted the words “in the reasonable opinion of” in clause 29.18(c).</p> <p>Aurizon Network has considered the other change suggested by stakeholders, however has not included the change.</p>

### Clause 30: Inspection and Audit Rights

180	Right to discontinue Train Services	Clause 30.3	<p>Reasonableness obligation has been inserted.</p> <p>Aurizon Network may only direct the End User to discontinue a Train Service where the load is actually in excess of the limits (not just in Aurizon Network’s reasonable opinion) and until such time as the Rollingstock is loaded in accordance with the UT4 SAA.</p>				<p>Aurizon Network has redrafted to include the word “reasonably” in clause 30.3(a).</p> <p>Aurizon Network has amended clauses 30.3(c) and 30.3(d) to clarify the obligation to be reasonable and to clarify the notification and service discontinuance processes.</p>
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Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
							Aurizon Network has amended clause 30.3(d) to reflect the removal of Maximum Allowable Gross Tonnage and Maximum Desirable Gross Tonnage from item 1 in Schedule 5.
181	Limitation of liability	Clause 30.5	<p>Restrictions apply to all commercially sensitive information, not just information that a party has a legitimate commercial reason to withhold that information from the other party.</p> <p>The independent person must execute a confidentiality deed.</p> <p>The End User has no obligation to ensure that the Operator does not bring a Claim against Aurizon Network.</p> <p>End User's obligation to indemnify Aurizon Network has been deleted.</p>				<p>Aurizon Network has redrafted this clause to include the first three principles suggested by stakeholders.</p> <p>Aurizon Network has considered the other change suggested by stakeholders, however has not included the change.</p>

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
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182	Need for reasonableness	Clause 30.7	A party is only required to bear the reasonable and direct costs of an inspection or audit.				<p>Aurizon Network has amended the clause to reflect that costs must be reasonable.</p> <p>Aurizon Network has considered the other change suggested by stakeholders, however has not included the change</p>
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### Clause 31: Insurance by End User

183	Obligation to provide information	Clause 31.3	<p>The End User has no obligation to ensure that the Operator provides evidence of its insurance policies to Aurizon Network.</p> <p>The End User's obligation to provide evidence is absolute – no need for Aurizon Network to request evidence.</p>				<p>Aurizon Network has considered the changes suggested by stakeholders, however has not included these changes.</p>
184	Unacceptable timeframes	Clause 31.4	Aurizon Network may only effect and maintain insurance in place of the				Aurizon Network has amended this clause to

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
			End User after it has given the End User 10 Business Days written notice.				include a timeframe of 10 Business Days.
185	Scope of insurance policies	Clause 31.5	Insurance policies must not contain any exclusions that materially amend the cover provided.				Aurizon Network has considered the change suggested by stakeholders, however has not included that change.
186	Obligation to notify	Clause 31.8	The End User need only notify Aurizon Network of potential claims to the extent that such claims arise from performance of the UT4 SAA.				Aurizon Network has redrafted this clause to include the principle suggested by stakeholders.
187	Limitation of liability to pay	Clause 31.10	The End User is only required to pay to Aurizon Network the portion of funds received under an insurance policy that is owing to Aurizon Network for damage to the Infrastructure.				Aurizon Network has redrafted this clause to include the principle suggested by stakeholders.

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
<b>Clause 32: Indemnities</b>							
188	Indemnities by Access Holders for liabilities to third parties	Clause 32.3 (previously clause 31.3)	Indemnity by Access Holder in favour of Aurizon Network 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, 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 because those indemnities are intended to cover liability suffered by Aurizon Network 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 Aurizon Network would not be</p>	Aurizon Network 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>	Aurizon Network has deleted clause 32.3(b).

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
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entitled to be indemnified for third party claims.  
The related amendments to clauses 32.1 and 33.1 are not acceptable to Aurizon Network.

189	Duty to mitigate	Clause 31.4	Obligation to mitigate extends to all losses relates to all indemnities under the UT4 SAA, not just clause 31.				Aurizon Network has redrafted this clause to include the principle suggested by stakeholders.
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**Clause 33: Limitation and exclusions of liability**

190	Benefit of exclusion of limitation in conditions of carriage	Clause 33.3 (UT4 SOAA only)	Clause 33.3 should be removed.				Aurizon Network has considered the change suggested by stakeholders, however has not included that change.  The extension of the benefit of any exclusion or limitation in the conditions of carriage is included in clause 14.3 of UT3 SOAA. It has been included separately under
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Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
							clause 33.3 of the UT4 SOAA for clarity.
191	Limitations and Exclusions of liability - Claims and exclusions in respect of Infrastructure Standard	Clause 33.3 (previously clause 32.3)	The exclusion of liability is too broad. The UT4 SAAs impose obligations on Aurizon Network broader than Aurizon Network carrying out Maintenance Works and Aurizon Network should be liable for claims if those obligations are not satisfied or carried out negligently.	<p>The exclusion in clause 32.3 is consistent with the exclusion in clause 14.4 of the UT3 SAAs.</p> <p>The intention is that Aurizon Network will not be liable in respect of the standard of the Infrastructure unless Aurizon Network has failed to comply with its maintenance obligation under clause 24.2. Those clauses impose a broad obligation on Aurizon Network in relation to maintenance, repairs, renewal and replacement of the Infrastructure to enable the operation of Train Services in accordance with the UT4 SAAs.</p>	Aurizon Network 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 UT3 position should not be preferred. The QRC considers the exclusion of liability to be too broad.</p> <p>Aurizon Network's drafting references only Aurizon Network's obligations under clause 24.2(a) (rather than all of clause 24.2 as suggested).</p> <p>In any case, the UT4 SAA imposes Infrastructure obligations on Aurizon Network broader than merely the carrying out of Maintenance Works.</p>	Aurizon Network has considered the changes suggested by stakeholders, however has not included these changes.

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
						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).	
192	Claims and exclusions in respect of non-provision of access	Clause 33.4(d) (previously 32.4(d))	Extension of the carve out in 32.4(d) is excessive				<p>Aurizon Network has deleted clause 33.4(d)(iii) which refers to the customer of another Railway Operator or any employees, contractors, volunteers or agents of a customer of another Railway Operator.</p> <p>Aurizon Network has considered the changes suggested by stakeholders, however has not included these changes.</p> <p>Aurizon Network has separated an Operator and its customer into two categories as opposed to</p>

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
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one in the UT3 SAAs and included staff, contractors, volunteers and agents to reflect the common use of contractors and agents by Customers.

