Hunter Valley Coal Network Access Undertaking

Dated: 1 December 2011

BY

AUSTRALIAN RAIL TRACK CORPORATION LIMITED (ABN 75 081 455 754) of Ground Floor, ARTC Building, Off Sir Donald Bradman Drive, Passenger Terminal Road, Mile End South Australia 5031 ("**ARTC**")

IN FAVOUR OF

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION being a body corporate established under **section 6A** of the *Competition and Consumer Act 2010* ("**ACCC**")

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Contents

1	**Preamble**	**4**
1.1	Introduction	4
1.2	Objectives	5
1.3	Recognition of Coal Chain Principles	6
1.4	Contract structure	6
2	**SCOPE AND ADMINISTRATION OF THE UNDERTAKING**	**7**
2.1	Scope	7
2.2	Grant and Duration of Undertaking	7
2.3	Variation of Undertaking	8
2.4	Existing agreements and rights	8
2.5	Insurance	8
2.6	Contact details	8
3	**NEGOTIATING FOR ACCESS**	**10**
3.1	Introduction	10
3.2	Framework	10
3.3	Information Provision	10
3.4	Parties to Negotiation	11
3.5	Confidentiality	12
3.6	Initial review where Coal Access Rights are sought	14
3.7	Access Application	14
3.8	Acknowledgment	15
3.9	Determination of Capacity	16
3.10	Indicative Access Proposal	16
3.11	Negotiation	17
3.12	Negotiation Process	18
3.13	Application for mutually exclusive Access Rights	19
3.14	Access Agreement	20
3.15	Dispute resolution	22
4	**ACCESS PRICING PRINCIPLES**	**27**
4.1	Price	27
4.2	Floor Revenue Limits	27
4.3	Ceiling Revenue Limits	27
4.4	Regulatory Asset Base	28
4.5	Economic cost	30
4.6	Cost allocation	31
4.7	Depreciation	31
4.8	Rate of return	32
4.9	Unders and overs accounting	32
4.10	Annual ACCC compliance assessment	33
4.11	Structure of Charges - Coal Access Rights	37
4.12	Structure of Charges - Non-Coal Access Rights	37
4.13	Pricing Objectives	39
4.14	Indicative Access Charge	39
4.15	Charge differentiation	40
4.16	Limits on Charge differentiation	43
4.17	Initial Indicative Services and Initial Indicative Access Charges	43

4.18	Determination of the Final Indicative Services (efficient train configuration)	45
4.19	Interim Indicative Services and Interim Indicative Access Charges	47
4.20	Process for finalising Indicative Access Charges	48
4.21	Provision of forecast information and coal volumes	49
5	**CAPACITY MANAGEMENT**	**50**
5.1	System Assumptions	50
5.2	Capacity Analysis	52
5.3	Identification of Shortfall in existing Capacity	53
5.4	Event leading to Capacity Shortfall of less than five days	54
5.5	Event leading to Capacity Shortfall greater than five days	54
5.6	Shortfall in creation of Additional Capacity	55
5.7	Capacity resumption, relinquishment and transfer	55
5.8	Review of mechanism to identify and assign Capacity losses	55
6	**NETWORK CONNECTIONS**	**57**
7	**CAPACITY INVESTMENT FRAMEWORK OVERVIEW**	**58**
7.1	Purpose	58
7.2	Overview of framework	58
7.3	Step 1 - Project initiation	59
7.4	Step 2 - Industry consultation for a project	59
7.5	Step 3 - User funding option	60
8	**PROJECT INITIATION**	**60**
8.1	Hunter Valley corridor capacity strategy	60
8.2	Additional Capacity endorsed by the RCG for concept assessment	61
8.3	Additional Capacity recommended by the HVCCC	61
8.4	Additional Capacity requested by the Applicant	62
8.5	Additional Capacity identified by ARTC	62
9	**INDUSTRY CONSULTATION**	**63**
9.1	Overview	63
9.2	The RCG	64
9.3	Concept assessment	65
9.4	Project Feasibility	66
9.5	Project Assessment	66
9.6	Project implementation	68
9.7	Project close-out	72
9.8	Endorsement of project development stages	72
10	**USER FUNDING OPTION**	**73**
10.1	User funding option	73
10.2	Capital Contribution Principles	74
10.3	Construction and ownership of assets	76
10.4	Dispute resolution	76
11	**ARTC DECISION MAKING**	**76**
11.1	ARTC consent to a project	76
11.2	ARTC decision to fund a project	76

12	**NETWORK TRANSIT MANAGEMENT**	**77**
12.1	Medium Term Capacity Management	77
12.2	Short Term Capacity Management	77
12.3	Network Transit Management	77
13	**PERFORMANCE MEASUREMENT AND INCENTIVES**	**78**
13.1	Network Key Performance Indicators	78
13.2	Negotiation of key performance indicators for each Access Agreement	78
13.3	Development of non-TUT related ARTC performance incentives	79
13.4	Review of system wide TUT	79
13.5	Development of TUT-related ARTC performance incentives	80
14	**DEFINITIONS**	**81**
14.1	Definitions	81
14.2	Interpretation	91
SCHEDULES		**94**
SCHEDULE A:1 - Elements of Coal Access Agreements		**95**
SCHEDULE A:2 - Elements of Non Coal Access Agreements		**99**
SCHEDULE B - Network		**102**
SCHEDULE C - Network Management Principles		**104**
SCHEDULE D - Performance Measurement and Incentives		**109**
SCHEDULE E - Segments		**111**
SCHEDULE F - Principles to guide ARTC/ HVCCC Consultation		**112**
SCHEDULE G - Annual Compliance Assessment - information provision and timing		**113**
SCHEDULE H - Parent Guarantee		**117**
Annexure A - Indicative Access Holder Agreement		**128**

1 Preamble

1.1 Introduction

Australian Rail Track Corporation Limited ("**ARTC**") gives this undertaking to the Australian Competition and Consumer Commission ("**ACCC**") pursuant to Part IIIA of the *Competition and Consumer Act 2010* (Cth) ("**CCA"**). This undertaking reflects the following characteristics of ARTC's commercial environment specific to the Hunter Valley Rail Network:

(a) ARTC was established on 24 February 1998 as a company under the *Corporations Act 2001* (Cth). ARTC's shares are fully owned by the Australian Government.

(b) On 5 September 2004, ARTC commenced a 60 year lease of certain parts of the rail network in NSW including the Hunter Valley network forming the Network. ARTC is responsible for managing the Network and for the granting of access to the Network.

(c) ARTC is a vertically separated provider of access.

(d) The predominant usage of the Network is for rail services to the Hunter Valley coal markets. Subject to legislative requirements in relation to other traffic, and in particular ARTC's obligations to provide and maintain priority for passenger services under the *Transport Administration Act 1988* (NSW). ARTC recognises that the operation of, and investment in the development of, the Network is primarily to improve utilisation and performance of such rail services and to optimise coal export throughput in the Hunter Valley. ARTC also recognises that non-coal users of the Network require certainty of access and that the views of non-coal users are to be considered and taken into account in making future decisions to invest in new Capacity on the Network.

(e) ARTC recognises that the Network facilitates provision of rail services to the coal supply chain primarily serving the export coal market through the Port of Newcastle, and also the NSW domestic coal market. ARTC recognises its role as an active participant in the HVCCC, and the role that the HVCCC plays with Hunter Valley Coal Chain Service Providers and Coal Customers in the integrated and coordinated planning of the coal supply chain serving the export coal market through the port of Newcastle, as well as the NSW domestic coal market. ARTC also recognises the role that the HVCCC plays in identifying, and in facilitating expansion of, Coal Chain Capacity.

(f) ARTC recognises that Hunter Valley export coal producers are seeking to align capacity contracted across contracts with infrastructure service providers, including above rail, below rail and port terminal capacity.

(g) ARTC recognises that the Network is also used by non-coal users. In relation to traffic utilising the Network other than for the purpose of hauling coal, ARTC operates in a competitive environment where competition from other modes of transport (particularly road) places constraint on rail transport and Access pricing. Access pricing for this traffic is such that it only meets their Direct Cost of Access to the Constrained Network.

(h) ARTC has adopted the concepts of equity and transparency as key elements of its pricing policies. ARTC will not discriminate price on the basis of the identity of the Applicant. By so doing, ARTC seeks to encourage customer confidence, competition and market growth in the rail and Hunter Valley export coal industries in an evolving environment.

(i) As an access provider, maintenance of, and investment in, the Network and Associated Facilities is a large component of ARTC's current cost structure. These services are either outsourced, and managed under contracts entered into on commercial terms as a result of a competitive tender process, or, in ARTC's view, otherwise managed on an efficient basis. ARTC has adopted this practice with a view to ensuring that ARTC's cost structure is Efficient.

(j) ARTC has prepared this Undertaking voluntarily in pursuance of its charter objectives.

(k) This Undertaking will be applied consistently to applications for Access Rights where such applications are within the scope of this Undertaking.

1.2 Objectives

This Undertaking is a voluntary undertaking submitted by ARTC under Part IIIA of the CCA. The intent of the Undertaking is to:

(a) provide a framework to manage negotiations with Applicants for Access Rights to the Network;

(b) establish a workable, open, non-discriminatory, efficient and inclusive process for lodging and processing applications for Access Rights;

(c) use transparent and detailed methodologies, principles and processes for determining Access revenue limits, terms and conditions;

(d) reach an appropriate balance between:

(i) the legitimate business interests of ARTC, including:

(A) recovery of at least sufficient revenue to meet the efficient costs associated with Access to the Network, having regard to the efficient operation of the Hunter Valley Coal Chain;

(B) a fair and reasonable return on ARTC's investment in the Network and Associated Facilities commensurate with its commercial risk; and

(C) encouraging customer confidence and market growth in the rail industry and also, in particular, the Hunter Valley coal industry;

(ii) the interest of the public, including:

(A) increasing competition and ensuring efficient use of resources; and

(B) the promotion of economically efficient investment, use and operation of the Network, being an element of the Hunter Valley Coal Chain;

(iii) the interests of Applicants seeking Access Rights to the Network, including:

(A) providing Access to the Network on fair and reasonable terms;

(B) providing Access in a transparent, efficient and non-discriminatory manner; and

(C) providing reliability in rail infrastructure's contribution to the Hunter Valley Coal Chain;

(e) provide an efficient and effective dispute resolution process in the event that ARTC and the Applicant are unable to negotiate mutually acceptable Access Agreements; and

(f) operate consistently with the objectives and principles in Part IIIA of the CCA and the Competition Principles Agreement.

1.3 Recognition of Coal Chain Principles

In preparing the Access Undertaking, ARTC has sought to recognise the importance of the following principles to coal producers seeking to export coal to the Port of Newcastle:

(a) coal producers require long term certainty of access to a contracted portion of Coal Chain Capacity, of which one component is contracted Capacity with ARTC;

(b) the availability of a reliable process through which access to Capacity can be negotiated within the broader context of the Hunter Valley Coal Chain;

(c) the development of a set of System Assumptions to apply across the Coal Chain and for ARTC to participate in the development of these System Assumptions in so far as they relate to the Network and to reflect the applicable Relevant System Assumptions in Access Holder Agreements; and

(d) there should be workable alignment between the allocation and utilisation of Capacity and the allocation and utilisation of capacity at the coal terminals at the Port of Newcastle.

1.4 Contract structure

(a) In recognition of interests pertaining to coal traffic, identified in **section 1.1(e)** and **(f)**, ARTC will, on request, enter into a direct agreement with a Coal Customer for Coal Access Rights to the Network (an Access Holder Agreement) subject to the following terms:

(i) the Coal Customer may only utilise those Access Rights through an Accredited Operator who has been nominated by the Access Holder for that purpose; and

(ii) that Operator must have an Operator Sub-Agreement with ARTC which has been endorsed by the Access Holder.

(b) An Accredited Operator may also enter into an Access Holder Agreement with ARTC under which it will hold Coal Access Rights. The Accredited Operator will also need an Operator Sub-Agreement with ARTC to utilise those Coal Access Rights.

(c) For non-coal traffic, ARTC will enter into a single Access Agreement for Non-Coal Access Rights with an Accredited Operator which will provide for both an entitlement to Train Paths and a right to operate Non-Coal Trains on those Train Paths, or with an Applicant who is not an Accredited Operator where the Applicant will procure the services of an Accredited Operator to operate the Trains on those Train Paths provided that all of the terms and conditions of the Access Agreement are met by the Applicant or the Operator.

2 SCOPE AND ADMINISTRATION OF THE UNDERTAKING

2.1 Scope

(a) This Undertaking provides for the negotiation of Access Rights to the Network, with details of the specified services and sections of the Network defined during Access negotiations. Access will include, in addition to the track, the benefit of Associated Facilities required to facilitate such Access.

(b) The Network means the network of railway lines delineated or defined in **Schedule B**, excluding Annexure 1 to **Schedule B**, where Annexure 1 to **Schedule B** contains a map, being a representation of these railway lines for illustrative purposes only.

(c) This Undertaking does not extend to any Extension to the Network nor to the track and infrastructure not part of the Network that may connect to the Network.

2.2 Grant and Duration of Undertaking

(a) Subject to **section 2.2(c)**:

(i) this Undertaking takes effect twenty one (21) days after the ACCC has published its decision to accept the Undertaking under **section 44ZZA(3)** of the CCA ("**Effective Date**"); and

(ii) on and from the Effective Date, all provisions of the Undertaking are taken to have commenced operation on 1 July 2011 ("**Commencement Date**").

(b) The Undertaking will continue until the earlier to occur of:

(i) the fifth (5th) anniversary of the Commencement Date; or

(ii) the withdrawal of this Undertaking in accordance with the CCA,

being, the Term of the Undertaking.

(c) If a person applies to the Australian Competition Tribunal under **section 44ZZBF(1)** of the CCA within the 21 day period referred to in **section 2.1(a)** for a review of the ACCC's decision to accept this Undertaking and the Tribunal affirms the ACCC's decision, then the Effective Date and the Commencement Date will be the time of the Tribunal's decision.

(d) ARTC undertakes to the ACCC that it will comply with the terms and conditions specified in this Undertaking including in relation to the grant of Access Rights to the Network from the earlier of the Commencement Date and the Effective Date.

2.3 Variation of Undertaking

ARTC may only vary the Undertaking with the consent of the ACCC under **section 44ZZA(7)** of the CCA.

2.4 Existing agreements and rights

(a) This Undertaking applies only to the negotiation of new Access Agreements and the negotiation of Access Rights in addition to those already the subject of an Access Agreement. Nothing in this Undertaking can require a party to an existing Access Agreement to vary a term or provision of that agreement.

(b) ARTC will reserve, at no charge, existing train paths used for non-coal traffic under agreements existing immediately before the Commencement Date. ARTC will reserve the existing train paths for the purpose of making them available to Applicants who submit an Access Application for Non-Coal Access Rights, to be used for substantially the same purpose and in respect of the same end-market as the existing train paths, within 30 Business Days from the Commencement Date. To avoid doubt, an Applicant seeking access to a reserved train path under this section will be offered an Access Agreement in accordance with **section 3.14(b)** and will be able to negotiate the terms and conditions of that Access Agreement in accordance with **section 3** of the Undertaking.

2.5 Insurance

ARTC will take out and maintain a liability insurance policy with a limit of not less than $250,000,000 for any one occurrence which provides an indemnity in respect of:

(a) loss of, loss of use of, and destruction or damage to, real or personal property;

(b) injury to, or disease or death of, persons; and

(c) ARTC's liability prescribed in Access Agreements and the Operator Sub-Agreements to the extent coverable by insurance.

2.6 Contact details

(a) Persons wishing to contact ARTC for further information or to apply for Access to the Network should contact ARTC at any of the following addresses:

(i) Australian Rail Track Corporation Limited

Ground Floor
Off Sir Donald Bradman Drive
Passenger Rail Terminal Road
MILE END SA 5031

Attention: Chief Executive Officer
Telephone: (08) 8217 4366
Facsimile: (08) 8217 4578

(ii) Australian Rail Track Corporation Limited

PO Box 10343
Gouger Street
ADELAIDE SA 5000

secretary@artc.com.au

(b) Applicants are also encouraged to search ARTC's internet web site at www.artc.com.au on which will be published various information regarding ARTC and this Undertaking including:

(i) illustrative maps showing a geographical description of the Network in the form of Annexure 1 of **Schedule B** as amended by ARTC from time to time during the Term;

(ii) a narrative description of the Network;

(iii) Indicative Access Charges for Indicative Services;

(iv) prices for which Access has been granted to Services other than Indicative Services, together with a general description of the Services to which such prices relate;

(v) the Network Management Principles;

(vi) the Indicative Access Holder Agreement including the Standard Operator Sub-Agreement;

(vii) current available market terms and conditions;

(viii) a copy of ARTC's annual report;

(ix) details of Committed Capacity and other Capacity on the Network;

(x) indicative section running times for Indicative Services;

(xi) route standards by corridor;

(xii) the Performance Indicators;

(xiii) RAB for each Segment;

(xiv) Ceiling Limit for the Constrained Network determined in the most recent annual compliance assessment; and

(xv) Hunter Valley corridor capacity strategy.

3 NEGOTIATING FOR ACCESS

3.1 Introduction

(a) ARTC will negotiate with an Applicant in good faith. This section of the Undertaking will form the framework for ARTC's negotiations with an Applicant for Access Rights. However, ARTC recognises that the process needs to be flexible and ARTC will be willing to tailor the process in consultation with the Applicant.

(b) For Coal Access Rights, ARTC recognises the importance of the role performed by the HVCCC in providing advice on the operating requirements needed to deliver Coal Chain Capacity, as well as the role of the other Hunter Valley Coal Chain Service Providers. In particular, ARTC recognises the importance of the Applicant and ARTC consulting with the HVCCC and the Hunter Valley Coal Chain Service Providers to determine the impact on Coal Chain Capacity of the Access Rights sought by the Applicant. This consultation may occur before the submission of an Access Application as provided under **section 3.7**.

3.2 Framework

This section of the Undertaking seeks to outline the process which will be followed to enable an Applicant to gain Access Rights to the Network. It provides for:

(a) preliminary meetings and exchanges of information, including, in relation to Coal Access Rights, consultation with the HVCCC and other Hunter Valley Coal Chain Service Providers;

(b) submission of an Access Application by the Applicant;

(c) preparation of an Indicative Access Proposal by ARTC;

(d) negotiations to develop an Access Agreement for execution;

(e) dispute resolution procedures; and

(f) both ARTC and the Applicant to negotiate in good faith.

3.3 Information Provision

(a) Subject to **section 3.3(b)**, ARTC will, if requested by an Applicant, provide the following information to the Applicant to assist with negotiations:

(i) path length availability;

(ii) for Coal Access Rights, referral to the Coal Chain Master Plan and Assumptions;

(iii) axle load limitations;

(iv) maximum allowable speeds;

(v) infrastructure characteristics;

(vi) applicable safe working requirements;

(vii) section run times;

(viii) the Incremental Cost and Economic Cost determined in accordance with the Undertaking for the Pricing Zones for which Access Rights are being sought; and

(ix) subject to **section 3.3(b)**, other information relating to Capacity or Train operations reasonably required by the Applicant in relation to the Access Rights sought.

(b) ARTC's obligation under **section 3.3(a)** is subject to:

(i) ARTC not disclosing any information which would breach a confidentiality obligation binding on it; and

(ii) the Applicant agreeing to pay the reasonable costs incurred by ARTC in obtaining information that is not ordinarily and freely available to ARTC.

3.4 Parties to Negotiation

(a) ARTC reserves the right to negotiate only with Applicants who comply with the requirements and processes set out in this Undertaking. If an Applicant does not comply with the relevant obligations and processes, and ARTC considers that such non-compliance is material, ARTC will not be obliged to continue negotiations regarding the provision of Access Rights for that Applicant.

(b) Where an Applicant seeks Coal Access Rights, ARTC will negotiate an Access Holder Agreement with an Applicant who is not an Accredited Operator on the following basis:

(i) the Applicant will nominate an Accredited Operator prior to utilising the Coal Access Rights sought;

(ii) that Operator will enter into an Operator Sub-Agreement agreed to by ARTC and the Access Holder and included as an annexure to the Access Holder Agreement; and

(iii) the Applicant will endorse the signed Operator Sub-Agreement.

ARTC will negotiate the terms of the Operator Sub-Agreement forming part of the Access Holder Agreement with the Access Holder or the relevant Operator where it has been appointed as the Access Holder's agent for that purpose.

(c) Where an Applicant seeks Non-Coal Access Rights, ARTC will negotiate an Access Agreement with an Applicant who is not an Accredited Operator where the Applicant will procure the services of an Accredited Operator to operate the Trains on the contracted Train Paths provided that all of the terms and conditions of the Access Agreement are met by the Applicant or the Operator.

(d) Where an Applicant intends to seek Coal Access Rights, ARTC may require the Applicant to provide sufficient evidence to the reasonable satisfaction of

ARTC that it will have sufficient Network Exit Capability, for the lesser of the proposed contracted period for the Train Paths or ten years from the time when the Coal Access Rights will be available for use. Where the Coal Access Rights sought are for the purpose of transporting coal to the Port of Newcastle, ARTC may require the Applicant to provide a copy of its contract with the relevant port company establishing the Applicant's ability to offload the anticipated coal at the Port of Newcastle.

(e) At any time, before or during the negotiation process, ARTC may require the Applicant to demonstrate to ARTC's reasonable satisfaction that it is able to meet the following prudential requirements:

(i) the Applicant must be Solvent;

(ii) the Applicant, or a Related Body Corporate of the Applicant, must not be currently, or have been in the previous (2) years, in Material Default of any agreement with ARTC, or any agreement in accordance with which access to rail infrastructure not managed by ARTC has been provided to the Applicant or a Related Body Corporate of the Applicant;

(iii) the Applicant has an Acceptable Credit Rating or will agree to provide credit support in the form of a Security or a Parent Guarantee before the Access Agreement becomes effective; and

(iv) the Applicant must be able to demonstrate to ARTC that it has a legal ownership structure with a sufficient capital base and assets of value to meet the actual or potential liabilities under an Access Agreement, including timely payment of access charges and payment of insurance premiums and deductibles under the required policies of insurance.

(f) If ARTC refuses to negotiate for any reasons as described in **section 3.4(a), 3.4(b), 3.4(c)** or **3.4(d)**, it will, within ten (10) Business Days of the decision to refuse to negotiate, explain in writing to the Applicant the reasons for such refusal.

(g) If the Applicant considers that ARTC has unreasonably refused to commence or subsequently unreasonably ceased negotiations in accordance with **section 3.4**, then the Applicant may refer the matter to the arbitrator in accordance with **section 3.15(f)**. If the arbitrator determines that ARTC has unreasonably refused to commence or subsequently unreasonably ceased negotiations, ARTC will recommence negotiations immediately.

(h) If at any time, ARTC is of the view that an Applicant's request for Access Rights is frivolous in nature, ARTC may refer the request to the arbitrator in accordance with **section 3.15(f)** for determination. If the arbitrator determines that the request is in fact frivolous, then ARTC will be entitled to cease negotiations and will not be obliged to comply with this Undertaking in respect of the request.

3.5 Confidentiality

(a) ARTC and the Access Holder acknowledge, subject to **section 3.5(b)** and **(c)**, that all information provided by one party ("**Provider**") to the other

("**Receiver**") as part of the negotiation process for Access Rights under this Undertaking that is designated or indicated in writing, as being the confidential information of the Provider or any of its Related Bodies Corporates ("**Confidential Information**") is secret and confidential and that the Receiver of Confidential Information will treat that Confidential Information as secret and confidential and the property solely of the Provider and not use that Confidential Information for any purpose other than the provisions of this Undertaking allow.

(b) To avoid doubt, information provided by an Access Holder to ARTC on the forecast and actual volume of coal to be transported on the Network by an Access Holder is Confidential Information.