The new inclusions are:

- provision for Conditional Access Rights or Capacity Shortfalls; and
- breach of an Infrastructure Lease by, or negligence of, an Infrastructure Lessor.

Aurizon Network believes these inclusions are reasonable and for clarity given Aurizon Network should not have a claim made against it when the Infrastructure was made unavailable due to acts of third party or the Access Rights was conditional or included in a shortfall.

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
193	Limitations and Exclusions of liability - Claims and exclusions in respect of non-provision of access	Clause 33.4 (previously clause 32.4)	QRC wants to reduce Aurizon Network's exclusions of liability for Claims in respect of non-provision of Access so Aurizon Network is liable where its failure to provide is a result of its breach or negligence.	<p>Consistent with Aurizon Network's comments in relation to clause 19.2 and 19.3, the QRC's proposed amendment to clause 32.4(a) is not acceptable.</p> <p>Aurizon Network accepts, in principle, the QRC's amendment to clause 32.4(b).</p> <p>The deletion of clauses 32.4 (d)(ii) and 32.4(d)(iii) is not acceptable. Aurizon Network does not agree that those clauses are inconsistent with clause 32.4(a) and considers that the deletion of those clauses is inconsistent with the principle that Aurizon Network should not be liable for the actions of third parties.</p> <p>The QRC's proposed amendment to clause 32.4(d)(vi)(B) is not acceptable for the reasons discussed above in relation to the QRC's submission on clause 9 of the AHAA.</p>	Aurizon Network to provide revised drafting for those amendments proposed by the 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>	Aurizon Network has redrafted this clause as per the Proposed Change column.

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
194	Claims and exclusions in respect of non-provision of access and delays to Train Movements	Clause 33.5(b)	Inclusion of Operational Constraints is excessive				<p>Aurizon Network has considered the change suggested by stakeholders, however has not included that change.</p> <p>Operational Constraints has been included as a reason for an Access Holder to claim against Aurizon Network where that Operational Constraint was a breach of the UT4 SAAs and resulted in Aurizon Network failing to make the Infrastructure available. This was previously provided for in clause 6.2(c) of the UT3 SOAA.</p> <p>The limitation to where the Operational Constraint was a breach of the UT4 SAA is reasonable given Aurizon Network has an ability to impose Operational Constraints under the agreement for safety reasons. Therefore, it should not be held liable for imposing</p>

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
							Operational Constraints in those circumstances.
195	Limitations and Exclusions of liability - Claims and exclusions in respect of delays to Train Movements	Clause 33.5(c) (previously clause 32.5(e))	The QRC resists 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).	Aurizon Network considers that the deletion of the reference to delays attributable to other Railway Operators is inconsistent with the principle that Aurizon Network should not be liable for the actions of third parties. Aurizon Network notes that even if it reschedules Train Services in accordance with its obligations under the UT4 SAAs, there will inevitably be delays to Train Services. However, Aurizon Network is prepared to delete clause 32.5(e)(iii) 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.  The deletion of clause 32.5(e)(ii) is not acceptable.	Aurizon Network will delete clause 32.5(c)(iii).	The QRC agrees with Aurizon Network's proposed change.	Aurizon Network has deleted clause 33.5(c)(iii) which refers to the customer of another Railway Operator or any employees, contractors, volunteers or agents of a customer of another Railway Operator.  Aurizon Network has considered the other change suggested by stakeholders, however has not included the change.

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
196	Obligation to pay	Clause 33.6	A party requesting assistance must pay the other party's reasonably incurred expenses within 5 Business Days upon demand (rather than 'promptly').				Aurizon Network has redrafted this clause to include the principle suggested by stakeholders.

#### Clause 34: Determination of liability and loss adjustment

197	Limitation of liability	Clause 34.1	<p>Claims threshold has been reduced to \$100,000.</p> <p>The QRC has noted that the threshold has been amended so that it is consistent with the Claims threshold in clause 32.2.</p>				<p>Aurizon Network has considered the change suggested by stakeholders, however has not included the change.</p> <p>The threshold in clause 32.2 is a minimum claims threshold. By amending the threshold in clause 34.1 to \$100,000, this has the effect that clause 34.1(c) would apply to every claim brought under the UT4 SAAs. This is not Aurizon Network's intention.</p>
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Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
198	Unacceptable timeframes	Clause 34.2(d)(iii)	The loss adjuster must not have been an employee of the End User, Operator or Aurizon Network (or a Related Body Corporate) within the last eight years.				Aurizon Network has considered the change suggested by stakeholders, however has not included the change as the five year period is consistent with the Access Undertaking.
199	Loss adjuster's powers	Clause 34.4	Maximum claim amount where loss adjuster's decision is final has been reduced to \$100,000 (presumably to make it consistent with the Claims threshold).				<p>Aurizon Network has considered the change suggested by stakeholders, however has not included the change.</p> <p>The threshold in clause 32.2 is a minimum claims threshold. By amending the threshold in clause 34.4 to \$100,000 this has the effect that clause 34.1(c) would apply to every claim brought under the UT4 SAAs. This is not Aurizon Network's intention.</p>

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
<b>Clause 35: Material Change</b>							
200	Determination of Net Financial Effect	Clause 34.3	Entire clause has been deleted.				Aurizon Network has deleted this clause.
<b>Clause 36: Disputes</b>							
201	Unacceptable timeframes	Clause 36.3	Expert must not have been an employee of the End User, Operator or Aurizon Network (or a Related Body Corporate) within the last eight years.				Aurizon Network has considered the change suggested by stakeholders, however has not included the change as the five year period is consistent with the Access Undertaking.
202	Appointment of an expert	Clause 36.3	The provisions relating to the Rail Safety Regulator as an expert have been removed entirely from the IRMP dispute process.				Clause 36.3 allows the parties to mutually agree an Expert and in the absence of agreement clauses 36.3(a)(i), (ii) and (iii) note the organisations that will be chosen to be the expert for legal,

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
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financial and technical matters.

Accordingly the parties could agree under clause 35.3 to appoint the Rail Safety Regulator as the expert. As a matter of practicality however, it is unlikely that the Rail Safety Regulator will agree to be the expert and, even if it did, it is unlikely that the Rail Safety Regulator would be able to make a determination within the timeframes required under a dispute.

**Clause 37: Force Majeure**

203	Notification of Force Majeure event	Clauses 37.1, 37.5 and 37.6					Minor amendment have been made for method of provision of notice.
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Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
<b>Clause 38: Suspension</b>							
204	Suspension	Clause 38	Concerns over the much more prescriptive list of suspension and termination rights, particularly in relation to Train Service Types.				<p>In relation to Train Service Types, the concept allows Aurizon Network to only suspend or terminate a Train Service Type rather than all Train Services under the UT4 SAA where a breach by the Access Holder occurs resulting in suspension or termination.</p> <p>The current UT3 SAAs suspension and termination clauses effectively result in suspension and termination of the entire agreement and all origin-destination hauls will be affected despite the breach only being specific to a particular origin-destination haul (i.e. Train Service Type).</p>
205	Powers to suspend	Clause 38.4 (previously 37.4)	Entire clause has been deleted.	Aurizon Network does not accept the deletion of clause 37.4 on the basis that if the End User	It is not intended to delete this clause.	The QRC does not agree with Aurizon Network's position.	Aurizon Network has considered the change suggested by stakeholders, however

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
				Agreements have been suspended, Aurizon Network should have the corresponding right to suspend the operation of Train Services under the UT4 SAAs.		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.	has not included that change.  The types of agreements which are considered in the definition of End User Agreement can directly impact Train Services.
206	Limitation of liability	Clause 38.5(c)	Aurizon Network's liability to the Access Holder will not be automatically excluded where no reasonable person in Aurizon Network's position could have formed the view that the stated grounds for suspension existed.	The QRC's proposed amendment would have the effect of making Aurizon Network liable to the Access Holder for any loss or damage arising from the suspension regardless of whether or not the suspension was valid.  Aurizon Network'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	It is not intended to amend this clause.		No change.

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
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Holder where it has acted reasonably.

207	Limitation of liability	Clause 38.6(c)	Aurizon Network's liability to the End User will not be automatically excluded where no reasonable person in Aurizon Network's position could have formed the view that the stated grounds for suspension existed.				<p>Aurizon Network has considered the change suggested by stakeholders, however has not included that change.</p> <p>The drafting in the UT4 SAAs is consistent with the position in the UT3 SAAs.</p>
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208	Consistent cross referencing	Clause 38.7	Reference to deleted clause 37.4 has been removed.				<p>Aurizon Network has considered the change suggested by stakeholders, however has not included that change.</p> <p>See also comments in item 205.</p>
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Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
<b>Clause 39: Termination</b>							
209	Termination	Clause 39	Concerns over the much more prescriptive list of suspension and termination rights, particularly in relation to Train Service Types.				<p>In relation to Train Service Types, the concept allows for Aurizon Network to only suspend or terminate a Train Service Type rather than all Train Services under the Access Agreement where a breach by the Access Holder occurs resulting in suspension or termination.</p> <p>The current UT3 SAAs suspension and termination clauses effectively result in suspension and termination of the entire agreement and all origin-destination hauls will be affected despite the breach only being specific to a particular origin-destination haul (i.e. Train Service Type).</p>
210	Clarity	Clauses 39.1, 39.2 and 39.3	QRC has removed the references to “or otherwise existing at Law” and noted				Aurizon Network has redrafted this clause to include the principle

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
			that that reference undermines the purpose of being prescriptive about default events.				suggested by stakeholders.
211	Unacceptable timeframes	Clause 39.3(d)	Period of time for which default must continue has been reduced to 20 Business Days.				Aurizon Network has considered the change suggested by stakeholders, however has not included that change.  The period of time of 40 Business Days is consistent with the position in the UT3 SAAs.
212	Clarity	Clause 39.5 (previously clause 38.5(b))	Clause 38.5(b) has been made subject to clause 38.5(b).				Aurizon Network has not made any change as it is unsure of the intent of stakeholders.
213	Termination	Clause 39.6	Proposed that after termination, the Access Holder should be obliged to remove Rollingstock as soon as practicable rather than within a 12 hour	In circumstances where the UT4 SAA has been terminated, it is important that the Access Holder/Operator removes Rollingstock as soon as reasonably practicable.	It is not intended to amend this clause.	The QRC agrees with Aurizon Network's proposed change.	Aurizon Network has amended this clause to provide that the timeframe is 12 hours or as otherwise agreed between the parties.

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
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period. This is to account for flexibility required.

Aurizon Network 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. Aurizon Network could agree an extended timeframe with the Access Holder in exceptional circumstances.

214	Intellectual Property and permitted use of Confidential Information	Clause 43					Amendments to provide that Confidential Information can also be used for the investigation and planning of Maintenance Work.
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Schedule 9: Suspension Events and Termination Events

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
215		Schedule 9, Part A item 1		The introduction of the materiality threshold is not appropriate. The test is demonstration to Aurizon Network's reasonable satisfaction.	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.	Aurizon Network has considered the change suggested by stakeholders, however has not included that change.
216		Schedule 9, Part A, item 2		The introduction of the materiality threshold is not appropriate as all relevant information needs to be provided before the operation of a Train Service.	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.	Aurizon Network has considered the change suggested by stakeholders, however has not included that change.
217		Schedule 9, Part A, item 3		Aurizon Network accepts the inclusion of the words "in a material respect" instead of the word "materially"  Aurizon Network accepts the deletion of the words "in Aurizon Network's	Include the words "in a material respect" instead of the words "materially".  Delete the words "in Aurizon Network's reasonable opinion" in paragraph (u).	The QRC agrees with Aurizon Network's proposed change.	Aurizon Network has redrafted this item as per the Proposed Change column.

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
				reasonable opinion" in paragraph (u).			
218		Schedule 9, Part A, item 4		Aurizon Network accepts the QRC's proposed amendment in principle.	Accept the QRC's position subject to modifications to the drafting.	The QRC will assess Aurizon Network's proposed drafting when the drafting foreshadowed by Aurizon Network is provided.	Aurizon Network has redrafted this item as per the Proposed Change column.
219		Schedule 9, Part A, item 5		Aurizon Network accepts the QRC's proposed amendment.	To be amended as proposed by the QRC.	The QRC agrees with Aurizon Network's proposed change.	Aurizon Network has redrafted this item as per the Proposed Change column.
220		Schedule 9, Part B, item 1		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.  The time period in respect of the Termination Event should be re-instated to 20	In respect of the Suspension Event, amend time period to 10 Business Days.  In respect of the Termination Event, amend time period to 20 Business Days.	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.	Aurizon Network has redrafted this item as per the Proposed Change column.