(c) For the purposes of this **section 3.5**, Confidential Information does not include information which is:

(i) in the public domain at the time of disclosure other than through the fault of the Receiver or of anyone to whom the Receiver has disclosed it;

(ii) obtained lawfully from a third party without restriction on use or disclosure;

(iii) required to be made public by operation of law (subject to the Receiver claiming any immunity, privilege or restriction on or from disclosure that it can reasonably claim), including without limitation information required by any stock exchange, rail safety or economic regulator; or

(iv) derived or produced from Confidential Information but disclosed in an aggregated form, on at least a Pricing Zone basis.

(d) ARTC and the Access Holder may disclose Confidential Information:

(i) necessary for the provision of advice by the Receiver's legal advisers, financiers, accountants or other consultants (provided they are under a legal obligation not to disclose the Confidential Information to any third party);

(ii) to a Related Body Corporate (provided they are under a legal obligation not to disclose the Confidential Information to any third party);

(iii) subject to entering into appropriate confidentiality arrangements with the HVCCC and the RCG, to the HVCCC or the RCG to the extent reasonably necessary to enable the HVCCC and RCG to co-ordinate the operation and capacity development of the Hunter Valley coal chain;

(iv) to an Operator to the extent that it is necessary or desirable for the parties to do so for the purposes of complying with contractual obligations under an Access Agreement or Operator Sub-Agreement;

(v) to the ACCC to the extent reasonably required to undertake its functions in relation to the Undertaking and the CCA;

(vi) subject to entering into appropriate confidentiality arrangements with the auditor, to an auditor appointed under **section 4.10(f)** of this Undertaking; or

(vii) to the lessor of the Network, if required under the terms of the NSW Lease.

3.6 Initial review where Coal Access Rights are sought

(a) Where an Applicant intends to seek Coal Access Rights and the Applicant has requested that ARTC take part in an initial review of Capacity requirements, ARTC will effectively and reasonably participate in that initial review subject to **section 3.6(c)**.

(b) The purpose of the initial review is to assist the Applicant to provide sufficient information to the HVCCC to enable the HVCCC to determine the impact on Coal Chain Capacity of the Access Rights sought, and to provide advice to the Applicant on that impact and on the operating requirements needed to deliver Coal Chain Capacity and for the Applicant to determine how many Train Paths may be required.

(c) If the other relevant Hunter Valley Coal Chain Service Providers do not effectively and reasonably participate in the initial review of Capacity, ARTC will not consider itself bound to participate in the review.

(d) For the purposes of this **section 3.6**, effective and reasonable participation by ARTC and the other relevant Hunter Valley Coal Chain Service Providers means the provision of information to the Applicant, and where requested, the provision of information to the HVCCC, which it reasonably considers necessary to enable the HVCCC to advise the Applicant of the operating requirements to deliver the throughput sought and to carry out an assessment of the impact of the Access Rights sought on Coal Chain Capacity.

3.7 Access Application

(a) Requests for Access Rights are to be submitted to ARTC prepared in written form and clearly state that the Access Application is made in accordance with this Undertaking and is accompanied by the following information:

(i) Applicant details, including business name, ABN, ACN, business address and contact details;

(ii) Capacity requirements such as mode of operation, locations and time of entry and exit to the Network, or combination of load and discharge points for which Access Rights are required. For cyclic traffic, the number of monthly and annual train services required;

(iii) any requirements for Additional Capacity (subject to **section 5**);

(iv) additional above rail requirements;

(v) duration of the Access Rights sought;

(vi) the type of Service intended to utilise the Access Rights sought, contract requirements including (where applicable) Train speed, axle

load and length, annual tonnages between load and discharge points, and task variability;

(vii) where applicable and available, details of the Operator or Operators likely to be nominated for each Train Path sought;

(viii) indication of Rolling Stock to be used; and

(ix) where an Applicant is seeking Coal Access Rights:

(A) subject to **section 3.7(b)**, confirmation that the Applicant will have sufficient Network Exit Capability, for the lesser of the proposed contracted period for the Train Paths or ten years from the time when the Coal Access Rights will be available for use. Where the Coal Access Rights sought are for the purpose of transporting coal to the Port of Newcastle, ARTC may require the Applicant to provide a copy of its contract with the relevant port company establishing the Applicant's ability to offload the anticipated coal at the Port of Newcastle; and

(B) any advice provided by the HVCCC on the impact of the Access Rights sought on Coal Chain Capacity, on the operating requirements needed to deliver Coal Chain Capacity, and on whether the Applicant has sufficient Network Exit Capability to enable the utilisation of the Coal Access Rights sought.

(b) If the Coal Access Rights sought are for the purpose of transporting coal to the Port of Newcastle, ARTC may accept an Access Application which does not meet the requirements of **section 3.7(a)(ix)(A)** provided the Applicant is able to establish to ARTC's reasonable satisfaction that it is negotiating with the relevant port company to obtain sufficient Network Exit Capability to offload the anticipated coal volumes at the Port of Newcastle.

(c) Prior to submitting an Access Application, an Applicant may, in addition to the initial review where an Applicant is seeking Coal Access Rights, seek initial meetings with ARTC to discuss the Access Application and to seek clarification of the process as outlined in this Undertaking and, in particular, the information to be included as part of an Access Application.

3.8 Acknowledgment

(a) Upon receiving an Access Application from an Applicant, ARTC will acknowledge receipt of the Access Application in writing (or electronically) to the Applicant within ten (10) Business Days of its receipt, or such longer period as specified in accordance with **section 3.8(c)**.

(b) Prior to acknowledging the Access Application ARTC may seek:

(i) additional information where ARTC can reasonably demonstrate the need for such information for the purpose of preparing an Indicative Access Proposal; or

(ii) clarification of the information that has been provided in the Access Application.

(c) If ARTC seeks additional information or clarification in accordance with **section 3.8(b)**, it will advise the Applicant of the additional information or the clarification required within ten (10) Business Days of receipt of the Access Application. Upon receiving the required information or clarification from the Applicant, ARTC will provide written acknowledgement of the receipt of the completed Access Application within ten (10) Business Days.

3.9 Determination of Capacity

(a) Subject to **section 3.9(b)**, ARTC will use reasonable efforts to provide the Indicative Access Proposal to the Applicant within sixty (60) Business Days of the acknowledgment given under **section 3.8**.

(b) In assessing an Access Application, ARTC may consider that due to the complexity of the Access Application, a delay in the time taken to obtain information from the HVCCC or the Applicant relevant to the assessment of the Access Application, or other extenuating circumstances, it is not reasonable to provide an Indicative Access Proposal within sixty (60) Business Days. In these circumstances, ARTC will inform the Applicant in its acknowledgment of the Access Application that ARTC does not expect to provide an Indicative Access Proposal within sixty (60) Business Days and within a further ten (10) Business Days will advise the Applicant of its estimate of the time required to deliver the Indicative Access Proposal. Where the Applicant is of the view that the time estimated for preparation of the Indicative Access Proposal under this **section 3.9(b)**, is excessive, then the Applicant may refer the matter to the arbitrator in accordance with **section 3.15(f)**.

(c) ARTC will determine whether there is sufficient Available Capacity to accommodate the Access Rights sought by the Applicant on the basis of a Capacity Analysis carried out in accordance with **section 5.2**.

(d) If ARTC considers that there is not sufficient Available Capacity on the Network to provide the Applicant with the Access Rights sought, ARTC will, if requested by the Applicant, inform the Applicant of the reasons for its view and the Applicant may request Additional Capacity. ARTC will consider the Applicant's request for Additional Capacity in accordance with **section 8.4**.

3.10 Indicative Access Proposal

(a) The Indicative Access Proposal will set out, amongst other things:

(i) the results of a Capacity Analysis determining whether there is sufficient Available Capacity to accommodate the requested Access Rights;

(ii) in the event the Access Application requires the Applicant to have recourse to Additional Capacity, an outline of the works and an indicative estimate of the cost of such works required to provide the Additional Capacity or an outline of the requirements for an investigation into the provision of Additional Capacity for the requested Access Rights;

(iii) advice in respect of the existence of other Applicants who have submitted an Access Application (where negotiations are continuing in accordance with this Undertaking) in respect of Access Rights which, if they were to be provided, would limit the ability of ARTC to provide Access Rights in accordance with the Indicative Access Proposal;

(iv) where the application is for Coal Access Rights, refer the Applicant to the HVCCC for any additional information in relation to Coal Chain Capacity;

(v) a reference to the Indicative Access Holder Agreement and a reference to the current available market terms and conditions as published on ARTC's website;

(vi) an initial estimate of the Charges for the Access Rights, based on the pricing principles set out in **section 4**; and

(vii) details of the additional information required for ARTC to progress the proposal and further develop the Charges and terms and conditions for acceptance.

(b) The Indicative Access Proposal will, unless it contains specific provisions to the contrary, contain indicative arrangements only and does not oblige ARTC to provide Access Rights in accordance with specific terms and conditions, including Charges, contained within it.

(c) If, after sixty (60) Business Days following ARTC's acknowledgment of the Access Application, or if applicable, after expiration of the time estimated by ARTC or determined by the arbitrator in accordance with **section 3.9(b)**, the Applicant believes that ARTC is not making reasonable progress in the preparation of the proposal, then the Applicant may refer the matter to the arbitrator for a determination in relation to the progress of the Indicative Access Proposal in accordance with **section 3.15(f)**.

(d) In the event that ARTC is unable to provide an Indicative Access Proposal based on the Access Application, ARTC will, if possible, submit to the Applicant an Indicative Access Proposal offering alternative Access Rights which it reasonably believes may meet the Applicant's requirements.

(e) Disputes arising from the process described in this **section 3.10** will be resolved in accordance with **section 3.15(f)**.

3.11 Negotiation

(a) If the Applicant intends to progress its Access Application under the negotiation process set out in this Undertaking on the basis of the arrangements outlined in the Indicative Access Proposal, the Applicant will notify ARTC of its intention to do so within thirty (30) Business Days of the date it receives the Indicative Access Proposal (or such other period of time that the parties agree). In the event that a notification is given after this period of time, ARTC will review the Indicative Access Proposal and, if considered necessary by ARTC, prepare a revised Indicative Access Proposal in accordance with **section 3.10** and the negotiation process outlined in this **section 3** will recommence from that point.

(b) If the Applicant is of the view that the Indicative Access Proposal has not been prepared in accordance with this Undertaking and would therefore not be an appropriate basis for continuing with the negotiation process under this Undertaking, then the Applicant will notify ARTC of its concerns within thirty (30) Business Days of the date of receipt of the Indicative Access Proposal.

(c) ARTC will take all reasonable steps to respond to the concerns raised by the Applicant in relation to the Indicative Access Proposal under **section 3.11(b)** within thirty (30) Business Days of receipt of notification of the concerns. If ARTC is unable to address the concerns of the Applicant within such time frame, ARTC will notify the Applicant in writing as to the reasons why and advise an intended course of action, with indicative time frames, of how the concern is being addressed. If the Applicant is satisfied with the response received from ARTC, including any revision to the Indicative Access Proposal, it will notify ARTC of its intention to proceed with negotiations within thirty (30) Business Days of receiving ARTC's response.

(d) If the Applicant is not satisfied with the response from ARTC, including any revision to the Indicative Access Proposal, the Applicant may seek to resolve the dispute in accordance with the dispute resolution process outlined in **section 3.15**. The Applicant will commence this dispute resolution process within thirty (30) Business Days of receiving ARTC's response.

3.12 Negotiation Process

(a) If the Access Applicant indicates its willingness to progress negotiations under this **section 3.12**, then both parties will commence negotiations as soon as reasonably possible to progress towards an Access Agreement.

(b) The negotiation period will commence upon the Applicant providing a notification to ARTC of its intention to proceed pursuant to **section 3.12(a)** and will cease upon the earlier of:

(i) execution of an Access Agreement in respect of the Access Rights sought by the Applicant;

(ii) written notification by the Applicant that it no longer wishes to proceed with its Access Application;

(iii) the expiration of three (3) months from the commencement of the negotiation period, or if both parties agree to extend the negotiation period, the expiration of the agreed extended period;

(iv) if ARTC believes that the negotiations are not progressing in good faith towards the development of an Access Agreement within a reasonable time period, issue of a notice by ARTC informing the Applicant that it does not believe the negotiations are progressing in good faith towards the development of an Access Agreement within a reasonable time period and that ARTC intends to end the negotiation period;

(v) if **section 3.12** applies and ARTC refers the matter to the arbitrator under **section 3.15(f)** for a determination on this issue and such

determination is found in ARTC's favour, the date of issue of the determination;

(vi) where an Applicant is seeking Coal Access Rights, ARTC receives evidence confirming that the Applicant no longer satisfies the Network Exit Capability requirement in **section 3.7(a)(ix)**, ARTC may issue a notice of intent to end the negotiation period, to become effective ten (10) Business Days after the issue of the notice. Where ARTC issues a notice of intent, ARTC will provide to the Applicant written reasons for its decision to end the negotiation period; or

(vii) if ARTC receives evidence confirming that the Applicant no longer satisfies the prudential requirements of **section 3.4(e)**, on receiving such evidence ARTC will advise the Applicant of such evidence and if the Applicant is not willing to provide Security or a Parent Guarantee, ARTC may issue a notice of intent to end the negotiation period, to become effective ten (10) Business Days after the issue of the notice. Where ARTC issues a notice of intent, ARTC will provide to the Applicant written reasons for its decision to end the negotiation period.

(c) Upon cessation of the negotiation period, ARTC will be entitled to cease negotiations with the Applicant.

3.13 Application for mutually exclusive Access Rights

(a) This **section 3.13** applies to the extent two or more Applicants have submitted an Access Application for Access Rights to Available Capacity existing and commissioned at the time each of the Access Applications is received, each of which satisfies the requirements of **section 3.7(a)(ix)(A)** and it is not reasonably possible for ARTC to fulfil, in whole, the request for Access Rights made under those Access Applications (each a "**Mutually Exclusive Access Application**").

(b) An Access Application may become a Mutually Exclusive Access Application at any time before an Access Agreement is executed pursuant to that Application.

(c) An Applicant will be notified as soon as practicable after ARTC has identified that its Application has become a Mutually Exclusive Access Application and the extent to which the Access Rights sought are affected.

(d) ARTC will, if requested, provide reasonable assistance to an access seeker to identify whether its Access Application can be modified so that it is no longer a Mutually Exclusive Access Application.

(e) Subject to **section 3.13(f)**, ARTC will allocate the affected Access Rights to the Applicant under a Mutually Exclusive Access Application who accepts an Access Agreement with ARTC which, in the opinion of ARTC, is most favourable to it. Unless impracticable, ARTC would make such a decision based on the Access Agreement that represented the highest present value of future returns to ARTC after considering all risks associated with the Access Agreement (including the relative time likely to be required to finalise an Access Agreement with each party).

(f) If in ARTC's reasonable opinion, two or more Mutually Exclusive Access Applications, which relate to Coal Access Rights, provide ARTC with a comparable present value of future returns to ARTC determined in accordance with **section 3.13(e)** and after considering all risks associated with the Access Agreements, ARTC will offer to allocate the affected Access Rights on a pro rata basis to the relevant Applicants.

For example, ARTC would offer to pro-rate the affected Access Rights to export producers if the two applications satisfied certain criteria including the same zone, same terms and conditions and the term of each was greater than 10 years.

(g) To avoid doubt, if an Access Holder seeks to renew Coal Access Rights in accordance with a specific right of renewal provided in its Access Holder Agreement, that request for a renewal will not be treated as an Access Application and will have, to the extent provided in the Access Holder Agreement, priority over an Access Application for Access Rights which are mutually exclusive with the Coal Access Rights sought to be renewed.

3.14 Access Agreement

(a) The granting of Access Rights will be finalised by the execution of an Access Agreement. The parties to the Access Agreement will be ARTC and the Applicant.

(b) Subject to **section 3.14(c)**, ARTC will offer Applicants the choice of the following as an Access Agreement:

(i) subject to the Applicant satisfying the Network Exit Capability requirement in **section 3.7(a)(ix)** and the prudential requirements in **section 3.4(e)**, for Applicants seeking Coal Access Rights:

(A) the Indicative Access Holder Agreement subject to the Applicant seeking Access Rights intended for the operation of Indicative Services or Interim Indicative Services;

(B) an updated Access Holder Agreement to reflect agreed amendments to the Indicative Access Holder Agreement. A negotiated Access Holder Agreement will incorporate those clauses from the Indicative Access Holder Agreement identified as Tier 1 (mandatory) provisions in **Schedule A:1** and will, (unless otherwise agreed between ARTC and the Applicant) at least address those provisions identified as Tier 2 (negotiable) provisions in **Schedule A:1,** as applicable to the destination of the Coal Access Rights sought. The details of **Schedule A:1** do not provide an exhaustive list of the issues that may be included in an Access Holder Agreement; or

(C) current available market terms and conditions in the form of an Access Holder Agreement which had been negotiated and agreed by ARTC and an Access Holder in accordance with **section 3.14(b)(i)(B)**, as published on ARTC's website, as applicable;

(ii) for Applicants seeking Non-Coal Access Rights:

(A) subject to the Applicant satisfying those prudential requirements in **section 3.4(e)(i), (ii)** and **(iv)**, an Access Agreement on the terms and conditions contained in the Indicative Interstate Access Agreement but amended to:

(i) define the network covered by the Access Agreement as the Network subject to this Undertaking;

(ii) incorporate those provisions identified as Tier 1 (mandatory) Non Coal Provisions in **Schedule A:2**;

(iii) delete the section relating to extensions and additional capacity (being clause 4.7 as at the Commencement Date) to the extent it relates to the Network;

(iv) any other amendments reasonably considered necessary to take into account the particular circumstances of the Hunter Valley and to be consistent with the terms of this Undertaking,

but to avoid doubt the Access Rights sought by the Applicant will not be considered an indicative service for the purposes of the Indicative Interstate Access Agreement and those terms and conditions applicable to an indicative service in the Indicative Interstate Access Agreement will not apply;

(B) an updated Access Agreement to reflect agreed amendments to the terms and conditions of the Indicative Interstate Access Agreement. A negotiated Access Agreement will incorporate those provisions identified as Tier 1 (mandatory) Non-Coal provisions in **Schedule A:2** and will, unless otherwise agreed between ARTC and the Applicant, at least address those provisions identified in **Schedule A:2** as Tier 2 (negotiable) Non-Coal provisions; or

(C) the current available market terms and conditions in the form of an Access Agreement for Non-Coal Access Rights which had been negotiated and agreed by ARTC and an Access Holder in accordance with **section 3.14(b)(ii)(B)** as published on ARTC's website, as applicable.

(c) ARTC must offer the Indicative Access Holder Agreement to an Applicant for Coal Access Rights:

(i) if the Applicant seeks Access Rights for the operation of Indicative Services or Interim Indicative Services;

(ii) if the Applicant meets the Network Exit Capability requirement in **section 3.7(a)(ix)** and the prudential requirements in **section 3.4(e)**; and

(iii) either:

(A) the Network has sufficient Available Capacity to meet the Applicant's needs; or

(B) ARTC consents to provide Additional Capacity to meet the Applicant's needs in accordance with **section 8**;

(d) Once the Applicant has notified ARTC that it is satisfied with the terms and conditions of the Access Holder Agreement as drafted, ARTC will, as soon as reasonably practicable, provide a final Access Holder Agreement (or, if applicable, an amendment to an existing Access Agreement) to the Applicant for execution.

(e) Where ARTC offers an Access Holder Agreement and the Applicant accepts the terms and conditions offered in that Access Holder Agreement, both ARTC and the Applicant will execute the Access Holder Agreement. The parties will use reasonable endeavours to comply with this **sub-section 3.14(e)** as soon as practicable.

3.15 Dispute resolution

(a) If any dispute arises under this Undertaking or in relation to the negotiation of Access Rights between an Applicant and ARTC ("**Dispute**") then, unless otherwise expressly agreed to the contrary by both parties, such Dispute will be resolved in accordance with this **section 3.15** and either party may give to the other party to the Dispute notice in writing ("**Dispute Notice**") specifying the Dispute and requiring it to be dealt with in the manner set out in this **section 3.15**. The parties will use reasonable endeavours acting in good faith to settle the Dispute as soon as is practicable.

(b) An Operator who has been appointed agent for the Access Holder as contemplated in **section 3.4(b)** may, with that Access Holder's prior written consent, participate in a dispute notified by that Access Holder under this **section 3.15** in relation to the Operator Sub-Agreement in which case, ARTC, the Operator and the Access Holder will be the parties to the Dispute.

(c) Disputes in relation to an Access Agreement once executed will be dealt with in accordance with the provisions of that Access Agreement and are not dealt with under this Undertaking. To avoid doubt, disputes raised in accordance with **sections 4.15(d)** and **4.20(f)** will be dealt with in accordance with **section 3.15(f)** of the Undertaking.

(d) **Negotiation**

Within five (5) Business Days of a party giving the other party a Dispute Notice, senior representatives from each party will meet and use reasonable endeavours, acting in good faith, to resolve the dispute by joint discussions.

(e) **Mediation**

(i) If the Dispute is not resolved under **section 3.15(d)** within ten (10) Business Days after the date of the Dispute Notice then:

(A) if the parties agree, they will attempt to resolve the Dispute by mediation pursuant to this **section 3.15(e)**; or

(B) if the parties do not wish to resolve the Dispute by mediation under this **section 3.15(e)**, either party may, by notice in writing to the other and the arbitrator, refer the Dispute to be determined by arbitration under **section 3.15(f)**.

(ii) If the parties agree to attempt to resolve the Dispute by mediation the Dispute will be referred to the chief executive officers of both parties who will attempt to resolve the Dispute, including by informal mediation.

(iii) If the Dispute is not resolved within a further ten (10) Business Days after being referred to the chief executive officers under **section 3.15(e)(ii)**, the Dispute will be referred to formal mediation in New South Wales by a single mediator appointed by agreement of the parties, or if they fail to agree within ten (10) Business Days, appointed by the President of the Law Society of New South Wales acting on the request of either party.

(iv) Unless the parties agree otherwise:

(A) the mediation will be conducted by a mediator under the "The Law Society Guidelines for those involved in Mediations of the Law Society of New South Wales";

(B) each party may appoint a person, including a legally qualified person to represent it or assist it in the mediation;

(C) each party will bear its own costs relating to the preparation for and attendance at the mediation; and

(D) the costs of a mediator will be borne equally by the parties.

(f) **Arbitration**

(i) If the Dispute is not resolved under **section 3.15(d)**, or at any time after the appointment of the mediator (if any) under **section 3.15(e)**, either party may by notice in writing to the other and the arbitrator terminate the mediation proceedings and notify the arbitrator of a Dispute to be determined by arbitration under this **section 3.15(f)**. If the Applicant serves notice on the arbitrator under this **section 3.15(f)**, that notice will also include an agreement by that Applicant to:

(A) pay the amounts and rates described in **section 3.15(f)(ii)(M)**; and

(B) indemnify the arbitrator from any claims made against the arbitrator arising in connection with the performance by the arbitrator of its duties under **section 3.15(f)**, such indemnity excluding circumstances where the conduct of the arbitrator constitutes wilful negligence, dishonest or unlawful conduct.

(ii) Where a Dispute is referred to arbitration in accordance with this **section 3.15(f)**, the following will apply:

(A) The arbitrator will be the ACCC. For the purposes of a particular arbitration, the arbitrator is to be constituted by two (2) or more members of the ACCC nominated in writing by the chairperson of the ACCC.

(B) The arbitrator will not proceed with the arbitration unless and until the Applicant has agreed to pay costs in accordance with the amounts or rates described in **section 3.15(f)(ii)(M)**; as determined by the arbitrator under that section.

(C) ARTC and the Applicant agree to adopt the arbitration procedures in Division 3 Subdivision D of Part IIIA of the CCA, except that:

(i) the arbitrator will observe the rules of natural justice but is not required to observe the rules of evidence;

(ii) a party may appoint a person, including a legally qualified person, to represent it or assist it in the arbitration; and

(iii) the arbitrator will include in the determination findings on material questions of law and fact, including references to evidence on which the findings of fact were based.