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
				Business Days. The QRC's proposal of 40 Business Days is too long.			
221		Schedule 9, Part B, item 2		Aurizon Network accepts the QRC's proposed amendment.	Accept the QRC's position.	The QRC agrees with Aurizon Network's proposed change.	Aurizon Network has redrafted this item as per the Proposed Change column.
222		Schedule 9, Part B, item 4		Aurizon Network does not accept the QRC's proposed amendments to both the Suspension Event and Termination Event.	It is not intended to amend this item.	The QRC's amendment was typographical only. It is not clear to the QRC why Aurizon Network objects to this amendment.	<p>Aurizon Network has considered the change suggested by stakeholders, however has not included that change.</p> <p>The intention is that:</p> <ul style="list-style-type: none"> <li>• a Suspension Event occurs if an Insolvency Event occurs in respect of the End User or the Operator; and</li> <li>• a Termination Event occurs if an Insolvency Event occurs in respect of the End User or the Operator and</li> </ul>

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
							continues for at least 40 Business Days.  The distinction between the Suspension Event and Termination Event is deliberate and Aurizon Network does not consider the proposed change to be merely typographical.
223		Schedule 9, Part B, item 6		Aurizon Network does not accept the QRC's proposed amendments on the basis that the End User or the Operator either ceases the relevant conduct or it does not.	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.	Aurizon Network has considered the change suggested by stakeholders, however has not included that change.
224		Schedule 9, Part B, item 8		Aurizon Network does not accept the QRC's proposed amendments on the basis that the causing of Serious Environmental Harm is a material breach of the UT4 SAAs which could have serious consequences.	It is not intended to amend this item.	The QRC does not agree with Aurizon Network's position. Aurizon Network should not have a right to terminate for an event that only	Aurizon Network has amended this clause to remove "or threatens to cause".

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
				Aurizon Network needs the capacity to suspend and, if necessary, terminate the UT4 SAAs in such circumstances.		"threatens to cause" harm.	
225		Schedule 9, Part B, item 9		Aurizon Network does not accept the QRC's proposed amendment as a failure to maintain insurance is a material breach of the UT4 SAA. The period to remedy the non-compliance before a suspension right is triggered is too long in those circumstances.	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.	Aurizon Network has considered the change suggested by stakeholders, however has not included that change.
226		Schedule 9, Part B, item 10		Aurizon Network does not accept the QRC's proposed amendments on the basis that failure to provide security is a material breach of the UT4 SAA. The period to remedy the non-compliance before a suspension right and termination right is triggered is too long in those circumstances.	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.	Aurizon Network has considered the change suggested by stakeholders, however has not included that change.

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
227		Schedule 9, Part B, item 13		<p>Aurizon Network considers that the right of suspension in the case of a reasonably anticipated breach of safety requirements is an important safeguard.</p> <p>Aurizon Network should not have to wait until a reasonably anticipated breach of safety requirements occurs before it can take action.</p> <p>Aurizon Network 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 month period.</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.	Aurizon Network has considered the change suggested by stakeholders, however has not included that change.
228		Schedule 9, Part B, item 14		The inclusion of the word "Days" is acceptable to Aurizon Network.	Accept the QRC's position.	The QRC agrees with Aurizon Network's proposed change.	Aurizon Network has redrafted this item as per the Proposed Change column.

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
<b>Aurizon Network liability to operators under SAAs</b>							
229	Aurizon Network's liability to operators under AHAA	Clauses 3.3, 7.6, 12.10(b)(ii), 16.3(c), 23.6(a)(ii), 23.6(b)(2), 26.6, 33.3, 33.4 and 33.5	Deletion of non-liability to operator provisions	<p>These provisions reflect the intention under an UT4 AHAA that Aurizon Network should have no liability to a nominated Operator in circumstances where Aurizon Network has validly exercised a right under the UT4 AHAA. These provisions manage Aurizon Network's liability to the Operator which is not a party to the UT4 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>	It is not intended to amend these clauses.	<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 AHAA 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>	<p>As an Access Interface Deed will govern the contractual relationship between the Operator and Aurizon Network in relation to the utilisation of the Access Rights, changes have been made to the relevant clauses to reflect this.</p> <p>See also comments in item 77.</p>

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
<b>Clause 40: Assignment</b>							
230	Assignment by the End User	Clause 40.2					Aurizon Network has amended this clause to clarify the process for assignment.
<b>Clause 42: Confidentiality</b>							
231	Limitation of disclosure rights	Clause 42.2	<p>Permitted disclosures for legal proceedings has been limited to the dispute resolution process under the UT4 SAAs.</p> <p>The End User has no obligation to ensure that the Operator does not bring a Claim against Aurizon Network.</p> <p>Reasonableness obligation has been inserted in relation to information required for the performance of Train Control functions.</p>				<p>Aurizon Network has included the word “reasonable” in clause 42.2(b)(v). Clause 42.2(b)(viii)(B) has been amended to reflect the Access Interface Deed from the Operator in favour of Aurizon Network.</p> <p>See also comments in item 77.</p> <p>Aurizon Network has considered the other change suggested by stakeholders, however has not included that change.</p>

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
232	Rights to urgent relief	Clause 42.6	A party may seek urgent injunctive relief, specific performance or a similar remedy, in addition to other remedies available at law or in equity or under the UT4 SAAs.				Aurizon Network has redrafted this clause to include the principle suggested by stakeholders.

### Clause 43: Intellectual Property

233	Intellectual Property	Clause 43	Concerns about the licence provided in respect of the Operator's IP and wants further details to clarify the requirement of this licence and the purposes for which it can be used.				<p>Aurizon Network proposes to delete the IP licence granted by the Access Holder under clause 43(b) and have included a new clause to allow Aurizon Network to use the Confidential Information for the following purposes</p> <ul style="list-style-type: none"> <li>• undertaking capacity assessments;</li> <li>• investigating and planning Maintenance Work; and</li> <li>• investigating and planning Infrastructure Enhancements.</li> </ul>
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Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
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As an example, in order to undertake capacity assessments for new capacity requests, Aurizon Network is required to extract the Train Service Entitlements (TSE) information in Schedule 2 of the Access Agreements. Without this information, Aurizon Network is unable to undertake full capacity assessments and meet its Undertaking Obligations.