(D) The arbitrator will when conducting the arbitration:

(i) proceed as quickly as is possible and consistent with a fair and proper assessment of the matter;

(ii) while having the right to decide on the form of presentations, encourage a written presentation by each party with exchange and with rebuttal opportunities and questioning by the arbitrator;

(iii) call on any party the arbitrator believes necessary to give evidence;

(iv) decide how to receive evidence and consider the need to keep evidence confidential and the need to protect the confidentiality of the arbitration process;

(v) present their determination in a draft form to the parties and hear argument from the parties before making a final determination; and

(vi) hand down a final determination in writing which includes all their reasons for making the determination.

(E) The arbitrator may at any time terminate an arbitration (without making an award) if it thinks that:

(i) the notification of the dispute is vexatious;

(ii) the subject matter of the dispute is trivial, misconceived or lacking in substance; or

(iii) the party who notified the dispute has not engaged in negotiations in good faith.

(F) In deciding a dispute, the arbitrator will take into account:

(i) the principles, methodologies and provisions set out in this Undertaking;

(ii) the objectives and principles enunciated in Part IIIA of the CCA and the Competition Principles Agreement;

(iii) ARTC's legitimate business interests and investment in the Network;

(iv) all costs that ARTC incurs in providing Access Rights, including any costs of extending the Network, but not costs associated with losses arising from increased competition in upstream or downstream markets;

(v) the economic value to ARTC of any additional investment that the Applicant or ARTC has agreed to undertake;

(vi) the interests of all persons who have rights to use the Network;

(vii) the operational and technical requirements necessary for the safe and reliable operation of the Network;

(viii) the economically efficient operation of the Network;

(ix) the benefit to the public from having competitive markets; and

(x) any other matters that the arbitrator thinks are appropriate to have regard to.

(G) In making its determination, the arbitrator:

(i) may deal with any matters referred to in section 44V of the CCA;

(ii) will not make a determination that would have any of the effects described in section 44W of the CCA;

(iii) will take into account the matters referred to in section 44X of the CCA; and

(iv) otherwise comply with **section 3.15(f)(ii)(C)**.

(H) The arbitrator may publish its determination at its discretion subject to consideration of submissions by either party to the arbitration which are commercially sensitive or contain confidential information. At any time prior to the making of the determination, either party may give notice to the arbitrator of the information supplied by it which is either commercially sensitive to it or subject to confidentiality obligations, including the reasons why such information is commercially sensitive or confidential. After considering such submissions, the arbitrator may decide not to publish as part of its determination the information that is commercially sensitive or confidential to either party to the arbitration.

(I) The arbitrator may join the conduct of separate arbitrations if the arbitrator considers that:

(i) there are one or more issues common to the arbitrations; and

(ii) the joining of the arbitrations will not unreasonably delay the process, or unreasonably increase the costs, of the arbitrations.

(J) The arbitrator may join one or more additional persons as a party to an arbitration if:

(i) the person applies in writing to be made a party and can demonstrate to the arbitrator an interest which is significant enough to reasonably warrant being made a party; and

(ii) the arbitrator considers that making the additional person a party to the arbitration will not unreasonably delay the process, or unreasonably increase the costs, of the arbitration.

(K) If the arbitrator joins the conduct of separate arbitrations or joins an additional person as a party to the arbitration, the arbitrator will have regard to the wishes of the parties and the need for commercial confidentiality in determining how it will conduct the arbitration.

(L) The determination of the arbitrator will be final and binding subject to any rights of review by a court of law.

(M) The arbitrator may charge for its costs of conducting an arbitration of a dispute the amounts and rates (if any) prescribed by the *Competition and Consumer Regulations 2010* (Cth). If the *Competition and Consumer Regulations*

2010 (Cth) do not prescribe such amounts or rates, the arbitrator may charge the amounts and rates mentioned in regulation 6F of those regulations as amended from time to time.

(N) The costs of the parties to the arbitration will be borne by the parties in such proportions as the arbitrator determines. Each party may make submissions to the arbitrator on the issue of costs at any time prior to that determination.

(O) Except where the determination or direction is subject to a review by a court of law, if an Applicant does not comply with a determination or direction of the arbitrator, then ARTC will no longer be obliged to continue negotiations regarding the provision of Access Rights to that Applicant.

(P) Except where the determination or direction is subject to a review by a court of law, ARTC will comply with the lawful directions or determinations of the arbitrator.

(Q) ARTC will indemnify the arbitrator from any claims made against it arising in connection with the performance by the arbitrator of its duties under this section, such indemnity excluding circumstances where the conduct of the arbitrator constitutes wilful negligence, dishonest or unlawful conduct.

4 ACCESS PRICING PRINCIPLES

4.1 Price

The Charge to an Access Holder will include a price negotiated in accordance with the principles set out in this Undertaking.

4.2 Floor Revenue Limits

(a) Access revenue from every Access Holder must at least meet the Direct Cost imposed by that Access Holder.

(b) For each Segment or group of Segments, Access revenue from Access Holders should, as an objective, meet the Incremental Cost of those Segments ("**Floor Limit**").

4.3 Ceiling Revenue Limits

(a) In relation to Segments identified as forming part of Pricing Zone 1 and 2 in Schedule E, Access revenue from any Access Holder, or group of Access Holders must not exceed the Economic Cost of those Segments which are required on a stand alone basis for the Access Holder or group of Access Holders ("**Ceiling Limit**").

(b) In relation to Segments identified as forming part of Pricing Zone 3 in Schedule E, the Access revenue from any Access Holder, or group of Access Holders must not exceed the Ceiling Limit where the RAB for those

Segments is equal to, or falls below, the RAB Floor Limit for those Segments at the end of the calendar year (t -1).

(c) Access revenue for the purposes of this **section 4.3** does not include Access revenue returned to a Contributor as a result of the operation of a user funding agreement between the Contributor and ARTC.

4.4 Regulatory Asset Base

(a) **Determination of RAB**

The Regulatory Asset Base ("**RAB**") for a Segment or group of Segments, will be determined in accordance with this **section 4.4(a)**.

The initial value of the RAB ("**Initial RAB**") will be:

(i) in relation to those Segments that have been ascribed a regulatory asset value in accordance with the NSW Rail Access Undertaking in force at the time immediately preceding the Commencement Date, set at the value of those Segments determined in accordance with the NSW Rail Access Undertaking as at the Commencement Date and if the date those values took effect is earlier than the Commencement Date, that part of the Initial RAB will be rolled forward to the Commencement Date in accordance with the asset valuation roll forward principles under the NSW Rail Access Undertaking as at August 2010 or as otherwise agreed between ARTC and the Independent Pricing and Regulatory Tribunal to determine an opening Initial RAB;

(ii) in relation to other Segments, initially valued using the depreciated optimised replacement cost method of valuing assets, and approved by the ACCC. The optimised replacement cost means the cost of replacement by commercially efficient application of best known currently available technology based on existing capacity and performance characteristics of the asset.

In relation to the Segments identified as forming part of Pricing Zone 3 in Schedule E, the RAB will be rolled forward annually according to the following methodology:

$RAB_{t\ start} = RAB_{t-1\ end} =$

$(1 + RoR) \times RAB_{t-1\ start} - \text{Out-turn Revenue}_{t-1} + \text{Out-turn Opex}_{t-1} + \text{Net Capex}_{t-1} \times (1 + 0.5 \times RoR)$

where:

$RAB_{t\ start}$ is RAB at the start of the relevant calendar year (t) (which, for the first year following the Commencement Date, would be the Initial RAB).

$RAB_{t-1\ end}$ is the RAB at the end of the preceding calendar year (t-1).

$RAB_{t-1\ start}$ is the RAB at the start of the preceding calendar year (t-1).

RoR is the nominal pre tax Rate of Return.

Out-turn $Revenue_{t-1}$ is the total Access revenue earned by ARTC in the preceding calendar year (t-1) but will not include:

(i) a Capital Contribution received from an Applicant or an Access Holder; or

(ii) Access revenue returned to a Contributor as a result of the operation of a user funding agreement between the Contributor and ARTC**.**

Out-turn $Opex_{t-1}$ is the total operating expenditure incurred by ARTC in the preceding calendar year (t-1), on an Efficient basis, determined in accordance with **sections 4.5(a)(i)**, **(iv)** and **(vii)** and **4.5(b)**.

Net $Capex_{t-1}$ is the net additions to the RAB in the preceding calendar year (t-1), that is out turn Capital Expenditure by ARTC less the written down value of any disposals during the preceding calendar year (t-1) on a Prudent basis, including interest cost incurred during construction up until 1 July in the calendar year the asset was commissioned, capitalised in the year the asset was commissioned and determined by reference to the relevant form of the Rate of Return (to the extent that Capital Expenditure is incurred on a Prudent basis, including interest cost), but will not include Capital Contributions.

(b) **RAB Floor Limit**

The RAB Floor Limit for a Segment or group of Segments will be:

(i) as at the Commencement Date, the Initial RAB;

(ii) rolled forward annually according to the following methodology

$$\text{RAB Floor Limit}_{t\ start} = \text{RAB Floor Limit}_{t-1\ end} =$$

$$(1 + CPI_{t-1}) \times \text{RAB Floor Limit}_{t-1\ start} + \text{Net Capex}_{t-1} - \text{Depreciation}_{t-1}$$

where:

$\text{RAB Floor Limit}_{t\ start}$ is the RAB Floor Limit at the start of the relevant calendar year (t) (which, for the first year following the Commencement Date, would be the Initial RAB).

$\text{RAB Floor Limit}_{t-1\ end}$ is the RAB Floor Limit at the end of the preceding calendar year (t-1).

$\text{RAB Floor Limit}_{t-1\ start}$ is the RAB Floor Limit at the start of the preceding calendar year (t-1).

CPI_{t-1} is the inflation rate for the preceding calendar year (t-1), determined by reference to the CPI for the September quarter of that year.

Net $Capex_{t-1}$ is the net additions to the RAB Floor Limit in the preceding calendar year (t-1) that is out-turn Capital Expenditure by ARTC less the written down value of any disposals during the preceding calendar year(t-1) on a Prudent basis, including interest cost incurred during construction up

until 1 July in the calendar year the asset was commissioned, capitalised in the year the asset was commissioned and determined by reference to the relevant form of the Rate of Return (to the extent that Capital Expenditure is incurred on a Prudent basis, including interest cost), but will not include Capital Contributions.

$Depreciation_{t-1}$ is Depreciation applicable to the RAB Floor Limit in the preceding calendar year (t-1).

4.5 Economic cost

(a) For the purposes of this **section 4**, Economic Cost of a Segment means:

(i) Segment Specific Costs;

(ii) Depreciation of Segment Specific Assets, where the value of those assets is determined in accordance with **section 4.4(b)**;

(iii) a return on Segment Specific Assets, being determined by applying a real pre-tax Rate of Return to (RAB Floor $Limit_{t-1\ start}$ + RAB Floor $Limit_{t-1\ end}$) * 0.5, where the value of the RAB Floor Limit is determined in accordance with **section 4.4(b)**;

(iv) an allocation of Non-Segment Specific Costs;

(v) an allocation of depreciation of Non-Segment Specific Assets, determined on a straight line basis, by reference to a reasonable estimate of the economic useful life of Non-Segment Specific Assets, and determined from the time the assets become serviceable;

(vi) an allocation of return on Non-Segment Specific Assets, being determined by applying a real pre-tax Rate of Return to the value of Non-Segment Specific Assets, from the time the assets become serviceable, where the value of those assets will include the capitalisation of interest cost incurred during construction up until the time the assets become serviceable, capitalised at that time and determined by reference to the relevant Rate of Return; and

(vii) the costs described in **sub-sections (a)(i)** to **(vi)** as applicable to Additional Capacity.

(b) All costs described in **sub-sections (a)(i), (iv), (v)** and **(vi)**, all applicable costs described in **sub-section (a)(vii)**, and all operating expenditure in **section 4.4(a)** are to be assessed on an Efficient basis.

(c) All costs are to be assessed on a stand alone basis.

(d) To avoid doubt, nothing in this **section 4** will prevent ARTC from charging Contributors and other Access Holders TOP Charges and non-TOP Charges as a result of the operation of a user funding agreement between Contributors and ARTC, in which case the TOP Charges and non-TOP Charges will be charged in accordance with **section 10.2**.

4.6 Cost allocation

(a) For the purposes of **section 4.5**, Non-Segment Specific Costs and depreciation of, and return on, Non-Segment Specific Assets will be allocated to Segments in accordance with the following principles:

(i) where possible, costs will be directly attributed to a Segment;

(ii) where possible, Non-Segment Specific Costs and Non-Segment Specific Assets will be identified with the Hunter Valley corridor, other ARTC corridors or identified as system-wide;

(iii) Non-Segment Specific Costs and depreciation of, and return on, Non-Segment Specific Assets identified with the Hunter Valley corridor or other ARTC corridors, or identified as system-wide, will be allocated to those parts of Segments in the Hunter Valley corridor or in other ARTC corridors, or, where identified as system wide, to Segments owned, leased or licensed by ARTC respectively, in proportion to:

(A) gtkm with respect to Non-Segment Specific Costs and depreciation of, and return on, Non-Segment Specific Assets associated with track maintenance; and

(B) Train kilometres with respect to Non-Segment Specific Costs and depreciation of, and return on, Non-Segment Specific Assets not associated with track maintenance.

(b) All costs will comprise ARTC's reasonably anticipated costs over a reasonable future timeframe.

4.7 Depreciation

For the purposes of calculating the Depreciation allowance in any calendar year:

(a) Depreciation is to be calculated for each calendar year, using a straight line methodology (unless otherwise agreed with an Access Holder and approved by the ACCC) with respect to specific assets and the estimate of the remaining useful life of the assets.

(b) The useful life of a Segment or group of Segments is to be determined having regard to:

(i) the average remaining mine life of coal mines utilising the Pricing Zone of which that Segment or group of Segments forms part;

(ii) average mine production levels anticipated during the Term having regard to Coal Chain Capacity at any time; and

(iii) marketable coal reserves estimated for each mine existing at the time of the determination or expected to commence during the 5 year period following the time of the determination.

The average remaining mine life of coal mines utilising a Pricing Zone may vary between Pricing Zones as approved by the ACCC.

(c) Depreciation is to be charged each year on the inflation adjusted opening balance of the RAB Floor Limit and on the Prudent Capital Expenditure associated with all of the assets commissioned in that year, charged for a period of half of that year.

4.8 Rate of return

For the Term of the Undertaking, the real pre-tax Rate of Return is 9.10% and the nominal pre-tax Rate of Return is 11.83%.

4.9 Unders and overs accounting

(a) Unders or overs accounting is the outcome of the reconciliation of Access revenue with applicable Ceiling Limits undertaken by ARTC as part of the annual ACCC compliance assessment under **section 4.10**. ARTC will calculate the total unders or overs amount as part of its submission to the ACCC (**section 4.10(a)(ii)**). The amount may need to be adjusted in accordance with a determination by the ACCC.

(b) For each Constrained Coal Customer, ARTC will:

(i) establish a Constrained Coal Customer Account;

(ii) determine the annual allocation of the total unders or overs amount to each Constrained Coal Customer in accordance with the methodology specified at (iii);

(iii) determine an allocation of the total unders or overs amount, for each Constrained Coal Customer based on the proportion of revenue, paid for Access Rights over the Constrained Network, by each Constrained Coal Customer, net of any rebate of the take or pay component of the Charges paid to that Constrained Coal Customer following the application of the system wide true-up tests and the annual individual reconciliation, and where applicable, in accordance with the equitable allocation to be carried out under **section 10.2**;

(iv) add or subtract the annual allocation for the calendar year from the opening balance in each applicable Constrained Coal Customer Account in determining the closing balance of the applicable Constrained Coal Customer Account for that calendar year;

(v) advise each Constrained Coal Customer of the details of its Constrained Coal Customer Account; and

(vi) reconcile the Constrained Coal Customer Accounts by one of two methods, being:

(A) ARTC bringing the closing balance of each Constrained Coal Customer Account back to zero by refunding or collecting the applicable amount to or from, respectively, each Constrained Coal Customer; or

(B) mutual agreement between the parties, which must result in an outcome that is equitable for all Constrained Coal Customers.

(c) For clarity, any refund provided to a Constrained Coal Customer under **section 4.9(b)(vi)(A)** will not exceed the total payments made by the Constrained Coal Customer in excess of Direct Costs in a calendar year.

(d) If ARTC voluntarily waives TOP Charges for an Access Holder that are otherwise contractually payable those waived TOP Charges are recoverable through increased TOP Charges applied to other Access Holders, or through unders and overs accounting under this **section 4.9,** or through a combination of both, except where the waiver is for the sole benefit of the Access Holder whose TOP Charges have been waived.

(e) A waiver of TOP Charges by ARTC under clause 11 of the Indicative Access Holder Agreement (including to facilitate a permanent change to the Service Assumptions for a Train Path as contemplated at clause 11.5(c)(iii) of the Indicative Access Holder Agreement) that would result in the use of an Indicative Service by that Access Holder or, in ARTC's reasonable opinion, a non-indicative Service by that Access Holder which provides for more efficient use of Capacity or Coal Chain Capacity will, for the purposes of **subsection (d),** be deemed to:

(i) have benefits that are not solely for the Access Holder whose TOP Charges have been waived; and

(ii) be recoverable through increased TOP Charges applied to other Access Holders, or through unders and overs accounting under this **section 4.9**, or through a combination of both.

(f) To avoid doubt, any variation to TOP Charges paid during a calendar year resulting from complying with **section 4** of the Undertaking, and specifically through complying with the applicable Ceiling Limit and calculation of any allocation of the total unders and overs amount, will not constitute a voluntary waiver of TOP Charges for the purpose of **subsections (d) and (e)**.

4.10 Annual ACCC compliance assessment

(a) ARTC will submit to the ACCC by 30 April each year in respect of the previous calendar year:

(i) documentation detailing roll-forward of the RAB and the RAB Floor Limit, and comparisons between RAB and RAB Floor Limit;

(ii) where documentation in (i) above demonstrates that RAB is at or below RAB Floor Limit, documentation detailing calculations relevant to reconciliation of Access revenue with the applicable Ceiling Limit and calculation of any allocation of the total unders and overs amount; and

(iii) where documentation in (i) above demonstrates that RAB is above RAB Floor Limit in Pricing Zone 3, documentation demonstrating that Indicative Access Charges, or Interim Indicative Access Charges, as applicable, satisfies the requirements in **section 4.3(b).**

(b) The documentation submitted by ARTC to the ACCC will, unless otherwise agreed with the ACCC and having regard to the relevant circumstances applicable at the time, meet the information provision guidelines and the timeframes set out in **Schedule G**.

(c) If the ACCC reasonably considers that it requires additional information, other than that provided by ARTC in accordance with **Schedule G,** in order to carry out its assessment under **section 4.10(d)**, it may request this information from ARTC in accordance with section 3 of **Schedule G** and upon receipt of such a request ARTC will use reasonable endeavours to provide the information to the ACCC as soon as reasonably practicable.

(d) The ACCC will determine whether ARTC has undertaken:

(i) roll-forward of the RAB and RAB Floor Limit in accordance with the Undertaking and, where the roll forward is not in accordance with the Undertaking, determine what closing RAB or RAB Floor Limit would be in accordance with the Undertaking;

(ii) when required, the calculations relevant to reconciliation of Access revenue with the applicable Ceiling Limit and calculation of any allocation of the total unders and overs amount in accordance with the Undertaking, and where the calculations are not in accordance with the Undertaking, determine what total unders and overs amount or allocation would be in accordance with the Undertaking having regard to the operation of its unders and overs account;

(iii) in determining whether ARTC has complied with the provisions of **section 4.4** in rolling forward RAB or the RAB Floor Limit, the ACCC may have regard to the submissions of relevant industry participants but if Capital Expenditure has been endorsed by the RCG in accordance with **section 9**, the ACCC will not consider whether that Capital Expenditure is Prudent;

(iv) the ACCC will publish its findings on its website and/or circulate to Access Holders in relation to the matters for its determination; and

(v) ARTC will revise the closing RAB and manage Constrained Coal Customer Accounts in accordance with any determination by the ACCC.

(e) The ACCC will determine whether ARTC has incurred Efficient costs and Efficient operating expenditure in accordance with **section 4.5(b)**, and determine the change (if any) to:

(i) the total unders and overs amount or allocation; and

(ii) closing RAB in **section 4.4(a)**,

that results from Economic Cost under **section 4.5(a)** only including Efficient costs and Efficient operating expenditure determined in accordance with **section 4.5(b)**.

(f) **Annual TUT Audit**

(i) At least three months prior to the end of a previous calendar year, ARTC will:

(A) advise the ACCC in writing of the identity of the person that it proposes to appoint as the auditor ("**Proposed Auditor**") to audit ARTC's compliance with its obligations under Schedule 2 of Access Holder Agreements in relation to the performance of the system true up test in each Pricing Zone in that calendar year ("**TUT Audit**"); and

(B) provide such information or documents that the ACCC requires to assess the skill and independence of the Proposed Auditor, and the proposed terms of engagement and confidentiality arrangements.

(ii) The Proposed Auditor must have the relevant skill to perform the TUT Audit and be independent of ARTC. Without limitation, the Proposed Auditor is not independent if he or she:

(A) is a current employee or officer of ARTC or its Related Bodies Corporate;

(B) has been an employee or officer of ARTC or its Related Bodies Corporate in the past 3 years;

(C) in the opinion of the ACCC, holds an interest in ARTC or its Related Bodies Corporate;

(D) has within the past 3 years been a professional adviser to ARTC or its Related Bodies Corporate;

(E) has a contractual relationship, or is an employee of a firm or company that has a contractual relationship, with ARTC or its Related Bodies Corporate.

(iii) If, within 5 Business Days of receipt by the ACCC of the information or documents from ARTC referred to in **section 4.10(f)(i)**, or such further period as required by the ACCC and notified to ARTC:

(A) the ACCC does not object to the Proposed Auditor, ARTC will appoint the Proposed Auditor as auditor to conduct the TUT Audit ("**Auditor**") as soon as practicable on terms approved by the ACCC; or

(B) the ACCC does object to the Proposed Auditor, ARTC will as soon as practicable appoint a person identified by the ACCC as the Auditor on terms approved by the ACCC,

and forward to the ACCC a copy of the executed terms of engagement of the Auditor.

(iv) Following the appointment of the Auditor in accordance with **section 4.10(f)(iii)**, ARTC will instruct the Auditor to conduct the TUT Audit

as soon as practicable in accordance with the approved terms referred to in **section 4.10(f)(iii)**.

(v) Subject to the Auditor continuing to meet the requirements in **section 4.10(f)(ii)** for the period of appointment, ARTC may appoint the Auditor to conduct the TUT Audit for consecutive calendar years.

(vi) A person who is, or who has been, appointed as Auditor is eligible for re-appointment as Auditor, and will not be taken to fail the independence requirement on the sole basis that the person was previously appointed as Auditor under this **section 4.10**.

(vii) ARTC will maintain and fund the Auditor and will indemnify the Auditor for reasonable expenses and any loss, claim or damage arising from the performance by the Auditor of functions required to be performed in conducting the TUT Audit, except where such expenses, loss, claim or damage arises out of the negligence, fraud, misconduct or breach of duty by the Auditor.

(viii) The actual costs reasonably incurred in connection with the conduct of the TUT Audit (which will include those costs referred to in section 4.10(f)(vii)) will be included in the Economic Costs.

(ix) ARTC will provide to the Auditor any information or documents requested by the Auditor that the Auditor reasonably considers necessary and relevant for conducting the TUT Audit.

(x) Not later than 30 April of the following calendar year, ARTC will provide the final written report of the TUT, as prepared by the Auditor ("**Final Audit Report**"), to the ACCC to review as part of the annual compliance assessment process under this Undertaking.

(xi) The ACCC will review the Final Audit Report and will decide, and will notify ARTC of, any amounts of underpayment of rebates that are owing to Access Holders or amounts of overpayment of rebates ARTC is entitled to recover.