Another example is the use of Train Service Entitlement (TSE) information and historical performance data by the operations team to plan for long and short term maintenance activities in order to ensure the least impact to revenue services.

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
<b>Clause 45: General</b>							
234	Counterparts	New clause 45.4					Aurizon Network has included the ability for the UT4 SAAs to be executed in counterparts.
235	Mutuality of general rights	Clause 45.6	The right to exercise discretion conditionally or unconditionally has been made mutual.  The right not to consult with the other party, act reasonably or act in good faith has been deleted.				Aurizon Network has redrafted this clause to include the principles suggested by stakeholders.
<b>Clause 46: Most favoured nation status</b>							
236	Equality between Access Holders	Clause 46	The 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	Aurizon Network does not accept the proposal that the most favoured nation clause be extended to apply to train scheduling as Aurizon Network is obliged to comply with the Network Management Principles, which form part of the	It is not intended to amend this clause.	The QRC does not agree with Aurizon Network's position.  At this stage, Aurizon Network and the QRC are in disagreement about the effectiveness of	Aurizon Network has considered the changes suggested by stakeholders, however has not included these changes.

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
			are limited if there is no audit right.	<p>Access Undertaking, in undertaking train scheduling.</p> <p>While Aurizon Network understands the QRC's concerns in relation to a right of audit, such a right gives rise to confidentiality issues. Aurizon Network has included drafting in clause 10.3.1 of the Access Undertaking which requires Aurizon Network to provide full copies of executed SAAs to the QCA, at the request of the QCA.</p> <p>This obligation, along with the non-discrimination provisions in the Access Undertaking and the QCA Act, provide an Access Holder with a mechanism for ensuring non-discriminatory treatment without giving rise to confidentiality issues.</p>		the UT4 auditing and conflicts protection provisions. The QRC will further consider its position once these provisions are resolved.	
237	Equality between end users	Clause 46.1	The clause has been extended to all charges in relation to Access (not just Access Charges) and				Aurizon Network has amended the clause to provide that the End User may raise a concern with

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
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specifically includes the value of the access charge, the take or pay terms and the terms of payment.  
QRC has noted that the term "Access Charges" is specific to the AHAA.

Aurizon Network if it believes the charge for the Like Train Service has not been developed in accordance with the pricing principles in the Access Undertaking.  
Minor amendments have been made to this clause for clarity.

**Schedule 1: Reference Schedule**

238	Security	Item 4 of schedule 1	Security details have been deleted.				<p>Aurizon Network has considered the change suggested by stakeholders, however has not included that change.</p> <p>It is reasonable for Aurizon Network to manage the credit risks of Access Holders via the provision of Security for a Security Amount.</p>
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Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
239	Security	Item 4 of schedule 1					Aurizon Network has redrafted this provision to clarify that it that Aurizon Network Cause cancellations are assumed to be zero for the purpose of calculating the Security Amount. Aurizon Network has deleted the deductible under an insurance policy from consideration of the Security Amount.

### Schedule 3: Nominated Network

240	Nominated Network	Items 1 and 2 of schedule 3					Aurizon Network has updated the drafting notes to clarify the requirement to include line diagrams/maps in the executed UT4 SAAs.
241	Parts of the Nominated Network	Item 4 of schedule 3					Aurizon Network has deleted this item as a consequence of the change to the definition of

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
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Material Change. See comments in item 19.

#### Schedule 4: Access Charges

242		Schedule 4					Aurizon Network has made relevant drafting changes to ensure that Schedule 4 is consistent with Schedule F of the Access Undertaking and the new pricing principles included in Part 6 of the Access Undertaking. For example, the definition of System Gtk is now Tariff Gtk and is now defined in Schedule 4, System Forecast is now defined as Gtk Forecast and System Nominal Train Payload is now defined as Nominal Train Payload.
243	Definition of Environmental	Item 1.1 of schedule 4					Aurizon Network has deleted references to Environmental

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
	Compliance Charge						Compliance Charge as this is now rolled back into EC.
244	Definition of Gross Tonnes	Item 1.1 of schedule 4					Aurizon Network has included a formula for clarity on how Gross Tonnes are determined.
245	New definition of Loading Efficiency Factor	Item 1.1 of schedule 4					A new definition of Loading Efficiency Factor has been included. It is used in determining the Gross Tonnes where there is no functioning Weighbridge.
246	Definition of Net Tonnes	Item 1.1 of schedule 4					Aurizon Network has made minor changes to the definition of Net Tonnes
247	Definition of Overload Charge	Item 1.1 of schedule 4					Aurizon Network has deleted references to Overload Charges as it no longer intends to charge Overload Charges.

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
248	Charges – Calculation of TOP Charges	Item 4 of schedule 4	The QRC has noted that its concerns regarding the definition of “Aurizon Network Cause” discussed in its submission are particularly relevant in relation to the calculation of the TOP Charge.				See comments in item 7 in relation to the definition of Aurizon Network Cause.
249	Charges – Calculation of ATPY	Item 4.4 of schedule 4	QRC notes its concerns with the method used to calculate the ATPY.				Aurizon Network has considered the change suggested by stakeholders, however has not included that change.
250	Charges - Calculation of ORA – the ‘mine cap’	Item 4.5 of schedule 4	QRC has requested an explanation of the formula used to calculate the ORA and has suggested that it should apply where there is a group of mines with the same ownership located in the same system.				Aurizon Network has considered the change suggested by stakeholders, however has not included that change.
251	Charges – Calculation of AHRA (the ‘operator cap’ for	Items 4.6 and 4.7 of schedule 4	QRC has noted that it does not support the proposed operator capping and that the AHRA should be				Aurizon Network has included a new provision that the Operator needs to demonstrate that it has

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
	access holders) and calculation of SXRA (the 'system cap')		removed from the system cap formula in section 4.7 of schedule 4.				the support of the Customer for the proposed grouping.
252	Unacceptable timeframes	Item 5.3 of schedule 4	The time period in which the End User may dispute a Variation Notice has been extended to 25 Business Days after receipt of the Variation Notice.				Aurizon Network has considered the change suggested by stakeholders, however has not included that change.
253	Expert duties	Item 5.4 of schedule 4	The Expert is not required to use reasonable endeavours to reach agreement with Aurizon Network, but must simply determine the reasonable variations.				Aurizon Network has considered the change suggested by stakeholders, however has not included that change.
<b>Schedule 5: Authorised Rollingstock and Relevant Rollingstock</b>							
254	Rollingstock and Rollingstock configurations	Item 1 of schedule 5					Aurizon Network has deleted parts of this item as the deleted details will be included in the relevant

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
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Authority to Travel or  
Train Route Acceptance.