(xii) If, at any time after receiving the Final Audit Report, the ACCC considers that a reconciliation between ARTC and Access Holders in respect of the incorrect calculation of rebates under the system true up test under schedule 2 of Access Holder Agreements will not materially affect the unders and overs accounting, then the ACCC will decide the amounts to be made or recovered by ARTC.

(xiii) Within 15 Business Days of receiving notification from the ACCC under **section 4.10(f)(xi)**, ARTC will inform the individual Access Holders of any amounts of underpayment of rebates owing to them or amounts of overpayment of rebates they are required to remit to ARTC as determined by the ACCC in accordance with clause 2.8 of Schedule 2 of the Access Holder Agreements.

(xiv) Within 15 Business Days of giving that notice, ARTC will make payments of the amounts owing as advised under **section 4.10(f)(xiii)** to individual Access Holders and is entitled to recover from Access

Holders any amounts owing to it in accordance with clause 2.8 of Schedule 2 of the Access Holder Agreements.

4.11 Structure of Charges - Coal Access Rights

For Coal Access Rights:

(a) Charges may be on the basis of a combination of:

(i) actual usage (being a function of distance and gross mass ($/gtkm) for a Pricing Zone); and

(ii) a take or pay component for the Access Rights contracted for under the Access Holder Agreement irrespective of whether the Access Holder uses all or any of the Access Rights.

(b) Notwithstanding a commitment by the Access Holder to pay the take or pay component of the Charge for Access Rights contracted for under the Access Holder Agreement, the Access Holder may be entitled to a rebate of the take or pay component of the Charges paid following the application of Pricing Zone-wide true-up tests and an annual individual reconciliation.

4.12 Structure of Charges - Non-Coal Access Rights

For Non-Coal Access Rights:

(a) Charges will comprise:

(i) a variable component, which is a function of distance and gross mass ($/gtkm);

(ii) a flagfall component, which is fixed and specific to each Train service type and Segment ($/km); and

(iii) an excess network occupancy component, which is a function of time ($/hr or part thereof) sought by an Applicant for a Train Path on the Network, which is in excess of:

(A) a reasonable allowance for section run times for the applicable Train service type as determined by ARTC;

(B) dwells for crossing and passing other Trains as determined and made available by ARTC for the Train Path; and

(C) an allowance for the reasonable requirements for operational activities whilst the Train occupies the Network as prescribed in **sub-section (c)**,

for a Pricing Zone.

(b) The Charges for Non-Coal Access Rights will be set so that the Access revenue received by ARTC from an Access Holder of Non-Coal Access Rights in respect of a single journey between a Network entry point and a Network exit point, taking into account each component of a Charge outlined above, will be no greater than the average Access revenue received by ARTC for Coal Access Rights to complete the same journey, adjusted to reflect the

relative difference in Capacity consumed by the Non-Coal Access Rights when compared to the Coal Access Rights.

(c) Allowances for the reasonable requirements for operational activities whilst the Train occupies the Network for a Pricing Zone are:

Pricing Zone	**Allowance for reasonable requirements for operational activities (hr)**
Pricing Zone 1	0
Pricing Zone 2	0
Pricing Zone 3	0.16

(d) Subject to **sub-section (e)**, the application of the excess network occupancy component relates only to the contracted Train Path, and not the utilisation of the Train Path.

(e) In determining the excess network occupancy component, ARTC will pro-rate the flagfall component back to an amount per hour by reference to the total of section run times applicable to the relevant Segment to which the flagfall component applies.

(f) Except as otherwise provided in the Access Agreement, the flagfall component and excess network occupancy component of the Charges, as applicable, are levied from the date ARTC grants access to the Train Path to the Access Holder until the expiry of that Train Path irrespective of whether such Train Path is utilised.

(g) The excess network occupancy component will only apply where the Applicant seeks to contract a Train Path on the Network, which is in excess of:

(i) a reasonable allowance for section run times for the applicable Train service type as determined by ARTC;

(ii) dwells for crossing and passing other Trains as determined and made available by ARTC for the Train Path; and

(iii) an allowance for the reasonable requirements for operational activities whilst the Train occupies the Network as prescribed in **sub-section (c).**

(h) In relation to utilisation of a contracted Train Path, the excess network occupancy component will not be charged in instances where ARTC is not able to provide the contracted Train Path or an agreed substitute Train Path except where the failure to provide the contracted Train Path is a result of an Incident, Third Party Works or an emergency.

(i) Notwithstanding the structure described above, all elements of the Charge are open to negotiation.

4.13 Pricing Objectives

(a) In determining Charges, ARTC will have regard to separate cost elements as follows:

(i) variable component of costs ("VCC") being Direct Costs;

(ii) fixed component of costs ("FCC") being fixed operating costs and Depreciation of, and return on, assets existing as at the Commencement Date; and

(iii) new capital component of costs ("NCC") being Depreciation of, and return on, assets commissioned during the Term.

(b) In determining Charges, ARTC will have regard to the following objectives:

(i) achieving full recovery of VCC from all Access Holders on the basis of actual network usage;

(ii) achieving maximum recovery of (or contribution to) FCC and NCC from all users;

(iii) providing certainty to ARTC through the application of a take or pay ("TOP") component to fully recover NCC over the economic life of new investments, and recover some or all of FCC from applicable Access Holders (coal users) on the basis of forecasted network usage, or otherwise recover some or all of FCC on the basis of actual network usage;

(iv) the proportion of FCC recovered through a TOP component to be consistently applied to all Access Holders holding Coal Access Rights within a Pricing Zone; and

(v) provide for an open and equitable mechanism for the application of TOP Charges.

4.14 Indicative Access Charge

(a) ARTC will determine for each year the Indicative Access Charges for Coal Access Rights with the characteristics of applicable Indicative Services (being Initial Indicative Services in **section 4.17** and Final Indicative Services to be determined in accordance with **section 4.18**), having regard to the System Assumptions. System Assumptions applicable to the Indicative Services will include the following:

(i) maximum axle load;

(ii) maximum speed;

(iii) Train length; and

(iv) section run times.

(b) There may be more than one Indicative Service and Indicative Access Charge within a Pricing Zone. Indicative Service assumptions and Indicative Access Charges would apply to all Segments within a Pricing Zone. Indicative

Service assumptions and Indicative Access Charges may both vary between Pricing Zones.

(c) Once Indicative Access Charges for Indicative Services are finalised each calendar year in accordance with **section 4.20**, ARTC will publish Indicative Access Charges on its website in the following format:

Note: These Charges are exclusive of GST.

Segments	**Non-TOP $/kgtkm (ex GST)**	**TOP $/kgtkm (ex GST)**	**Indicative Service Assumptions**
In Pricing Zone 1*			
Indicative Service 1	X.XXX	X.XXX	XXXXXXXXX
Indicative Service 2	X.XXX	X.XXX	XXXXXXXXX
In Pricing Zone 2*			
Indicative Service	X.XXX	X.XXX	XXXXXXXXX
In Pricing Zone 3*			
Indicative Service	X.XXX	X.XXX	XXXXXXXXX

*Pricing Zones contain Segments as specified at Schedule E

(d) ARTC will offer the applicable Indicative Access Charges described in **section 4.14(c)** above to Applicants seeking Coal Access Rights with applicable Indicative Service characteristics.

4.15 Charge differentiation

(a) In formulating its Charges for Coal Access Rights other than Coal Access Rights for Indicative Services contracted for under an Indicative Access Holder Agreement, ARTC will:

(i) subject to **section 4.15(a)(iii)**, reflect the commercial impact on ARTC's business of the relative consumption of Capacity and Coal Chain Capacity compared to Indicative Services and the logistical impact on ARTC's business of the relative reduction in Capacity and relative reduction in Coal Chain Capacity compared to Indicative Services;

(ii) have regard to a range of factors which impact on its business including:

(A) the Indicative Access Charges for Indicative Services;

(B) the particular characteristics of the relevant Service intended to utilise the Access Rights sought, which include axle load, speed, wheel diameter, Train length, origin and destination (including number and length of intermediate stops), departure and arrival times and days of the week;

(C) the commercial impact on ARTC's business which includes:

(aa) the term of the Access Holder Agreement;

(ab) the consumption of ARTC's resources;

(ac) the Segments of the Network relevant to the Access Rights sought;

(ad) previously negotiated Charges agreed under the terms of the Undertaking, where relevant, as published by ARTC under **section 2.6(b)**;

(D) logistical impacts on ARTC's business which include:

(aa) the impact on other Services and risk of failure of the endorsed Operator to perform its obligations under the Operator Sub-Agreement; and

(ab) system flexibility;

(E) Capital Contributions or other contributions by the Applicant to ARTC's costs;

(F) the cost of any Additional Capacity; and

(iii) for the purpose of assisting transition between regulatory and contractual arrangements and to remove uncertainty to support investment decisions relating to Trains, charge the same price for the two primary existing services using the Network as at the Commencement Date in accordance with **sub-paragraphs (A)** and **(B)** below during the Regulatory Transition Period:

(A) the Charges for the services described in **section 4.19(c)** as Interim Indicative Service 1 and Interim Indicative Service 2 in Pricing Zone 1 may be the same, and the Charges for Interim Indicative Service 1 and Interim Indicative Service 2 in Pricing Zone 2 may be the same, notwithstanding those services will no longer constitute Interim Indicative Services after the Interim Period; and

(B) for the purposes of this **section 4.15(a)(iii)**, Charges are taken to mean the unit TOP price and unit Non-TOP price.

(b) In formulating its Charges for Non-Coal Access Rights, ARTC will have regard to a range of factors which impact on its business including:

(i) previously negotiated Charges agreed under the terms of the Access Undertaking, where relevant, as published by ARTC under **section 2.6(b)**;

(ii) the particular characteristics of the relevant Service intended to utilise the Access Rights sought, which include axle load, speed, wheel diameter, Train length, origin and destination (including number and length of intermediate stops), departure and arrival times and days of the week;

(iii) the commercial impact on ARTC's business which includes:

(A) the term of the Access Agreement;

(B) the potential for growth of the business;

(C) the opportunity costs to ARTC;

(D) the consumption of ARTC's resources, including Capacity;

(E) the credit risk associated with the business;

(F) the market value of the Train Path sought;

(G) the Segments of the Network relevant to the Access Rights sought;

(H) logistical impacts on ARTC's business including the impact on other Services and reduced Capacity;

(I) Capital Contributions or other contributions by the Applicant to ARTC's costs; and

(J) the cost of any Additional Capacity.

(c) For the purposes of **section 4.15(a)(i), section 4.15(a)(ii)(D)(ab)**, **section 4.15(b)(iii)(D)** and **(H)** above, ARTC will have regard to the optimal use of the Network for Indicative Services with the objective of optimising Coal Chain Capacity. As such, ARTC will determine the Capacity and Coal Chain Capacity consumption associated with the utilisation of Coal Access Rights with characteristics other than that of Indicative Services having regard to the Capacity and Coal Chain Capacity consumption of Indicative Services on the Network.

(d) If an Access Holder disagrees with a Charge formulated by ARTC, other than an Indicative Access Charge or Interim Indicative Access Charge, then the Access Holder may give ARTC a Dispute Notice within twenty (20) Business Days of being notified of the Charge and the dispute will be resolved by arbitration in accordance with **section 3.15(f)** of the Undertaking.

(e) If the Dispute Notice given under **section 4.15(d)** concerns Coal Access Rights in a Pricing Zone and ARTC receives Dispute Notices from Access

Holders holding two thirds or more of the contracted gtkm for Indicative Services or Interim Indicative Services in that Pricing Zone in accordance with the requirements in **section 4.20(f)**, then a dispute notified under **section 4.15(d)** will be stayed pending the arbitrator's determination of the dispute notified under **4.20(f)**.

4.16 Limits on Charge differentiation

(a) Subject to **sections 4.15(a)**, **4.15(b)** and **4.15(c)** above (as applicable), and to ARTC having an obligation under clause 3.8 of the Indicative Access Holder Agreement, ARTC will not, in formulating its Charges, have regard to:

(i) the identity of the Applicant; and

(ii) whether or not the Applicant is a Government Authority.

(b) Subject to **sections 4.15(a), 4.15(b)** and **4.15(c)** above (as applicable), in formulating its Charges, ARTC will not differentiate between Applicants:

(i) in circumstances where:

(A) the characteristics of the Access Rights sought are alike;

(B) the Applicants are operating within the same end market; and

(ii) for Coal Access Rights, on the basis of the marginal cost of production of the mines being served by the Coal Access Rights sought, to the extent such information is known to ARTC.

(c) ARTC will determine whether the characteristics of Access Rights are alike having regard to matters including location, duration and quality of the Train Path, nature of Train consist, characteristics of the Service intended to use the Access Rights sought, longevity of Access Rights, arrival and departure times of the day and week.

4.17 Initial Indicative Services and Initial Indicative Access Charges

(a) Within 30 Business Days of receiving approval from the ACCC to vary the Undertaking for the adoption of Initial Indicative Services, ARTC will publish the characteristics of the Initial Indicative Services, initial Indicative Access Charges and Charges for non-Indicative Services, including those which are Interim Indicative Services, and the annual process for the finalisation of Indicative Access Charges under **section 4.20** will not apply to the determination of Indicative Access Charges for that year.

(b) From the first day of the calendar month following the publication of the prices in accordance with **section 4.17(a)** until the Final Indicative Services and Indicative Access Charges approved by the ACCC come into effect under **section 4.18** ("**Initial Period**"), the assumptions set out in section **4.17(d)** will apply as the Initial Indicative Services.

(c) Indicative Access Charges applicable to the Initial Indicative Services ("**Initial Indicative Access Charges**") set out in **section 4.17(d)** will apply

during the Initial Period. For each calendar year of the Initial Period, ARTC will, using reasonable endeavours and having regard to available information, determine:

(i) Initial Indicative Access Charges applicable to the Initial Indicative Services as described in **section 4.17(d)**; and

(ii) Charges for other Services associated with Coal Access Rights applicable during the Initial Period.

(d) The following Initial Indicative Access Charges for Initial Indicative Services will apply as from the first day of the calendar month following the publication of the prices as contemplated in **section 4.17(a)**.

Segments	**Non-TOP $/kgtkm (ex GST)**	**TOP $/kgtkm (ex GST)**	**Initial Indicative Service Assumptions**
In Pricing Zone 1*			
Initial Indicative Service 1	0.844	8.342	30 tonne maximum axle load 60 kph maximum speed (loaded) 80 kph maximum speed (empty) 96 wagon train length section run times as per applicable Hunter Valley standard working timetable
Initial Indicative Service 2	0.844	9.251	25 tonne maximum axle load 80 kph maximum speed (loaded) 80 kph maximum speed (empty) 82 wagon train length section run times as per applicable Hunter Valley standard working timetable
In Pricing Zone 2*			
Initial Indicative Service 1	2.393	6.939	30 tonne maximum axle load 60 kph maximum speed (loaded) 80 kph maximum speed (empty) 96 wagon train length section run times as per applicable Hunter Valley standard working timetable
In Pricing Zone 3*			
Initial Indicative	0.837	5.072	25 tonne maximum axle load 80 kph maximum speed (loaded)

Segments	Non-TOP $/kgtkm (ex GST)	TOP $/kgtkm (ex GST)	Initial Indicative Service Assumptions
Service 1			80 kph maximum speed (empty) 82 wagon train length section run times as per applicable Hunter Valley standard working timetable

*Pricing Zones contain Segments as specified at Schedule E

(e) ARTC will offer the applicable Initial Indicative Access Charges to Applicants seeking Coal Access Rights with applicable Initial Indicative Service characteristics during the Initial Period.

4.18 Determination of the Final Indicative Services (efficient train configuration)

(a) ARTC will develop, in consultation with the HVCCC, the proposed characteristics of the indicative services which ARTC considers will deliver the optimum utilisation of Coal Chain Capacity, given certain System Assumptions ("**Final Indicative Services**"). The intention is that this process will be a more robust modelling exercise than that used for selecting the Initial Indicative Services and will include scenarios under which System Assumptions are also varied in addition to the Coal Train configurations.

(b) Within 30 months of the Commencement Date, ARTC will:

(i) consult with the HVCCC, Access Holders and Operators on the proposed characteristics of the Final Indicative Services and whether gtkm is the appropriate pricing unit to encourage efficient consumption of Capacity;

(ii) submit to the ACCC proposed characteristics of the Final Indicative Services developed in consultation with the HVCCC and, having reasonable regard to submissions arising from the consultation at subsection (i) above, if ARTC considers that gtkm is not an appropriate pricing unit to encourage efficient consumption of Capacity, an alternative pricing unit that ARTC considers will encourage efficient consumption of Capacity; and

(iii) seek the approval of the ACCC to vary this Undertaking to provide for the adoption of the proposed characteristics as those of the Final Indicative Services and the alternative pricing unit (if any).

(c) In consulting with the HVCCC, Access Holders and Operators, ARTC will:

(i) assist the HVCCC to undertake modelling; and

(ii) will follow the principles of consultation set out in **Schedule F**,

with the objective of determining the Coal Train configuration which will deliver optimum utilisation of Coal Chain Capacity and ARTC will use its best endeavours to agree with the HVCCC the characteristics to be submitted to the ACCC as the proposed Final Indicative Services.

(d) In support of its application to vary the Undertaking for the adoption of the characteristics proposed in **section 4.18(b)** as the Final Indicative Services, ARTC will submit to the ACCC:

(i) proposed characteristics of the Final Indicative Services which it considers will deliver optimum utilisation of Coal Chain Capacity including:

(A) maximum train axle load;

(B) maximum train speed;

(C) train length; and

(D) section run times;

(ii) the proposed indicative access charges for the proposed Final Indicative Services; and

(iii) supporting documentation.

(e) If the ACCC accepts the characteristics proposed by ARTC in consultation with the HVCCC as the Final Indicative Services, and accepts the variation sought by ARTC to this Undertaking, ARTC will:

(i) promptly publish on its website:

(A) the characteristics proposed under **section 4.18(b)** as the Final Indicative Services; and

(B) the indicative access charges accepted by the ACCC for the Final Indicative Services as the Indicative Access Charges, in the format set out in **section 4.14(c)**;

(ii) offer the Indicative Access Charges to Applicants seeking Coal Access Rights for the Final Indicative Services (including Access Holders seeking to vary their Access Holder Agreements so as to operate Final Indicative Services on existing contracted Train Paths) to apply in the year immediately following the date the variation to the Access Undertaking accepting the Final Indicative Services and Indicative Access Charges comes into effect and the annual process for the finalisation of Indicative Access Charges under **section 4.20** will not apply to the determination of Indicative Access Charges for that year; and

(iii) determine Charges for Coal Access Rights other than Access Rights for the Final Indicative Services to apply in the year immediately following the date the variation to the Access Undertaking accepting the Final Indicative Services and Indicative Access Charges comes into effect, in accordance with **section 4.15** and in doing so will take into account the Indicative Access Charges accepted by the ACCC in determining those Charges.

(f) If the ACCC does not accept the characteristics proposed by ARTC as the Final Indicative Services, ARTC will, within a timeframe reasonably

specified by the ACCC (not to be less than 3 months) having regard to the need for further modelling and industry consultation, submit revised characteristics to the ACCC and seek the approval of the ACCC to vary this Undertaking to provide for the adoption of the revised characteristics as the Final Indicative Services.

4.19 Interim Indicative Services and Interim Indicative Access Charges

(a) During the period between the Commencement Date and the time the Final Indicative Services and the Indicative Access Charges approved by the ACCC come into effect under **section 4.18**) ("**the Interim Period**"), the interim indicative services assumptions in **section 4.19(c)** will apply as the interim indicative services ("**Interim Indicative Services**") and ARTC will, using reasonable endeavours, and having regard to available information, determine:

(i) access charges ("**Interim Indicative Access Charges**") applicable to the Interim Indicative Services, during the Interim Period; and

(ii) Charges for other Services associated with Coal Access Rights applicable during the Interim Period.

(b) Interim Indicative Access Charges for Coal Access Rights with Interim Indicative Service characteristics as described in **section 4.19(c)** will be determined by ARTC each calendar year of the Interim Period. ARTC will determine its Interim Indicative Access Charges for Interim Indicative Services in accordance with **section 4.15(a)**.

(c) The following Interim Indicative Access Charges for Interim Indicative Services will apply as at the Commencement Date.

Segments	**Non-TOP $/kgtkm (ex GST)**	**TOP $/kgtkm (ex GST)**	**Interim Indicative Service Assumptions**
In Pricing Zone 1*			
Interim Indicative Service 1	0.935	7.563	30 tonne maximum axle load 60kph maximum speed (loaded) 80kph maximum speed (empty) 91 wagon train length section run times as per applicable Hunter Valley standard working timetable
Interim Indicative Service 2	0.935	7.563	30 tonne maximum axle load 60kph maximum speed (loaded) 80kph maximum speed (empty) 74 wagon train length section run times as per applicable Hunter Valley standard working timetable
Interim Indicative Service 3	0.935	7.563	25 tonne maximum axle load 80kph maximum speed (loaded) 80kph maximum speed (empty)

Segments	Non-TOP $/kgtkm (ex GST)	TOP $/kgtkm (ex GST)	Interim Indicative Service Assumptions
			72 wagon train length section run times as per applicable Hunter Valley standard working timetable
In Pricing Zone 2*			
Interim Indicative Service 1	0.572	7.563	30 tonne maximum axle load 60kph maximum speed (loaded) 80kph maximum speed (empty) 91 wagon train length section run times as per applicable Hunter Valley standard working timetable
Interim Indicative Service 2	0.572	7.563	30 tonne maximum axle load 60kph maximum speed (loaded) 80kph maximum speed (empty) 74 wagon train length section run times as per applicable Hunter Valley standard working timetable
In Pricing Zone 3*			
Interim Indicative Service 1	0.769	5.575	25 tonne maximum axle load 80kph maximum speed (loaded) 80kph maximum speed (empty) 72 wagon train length section run times as per applicable Hunter Valley standard working timetable

*Pricing Zones contain Segments as specified at Schedule E

(d) ARTC will offer the Interim Indicative Access Charges to Applicants seeking Coal Access Rights with applicable Interim Indicative Service characteristics during the Interim Period.

4.20 Process for finalising Indicative Access Charges

(a) Before 1 July of each year ARTC may seek from each Access Holder, to the extent necessary, any proposed variations to the Access Holder's contracted coal volumes for the following calendar year.

(b) Each calendar year, ARTC will determine its annual forecast of costs for the Network in each Pricing Zone which are to be recovered by ARTC in the next calendar year.

(c) The Indicative Access Charges determined by ARTC under **section 4.14** will be based on the contracted coal volumes for that calendar year, any additional volumes that ARTC considers likely to be contracted coal volumes for that

relevant year, and ARTC's forecast costs as determined under **sub-section (b)**.

(d) Subject to **sub-section (e)**, ARTC will notify the aggregate coal volumes which will include reasonably expected contracted coal volumes, ARTC's annual forecast costs as determined under **sub-section (b)**, and the Indicative Access Charges to those Access Holders holding Coal Access Rights for Indicative Services by 1 November of each calendar year.

(e) ARTC will not be required to provide information on aggregate coal volumes if it reasonably considers that the provision of such information will allow an Access Holder to determine the individual contracted coal volumes or anticipated coal volumes of another Access Holder.

(f) If Access Holders holding two thirds or more of the contracted gtkm for Indicative Services in the relevant Pricing Zone for the next calendar year give ARTC a Dispute Notice within twenty (20) Business Days of being notified of the Indicative Access Charges setting out that they disagree with the Indicative Access Charges for that Pricing Zone, then the dispute will be resolved by arbitration under **section 3.15(f)**. If less than two thirds of those Access Holders give a Dispute Notice within the required time for a Pricing Zone, the Indicative Access Charges as notified for that Pricing Zone are final and not subject to arbitration under **section 3.15(f)**. Additional Capacity in the Pricing Zone which has been contracted on a conditional basis and which will not be commissioned in the next calendar year will not count towards the two thirds test.