#### Schedule 6: Performance Levels

255	Scope of dispute provisions	Item 1 of schedule 6	The statement that a failure to reach agreement of the Performance Levels is not a dispute for the purposes of clause 35 has been deleted.				Aurizon Network has considered the change suggested by stakeholders, however has not included that change.
256	Calculation of BRTT	Appendix to Schedule 6					Maximum SRT has been deleted as it is used in calculation of the BRTT Factor, as opposed to the calculation of BRTT so it is not required.

#### Schedule 7: High visibility clothing, Emergency Procedures and Environmental Management Standards

257	Environmental matters	Item 3.1 of schedule 7	The provisions relating to refuelling have been noted to be subject to				Aurizon Network has not made any change as it is unsure of the intent of stakeholders.
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Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
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technical/commercial review.

#### Schedule 8: Insurance

258	Insurance deductible	Schedule 8					Aurizon Network has removed references to the required deductible amount.
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#### Schedule 10: Interface Coordination Arrangements

259	Operator's advice to Train Controller	Item 1.2(b) of schedule 10	Concern about what other information Aurizon Network expects other than what is listed.				Aurizon Network has amended this item to provide that the Operator must provide Aurizon Network with any additional information which may be relevant to the operation of the Train Services.
260	Consultation between the	Item 1.4 of schedule 10	It is reasonable that item 1.4(g) of schedule 10 should have some higher obligation to not				Aurizon Network has amended item 1.4(f) of schedule 10 to provide that it must not

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
	Train Controller and the Operator		unreasonably without hold consent especially if it is a below rail cause for non- scheduled break.  Stakeholders advised the drafting starting with "If" does not provide comfort.				unreasonably refuse any request for a Traincrew Break or Relief by the Operator's Controller.
261	Safety Alerts and Safety Notices	Item 2.1 of schedule 10	In relation to items 2.1(a) and 2.1(b)(iii) of schedule 10, the obligations of Aurizon Network are not sufficient when it is considered that Aurizon Network "may" provide notice or information within that notice (Safety Changes and Alerts).				Aurizon Network has amended item 2.1(a)(ii) of schedule 10 to provide that if a serious safety incident has occurred that has affected or could affect the network, the Operator or any other user of the Infrastructure, Aurizon Network must give the Operator a Safety Alert.  Aurizon Network has amended item 2.1(b)(iii) of schedule 10 to provide that Aurizon Network may publish the information specified in that item in a Train Notice or Safety Alert but must, as soon as reasonably practicable,

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
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publish that information in a safety notice.

### Train Operations Agreement

262	Interpretation	Clause 1.2(e)(xvii) (UT4 TOA)	<p>New provision inserted which states "access or access rights does not include rights granted by Aurizon Network 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 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.</p>	It is not intended to amend this clause	The QRC has no comment on this issue.	See comments in item 51.
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Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
263	General	General	Justification required for any changes to the UT4 TOA and the recently approved UT3 TOA.	Differences between the UT3 and UT4 versions of the TOA are generally due to the updating of the UT3 TOA to reflect the new policy positions adopted in the UT4 SOAA. There are some minor differences which are a result of the timing difference between submission of the UT4 TOA in April and the approval of the UT3 TOA in August 2013.	No Change		Differences between the UT3 and UT4 versions of the Train Operations Agreement are generally due to reflect the new policy positions adopted in the UT4 SAAs.
264	Operation of Ad Hoc Train Services	Clause 3.3					<p>Minor amendments to the clause to reflect that an Operator may only request under the TOA an Ad Hoc Train Service in addition to the Nominated Monthly Train Services of a Train Service Type (as defined in paragraph (a) of the definition of Ad Hoc Train Service).</p> <p>An Operator may operate an Ad Hoc Train Service which is not a Train Service for a Train Service</p>

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
							Type under the TOA (as defined in paragraph (b) of the definition of Ad Hoc Train Service) but this must be requested by the End User under the EUAA.
265	Increase to Access Revenue	Clauses 14.2, 17.12 and 25.5 (UT4 TOA)	<p>Concerned that there is no process outlined in terms of how these increases to access charges are triggered or calculated. Such processes should be prescribed in the Access Undertaking and not subjectively applied by Aurizon Network.</p> <p>Query how these changes will be applied to System Allowable Revenue and the capacity multiplier so there is no double recovery.</p>				<p>Aurizon Network has included drafting changes to clauses 14.2(a)(iv)(A), 17.12(a)(iii) and 25.5(a)(i) such that it is reasonable costs which are considered.</p> <p>Any increases in Access Charges will be calculated in accordance with the Pricing Principles contained in Schedule F to the Access Undertaking. As these charges form part of Access Charges received from Aurizon Network it is included in System Allowable Revenue.</p>

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
266	Renewal	Clauses 2.2 and 7(b) (UT4 TOA)	The UT4 TOA should have a provision stating that if the corresponding UT4 EUAA is renewed and the End User has nominated to continue with the current Operator, the UT4 TOA will be renewed on the same terms consistent with the corresponding UT4 EUAA.	Aurizon Network has not included such a term as it is implied in the renewal of an UT4 EUAA that if the End User chooses to use the same operator, the Operator will be required to renew / enter into the corresponding Train Operations Agreement.			<p>Aurizon Network has considered the change suggested by stakeholders, however has not included that change.</p> <p>Given that the rights of renewal under the UT4 EUAA will be governed by the Access Undertaking at the time (see comments in item 52), it is not appropriate to include a separate right of renewal in the UT4 TOA. If the End User renews the EUAA, the End User can nominate the Operator under the terms of the EUAA (and the Operator will need to enter into the form of Train Operations Agreement which is annexed to the renewed EUAA),</p>
267	Grant of Operational Rights	Clause 3.1 (UT4 TOA)	This differs from the UT3 TOA approved by the QCA, where access rights were in respect to Train Services, not individual Train Service	<p>Refer to general discussion about the concept of Train Service Types.</p> <p>Train Service Types does not impact on the renewal</p>	No Change		The new definition of Train Service Type formalises a concept which was always in the UT3 SAAs since Train Services are defined

Item	Issue	CI <sup>1, 2</sup>	Industry Response (October 2013)	Original Proposal and Discussion	AN Proposed Change (November 2013)	Stakeholder Response (January 2014)	Aurizon Network Response (August 2014)
			Types. This will impact on the renewal provision (refer to clause 2.2 above) and restricts access and operational flexibility.	process and mirrors what currently needs to occur in respect of individual Origin-Destination hauls which have varying expiry dates.			by reference to their relevant Train Service Descriptions.  Aurizon Network has considered the changes suggested by stakeholders, however has not included these changes.  See also comments in item <a href="#">266264</a> in relation to renewals.
268	Nature and Scope of Operational Rights	Clause 3.2 (UT4 TOA)	Clause 3.2 contains specific restrictions on an operator's use of the Network. As these provisions were not specifically contained in previous forms of standard access agreements it will disadvantage new entrants.  Under these restrictions Aurizon Network is confining the provision of access between a specific origin and unloading facility.	This is a mirror of clause 2 of the UT3 SOAA and has been included in all of the UT4 SAAs.  It is intended to clarify the rights which are granted under the Train Operations Agreement.	No Change		This is a mirror of clause 2 of the UT3 SOAA and has been included in all of the UT4 SAAs.  Aurizon Network has considered the change suggested by stakeholders, however has not included that change.

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269	Operation of Ad Hoc Train Service	Clause 3.3 (UT4 TOA)	Treatment of Ad Hoc Train Services should be the same across any form of Access Agreement.	<p>As the Operator is operating Train Services at the request of the End User, any services in addition to those granted to the Operator under the TOA should be at the direction of the End User.</p> <p>This reflects the fact that unlike the SOAA or AHAA, the Operator does not hold the Access Rights and Take or Pay liability and is operating the Train Services at the request of the End User under the EUAA.</p>	No Change		Aurizon Network has considered the change suggested by stakeholders, however has not included that change.
270	Nomination and Variation of the Operator	Clauses 5 and 6 (UT4 TOA)	<p>Clarification as to how Ad Hoc Train Services will be treated upon termination of the Train Operations Agreement or once the End User has nominated to withdraw all Operational Rights from the Operator.</p> <p>Clarity on whether there is the ability for one Train Operations Agreement to contain Operational Rights for more than one End User and if so how it would be</p>	Once a Train Operations Agreement is terminated the Operator is not entitled to operate any Train Services under it.	No Change		Aurizon Network has considered the changes suggested by stakeholders, however has not included these changes.

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			considered against these provisions.				
271	Billing and Charges – Dispute	Clause 8.4 (UT4 TOA)	Payment or notice to dispute is required within 10 Business Days, the previous 14 day timeframes should be reinstated.	10 Business Days will in the majority of cases be the same as 14 days. All references to days has been, where able, amended to be Business Days for consistency in all of the UT4 SAAs. Timeframes for operational processes have remained as days to reflect operations occurring outside of Business Days.	No Change		Aurizon Network has considered the change suggested by stakeholders, however has not included that change.
272	Operation of Train Services	Clause 10.1(b) (UT4 TOA)	This additional provision adds an administrative burden to the parties and restricts the operation of Train Services by a Railway Operator.  The treatment should be no different to any Railway Operator under any form of access agreement.	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 concept of access rights always being granted on an origin-destination basis.  Similarly, the requirement that prior to operating a Train Service, the Operator	Accept the QRC's position on the basis that, if required by Aurizon Network on a case by case basis, Aurizon Network can require the provision of this information under item 1.2(b) of schedule 10.	In principle, the QRC agrees with Aurizon Network's position.	Aurizon Network has deleted clause 10.1(b) of the UT4 TOA.

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				<p>must notify Aurizon Network of the End User for whom the Operator will operate that Train Service is also contained in clause 4.1(e) of the UT3 TOA.</p> <p>On the basis that Aurizon Network can require this information to be provided by the Operator's Controller to the Train Controller under the Train List provided to the Train Controller under item 1.2(b) of schedule 10, Aurizon Network is prepared to delete the requirement in clause 10.1(b).</p>			
273	Commencement of Train Services and Supply Chain Rights	Clauses 10.2 and 10.4 (UT4 TOA)	Requirement to demonstrate Supply Chain Rights prior to operation of a Train Service is restrictive due to the subjective nature of this test. It may also be too difficult as the End User, rather than the Operator, is likely to hold the Supply Chain Rights, these needs to be clarified.		No change		See comments in items 38, 68 and 73.

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			<p>The parameters listed are also too extensive.</p> <p>Concerns over subjective application across different Access Holders and Operators.</p>				
274	Commencement of Train Services for Train Service Type	Clause 10.3 (UT4 TOA)	<p>Previously, the completion of these matters related to Train Services. The new provisions are more onerous as they related to individual Train Service Type.</p> <p>As an example, there should be no requirement to provide a certificate of compliance or Emergency Response Plans again if the current ones already in place and approved by Aurizon Network are sufficient for the introduction of the new Train Service.</p>	<p>The distinction between commencement of Train Services generally and for a Train Service Type has been made to reflect the practice to continue adding new Train Services into the agreement. The clause has been written so that each of the requirements are triggered only if required, so in the example if the Emergency Response Plan was sufficient and did not need amendment for the new Train Service Type, clause 10.3 would not require it, as it allows the Operator to notify Network no amendments are required. However, the onus is on the Operator to notify Network that it is not required (so as to ensure that the Operator has turned</p>			<p>Aurizon Network has considered the changes suggested by stakeholders, however has not included these changes.</p>

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its mind to these requirements).

275	Reduction of Nominated Monthly Train Services under EUAA	Clause 11.1 (UT4 TOA)	<p>The ability to reduce Nominated Monthly Train Services due to the Operator average annual payload exceeding the Maximum Payload does not promote efficiency for the supply chain as Operators do not have any incentives to increase their payloads.</p> <p>No reciprocal provisions for increase Nominated Monthly Train Services as a result of payloads less than the average being used.</p> <p>Clarity on how existing UT2 and UT3 access holders will be treated based on the standard access agreements which do not contain these terms.</p>	<p>Aurizon Network believes both mechanisms assist in the efficient use of the supply chain and ensures that where Access Holders hold onto additional paths than necessary they can be provided to other access seekers.</p> <p>It will also be a useful avenue for Operators where they do move to larger payloads and wish to relinquish paths without penalty.</p> <p>Aurizon Network would not be able to increase Nominated Monthly Train Services as the capacity provided under the agreement is based on an assumption that the Operator would at least use the Nominal Payload, this provision deals with the reality that over 10 year terms, Operators make improvements to their</p>	No Change		See comments in items 88 and 89.
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payloads and hold onto Nominated Monthly Train Services in addition to what is required to meet their tonnage requirements.