(g) ARTC will promptly publish the final Indicative Access Charges on its website in the format set out in **section 4.14(c)**:

(i) if there is no arbitration - following the end of the twenty (20) Business Day dispute period; or

(ii) if there is an arbitration - following the determination by the arbitrator.

(h) If the Commencement Date occurs after 1 July in a year, then ARTC must determine the Indicative Access Charges for the following calendar year in accordance with **paragraphs (a)** to **(e)** with the objective of determining the Indicative Access Charges before, or as soon as possible after, the start of the calendar year.

(i) For the Interim Period, all references to Indicative Services and Indicative Access Charges in this **section 4.20** will be read as Interim Indicative Services and Interim Access Charges respectively and all references to **section 4.14** will be read as references to **section 4.19** as appropriate.

4.21 Provision of forecast information and coal volumes

(a) In addition to the information provided to each Access Holder of Coal Access Rights under **section 4.20(d),** ARTC will provide to each Access Holder of Coal Access Rights before 1 November of each calendar year:

(i) ARTC's forecast annual total operating expenditure for each of the next 10 calendar years;

(ii) ARTC's forecast annual capital expenditure for each of the next 10 calendar years as set out in the most recent version of the Hunter Valley Corridor Capacity Strategy (including all RCG endorsed capital expenditure as provided for in that document); and

(iii) subject to **section 4.20(e):**

(A) the aggregate annual coal volumes contracted by Access Holders for each of the next 10 calendar years; and

(B) the minimum aggregate annual coal volumes for all Access Holders for each of the next 10 calendar years, which will be determined by identifying the shortest possible term applicable to each Access Holder Agreement, should the Access Holder exercise any rights of early termination under that agreement.

(b) The 10 year information provided by ARTC under this section will include information for the calendar year for which Indicative Access Charges or the Interim Indicative Access Charges, as applicable, are determined and information provided for under **section 4.20(d)**.

5 CAPACITY MANAGEMENT

5.1 System Assumptions

(a) ARTC will participate in the development of System Assumptions via the HVCCC and will use reasonable endeavours to agree System Assumptions with the HVCCC, the coal terminal operators at the Port of Newcastle and other relevant service providers. To avoid doubt, if a System Assumption is based on a subset of assumptions (which at the Commencement Date includes the Relevant System Assumptions), then ARTC will also use reasonable endeavours to agree those assumptions.

(b) ARTC will base each Capacity Analysis carried out under **section 5.2** on the Relevant System Assumptions and ARTC will reflect the elements (f) to (j) of the Relevant System Assumptions in the Access Holder Agreements.

(c) If ARTC does not agree with any assumption as detailed in the System Assumption Document as issued by the HVCCC from time to time (which to avoid doubt may include any Relevant System Assumption which is not agreed between the HVCCC and ARTC or an assumption detailed in the System Assumption Document that is based on a Relevant System Assumption which is not agreed between the HVCCC and ARTC), it must, within 20 Business Days of the publication of the System Assumption Document notify the HVCCC and the ACCC of, and publish on its website:

(i) the assumption with which ARTC does not agree;

(ii) the grounds on which ARTC does not agree with that assumption, together with supporting documentation for those grounds in reasonable detail; and

(iii) the assumption which ARTC reasonably proposes should apply instead of the assumption referred to in **section 5.1(c)(i)** (and, if applicable, the Relevant System Assumptions on which that assumption should be based).

(d) If ARTC disagrees with the assumption on the basis that it considers (acting reasonably) that the practical adoption of:

(i) ARTC's proposed assumption is necessary for reasons of safe operation of the Network or to prevent an adverse impact on the condition of the Network; or

(ii) the HVCCC's assumption would have an adverse commercial implication for ARTC (provided that ARTC may not rely on this paragraph (ii) to the extent that the adverse commercial implication for ARTC would arise under the operation of system true up test under Schedule 2 of Access Holder Agreements entered into pursuant to the Undertaking),

then ARTC's notification under **section 5.1(c)** must state that this is the basis for the disagreement.

(e) Within twenty 20 Business Days of receipt of the notice referred to in **section 5.1(c)**, the HVCCC may notify ARTC that it wishes to raise a dispute based on the reasoning provided by ARTC for not adopting the relevant assumption. The HVCCC is not permitted to raise a dispute if ARTC disagrees with an assumption on the basis of one of the grounds in **section 5.1(d)** but to avoid doubt, this does not prevent the HVCCC raising a dispute on whether ARTC has acted reasonably in relying on **section 5.1(d)**.

(f) Within 10 Business Days of the HVCCC giving a dispute notice under **section 5.1(e),** senior representatives from ARTC and the HVCCC will meet and use reasonable endeavours, acting in good faith, to resolve the dispute by joint discussions. If the dispute is not resolved, either party may notify a dispute with the ACCC for determination by arbitration in accordance with **section 3.15(f)(ii)**.

(g) Upon receiving dispute notice under **section 5.1(f)**, the ACCC will determine whether the assumption referred to in **section 5.1(c)(i)** or the assumption referred to in **section 5.1(c)(iii)** is the more reasonable assumption taking into account:

(i) the context of the daily operations of the Hunter Valley Coal Chain at the time of the publication of the System Assumption Document (as applicable), including for the purposes of accurately determining Capacity; and

(ii) the interests of:

(A) Access Holders with Coal Access Rights for export coal;

(B) Access Holders with Coal Access Rights for domestic coal;

(C) other users of the Network; and

(D) ARTC,

including whether ARTC or the parties referred to in **paragraphs (A)** to **(C)** will be materially disadvantaged, including in the context of, and basis upon, which ARTC or the party entered into the Access Agreement or Access Holder Agreement and, where applicable, in applying assumptions in the system true up test under Schedule 2 of the Access Holder Agreements which are different to those to which ARTC or the party has previously agreed and relied upon in entering the Access Agreement or Access Holder Agreement, provided that, in considering whether ARTC or the parties referred to in **paragraphs (A)** to **(C)** are materially disadvantaged as a result of that difference, the ACCC must take account of the reasons for that difference at the applicable time.

(h) If the ACCC reasonably considers that it requires additional information from ARTC to make a determination under **section 5.1(g)**, it may request that information from ARTC and, upon receipt of such a request, ARTC must use reasonable endeavours to provide that information to the ACCC as soon as reasonably practicable.

(i) Once the ACCC makes its determination under **section 5.1(g)** as to which assumption is the more reasonable assumption, that assumption will be regarded as a System Assumption or (where applicable) a Relevant System Assumption for the purposes of the Undertaking.

(j) Until such time as the ACCC makes its determination, all calculations, assessments and determinations made by ARTC on the basis of the then applicable System Assumptions will be made on the basis of the assumption referred to in **section 5.1(c)(iii)**. If the determination of the ACCC is that the assumption referred to in **section 5.1(c)(i)** is to apply, that assumption will be regarded as a System Assumption or (where applicable) a Relevant System Assumption for the purposes of the Undertaking and ARTC will revise accordingly any calculations, amendments or determinations made on the basis of the assumption referred to in **section 5.1(c)(i)** in relation to the TOP rebates arising from the system true up test under Schedule 2 of Access Holder Agreements to the extent necessary.

5.2 Capacity Analysis

(a) A Capacity Analysis will be undertaken by ARTC as part of the preparation of the Indicative Access Proposal. The Capacity Analysis will identify whether, indicatively, there is sufficient Available Capacity to meet the Applicant's request for Access Rights and, if not, indicatively, the extent to which Additional Capacity is required.

(b) Where ARTC believes that there are major impediments to the provision of Additional Capacity to meet an Applicant's request, and that the Additional Capacity that might be necessary would have a significant bearing on the economics of the proposed operation, the Capacity Analysis may be done in more detail which may require more time for the preparation of the Indicative Access Proposal (**section 3.10**). Where a Capacity Analysis is to be done in more detail pursuant to this section, ARTC may charge a fee that is based on reasonable cost and agreed with the Applicant.

(c) The finalisation of the Capacity Analysis will enable the finalisation of the resultant Capacity Entitlement, Train Paths, Charges and terms and conditions of the resultant Access Agreement.

(d) As part of undertaking its Capacity Analysis, ARTC will consult the HVCCC and will take into account the HVCCC's comments on the availability of Coal Chain Capacity, in accordance with the following steps:

(i) ARTC will seek the HVCCC's views as to whether the provision of the Access Rights sought will have an impact on Coal Chain Capacity;

(ii) where the HVCCC provides its view within 20 Business Days, or such other time as agreed with ARTC, ARTC will consider the view expressed by the HVCCC in good faith;

(iii) where ARTC disagrees with the view expressed by the HVCCC, ARTC will provide the HVCCC (and if requested, the Applicant where that Applicant is not a member of the HVCCC) with written reasons, subject to confidentiality restrictions, why it disagrees with the HVCCC's assessment within 10 Business Days of receipt of that assessment, or such other period as agreed with the HVCCC and will ask the HVCCC to consider ARTC's reasons and provide its revised view within a specified timeframe;

(iv) where the HVCCC provides its view within the specified timeframe, ARTC will consider the revised view of the HVCCC in good faith.

(e) While ARTC will have regard to the HVCCC's views in accordance with **section 5.2(d)**, ARTC will have the sole right to determine whether there is sufficient Available Capacity to grant the Access Rights sought by the Applicant.

5.3 Identification of Shortfall in existing Capacity

(a) If, at any time during a month, ARTC identifies that there is likely to be a shortfall in Capacity to meet all remaining unconditional Capacity entitlements held by all Access Holders in that month, after taking into account likely usage of Access Holders with an allocation period of a quarter, and the shortfall arises other than as a result of planned maintenance, ("**Capacity Shortfall**") then ARTC will:

(i) as soon as reasonably practicable, inform each Access Holder (if affected), coal terminal operators at the Port of Newcastle and the HVCCC of the expected duration of the Capacity Shortfall but to avoid doubt, ARTC's representation of the expected duration of the shortfall is not binding on ARTC; and

(ii) subject to ARTC meeting its obligations under **section 5.4** and **section 5.5**, consult with the HVCCC in accordance with the principles in **Schedule F** with the objective of coordinating its response to the Capacity Shortfall with the other Hunter Valley Coal Chain Service Providers.

(b) For the purposes of this **section 5,** the Capacity entitlement held by an Access Holder will be considered an unconditional Capacity entitlement if all conditions precedent to the conferral of that Capacity entitlement on the access holder under the terms of the relevant access agreement, including the completion of designated projects, have been satisfied, or waived by ARTC.

5.4 Event leading to Capacity Shortfall of less than five days

(a) If ARTC expects that an event resulting in a Capacity Shortfall will be for a duration of five days or less and there will be insufficient Capacity to meet all remaining unconditional Capacity entitlements held by all Access Holders in that Month after taking into account likely usage of Access Holders with an allocation period of a quarter, ARTC will allocate the Capacity available in accordance with the following principles:

(i) Capacity will be allocated first to passenger services in accordance with ARTC's obligations under section 88L of the *Transport Administration Act 1988* (NSW);

(ii) Capacity remaining after the allocation of Capacity under **sub-section (a)(i)** will be allocated to Access Holders at ARTC's discretion. In exercising its discretion, ARTC must take into account its contractual obligations under Access Agreements but may allocate Capacity other than on an equitable basis if it is consistent with the objective of ensuring efficient utilisation of Capacity and Coal Chain Capacity during the Capacity Shortfall and after considering any recommendations provided by the HVCCC under **section 5.3(a)(ii)**; and

(iii) In exercising its discretion under **section 5.4(a)(ii)**, ARTC will use its best endeavours, to the extent practicable, not to reduce availability of contracted access rights from load points not affected by the Capacity Shortfall under this **section 5.4**.

(b) ARTC will promptly inform the HVCCC of the result of the allocation of Capacity under **section 5.4(a)**.

5.5 Event leading to Capacity Shortfall greater than five days

(a) If ARTC expects that an event resulting in a Capacity Shortfall will be for a duration of more than five days or an event resulting in a Capacity Shortfall subsequently has a duration of more than five days, and there will be insufficient Capacity to meet all remaining unconditional Capacity entitlements held by all Access Holders in that month after taking into account likely usage of Access Holders with an allocation period of a quarter, ARTC will allocate the Capacity available in accordance with the following principles:

(i) Capacity will be allocated first to passenger services in accordance with ARTC's obligations under section 88L of the *Transport Administration Act 1988* (NSW);

(ii) To the extent practicable, contracted access rights from load points not affected by the Capacity Shortfall (for example, load points east of the event causing the Capacity Shortfall), will not be reduced by

the Capacity Shortfall and Access Holders should continue to be able to use Capacity entitlements originating from unaffected load points; and

(iii) ARTC will, to the extent practicable, reduce access rights for each affected load point (for example, a load point west of the event causing the Capacity Shortfall where the Access Holder has Capacity entitlements remaining in that month) with the objective that each affected load point will at the end of the month have borne an equitable pro-rata share of the Capacity Shortfall.

(b) ARTC will promptly inform the HVCCC of the result of the allocation of Capacity under **section 5.5(a)**.

5.6 Shortfall in creation of Additional Capacity

(a) Where there is a delay in the completion of a project creating Additional Capacity such that some, but not all, Additional Capacity becomes available, or a project creating Additional Capacity creates less Capacity than expected, that Capacity will be allocated among the Access Holders who have Capacity Entitlements to the Additional Capacity on an equitable pro-rata basis. By way of example, if one Access Holder had 60% of all contracted Capacity Entitlements to the Additional Capacity created by that project, then 60% of the available Additional Capacity will be allocated to that Access Holder.

(b) ARTC will promptly inform the HVCCC of the result of the allocation of Capacity under **section 5.6(a)**.

5.7 Capacity resumption, relinquishment and transfer

(a) The terms of the Access Agreement will provide that ARTC may reduce the Capacity Entitlement of an Access Holder where an Access Holder has under-utilised the Capacity Entitlement granted to it under that Access Agreement. Any decision by ARTC in this regard is subject to the dispute resolution provision in the Access Agreement.

(b) An Access Holder may also reduce its Capacity Entitlement in accordance with the terms of the Access Agreement.

(c) A Capacity Entitlement may be assigned or traded by an Access Holder to a third party in accordance with the assignment or trading provisions of that Access Agreement.

5.8 Review of mechanism to identify and assign Capacity losses

(a) Within 12 months of the Commencement Date, ARTC will, in consultation with the HVCCC, commence a review of the policy and processes for identifying and allocating losses of Capacity caused by Access Holders and their Operators and potential incentive mechanisms to minimise such losses where they have a material impact on Capacity or Coal Chain Capacity or the Capacity entitlements of Access Holders, including those processes outlined in clause 11.6 of the Indicative Access Holder Agreement.

(b) As part of that review, ARTC will:

(i) if the HVCCC agrees to conduct the industry wide review within 12 months of the Commencement Date, participate in good faith in that review and will consider any proposals arising from that review accordance with the consultation process outlined in **section 5.8(c);**

(ii) invite the HVCCC, Access Holders and other Hunter Valley Coal Chain service providers to:

(A) provide their views of whether particular actions or omissions of Access Holders or their Operators (such as cancellation of scheduled Services) have a material impact on Capacity, Coal Chain Capacity or the Capacity entitlement of Access Holders; and

(B) submit proposals for a suitable framework to address any adverse impact on Capacity caused by such actions or omissions including any rules for the allocation of losses of Capacity to the responsible Access Holder,

within a specified time (which must not be less than six weeks).

(c) ARTC will in good faith consider any proposals arising from the HVCCC review (if carried out) or the submissions and proposals provided to ARTC within a specified time pursuant to ARTC's review (as applicable) and if ARTC reasonably determines, following consultation with the HVCCC (and further consultation with other stakeholders at ARTC's discretion) that:

(i) particular actions or omissions of Access Holders or their Operators have a material impact on Capacity, Coal Chain Capacity or the Capacity entitlement of Access Holders; and

(ii) a proposal received under **section 5.8(b)**, including a proposal which has been amended following consultation with ARTC and the HVCCC, meets the following criteria:

(A) the proposal, if adopted, would be likely to have demonstrably positive benefits in increasing the Available Capacity and allocating the impact of an event causing a Capacity shortfall to the Access Holder causing the incident or event leading to the Capacity shortfall;

(B) the anticipated benefits of the proposal outweigh the potential detriments of the proposal including the costs associated with implementation and monitoring of the proposal and an increase in the likelihood of disputes in assigning Capacity losses among Hunter Valley Coal Chain participants; and

(C) the proposal has the support of the HVCCC and the broad support of Hunter Valley Coal Chain participants including Access Holders and the Hunter Valley Coal Chain service providers,

then ARTC will, by no later than two years from the Commencement Date, submit the revised proposal, including supporting

documentation to the ACCC and will seek the approval of the ACCC to vary the Undertaking to provide for the adoption of the proposal.

(d) If the ACCC accepts the proposal submitted by ARTC under **section 5.8(c)** and approves the variation sought by ARTC to the Undertaking, then any amendments to the Indicative Access Holder Agreement approved by the ACCC as part of the variation will be identified as a Tier 1 (Mandatory) Coal Provision in **Schedule A:1** to the Undertaking, and those amendments will be automatically incorporated into all Access Holder Agreements for Coal Access Rights, on the date the new or varied Access Undertaking comes into effect.

(e) If ARTC decides not to submit a variation application to the ACCC under **section 5.8(c)**, ARTC must, by no later than two years from the Commencement Date publish, subject to confidentiality restrictions, a report on its website setting out its reasons for rejecting any proposals developed or submitted under **section 5.8(b)**.

6 NETWORK CONNECTIONS

(a) In the event that other owners of track not part of the Network wish to connect such track to the Network, ARTC will consent to such a connection provided:

(i) all relevant approvals from all relevant Government Authorities have been obtained;

(ii) the configuration of the connection to the Network is such that the connection will not, by virtue of its existence, reduce Capacity or Coal Chain Capacity (in assessing Coal Chain Capacity, ARTC will consult the HVCCC, and take into account HVCCC's comments on any reduction of Coal Chain Capacity in accordance with the steps set out in **section 5.2(d)** and **(e)**, as applicable);

(iii) procedural and physical interface arrangements comply with ARTC's existing interface arrangements and there is no impact on safety;

(iv) the owners of track not part of the Network ensure that all users of such track comply with the directions of ARTC's Network controllers regarding entry to and exit from the Network;

(v) the connection meets ARTC's engineering and operational standards;

(vi) the owners of track not part of the Network meet the initial and continued costs associated with constructing and maintaining the connection and agree to reasonable terms associated with the construction, maintenance and operation of the connection as determined by ARTC; and

(vii) the connection is not inconsistent with the terms of any lease, licence or other arrangement to which ARTC is a party in respect of the land on which the connection is to be built. Subject to any confidentiality restrictions or obligations, ARTC will make available extracts of the relevant terms on request.

(b) For the purposes of **section 6,** connection includes the Turnout and, if the construction of railway track on land owned or controlled by ARTC forming part of the Hunter Valley Network corridor is necessary to connect the Turnout to the owner's track, the portion of railway track on ARTC owned or controlled land forming part of the Hunter Valley Network corridor necessary to connect the Turnout to the other owner's track.

(c) Unless otherwise agreed, ARTC will generally lease the assets relating to the connection from the owner for a nominal sum to the extent such assets form part of the Network and ARTC reasonably considers it necessary to have operational control of those assets.

(d) If ARTC has refused consent under **section 6(a)(ii)**, ARTC will, if requested to do so by the applicant, notify the applicant in writing of the reasons why the connection would, in its view or the view of the HVCCC, reduce Capacity or Coal Chain Capacity.

(e) To avoid doubt, if, at any time during the negotiation period, a dispute arises between the parties in relation to the matters under this **section 6**, then either party may seek to resolve the dispute in accordance with the dispute resolution process outlined in **section 3.15**.

7 CAPACITY INVESTMENT FRAMEWORK OVERVIEW

7.1 Purpose

(a) The purpose of this **section 7** is to provide an overview of the investment framework for providing Additional Capacity outlined in detail in **sections 8** to **11**.

(b) This **section 7** is an aid to interpretation of **sections 8** to **11** but, to the extent an inconsistency arises, **sections 8** to **11** will prevail over this **section 7**.

7.2 Overview of framework

There are three main steps in the capacity investment framework:

(a) **Project initiation** - This is the process by which new Projects to provide Additional Capacity are identified and ARTC is obliged to prepare a Concept Assessment Report for endorsement to the RCG. This project initiation step is set out in **section 8**.

(b) **Industry consultation** - This process provides a staged process for development and implementation of a project in consultation with industry as represented by the RCG commencing with concept assessment. The process involves a number of stages where the RCG is asked to endorse the project proceeding to the next stage. The industry consultation process is set out in **section 9**.

(c) **Under funding option -** If ARTC elects not to fund all or part of a Project (whether or not endorsed by the RCG or the ACCC), then users will have the right to fund that investment and ARTC will have an obligation to undertake that Project as agreed pursuant to a user funding agreement or as a result of an arbitration. The user funding arrangements are set out in **section 10**.

Section 11 sets out ARTC's decision making process for consenting to Additional Capacity and funding Projects which is relevant to the above steps.

7.3 Step 1 - Project initiation

(a) Projects providing Additional Capacity can be initiated for concept assessment in a number of ways:

(i) as identified in the Hunter Valley corridor capacity strategy and endorsed by the RCG;

(ii) as recommended by the HVCCC at any time;

(iii) as requested by an Applicant at any time; or

(iv) as proposed by ARTC at any time.

(b) The primary means of identifying the need for Projects to meet that need will be the Hunter Valley corridor capacity strategy. ARTC's obligations to prepare, consult on and publish a Hunter Valley corridor capacity strategy are set out in **section 8.1**.

(c) Projects initiated by ARTC, the HVCCC or an Applicant may, but do not have to be, a Project included in the Hunter Valley corridor capacity strategy.

(d) The party initiating a Project must fund the Concept Assessment Report but, if the RCG endorses the Project to proceed to project feasibility, then those costs will become part of the Project costs and will be refunded to that party.

7.4 Step 2 - Industry consultation for a project

(a) The industry consultation process must be used for Projects creating Additional Capacity and may be used by ARTC for projects which do not involve the creation of Additional Capacity.

(b) The industry consultation process involves five stages - concept assessment, project feasibility, project assessment, project implementation and project close out.

(c) ARTC may seek endorsement from the RCG to proceed to the next stage.

(i) If endorsed by the RCG, then the costs incurred for the next stage are deemed Prudent to the extent of the endorsement.

(ii) If endorsed by the RCG, then any variation to previously endorsed costs for that stage are deemed Prudent to the extent of the endorsement.

(iii) If proceeding to the next stage is not endorsed by the RCG, then ARTC may elect to seek ACCC endorsement of the relevant costs as Prudent.

(d) ARTC is not required to proceed with a Project which does not, in ARTC's reasonable opinion, satisfy the Technical Criteria (subject to dispute resolution).

(e) At each stage, ARTC will advise the RCG of its intention as to whether it agrees to fund the next stage (or any increase in Project Costs during project implementation) having regard to the Financial Criteria.

7.5 Step 3 - User funding option

(a) If at any time, ARTC advises that it will not fund a Project, then the user funding option described at **section 10.1** is available.

(b) ARTC will negotiate in good faith with relevant Contributors to agree a user funding agreement under which ARTC will proceed with the Project and the Contributor will fund the Project.

(c) The ACCC will be the arbitrator of any dispute.

(d) The intent of the user funding option is to have a flexible mechanism by which the industry can fund Projects through a Capital Contribution where ARTC elects not to do so, including Projects which in whole or in part are deemed Prudent in accordance with **section 9**.

(e) A Contributor will recover its funding in accordance with the Capital Contribution Principles.

8 PROJECT INITIATION

8.1 Hunter Valley corridor capacity strategy

(a) ARTC will develop a Hunter Valley corridor capacity strategy annually.

(b) In developing the Hunter Valley corridor capacity strategy, ARTC will base the strategy on the rolling annual capacity forecast developed by the RCG, which will:

(i) be based on contracted volumes sought by existing and prospective access holders;

(ii) be aligned with Newcastle port terminal capacity forecasts; and

(iii) identify maximum future capacity requirements.