Existing UT2 and UT3 access holders will not have this term imposed on them as they are not provided for in the current UT2 and UT3 agreements.

276	Notice of Intention to Increase Nominal Payload	Clause 12.1 (UT4 TOA)	Carrying capacity of an Operator's Rollingstock should not be dictated by the access provider.				See comments in items 91 to 99.
			The procurement of Rollingstock is an Operator's commercial decision and takes several years to plan and commission.				
			These issues should be made by the Operator and End User rather than Aurizon Network.				

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277	Non-compliance by Operator with Train Service Description	Clause 14.2 (UT4 TOA)	<p>There is no specified assessment on how Aurizon Network determines the Operator is not complying with the Train Service Description. It is likely to be based on the subjective opinion of Aurizon Network.</p> <p>Aurizon Network has introduced its recovery of cost of risk and claim for additional revenue when it believes more capacity is being utilised by an Operator. Stakeholders are seeking clarity as to how this works with the capacity multiplier (i.e. is there double recovery?)</p>	Whether or not the Operator is complying with the Train Service Description will be a question of fact and could not be subjectively determined, hence Aurizon Network has not set out a process. It will be very clear if the Operator is not loading within the specified loading times or not completing the cycle within the specified cycle time.	No Change		<p>Any increases in Access Charges will be calculated in accordance with the Pricing Principles contained in Schedule F to the Access Undertaking. For Train Services which utilise additional capacity, the increase in Access Charge would be recovered via the Capacity Multiplier and it no a charge in addition to it.</p> <p>See also comments in items 123 and <a href="#">265263</a>.</p>
278	Compliance with Aurizon Network's Accreditation	Clause 14.6 (UT4 TOA)	The new clause states that Aurizon Network would not be in breach in respect to any act or omissions to its compliance with its Accreditation. The UT4 TOA requires the Operator to maintain its Accreditation at all times. This clause should be reciprocated for Aurizon Network where it	Under clause 14.3 of the UT4 TOA, Aurizon Network is required to observe and comply with the conditions of its Accreditation.			<p>Aurizon Network is obliged, under clause 14.3(b) to observe and comply with the conditions of its Accreditation.</p> <p>Aurizon Network has considered the changes suggested by stakeholders, however</p>

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			must maintain and comply with its Accreditation at all times.				has not included these changes.  See also comments in item 129.
279	Operating Plan	Clause 15 (UT4 TOA)	This clause requires the Operating Plan to satisfy all requirements in Schedule C of the 2013 DAU – the inclusions in Schedule C contain matters that seem onerous (for example, storage locations, TSEs, tonnage profile, negative impacts to main line running, total number of consists and minimum amount of consists to satisfy 100% of TSEs).  An operating plan should simply address operational matters.	Some of the detail included in Schedule C of the DAU are not new, such things as number of consists required to satisfy 100% of TSEs, stowage locations are already required as part of the Operating Plan.	No Change		Aurizon Network has considered the changes suggested by stakeholders, however has not included these changes.
280	Alterations to Train Services by Operators	Clause 16.2(b) (UT4 TOA)	The concept of a 48 hour window is in the current drafting of the proposed system rules which is undergoing a consultation process.				See comments in item 135.

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			<p>Query why a system rules concept is included in an agreement as opposed to a broader over-arching document such as the Access Undertaking.</p> <p>Require clarity on how this rule will apply for Access Holders with existing UT2 and UT3 agreements.</p>				
281	Variation to Access Charge Rates	Clauses 17.12 and 25.5 (UT4 TOA)	As per above comment on clause 14.2 – clarity on how these works with the capacity multiplier.				See comments in item <a href="#">277275</a> .
282	Response to a Discretionary System Amendment	Clause 18.2(a) (UT4 TOA)	<p>The 30 day timeframe as approved by the QCA should be reinstated over the 20 Business Days.</p> <p>The provision should allow for an extension of the timeframe for an Operator to response to an Amendment Notice if this is agreed between the parties.</p>	<p>20 Business Days equates to 30 days. As noted above the conversion to Business Days has been done so for consistency.</p> <p>Aurizon Network agrees to providing a longer timeframe if requested and agreed.</p>	Clause 18.2(b) to be amended to provide that the timeframe may be extended by agreement between the parties.		Aurizon Network has redrafted this clause as per the Proposed Change column.

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283	Train Service Descriptions	Schedule 2 (UT4 TOA)	<p>The schedule is more specific in respect of Train Service Type – items such as Maximum SRT, Nominated TSEs and Maximum Payload.</p> <p>One of the stakeholders disagrees with the introduction of Train Service Type as it limits rights flexibility.</p>	<p>These items were always required for an Origin-Destination haul (Train Service) however rather than in disparate schedules Aurizon Network has included in one location for clarity.</p>			<p>Aurizon Network has considered the changes suggested by stakeholders, however has not included these changes.</p>
284	Performance Levels	Schedule 6 (UT4 TOA)	<p>Clause specifically outlines performance levels to be agreed between the parties and specifically outlines how BRTT Thresholds and how they are calculated.</p>	<p>Schedule 5 of UT3 TOA and SOAA has always provided for the agreement between parties of Performance Levels.</p> <p>BRTT was specifically included as it previously was included in Schedule 1 of UT3 which now is the Train Service Description and specifically Operator requirements. The BRTT has been included in Schedule 6 to be clear that it is a Network performance indicator.</p>			<p>Aurizon Network has considered the changes suggested by stakeholders, however has not included these changes.</p>

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285	Security Amount	Item 4 Schedule 1					<p>Amendments to the Security Amount so that :</p> <ul style="list-style-type: none"> <li>• where the End User elects to pay all Access Charges, the Security Amount under the TOA will be the Operator's proportion (being the proportion which the Operational Rights bear to the Access Rights) of 12 weeks future Access Charges.</li> <li>• where the Operator is liable for the Access Charges, the Security Amount will be 12 weeks of future Access Charges assuming that the Operator will fully utilise the Access Rights.</li> </ul>