(c) The Hunter Valley corridor capacity strategy will include capacity expansion options which:

(i) seek to ensure sufficient Capacity to meet coal producers' combined demand forecasts;

(ii) take into consideration preferred outcomes of the Coal Chain Master Plan, existing capability and future investment commitments in other parts of the coal supply chain, and a reasonable assessment of sunk assets and the costs and risks associated with fluctuations in coal demand and volumes;

(iii) include a preliminary high level assessment of objectives, and an indicative cost estimate and benefits;

(iv) include an estimate of cost to be incurred in the concept assessment stage; and

(v) include recommendations on the preferred options.

(d) Before finalising the Hunter Valley corridor capacity strategy, ARTC will:

(i) convene and conduct an annual meeting with the HVCCC and relevant coal terminal operators at the Port of Newcastle. The objective of the consultation is to provide that any planned expansions to the Network in the Hunter Valley corridor capacity are aligned with expansions at the coal terminals at the Port of Newcastle;

(ii) publish a draft Hunter Valley corridor capacity strategy on the ARTC website and invite comments on the options set out in draft strategy from all users of the Network including Access Holders with Coal Access Rights, Access Holders with Non-Coal Access Rights, and above rail operators; and

(iii) consider the views submitted by those stakeholders in good faith and take those views into account in finalising the Hunter Valley corridor capacity strategy.

(e) ARTC will publish the Hunter Valley corridor capacity strategy on its website, which will include its assessment of Capacity based on the Relevant System Assumptions, as soon as practicable after it is finalised each year under **section 8.1(d)(iii)**.

8.2 Additional Capacity endorsed by the RCG for concept assessment

ARTC may seek formal endorsement from the RCG of a project identified in the Hunter Valley corridor capacity strategy to proceed to concept assessment and, if endorsed, the costs of undertaking the Concept Assessment Report will be deemed as Prudent and included in the RAB or expensed in the year incurred.

8.3 Additional Capacity recommended by the HVCCC

(a) The HVCCC may at any time recommend to ARTC a Project. The Project may, but does not need to be, a Project identified in the Hunter Valley corridor capacity strategy.

(b) If the HVCCC makes such a recommendation, ARTC will consult with the HVCCC to develop the Project and will use reasonable endeavours to agree with the HVCCC an estimated cost and timeframe to prepare a Concept Assessment Report for that Project.

(c) If the HVCCC pays the agreed costs, ARTC will prepare a Concept Assessment Report for that Project and use reasonable endeavours to do so in the agreed timeframe.

(d) If requested by the HVCCC, ARTC will submit the Concept Assessment Report to the RCG for endorsement to proceed to project feasibility (unless in ARTC's reasonable opinion the Project does not satisfy the Technical Criteria in which case it will provide written reasons to the HVCCC).

(e) If the RCG endorses the Project to proceed to project feasibility, ARTC will reimburse the HVCCC the agreed costs to prepare the Concept Assessment Report and the costs incurred in preparing the Concept Assessment Report will be deemed Prudent and included in the RAB or expensed in the year incurred.

8.4 Additional Capacity requested by the Applicant

(a) If an Applicant requests Additional Capacity under **section 3.9(d)** and following the provision of the Indicative Access Proposal under **section 3.10,** wishes to proceed with the request for Additional Capacity, ARTC will consult with the Applicant and, if appropriate the HVCCC, to develop the associated Project and will use reasonable endeavours to agree with the Applicant an estimated cost and timeframe to prepare a Concept Assessment Report for that Project.

(b) If the Applicant pays the agreed costs, ARTC will prepare a Concept Assessment Report for that Project and use reasonable endeavours to do so in the agreed timeframe.

(c) If requested by the Applicant, ARTC will submit the Concept Assessment Report to the RCG for endorsement to proceed to project feasibility (unless in ARTC's reasonable opinion the project does not satisfy the Technical Criteria in which case it will provide written reasons to the Applicant).

(d) If the RCG endorses the Project to proceed to project feasibility, ARTC will reimburse the Applicant the agreed costs to prepare the Concept Assessment Report and the costs incurred in preparing the Concept Assessment Report will be deemed Prudent and included in the RAB or expensed in the year incurred.

(e) To the extent the Project is developed and implemented through the industry consultation process set out in **section 9** ARTC will keep the Applicant informed of the progress of the Project.

(f) To avoid doubt, the preparation of the Concept Assessment Report and the industry consultation process in relation to the Project may occur in parallel with the negotiation of an Access Agreement under **section 3.12** and/or following the entry into of an Access Agreement (which may, for example, provide for the provision of Access Rights in relation to the Additional Capacity subject to the RCG endorsement of the Project).

(g) The Project requested by the Applicant under **sub-section (a)** may, but does not need to be, a Project identified in the Hunter Valley corridor capacity strategy.

8.5 Additional Capacity identified by ARTC

ARTC may at any time prepare a Concept Assessment Report in relation to a project for RCG endorsement to proceed to project feasibility. The Project may, but does not need to be, a project identified in the Hunter Valley corridor capacity strategy.

9 INDUSTRY CONSULTATION

INTRODUCTION

9.1 Overview

(a) If a Project to provide Additional Capacity is initiated under **section 8** and proceeds to concept assessment, ARTC will undertake industry consultation in relation to the Project in accordance with this **section 9**.

(b) ARTC may also use the industry consultation process to obtain endorsement for projects to the extent they do not involve Additional Capacity (for example asset replacement, cost reduction or safety related projects).

(c) The objectives of the consultation process are to:

(i) inform Hunter Valley Coal Chain participants of Additional Capacity requirements and investment strategies;

(ii) provide a process for Hunter Valley Coal Chain participant input, aimed at, among other things the alignment of projects to provide Additional Capacity with projects to expand capacity at the coal terminals at the Port of Newcastle; and

(iii) provide a process for the applicable industry participants to participate in the development and management of projects and to endorse Capital Expenditure incurred by ARTC in providing Additional Capacity or incurred in relation to the Network as Prudent.

(d) The depth of analysis and documentation prepared at each stage of consultation will reflect the cost, benefits and risks of a project.

(e) The stages of consultation set out below will be followed in accordance with this **section 9** except where:

(i) ARTC considers that the process would unjustifiably compromise timely delivery of the project, and the RCG consents to a modified consultation process for that project; or

(ii) ARTC considers that a project is minor in its scope or cost in which case ARTC will consult on the group of minor projects rather than each minor project individually. A project would typically be considered minor in scope or cost if it relates to ongoing annual programmes for asset replacement rather than a project to deliver Additional Capacity and if a project does not relate to an ongoing annual programme for asset replacement, then ARTC may only consult on it as part of a group of minor projects with the consent of the RCG.

(f) Any endorsed costs incurred in complying with the provisions of this **section 9** will normally be included in the RAB where a project is commissioned, or otherwise expensed in the year incurred.

(g) ARTC will use reasonable endeavours, to the extent within its control, to undertake the stages of consultation set out in **sections 9.3** to **9.7** below as

applicable, having regard to the objective of delivering Capacity in line with demand as forecasted by the industry, or as sought by an Applicant.

9.2 The RCG

(a) ARTC will convene, and conduct, regular monthly meetings with the RCG for the purpose of consulting with applicable industry representatives and obtaining endorsement of Capital Expenditure associated with Additional Capacity or other Capital Expenditure on the Network. ARTC will prepare an agenda for meetings and provide a secretariat. ARTC may seek to consult or seek endorsement from the RCG outside of regular monthly meetings where ARTC considers this will assist project development and delivery.

(b) At the commencement of this Undertaking, the RCG will comprise the following membership (as selected by the relevant industry participants). One representative of:

(i) each Access Holder who holds the largest volume of contracted coal gtkm in each Pricing Zone;

(ii) any other Access Holder with more than 7% of contracted coal gtkm on the Network who is not already eligible to appoint a representative under **sub-section (i)**;

(iii) all Access Holders with less than 7% of contracted coal gtkm on the Network and the Representative may split its vote according to the percentage of contracted coal gtkm held by each represented party if requested;

(iv) each Operator, in its capacity as an Operator, with more than 10% of contracted coal gtkm on the Network who is not an Access Holder with more than 10% of contracted coal gtkm on the Network (in a non-voting capacity); and

(v) the HVCCC (in a non-voting capacity).

(c) The composition of the RCG may change from time to time as agreed by ARTC and the current members of the RCG at the time. RCG members may, but do not have to be participants in the HVCCC.

(d) Only those RCG members who represent Access Holders will be entitled to vote and each RCG member will vote in accordance with the wishes of Access Holders that it is representing, or, where the Access Holder is an Operator, those Coal Customers on whose behalf the Access Rights are held.

(e) Subject to **sub-section (f)**, RCG member voting will be weighted on the basis of contracted coal gtkm for the current calendar year and the next nine calendar years, in the Pricing Zone in which a project is proposed to occur.

(f) In determining voting entitlement, other than for the purposes of endorsing project assessment at **section 9.4(d)** and any stage beyond that, ARTC may, at its discretion, include any coal gtkm in the Pricing Zone which ARTC reasonably expects will become contracted coal gtkm, for the current calendar year or for any of the following nine calendar years, immediately following the completion of the proposed project. To avoid doubt ARTC may, in

exercising this discretion, determine that a prospective access holder which is not a current member of RCG has a voting entitlement.

(g) The RCG will be involved at each stage of project development and will have the opportunity to endorse each stage before ARTC proceeds to the next stage.

(h) ARTC may elect to continue to the next stage of project development without RCG endorsement. Where this occurs, ARTC may elect to seek endorsement of the expenditure from the ACCC in respect of project development and delivery to the extent not endorsed by the RCG. Expenditure incurred by ARTC on project development or delivery will be included in the RAB or expensed when incurred as endorsed by the ACCC. ARTC may seek the ACCC's endorsement in advance of, or subsequent to, incurring the expenditure.

PROJECT DEVELOPMENT STAGES

9.3 Concept assessment

(a) Where ARTC prepares a Concept Assessment Report under **section 8**, it will use reasonable endeavours to ensure the report complies with **sub-section (b)** unless agreed otherwise with the RCG, HVCCC or an Applicant (as applicable).

(b) The objective of the Concept Assessment Report will be to enable a preliminary assessment of the potential costs, benefits and risk involved and unless ARTC and the RCG, HVCCC or an Applicant (as applicable) agrees otherwise, will include an indicative assessment of:

(i) project objectives;

(ii) broad cost estimates and associated benefits;

(iii) preliminary financial analysis;

(iv) preliminary risk assessment; and

(v) indicative timeframes for the development and the delivery of the project.

(c) At the time ARTC submits a Concept Assessment Report to the RCG, ARTC will advise whether it intends to fund the project feasibility stage of the project, subject to project feasibility being endorsed by the RCG.

(d) ARTC may seek endorsement from the RCG to proceed to project feasibility. Endorsement to proceed to project feasibility would include:

(i) endorsement of any variation to the estimated costs endorsed under **section 8.2** or ARTC's costs of preparing the Concept Assessment Report for the HVCCC or an Applicant (as applicable), incurred in undertaking concept assessment;

(ii) endorsement for ARTC's estimated costs and proposed timeframe to undertake project feasibility,

to be included in the RAB or expensed in the year incurred.

9.4 Project Feasibility

(a) For each project endorsed at the concept assessment stage, ARTC will provide a project feasibility report to the RCG.

(b) Unless ARTC and the RCG agree otherwise, the project feasibility report will include:

(i) confirmation of project objectives, including a preliminary functional specification;

(ii) brief outline of scope;

(iii) identification of estimated project costs (with a +/-20% range);

(iv) potential benefits, including capacity, maintenance and operating benefits;

(v) preliminary risk assessment;

(vi) preliminary project management plan, including initial estimate of timeline for milestones;

(vii) details of any variation to the budgeted costs to undertake Project Feasibility; and

(viii) outline of project assessment stage, including an estimate of budget.

(c) At the time ARTC submits a project feasibility report to the RCG, ARTC will advise whether it intends to fund the project assessment stage of the project, subject to project assessment being endorsed by the RCG.

(d) ARTC may seek formal endorsement from the RCG to proceed to project assessment. Endorsement to proceed to project assessment would include:

(i) endorsement of any variation to the estimated costs endorsed under **section 9.3(d)(ii)** incurred in undertaking project feasibility; and

(ii) endorsement for ARTC's estimated costs and proposed timeframe to undertake project assessment,

to be included in the RAB or expensed in the year incurred.

9.5 Project Assessment

(a) For each project endorsed at the project feasibility stage, ARTC will provide a project assessment report for endorsement to the RCG.

(b) Unless ARTC and the RCG agree otherwise, the project assessment report will include:

(i) project objectives report, including functional specification;

(ii) scope of work report, including:

(A) assessment of technical and operating requirements;

(B) developed concept design, with survey if required; and

(C) independent design verification if required;

(iii) project schedule including time tolerances and project budget with a+/-10% margin or a larger margin where appropriate for larger projects, an estimate of contingency supported by risk assessment, cost analysis, and basis for contingency;

(iv) financial evaluation, including estimated impact on access pricing;

(v) developed project management plan which may include:

(A) project configuration management plan;

(B) project delivery strategy;

(C) resource management plan;

(D) cost management plan;

(E) quality management plan;

(F) safety management plan;

(G) procurement management plan;

(H) interface management plan;

(I) scope and budget change management plan;

(J) environmental plan;

(K) project phases, milestones and deliverables;

(L) project risk assessment report; and

(M) regulators notification, if needed.

(c) At the time ARTC submits a project assessment report to the RCG, ARTC will advise whether it intends to fund project procurement for the project, subject to project procurement being endorsed by the RCG.

(d) ARTC may seek formal endorsement from the RCG to proceed to project procurement. Endorsement to proceed to project procurement would include any variation between the endorsed estimated cost range identified during project assessment and the project budget identified during project feasibility and:

(i) endorsement of any variation to the estimated costs endorsed under **section 9.5(b)(iii)** incurred in undertaking project assessment; and

(ii) endorsement of ARTC's estimated costs and proposed timeframe to comply with the provisions of project procurement, including costs incurred in obtaining independent expert determination as applicable,

to be included in the RAB or expensed in the year incurred.

9.6 Project implementation

(a) **Procurement**

(i) ARTC may, at its discretion, commence procurement in parallel with project assessment, prior to endorsement to proceed to project implementation.

(ii) For each project endorsed at the project assessment stage, ARTC will undertake, through a tender process, alliance or internal evaluation, detailed confirmation of project scope and cost.

(iii) Where a cost outside of the range, or contingency endorsed in the project assessment stage is confirmed ("**Cost Variation**") and/or there is a material variation from the project schedule ("**Schedule Variation**") under **section 9.4(b)(iii)**, ARTC will seek the endorsement of the RCG for those variations.

(iv) Where ARTC undertakes confirmation of scope, project timing and cost through an alliance or internal evaluation, the RCG may, at its cost, seek to review the scope, project timing and cost, having regard to all elements of the selected method of project delivery.

(v) If the RCG endorses the Cost Variation and/or Schedule Variation, ARTC will proceed with project implementation.

(vi) If the RCG endorses less than the Cost Variation, or does not endorse the Schedule Variation, ARTC may refer the matter to an agreed independent expert for a determination as to whether the Cost Variation is Prudent or whether the Schedule Variation is reasonable (having regard to whether it arose from a matter outside of ARTC's reasonable control or which could not have been reasonably anticipated by ARTC), in accordance with **section 9.6(d)**.

(vii) Upon the independent expert determining on the cost to be taken as Prudent in accordance with **sub-section (vi)** (which, to avoid doubt, must take into account any change in project schedule which the independent expert considers reasonable), then subject to **sub-section (viii)**, ARTC will proceed with project implementation regardless of whether the independent expert determines the full amount of the Cost Variation as Prudent.

(viii) If the independent expert determines the cost which is Prudent is less than the Cost Variation and/or the Schedule Variation is not reasonable, then ARTC may either:

(A) proceed with the project implementation by way of alliance or internal evaluation, at the costs determined by the independent expert as Prudent and in accordance with the project schedule determined by the independent expert; or

(B) proceed by way of an open competitive tender and undertake project implementation in accordance with the costs and project schedule determined as a result of that independent tender process.

(ix) Any cost of delay resulting from following this process will be deemed Prudent with respect to the project.

(b) **Project management plan**

(i) ARTC will:

(A) finalise the project management plan developed during project assessment, including a contract management plan and operational readiness plan and provide the finalised project management plan and project schedule including time tolerances and project budget to the RCG for endorsement; and

(B) advise whether it intends to fund the project delivery stage of the project in accordance with the revised project budget and/or project schedule resulting from project procurement, subject to project delivery being endorsed by the RCG.

(ii) Endorsement of the finalised project management plan would include endorsement of the project budget and schedule for project delivery to be included in the RAB or expensed in the year incurred.

(c) **Project delivery**

(i) ARTC will implement the finalised project management plan.

(ii) ARTC will provide progress reports to the RCG at RCG meetings, the nature and frequency of which will be agreed with the RCG. Unless ARTC and the RCG agree otherwise, a progress report will include:

(A) a report on the physical status of work commenced;

(B) an assessment of remaining time and required resources to complete the project;

(C) an assessment of expected resource availability;

(D) identification of any issues; and

(E) exceptions, where ARTC would advise the RCG that the project will deviate outside of its planned cost margins, as set out in the project budget, or outside of the planned timing tolerance margins, as set out in the project schedule, both

included with the project assessment report to be provided under **section 9.5(a)**.

(iii) Where a variation to the endorsed project budget or project schedule identified at **section 9.5(b)(iii)** including contingency, or an endorsed variation at **section 9.6(a)(iii)** or approved by an independent expert at **section 9.6(a)(viii)**, arises the following will apply:

(A) ARTC will submit a revised project schedule and/or costing to the RCG for endorsement having regard to the prudency of the revised costing and the reasonableness of the revised project schedule but will continue with project delivery while a decision in respect of the endorsement is pending;

(B) the RCG may endorse all or part of the variation and where the RCG endorses all of the variation, ARTC will continue with project delivery;

(C) where the RCG endorses less than the full variation and/or endorses a different project schedule, ARTC may refer the matter to an agreed independent expert for review in accordance with **section 9.6(d)**. ARTC will continue with project delivery while that expert determination is pending;

(D) the review of the independent expert will have regard to whether the variation is Prudent and/or whether the variation to the project schedule is reasonable and arose from a matter outside of ARTC's reasonable control or which could not have been reasonably anticipated by ARTC;

(E) If the independent expert decides the full extent of the variation to be taken is Prudent and/or the variation to the project schedule is reasonable, ARTC will continue with project delivery;

(F) If the independent expert decides the full extent of the variation to be taken is not Prudent or the variation to the project schedule is not reasonable, ARTC may cease project delivery, or, having regard to the findings of the independent expert, propose a variation to the RCG in accordance with **section 9.6(c)(iii)(A)**; and

(G) Any cost incurred by ARTC in complying with this **sub-section (iii)**, including any cost of delay resulting from following this process will be deemed Prudent with respect to the project. To avoid doubt, any expenditure incurred by ARTC in continuing a project pending endorsement by the RCG or an independent expert, will be deemed Prudent with respect to the project.

(d) **Independent expert review**

(i) Unless the parties agree otherwise, where ARTC refers a matter to an agreed independent expert under **section 9.6(a)(vi)** or **section 9.6(c)(iii)(C)**, the independent expert will:

(A) if the parties are unable to agree on the appointment of an independent expert within 10 Business Days of the matter being referred to expert determination, be appointed by the President of the Institute of Arbitrators and Mediators Australia ("**IAMA**");

(B) act as an expert and not an arbitrator;

(C) proceed as quickly as possible and consistent with a fair and proper assessment of the matter;

(D) observe the rules of natural justice but will not be required to observe the rules of evidence;

(E) while having the right to decide on the form of presentations, encourage a written presentation by each party to be exchanged with the other party, with the opportunity for each party to respond to the other party's presentation; and

(F) have regard to the principles, methodologies and provisions set out in the Undertaking.

(ii) The finding of the independent expert will be final and binding on the parties subject to any rights of review by a court of law.

(e) **Commissioning**

(i) ARTC will commission the project into operation upon completion of project delivery.

(ii) If the project has a delivery time frame of more than 12 months, and the RCG consents to a staged delivery of the project, upon completion of any stage, any capital expenditure and interest cost incurred during construction associated with that stage will be deemed Prudent at the date of completion of that stage.

(iii) If a project is commissioned after the latest of:

(A) the project delivery date set out in the project schedule at **section 9.5(b)(iii)** finalised and provided as part of the project management plan under **section 9.6(c)(iii)(C)**;

(B) if a new project schedule has been endorsed by the RCG under **section 9.6(c)(iii)(B)**, the project delivery date set out in that endorsed project schedule; and

(C) if a new project schedule has been determined by an independent expert under **section 9.6(c)(iii)(C)**, the project delivery date set out in that project schedule,

then, any interest incurred in respect of construction during the period between the (new) project delivery date and the project actual commissioning date will not be deemed Prudent.

9.7 Project close-out

(a) Upon completion of project implementation, ARTC will provide a project close-out report for the RCG. Unless ARTC and the RCG agree otherwise, a project close-out report will include:

(i) formal acceptance of works;

(ii) outstanding works and if necessary a completion plan;

(iii) cost report; and

(iv) verification of benefits delivered.

(b) Any Capital Expenditure incurred by ARTC in providing Additional Capacity that is within the cost range, including any contingency endorsed at the project assessment stage, or endorsed by the RCG or determined by the independent expert at the project implementation stage, will be taken as Prudent.

9.8 Endorsement of project development stages

(a) Where Additional Capacity is provided in relation to a particular Pricing Zone, the endorsement of coal producers that hold Coal Access Rights under an Access Holder Agreement and any coal gtkm included under **clause 9.2(f)**, either directly or through RCG representatives, with over 50% of contracted coal gtkm in that Pricing Zone will constitute endorsement by the RCG of that stage of project development.

(b) Where Additional Capacity (delivered by way of a single project or series of projects) is provided in relation to a particular Pricing Zone, and that Additional Capacity results in an increase in the Indicative Access Charge for that Pricing Zone by more than 10%, the endorsement of Coal Customers that hold Coal Access Rights under an Access Holder Agreement and any coal gtkm included under **clause 9.2(f)**, either directly or through RCG representatives, with over 70% of contracted coal gtkm in that Pricing Zone will constitute endorsement by the RCG of that stage of project development.

(c) To avoid doubt, **sub-section (a)** will apply if a Contributor agrees to fund Additional Capacity such that the increase in the Indicative Access Charge for that Pricing Zone is equal to or less than 10%.

10 USER FUNDING OPTION

10.1 User funding option

(a) If:

(i) ARTC advises at any project development stage that it will not, or will no longer, fund a Project or will only fund a Project to certain level which is less than that expected to complete the Project; or

(ii) ARTC ceases a Project under **section 9.6(c)(iii)(F)**,

and an Applicant or an Access Holder ("**Contributor**") notifies ARTC that they are willing to fund the Project in whole or in part through a Capital Contribution such that ARTC's financial position is no worse off, then ARTC and the Contributor will negotiate in good faith to agree a user funding agreement under which ARTC will proceed with the Project and the Contributor will provide funding for the Project.

(b) Within a reasonable time of the Contributor giving a notice under **sub-section (a)**, ARTC will provide the Contributor with an indicative timetable for negotiating a user funding agreement including any investigations or information required by ARTC to proceed with negotiation. Once agreed, ARTC will use reasonable endeavours to adhere to the timetable and notify the Contributor of any delays.

(c) Subject to ARTC's agreement, a Contributor may fund ARTC's costs of providing Additional Capacity:

(i) by the Contributor providing an amount of initial funding in advance of a Project commencing sufficient for ARTC to commence the Project and providing additional funding for the next stages of the Project when agreed milestones are achieved with the objective that ARTC is not required to fund the Project out of its own working capital;

(ii) by the Contributor reimbursing the relevant costs as and when they are incurred by ARTC; or

(iii) in any other way that ARTC and the Contributor agree.

(d) In negotiating a user funding agreement, a Contributor may elect:

(i) to seek to have some or all of the Project costs deemed as Prudent through the Project proceeding through the RCG or seeking ACCC endorsement of the Project costs as Prudent (in which case ARTC will provide reasonable cooperation to the Contributor at the Contributor's cost); and/or

(ii) fund the Project without seeking to have some or all of the Project costs included into the RAB.

(e) The Contributor will recover the capital cost associated with its funding, in accordance with the Capital Contribution Principles as set out in **section 10.2**

and the mechanism for recovery will depend on the extent to which the Project costs are endorsed as Prudent either by the RCG or ACCC.

(f) Where the Additional Capacity is initially funded by a Capital Contribution, an equitable form of reconciliation between the Contributor, ARTC and another user sharing the Additional Capacity will apply, consistent with the Capital Contribution Principles in **section 10.2**.

10.2 Capital Contribution Principles

(a) The following principles will apply in relation to the negotiation of a user funding agreement between ARTC and a Contributor to achieve an equitable form of reconciliation under **section 10.1(f)**:

(i) ARTC will be economically no worse off as determined in accordance with the criteria set out in **sub-section (b)**.

(ii) In determining Charges for the relevant Pricing Zone, ARTC will have regard to:

(A) achieving full recovery of VCC from all Access Holders on the basis of actual usage;

(B) the Charges applicable to the Contributor and other Access Holders will be equitable subject to the relevant provisions of **section 4.14** and **section 4.15** of this Undertaking; and

(C) the Contributor will not achieve recovery of capital cost associated with assets funded by a Capital Contribution (**"Contributed Assets"**) that exceeds the Rate of Return.

(b) "**Economically No Worse Off**" means, in relation to the Contributed Assets of a Contributor in a Segment, earning a rate of return on assets funded by ARTC ("**ARTC Assets**") that have a value forming part of the RAB Floor Limit for that Segment in the year that the Contributed Assets are commissioned ("**Relevant ARTC Assets**"):

(i) in the year that the Contributed Assets are commissioned and each year thereafter; and

(ii) following reconciliation with the Contributor in accordance with these Capital Contribution Principles,

that is no less than the rate of return on the Relevant ARTC Assets that ARTC would have earned in the year that the Contributed Assets are commissioned, had the Contributed Assets not been commissioned. To avoid doubt, the rate of return on the Relevant ARTC Assets in each year will be determined in accordance with **section 4** of the Undertaking and based on the average of the opening and closing value of the Relevant ARTC Assets.

(c) Where a Capital Contribution is made by the Contributor, to the extent that the related Capital Expenditure is Prudent in accordance with **section 9** of this Undertaking, or determined as Prudent by the ACCC:

(i) ARTC will have regard to the following objectives in determining Charges for the relevant Pricing Zone:

(A) Maximising recovery of (or contribution to) applicable FCC and NCC, in proportion to relative consumption of assets funded by ARTC or a Capital Contribution (**"Combined Assets"**).

(B) Maximising recovery of (or contribution to) the capital cost associated with Contributed Assets, determined with reference to the useful life of the Contributed Assets and Rate of Return approved under this Undertaking, in proportion to relative consumption of the Combined Assets.

(ii) Subject to **sub-section (a)(i)** and **sub-section (a)(ii)(C)**, recovery of capital cost associated with Contributed Assets by the Contributor will be based on an allocation of revenue obtained through the Charges between ARTC and the Contributor such that ARTC and the Contributor achieve an equitable rate of capital cost recovery from ARTC Assets and Contributed Assets respectively.

(iii) The Contributor will not receive any priority in the allocation of Additional Capacity made available through Contributed Assets.

(d) Where a Capital Contribution is made by the Contributor, to the extent that the related Capital Expenditure is not Prudent in accordance with **section 9** of this Undertaking, or is not endorsed to be Prudent by the ACCC:

(i) ARTC will have regard to the following objectives in determining Charges for relevant Pricing Zone:

(A) Maximising recovery of (or contribution to) the non-capital component (operating expenditure) of applicable FCC and NCC, in proportion to relative consumption of Combined Assets.

(B) Maximising recovery of (or contribution to) the capital component (depreciation and return) of applicable FCC and NCC, in proportion to relative consumption of ARTC Assets.

(C) Subject to **sub-section (d)(i)(D)**, there will be no recovery of (or contribution to) the capital cost associated with Contributed Assets.

(D) Where another Access Holder elects to utilise the Additional Capacity made available through Contributed Assets, maximising recovery from that Access Holder of (or contribution to) the capital cost associated with Contributed Assets, determined with reference to the useful life of the Contributed Assets and Rate of Return approved under the Undertaking, in proportion to relative consumption of Contributed Assets.

(ii) The Contributor will not recover the capital cost associated with Contributed Assets except where another Access Holder elects to utilise the capacity made available through the Contributed Assets, in which case the recovery of capital cost associated with Contributed Assets will be based on an allocation of revenue obtained through the Charges between ARTC and the Contributor such that ARTC and the Contributor achieve an equitable rate of capital cost recovery from ARTC Assets and Contributed Assets respectively.

(iii) The Contributor will receive priority in the allocation of Additional Capacity made available through Contributed Assets.

(e) Other than the principles at **sub-sections (a)(i)** and **(ii)** and **sub-section (d)(i)(C)** ARTC and the Contributor may agree to depart from the principles set out in this **section 10.2** to apply to the equitable form of reconciliation.

10.3 Construction and ownership of assets

(a) Unless it otherwise agrees, ARTC will manage the construction of the Additional Capacity under the user funding option.

(b) Any Additional Capacity, once created, will be owned by ARTC (or the lessor under the NSW Lease) and managed by ARTC.

10.4 Dispute resolution

A dispute as to the terms of a user funding agreement will be a "Dispute" for the purposes of **section 3.15** and references to "Applicant" in that section will be construed as a reference to the Contributor.

11 ARTC DECISION MAKING

11.1 ARTC consent to a project

(a) If, in ARTC's reasonable opinion, a Project does not satisfy the Technical Criteria, ARTC may decide not to proceed to the next stage in which case it will give written reasons to the RCG and, if applicable, the Applicant who has initiated the Project.

(b) If the RCG and/or, if applicable, the Applicant who initiated the Project raises a dispute as to whether the Technical Criteria are satisfied, then it will be a "Dispute" for the purposes of **section 3.15**.

(c) If the dispute is raised by the RCG, then "Applicant" in **section 3.15** will be construed to include one or more members of the RCG acting as a representative of the RCG.

11.2 ARTC decision to fund a project

(a) If, in ARTC's opinion, the Project does not satisfy the Financial Criteria, ARTC may elect not to fund a Project, discontinue funding a Project or only fund a Project to a certain level (in which case ARTC will promptly notify the RCG and the Applicant (if applicable)).

(b) At each stage, ARTC will advise the RCG and, if applicable, the Applicant who has initiated the Project whether ARTC intends to fund the next stage of the Project.

(c) If a cost variation occurs during project implementation. ARTC will promptly advise the RCG and, if applicable, the Applicant who has initiated the Project whether it will fund that cost variation at the same time as ARTC seeks endorsement of that variation from the RCG under **section 9.6(a)(iii)** or **section 9.6(c)(iii)(A)** unless the Applicant has already agreed to fund the Project under a user funding agreement.

(d) ARTC's funding may be subject to conditions (for example endorsement of the next stage by the RCG or up to a maximum level).

(e) If ARTC elects not to fund a Project in whole or in part, ARTC will provide written reasons why the Financial Criteria are not satisfied to the RCG and, if applicable, the Applicant who has initiated the Project.

(f) If ARTC elects not to fund all or part of the Project, or a condition to its funding is not met and not waived by ARTC, then the user funding option under **section 10** applies.

12 NETWORK TRANSIT MANAGEMENT

12.1 Medium Term Capacity Management

(a) ARTC will undertake medium term capacity planning and will develop the Master Train Plan ("**MTP**") having regard to:

(i) Capacity Entitlements under existing Access Holder Agreements for Coal Access Rights; and

(ii) Capacity Entitlements under existing Access Agreements for Non-Coal Access Rights.

(b) ARTC will provide the MTP to the HVCCC to assist the HVCCC in advising ARTC in relation to the day-to-day scheduling of Trains.

12.2 Short Term Capacity Management

ARTC will undertake short term capacity planning, including the development of the Daily Train Plan ("**DTP**"), having regard to:

(a) the MTP and the remaining Capacity Entitlements of Access Holders under Access Holder Agreements and other Access Agreements;

(b) any relevant input provided by the HVCCC; and

(c) the Network Management Principles ("**NMPs**").

12.3 Network Transit Management

ARTC will manage transit on the Network in accordance with the NMPs.

13 PERFORMANCE MEASUREMENT AND INCENTIVES

13.1 Network Key Performance Indicators

(a) ARTC will report on its website performance against the Network Key Performance Indicators set out in **Schedule D**, at the frequency referred to in **Schedule D**. To avoid doubt, in reporting on the performance against the Network Key Performance Indicators, ARTC will not report on the performance of individual Access Holders or Operators.

(b) ARTC's obligation to report performance under this **section 13** will not arise until the completion of the first full period in respect of which performance is measured, this means that:

(i) ARTC will not report quarterly performance until the completion of the first full quarter after the Commencement Date; and

(ii) ARTC will not report annual performance until the completion of the first full calendar year after the Commencement Date.

13.2 Negotiation of key performance indicators for each Access Agreement

(a) ARTC will negotiate with an Applicant in good faith the key performance indicators to be included in an Access Agreement, and any changes to the key performance indicators in the Access Agreement during the term of the Access Agreement.

(b) In negotiating the key performance indicators for an Access Agreement ARTC's objectives include to have a consistent set of key performance indicators for all Access Holders which are also consistent with:

(i) the applicable Relevant System Assumptions;

(ii) other incentives and measures of ARTC's performance including the performance indicators contained in the NSW Lease; and

(iii) in the case of an Access Holder Agreement for Coal Access Rights:

(A) coal chain performance indicators;

(B) the Network Key Performance Indicators reported by ARTC under **section 13.1** of the Access Undertaking, where applicable;

(C) any particular incentives and measures of ARTC's performance contained in the Indicative Access Holder Agreement including the application of the system wide true-up tests, and

unless otherwise agreed by ARTC and the Applicant, the key performance indicators to be included in an Access Holder Agreement for Coal Access Rights will be a subset of the Network Key Performance Indicators, as contemplated by the reporting scope for each indicator identified in the second column of the Network Key Performance Indicators table in section 1

of **Schedule D**, except that the reporting detail for each indicator identified in the fourth column of that table will be specific to the Applicant.

(c) If requested by the Applicant or, if ARTC reasonably considers necessary, ARTC will include one or more Operators nominated by an Applicant in the negotiation of the key performance indicators to be included in the Access Agreement and in any review of those indicators.

13.3 Development of non-TUT related ARTC performance incentives

(a) Within six months of the Commencement Date, ARTC will:

(i) prepare and publish on its website options for a proposed performance incentive scheme which has the objectives of encouraging ARTC, through financial reward, to improve operating, maintenance and capital expenditure efficiency, and achieve desirable safety performance, to be included in the Undertaking; and

(ii) invite submissions from Access Holders and other stakeholders on the proposed performance incentive scheme, within a specified time (which must be not less than 6 weeks from the publication of the options).

(b) ARTC will in good faith consider the submissions provided within the specified time and by no later than 12 months from the Commencement Date will:

(i) prepare a report addressing options for a proposed performance incentive scheme having regard to the submissions and containing ARTC's proposed variation to the Undertaking to include its proposed performance incentive scheme;

(ii) provide the report to the ACCC; and

(iii) lodge a variation application with the ACCC under **section 44ZZA(7)** of the CCA consistent with the report.

(c) To avoid doubt, the performance incentive scheme under this **section 13.3** may be developed separately from the TUT-related performance incentive scheme to be developed under **section 13.5** and is not required to include performance incentives to the extent they would overlap with those to be developed under **section 13.5**.

13.4 Review of system wide TUT

(a) As soon as practicable after the completion of two full calendar years following the Commencement Date, ARTC will commence a review of the operation and effectiveness of the system wide true up test ("**TUT**") in Schedule 2 of the Indicative Access Holder Agreement ("**TUT Review**").

(b) ARTC will invite submissions from Access Holders and other stakeholders, to be made within a specified timeframe (which must be not less than 6 weeks from the publication of a request for submissions), on whether:

(i) having regard to the consequences of failing the TUT, the TUT provides appropriate incentives to make available Capacity for use either on a contracted or ad hoc basis; and

(ii) the TUT provides appropriate incentives for ARTC having regard to the:

(A) the objectives in **section 1.2**;

(B) the coal chain principles recognised in **section 1.3**; and

(C) practical experience of Network and Hunter Valley Coal Chain operations and performance relevant to the operation of the TUT from the Commencement Date to the time of review.

(c) ARTC will in good faith consider the submissions provided in accordance with **section 13.4(b)** and complete the TUT Review within 6 months of the commencement of the TUT Review.

(d) At the completion of the TUT Review, ARTC:

(i) will publish a report on its website (subject to confidentiality restrictions), and provide a copy to the ACCC, setting out its view on the operation and effectiveness of the TUT and its response to any material concerns raised by Access Holders or stakeholders in the context of the TUT Review; and

(ii) may submit a proposed variation to the Undertaking as a result of the TUT Review to the ACCC for approval, or if it chooses not to, will set out in the report reasons why it is not submitting a variation application.

13.5 Development of TUT-related ARTC performance incentives

(a) ARTC will either in parallel with, or following completion of, the TUT Review:

(i) prepare and publish on its website options for a proposed performance incentive scheme which has the objectives of encouraging ARTC, through financial reward, to improve its performance in relation to making Capacity available for use either on a contracted or ad hoc basis and balancing the negative consequences of failing the system wide TUT, to be included in the Undertaking; and

(ii) invite submissions from Access Holders and other stakeholders on the proposed TUT-related performance incentive scheme, within a specified time (which must be not less than 6 weeks from the publication of the options).

(b) ARTC will in good faith consider the submissions provided within the specified time and prepare a report addressing options for a proposed TUT-related performance incentive scheme having regard to the submissions and

containing ARTC's proposed variation to the Undertaking to include its TUT-related proposed performance incentive scheme and:

(i) provide that report to the ACCC; and

(ii) may lodge a variation application with the ACCC under **section 44ZZA(7)** of the CCA consistent with the report, or if it chooses not to, will set out in the report reasons why it is not submitting a variation,

at the same time as it submits the TUT Review report to the ACCC for approval under **section 13.4(d)** or as part of the TUT Review report.

(c) If ARTC decides to conduct the development of a TUT-related ARTC performance scheme after completion of the TUT Review, ARTC will complete development of a TUT-related ARTC performance scheme within 6 months of the completion of the TUT Review or such longer period as required to consider or address any variations that may be proposed or required by the ACCC.

14 DEFINITIONS

14.1 Definitions

In this Undertaking, unless inconsistent with the context, words and expressions shall have the following meanings:

"Acceptable Credit Rating" means a minimum long term credit rating of either BBB from Standard & Poors or Baa2 from Moody's;

"**Access**" means access to use the Network, or any part thereof for the purpose of utilising Access Rights;

"**Access Agreement**" means an agreement between an Access Holder and ARTC for Access Rights;

"**Access Application"** means an application for Access Rights as described in **section 3.7**;

"**Access Holder"** means an Applicant who has been granted Access Rights to the Network;

"**Access Holder Agreement**" means an agreement entered into between ARTC and an Applicant for Coal Access Rights, the current indicative terms and conditions of which are set out in Annexure A;

"**Access Rights**" means Coal Access Rights and Non-Coal Access Rights;

"**Accredited**" means in relation to an Operator, having accreditation as an operator as defined under the Rail Safety Act in New South Wales and **"Accreditation"** bears a corresponding meaning;

"**Additional Capacity**" means, in relation to the Network, the capability of the Network to carry additional task by an enhancement or improvement of the infrastructure forming part of the Network or Associated Facilities;

"**Applicant**" means the person seeking Access Rights under **section 3** to become an Access Holder and, to avoid doubt, does not include an Operator seeking to enter into an Operator Sub-Agreement;

"**ARTC's Environmental Licence**" means ARTC's environment protection licence under the *Protection of the Environment Operations* Act 1997 (NSW) in respect of the Network that is situated in New South Wales or such other replacement licences that may be issued from time to time;

"**Associated Facilities**" means all associated track structures, over and under track structures, supports (including supports for equipment or items associated with the use of the Network), tunnels, bridges, train control systems, signalling systems, communication systems and associated plant, machinery and equipment from time to time but only to the extent that such assets are related to or connected with the Network but does not include any sidings or yards;

"**Assumptions**" means those statements of reasonable expectation identified as such in the Coal Chain Master Plan;

"**Available Capacity**" means Capacity that is not Committed Capacity (but does include Committed Capacity in instances where it will cease being Committed Capacity prior to the time in respect of which Capacity is being assessed);

"**Business Day**" means a day which is not a Saturday, Sunday or public or bank holiday in the State of New South Wales;

"**Capacity**" means the capability of the Network for Services, including Additional Capacity, based on and applying:

(a) Relevant System Assumptions; and

(b) other assumptions related to operating the Network for non-coal Services as reasonably determined by ARTC;

"**Capacity Analysis**" means the assessment by ARTC as to the Available Capacity of the Network and whether or not there is sufficient Available Capacity to accept the application for Access Rights and, if not, an assessment of the Additional Capacity required to accept the application for Access Rights as described in **section 5**;

"**Capacity Entitlement**" means the Capacity granted to the Access Holder under the Access Agreement in the form of Train Paths to be used in a certain period;

"**Capital Contribution**" means a direct payment other than by way of a Charge by an Applicant or Access Holder in connection with Capital Expenditure undertaken by ARTC, paid up-front or over a period of time. Where a Capital Contribution is to be paid over a period of more than one year, the value of the Capital Contribution may be represented as a single amount determined on a net present value basis by application of the relevant form of the Rate of Return;

"**Capital Contribution Principles**" means the principles included in **section 10.2**;

"**Capital Expenditure**" means annual expenditure as incurred by ARTC incorporated in the annual re-valuation of the Network and Associated Facilities as contemplated in **section 4.4**;

"**CCA**" means the *Competition and Consumer Act 2010* (Cth);

"**Ceiling Limit**" has the meaning given in **section 4.3**;

"**Charges**" means the charges payable by the Access Holder for the provision of Access Rights under the Access Agreement;

"**Coal Access Rights**" means the availability of the Train Paths specified in an Access Holder Agreement, and the right to utilise those Train Paths, through an Operator with Coal Trains, on the Network;

"**Coal Chain Capacity**" means the system wide capacity of the Hunter Valley Coal Chain, including below rail, above rail and port services as agreed with the HVCCC from time to time based on the System Assumptions;

"**Coal Chain Master Plan**" means a plan developed by the HVCCC on behalf of, and in consultation with, Hunter Valley Coal Chain participants detailing medium to long term forecasts of demand for coal haulage, requirements for Coal Chain Capacity over the applicable forecast period and identifying potential investments in parts of the Hunter Valley Coal Chain infrastructure intended to achieve increases in Coal Chain Capacity;

"**Coal Customer**" means a person who owns coal which is to be transported on the Network;

"Coal Train" means a Train, the sole purpose of which is transporting coal in open coal wagons whether loaded, empty, operating in or transiting through the Network, or any part thereof;

"**Committed Capacity**" means that portion of the Capacity that is required to meet the Capacity Entitlements of Access Holders;

"**Commencement Date**" has the meaning given to it in **section 2.2**;

"**Competition Principles Agreement**" means the agreement entered into by the Commonwealth of Australia and each State and Territory of Australia in 1995 to implement the national competition policy of Australia;

"**Concept Assessment Report**" means the report described in **section 9.3**;

"**Constrained Coal Customer**" means an Access Holder:

(a) who holds Coal Access Rights under a current written access agreement with ARTC; and

(b) who paid ARTC for access to the Constrained Network and such payments, other than for Direct Costs, formed part of the annual coal access revenue for the Constrained Group of Mines;

"Constrained Coal Customer Account" means an account maintained by ARTC for the purpose described in **section 4.9**;

"Constrained Group of Mines" means the group of mines and unloading points that are serviced by Coal Trains where the operation of those Coal Trains is entirely within

the Constrained Network, and where access revenue on those Segments forming the Constrained Network is:

(a) closest to if less than; or

(b) exceeds by the largest amount;

the Economic Cost for the Constrained Network;

"Constrained Network" means the group of Segments within the Network bounded by the mine loading points and the Newcastle port where access revenue on those Segments is likely to reach or exceed Economic Cost for those Segments on a stand alone basis;

"**Contributor**" has the meaning given in **section 10.1**;

"**CPI**" means the Sydney All Groups Consumer Price Index number published by the Australian Bureau of Statistics;

"**Credit Support**" means either:

(a) a Parent Guarantee; or

(b) Security;

"**Depreciation**" has the meaning described in **section 4.7**;

"**Direct Cost**" means maintenance expenditure, including major periodic maintenance that varies with usage of the Network, and may include other costs that vary with the usage of the Network but excluding Depreciation, assessed on an Efficient basis;

"**Economic Cost**" means the cost described in **section 4.5**;

"**Effective Date**" has the meaning given to it in **section 2.2**;

"**Efficient**" means, in respect to costs and operating expenditure, costs incurred by a prudent service provider managing the Network, acting efficiently, having regard to any matters particular to the environment in which management of the Network occurs including:

(a) the Hunter Valley Coal Chain where a key objective in maintenance planning is to maximise coal chain throughput and reliability;

(b) ARTC's obligations to maintain the Network having regard to the terms of applicable Access Agreements and Access Holder Agreements existing at the time; and

(c) ARTC's obligations under the law, applicable legislation (including regulations) or the NSW Lease.

"**Extension**" means the addition of infrastructure not forming part of the Network when the addition is proposed as part of an Access Application or during the negotiation process;

"**FCC**" has the meaning described in **section 4.13(a)(ii);**

"Final Indicative Services" has the meaning given to it in **section 4.18** and will have the characteristics approved by the ACCC in accordance with **section 4.18**;

"**Financial Criteria**" means:

(a) whether the investment to provide the Additional Capacity is endorsed by the RCG under **section 9** or has been endorsed as Prudent by the ACCC;

(b) whether there are sufficient take or pay commitments contracted by applicable Access Holders to recover NCC associated with the Additional Capacity over the economic life of the Additional Capacity;

(c) whether the terms and conditions of the relevant Access Agreements raise any material risk to ARTC recovering NCC associated with the Additional Capacity over the economic life of the Additional Capacity;

(d) ARTC's ability to service and raise financing through debt and equity for the Additional Capacity;

(e) the opportunity cost to ARTC given the relative risk and returns associated with the Additional Capacity financing relative to other investment opportunities; and

(f) the net effect on ARTC's balance sheet, gearing ratios and any other debt covenants in existence at the time;

"**Floor Limit**" has the meaning described in **section 4.2**;

"**Government Authority**" means any Commonwealth, State or local government department or other body exercising an executive, legislative, judicial or governmental function;

"**gtkm**" means gross tonnes multiplied by kilometres;

"**Hunter Valley Coal Chain**" means the system of moving coal from coal producers through a terminal in the Gunnedah, Sydney or Gloucester basin areas of New South Wales that utilise the Network and:

(a) in relation to coal exported through an export terminal at Newcastle, includes those persons:

    (i) who participate in marketing, mining, loading, transporting, unloading, stockpiling and shiploading activities;

    (ii) who provide rail or port infrastructure or port services to facilitate those activities; or

    (iii) who provide vessel or cargo management services, and

(b) in relation to other coal movements in the Gunnedah, Sydney or Gloucester basin areas of New South Wales, includes those persons:

    (i) who participate in marketing, mining, loading, transporting, unloading and stockpiling activities; or

    (ii) who provide rail infrastructure to facilitate these activities;

"**Hunter Valley Coal Chain Service Providers**" means those participants in the Hunter Valley Coal Chain who provide rail or port infrastructure or port services to facilitate the movement of coal through the Hunter Valley Coal Chain;

"**HVCCC**" means Hunter Valley Coal Chain Coordinator, or where that body no longer exists, or has been reconstituted, renamed, replaced or whose functions have been removed or transferred to another body or agency, is a reference to the body which has the responsibility to most closely perform the functions of the first mentioned body, as reasonably determined by ARTC;

"**Incident**" has the meaning ascribed to it in the Standard Sub-Operator Agreement, included as a Schedule to Indicative Access Holder Agreement at Annexure A;

"**Incremental Cost**" means all costs that could be avoided in the medium term if a Segment was removed from the Network;

"**Indicative Access Charges**" mean the Charges for Access Rights described in **section 4.14** as varied from time to time;

"**Indicative Access Holder Agreement**" or "**IAHA**" means the access holder agreement at Annexure A;

"**Indicative Access Proposal**" means the preliminary Access proposal submitted by ARTC under **section 3.10**;

"**Indicative Interstate Access Agreement**" means the indicative track access agreement included with an access undertaking accepted by the ACCC from time to time under Division 6 of Part IIIA of the CCA that covers the Interstate Network and, at the Commencement Date, means the indicative agreement included in Schedule D of the interstate access undertaking, accepted by the ACCC on 30 July 2008;

"Indicative Services" means Initial Indicative Services or Final Indicative Services operating on the Network;

"Initial Indicative Access Charges" has the meaning given to it in **section 4.17(c)** and for the first calendar year following its approved will be as set out in **section 4.17(d)**;

"Initial Indicative Services" means Indicative Services operating on the Network that have the characteristics set out in **section 4.17(d)**;

"Initial Period" has the meaning given to it in **section 4.17(b)**;

"**Interim Indicative Access Charges**" has the meaning given to it in **section 4.19(a)(i)** and for the calendar year containing the Commencement Date will be as set out in **section 4.19(c)**;

"**Interim Indicative Services**" has the meaning given to it in **section 4.19(a)** and will have the characteristics set out in **section 4.19(c)**;

"**Interim Period**" has the meaning given to it in **section 4.19(a)**;

"**Interstate Network**" means the network of railways lines delineated or defined in Schedule E of the interstate access undertaking accepted by the ACCC on 30 July 2008;

"**kgtkm**" means a thousand gross tonnes multiplied by kilometres travelled;

"**Material Default**" means any breach of a fundamental or essential term or repeated breaches of any of the terms of the agreements, as referred to in **section 3.4(e)**;

"**Mutually Exclusive Access Application**" has the meaning described in **section 3.13(a)**;

"**NCC**" has the meaning described in **section 4.13(a)(iii)**;

"**Network**" has the meaning described in **section 2.1(b)**;

"**Network Exit Capability**" means:

(a) in the case of Coal Access Rights sought or obtained for the purpose of transporting each cargo of coal to the Port of Newcastle, sufficient capacity allocated to that Access Holder at a coal terminal at the Port of Newcastle to offload the coal transported, or if the Access Holder is an Operator, the Coal Customer on whose behalf the Coal Access Rights are to be used has sufficient capacity at a coal terminal at the Port of Newcastle to enable the Operator to offload the coal transported; and

(b) in the case of Coal Access Rights sought or obtained for the purpose of transporting each cargo of coal to a destination other than the Port of Newcastle, an ability to off load the coal transported from the Network at that particular destination;

"**Network Management Principles**" means the principles regulating Train movements on the Network, set out in **Schedule C**;

"**Non-Coal Access Rights**" means the availability of Train Paths specified in an Access Agreement, and the right to operate Trains other than Coal Trains on those Train Paths;

"**Non-Segment Specific Assets**" means assets that are not Segment Specific Assets;

"**Non-Segment Specific Costs**" means operating costs that ARTC cannot directly identify with a Segment;

"**NSW Lease"** means the Deed of Lease over the interstate and Hunter Valley rail lines and infrastructure between the State Rail Authority of New South Wales, Rail Infrastructure Corporation and ARTC dated 31 May 2004, as amended from time to time;

"**Operator**" means an Accredited Operator seeking to operate Trains in accordance with the relevant Access Agreement and, where applicable, Operator Sub-Agreement;

"Operator Sub-Agreement" means an agreement entered into between ARTC and an Operator, the standard terms and conditions of which are included as a Schedule to the Indicative Access Holder Agreement at Annexure A;

"Parent Guarantee" means a guarantee in the form of **Schedule H** given by a Related Body Corporate of the Access Holder or Operator who has an Acceptable Credit Rating);

"**Performance Indicators**" means the performance indicators described in **Schedule D**;

"**Pricing Zone**" means a grouping of Segments as prescribed in **Schedule E**;

"**Project**" means a project to create Additional Capacity;

"**Prudent**" means in relation to Capital Expenditure, capital and renewals projects identified, and expenditure incurred, that is:

(a) taken as prudent in accordance with **section 9.7(b)**; and

(b) otherwise, prudent having regard to:

(i) need to meet market demand for Capacity and performance of the Network, or the need to extend the economic life of the Network;

(ii) whether the scope of works is consistent with that identified in the Hunter Valley corridor capacity strategy, where applicable, current as at the Commencement Date or as varied from time to time;

(iii) what is considered to represent an efficient means to achieve that demand or extend that economic life;

(iv) what is consistent with existing standard and configuration of adjacent and/or existing infrastructure with similar utilisation and market requirements, or its modern engineering equivalent;

(v) expenditure incurred efficiently in implementing the project, where efficient costs will reflect the costs incurred by a prudent service provider on an Efficient basis;

(vi) adjustments in relation to the timing of commencement and/or commissioning of projects;

(vii) the importance to the industry of anticipated timing for completion of projects having regard to the impact on Coal Chain Capacity and commercial arrangements; and

(viii) where applicable, support by the relevant industry participants;

"**RAB Floor Limit**" has the meaning given in **section 4.4(b)**;

"Rate of Return" has the meaning described in **section 4.8**;

"**RCG**" means the Rail Capacity Group;

"Regulatory Transition Period" means the period between the Commencement Date and 31 December 2014;

"**Related Body Corporate**" has the meaning given to Related Body Corporate in the *Corporations Act 2001* (Cth);

"**Relevant System Assumptions**" means the following assumptions provided to, or agreed with, the HVCCC and published on ARTC's website (subject to any confidentiality restrictions) or as determined under **section 5.1**:

(a) ARTC track including path numbers;

(b) live run management;

(c) ARTC system losses;

(d) maintenance intervention;

(e) train parking capacity (for shut downs);

(f) section run times;

(g) maximum train length;

(h) maximum train axle load;

(i) maximum train speed; and

(j) any other assumptions reasonably determined by ARTC from time to time as necessary for the purposes of determining Capacity;

"**Rolling Stock**" means a locomotive, carriage, wagons or other vehicle for use on a railway;

"Security" means an unconditional and irrevocable bank guarantee, letter of credit, performance or insurance bond issued by a bank holding an Australian banking licence or such other reputable person or institution accepted by ARTC and which is in a form reasonably satisfactory to ARTC;

"**Segment**" means a component of the Network as defined in **Schedule E** and is the smallest component for which the Ceiling Limit and Floor Limit applies;

"**Segment Specific Assets**" means assets that:

(a) form part of RAB and are subject to **section 4.4** of the Undertaking; and

either

(b) ARTC can directly identify with a Segment because those assets are physically or functionally part of a Segment; or,

(c) ARTC has otherwise directly identified with a Segment having regard to recovery of relevant costs associated with those assets consistent with the beneficial use of those assets;

"**Segment Specific Costs**" means operating costs that ARTC can directly identify with a Segment;

"**Services**" means a Train run by the Operator using the Network which provides railway freight or passenger services including work Trains;

"**Solvent**" means that, in the last five years:

(a) the Applicant has been able to pay all its debts as and when they become due and has not failed to comply with a statutory demand under section 459F(1) of the *Corporations Act 2001* (Cth);

(b) a meeting has not been convened to place it in voluntary liquidation or to appoint an administrator;

(c) an application has not been made to a court for the Applicant to be wound up without that application being dismissed within one month;

(d) a controller (as defined in the *Corporations Act 2001* (Cth)) of any of the Applicant's assets has not been appointed; or

(e) the Applicant has not proposed to enter into or enters into any form of arrangement with its creditors or any of them, including a deed of company arrangement;

"**Standard Operator Sub-Agreement**" means the operator-sub-agreement included as a schedule to Indicative Access Holder Agreement at Annexure A;

"**System Assumptions**" means the assumptions for the Hunter Valley Coal Chain as detailed in the System Assumption Document as varied from time to time, including:

(a) interface and live run losses between each element in the Hunter Valley Coal Chain;

(b) agreed operating mode of the Hunter Valley Coal Chain;

(c) surge and tolerance requirements;

(d) capacities of fixed infrastructure;

(e) rolling stock requirements; and

(f) vessel requirements,

except if not agreed to by ARTC, then those System Assumptions reasonably determined by ARTC from time to time and published on its website in accordance with **section 5.1(c)(iii)**, unless otherwise determined in accordance with **section 5.1(g)**;

"**System Assumptions Document**" means the document prepared by the HVCCC in consultation with ARTC and operators of coal terminals at the Port of Newcastle that details System Assumptions and simulation model outputs for the relevant Coal Chain Capacity scenarios;

"**Technical Criteria**" means whether the infrastructure required to provide the Additional Capacity of the Network:

(a) is technically feasible and consistent with the economically efficient operation of the Network and meets ARTC's engineering and operational standards;

(b) is consistent with the safe and reliable operation of the Network and will not impact on the safety of any user of the Network;

(c) does not reduce Capacity or Coal Chain Capacity; and

(d) does not otherwise compromise ARTC's legitimate business interests, except that this will not include consideration any of the factors included under the Financial Criteria;

"**Term**" means the term of this Undertaking as described in **section 2.2(b)**;

"**Third Party Works**" has the meaning described in Annexure A;

"**Train**" means one or more units of Rolling Stock coupled together, at least one of which is a locomotive or other self-propelled unit;

"**Train Path**" means the entitlement of the Access Holder to use, through an Accredited Operator, the Network between the locations and any other entitlements as set out in the Access Agreement and consistent with the allocations set out in the DTP;

"**Turnout**" means the points, signal and de-rail device connecting, or for operating the connection of, a connecting track with the Network;

"**Undertaking**" means this undertaking as amended from time to time in accordance with **section 2.3**;

"**VCC**" has the meaning described in **section 4.13(a)(i)**.

14.2 Interpretation

In this Undertaking, unless the context otherwise requires:

(a) singular words will also have their plural meaning and vice versa;

(b) a reference to a person includes companies and associations;

(c) a reference to a consent of a party means the prior written consent of that party;

(d) headings are for convenient reference only and do not affect the interpretation of this Undertaking;

(e) a reference to a section, clause, Part or a Schedule is a reference to a section, clause, Part or Schedule of this Undertaking;

(f) a reference to a party includes its successors and permitted assigns;

(g) notices that are required to be given in writing to ARTC may, if so agreed by ARTC, be provided in electronic form;

(h) a reference to any Act includes all statutes regulations codes by-laws or ordinances and any notice, demand, order, direction, requirement or obligation under that Act (and vice versa) and unless otherwise provided in that Act includes all consolidations amendments re-enactments or replacements from time to time of that Act and a reference to "law" includes a reference to any Act and the common law;

(i) the words "including", "for example" or "such as" when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and

(j) a reference to $ and dollars is to Australian currency.

Signing page

DATED: the first day of December 2011.

EXECUTED by **AUSTRALIAN RAIL TRACK CORPORATION LTD** by its duly authorised Officer:

.....
John Fullerton
Chief Executive Officer

SCHEDULES

A. Essential Elements of Access Holder Agreement

B. Network

C. Network Management Principles

D. Performance Measurement and Incentives

E. Segments

F. HVCCC consultation principles

G. ARTC Annual Compliance Report: Information provision and timing

H. Parent Guarantee

SCHEDULE A:1 - Elements of Coal Access Agreements

Tier 1 (mandatory) provisions for all Access Holder Agreements for Coal Access Rights*:

1 IAHA Clause 1.5: Tier 1 Mandatory Provisions

2 IAHA Clause 3.1: Grant of Train Paths for transport of coal IAHA

3 IAHA Clause 3.2: Annual Determination of BPU, MTC and NPC

4 IAHA Clause 3.3: Determination of Monthly Tolerance Cap and Tolerance

5 IAHA Clause 3.4: Identification of Path Usages

6 IAHA Clause 3.6: Availability Exceptions

7 IAHA Clause 3.14: Network Exit Capability requirement

8 IAHA Clause 5.4: Calculation of TOP Rebate and Ad-Hoc Charge Rebate

9 IAHA Clause 6: Capacity shortfall

10 IAHA Clause 11.1(c): Variation of a Train Path for the purposes of maximising the use and reliability of the Network

11 IAHA Clause 11.4: Removal of Path Usages for under-utilisation

12 IAHA Clause 11.5: Use of Non-Compliant Services

13 IAHA Clause 11.6: Cancellations of services

14 IAHA Clause 15: Confidentiality

15 IAHA Clause 16.4: Temporary Trade of Path Usages

16 IAHA Clause 16.5: Treatment of Traded Path Usages

17 IAHA Clause 16.6: CTS Administrator and HVCCC

18 IAHA Clause 16.7: The effect of assignment (but only to the extent it relates to clause 16.4)

19 IAHA Clause 16.8: Reduction in time period for ARTC approval of trades

20 IAHA Clause 19.1: New or varied Access Undertaking

21 IAHA Train Path Schedule: Clause 4.1 Capacity Condition Precedent; Clause 4.2 Removal of path usages for failure to satisfy Capacity Condition Precedent

22 IAHA Schedule 2: System true-up test

23 IAHA Schedule 3: Clause 4.1(c) Determination of TOP $Price_{PZ}$ and Non-TOP $Price_{PZ}$, - dispute resolution provisions

* Except if the Access Holder Agreement is for Access Rights to transport coal to a destination other than the Port of Newcastle, in which case:

- the Tier 1 (mandatory) provisions are items 1, 3, 5, 6, 8, 9, 10, 12, 13, 20, 22, 23; and
- items 2, 4, 7, 11,14, 15, 16, 17, 18, 19 and 21 will be treated as Tier 2 (negotiable) provisions.

Tier 2 (negotiable) provisions for all Access Holder Agreements for Coal Access Rights

1 provisions allowing ARTC to require, at any time during the term of the Access Holder Agreement that the Access Holder has an Acceptable Credit Rating or delivers Credit Support to ARTC;

2 Access Holder's non-exclusive access to Network;

3 Access Holder's entitlement to Train Paths subject to the matters outside ARTC's control, legislated passenger priority, safety, emergency, Third Party Works, material failure of Operator's trains, any lawful requirement given by a Governmental Authority and Network Management Principles;

4 each party warranting the accuracy of information provided;

5 an Access Holder can only utilise its access rights through an Accredited Operator who has entered into an Operator-Sub Agreement with ARTC which has been endorsed by the Access Holder, a copy of which is to be included as an Annexure to the Access Holder Agreement;

6 Access Holders paying a Charge for Coal Access Rights based on a combination of actual usage (being a function of distance and gross mass ($/gtkm) for a Pricing Zone) and on a take or pay basis;

7 charges to be determined in accordance with **section 4.13** and **section 4.20** of the Undertaking, as applicable;

8 ARTC may charge for access to Extensions and Additional Capacity;

9 ARTC to conduct Network Control, issue Instructions, maintain and operate the Network in a non-discriminatory manner;

10 ARTC having the ability to vary (temporarily or permanently), remove and review contracted Capacity Entitlements in appropriate circumstances and to take possession of the Network for repairs, maintenance, new works and upgrades;

11 provisions which allow ARTC to meet its obligations under its NSW lease, including without limitation:

(a) the provision of all Train Paths will be subject to ARTC's obligations regarding passenger priority; and

(b) the train decision factors which detail the allocation of train priority in real time train control;

12 implementation and compliance with ARTC's Environmental Licence and environmental management system manual;

13 provisions which allow ARTC to meet its obligations in relation to third parties' rights to conduct works on the Network;

14 payment of, if payable, legal costs of execution (including any associated stamp duty, fees, fines and penalties thereon) in all relevant jurisdictions on the Access Holder Agreement and any document contemplated or allowed by the Access Holder Agreement;

15 termination of Access Holder Agreements on termination or cessation of ARTC's leasehold rights;

16 appropriate termination and suspension provisions;

17 indemnities by the Access Holder and ARTC;

18 ARTC is not liable for indirect or consequential losses relating to Incidents;

19 the parties agree that any changes in law which materially affects the parties' rights under the Access Holder Agreement is excluded to the extent permitted by law;

20 the parties agree to renegotiate the Access Holder Agreement to the extent that a change in law prevents a party from performing any of its obligations;

21 warranties or guarantees from the Access Holder sufficient to meet obligations or potential obligations under the Access Holder Agreement;

22 dispute resolution procedures; and

23 an Operator Sub-Agreement including the following elements:

(a) a clause enabling ARTC to request the Operator to provide Credit Support if the Operator is unable to demonstrate to ARTC that it meets appropriate prudential requirements;

(b) ARTC and Operator holding appropriate Accreditation;

(c) ARTC and Operator holding appropriate insurance;

(d) Operator's entitlement to operate Coal Trains on the Network for the Access Holder is limited to the Access Holder's Coal Access Rights;

(e) Operator has a non-exclusive access to Network;

(f) Operator's entitlement to operate Coal Trains on a Train Path is subject to the matters outside ARTC's control, legislated passenger priority, safety, emergency, Third Party Works, material failure of Operator's Trains, any lawful requirement given by a Governmental Authority and Network Management Principles;

(g) provisions which allow ARTC to meet its obligations under its NSW lease, including without limitation:

- the provision of all Train Paths will be subject to ARTC's obligations regarding passenger priority; and
- the train decision factors which detail the allocation of train priority in real time train control;

(h) contracted Train Paths subject to the matters outside ARTC's control, legislated passenger priority, safety, emergency, Third Party Works, any lawful requirement given by a Governmental Authority and Network Management Principles;

(i) each party warranting the accuracy of information provided;

(j) the Operator providing warranties regarding Rolling Stock;

(k) ARTC to conduct Network Control, issue Instructions, maintain and operate the Network in a non-discriminatory manner;

(l) Operator complying with plans dealing with Incidents, preservation of evidence and implementation and compliance with ARTC's Environmental Licence and environmental management system manual;

(m) Operator complying with the Codes of Practice as published by ARTC from time to time and Instructions issued by ARTC;

(n) Operator to ensure use of the Network minimises obstruction to the Network, complies with any laws and does not materially affect or damage any part of the Network or ARTC's property;

(o) Operator to provide and maintain communications equipment compatible with equipment used in the Network Control Centre and provide information to ARTC regarding the provision of train services;

(p) Operator to provide ARTC with a train manifest for each train service and inform ARTC of any cancellations;

(q) Operator to ensure that any item hauled is secured and does not become deposited on or adjacent to the Network;

(r) Operator to comply with applicable and appropriate safety standards;

(s) the ability of ARTC to temporarily vary the Train Paths by Instruction to the Operator;

(t) mechanism to change the Operator's Operator Rights due to changes in the Access Holder Agreements or Access Holder nominations;

(u) the ability of ARTC to inspect and conduct audits on the Operator;

(v) appropriate termination and suspension provisions;

(w) the parties agree that any changes in law which materially affects the parties' rights under the Operator Sub-Agreement is excluded to the extent permitted by law;

(x) the parties agree to renegotiate the Operator Sub-Agreement to the extent that a change in law prevents a party from performing any of its obligations;

(y) indemnities by the Operator and ARTC in relation to Incidents; and

(z) dispute resolution procedures.

SCHEDULE A:2 - Elements of Non Coal Access Agreements

Tier 1 (mandatory) provisions for an Access Agreement for Non-Coal Access Rights

1 IAHA Clause 6: Capacity shortfall provisions which are aligned and consistent with those set out in **section 5.3, 5.4** and **5.5** of this Undertaking; and

2 A provision equivalent to clause 19.1(b) of the IAHA setting out that any changes to a Tier 1 (mandatory) Non-Coal Provision identified in an Access Undertaking accepted by the ACCC, will be automatically incorporated into the Access Agreement.

Tier 2 (negotiable) provisions for an Access Agreement for Non-Coal Access Rights

1 the right of ARTC to seek security from the Access Holder;

2 Access Holder's non-exclusive access to Network;

3 Access Holder's entitlement to contracted Train Paths are subject to the matters outside ARTC's control, legislated passenger priority, safety, emergency, Third Party Works, material failure of Operator's trains, any lawful requirement given by a Governmental Authority and Network Management Principles;

4 each party warranting the accuracy of information provided;

5 Access Holders paying a Charge based on a variable component (a function of distance and gross mass $/gtkm), a flagfall component and an excess network occupancy component;

6 ARTC may charge for access to Extensions and Additional Capacity;

7 ARTC to conduct Network Control, issue Instructions, maintain and operate the Network in a non-discriminatory manner;

8 ARTC having the ability to vary (temporarily or permanently), remove and review contracted Capacity Entitlements in appropriate circumstances and to take possession of the Network for repairs, maintenance, new works and upgrades;

9 under-utilised capacity may be withdrawn by ARTC;

10 provisions which allow ARTC to meet its obligations under its NSW lease, including without limitation:

(a) the provision of all Train Paths will be subject to ARTC's obligations regarding passenger priority; and

(b) the train decision factors which detail the allocation of train priority in real time train control;

11 implementation and compliance with ARTC's Environmental Licence and environmental management system manual;

12 contracted Train Paths subject to matters outside ARTC's control, legislated passenger priority, safety, emergency, Third Party Works, any lawful requirement given by a Governmental Authority and Network Management Principles;

13 provisions which allow ARTC to meet its obligations in relation to third parties' rights to conduct works on the Network;

14 payment of, if payable, legal costs of execution (including any associated stamp duty, fees, fines and penalties thereon) in all relevant jurisdictions on the Access Agreement and any document contemplated or allowed by the Access Agreement;

15 termination of Access Agreements on termination or cessation of ARTC's leasehold rights;

16 indemnities by the Access Holder and ARTC including in relation to Incidents;

17 ARTC is not liable for indirect or consequential losses relating to Incidents;

18 the parties agree that any change in law which materially affects the parties' rights under the Access Agreement is excluded to the extent permitted by law;

19 the parties agree to renegotiate the Access Agreement to the extent that a change in law prevents a party from performing any of its obligations;

20 warranties or guarantees from the Access Holder sufficient to meet obligations or potential obligations under the Access Agreement;

21 where the Access Holder is an Operator, the Operator holds appropriate Accreditation;

22 where the Access Holder is not an Accredited Operator, an obligation on the Access Holder to procure the services of an Accredited Operator to operate the Trains on the contracted Train Paths;

23 the Access Holder, and where relevant, the Operator holds appropriate insurance;

24 the Access Holder or, where relevant, the Operator provides a warranty regarding Rolling Stock;

25 the Access Holder and, where relevant, the Operator complies with plans dealing with Incidents, preservation of evidence and implementation and compliance with ARTC's Environmental Licence and environmental management system manual;

26 the Access Holder and, where relevant, the Operator complies with Codes of Practice as published by ARTC from time to time and Instructions issued by ARTC;

27 the Access Holder and, where relevant, the Operator, ensures use of the Network minimises obstruction to the Network, complies with any laws and does not materially affect or damage any part of the Network or ARTC's property;

28 the Access Holder and, where relevant, the Operator provides and maintains communications equipment compatible with equipment used in the Network Control Centre and provide information to ARTC regarding the provision of train services;

29 the Access Holder and, where relevant, the Operator provides ARTC with a train manifest for each train service and inform ARTC of any cancellations;

30 the Access Holder and, where relevant, the Operator ensures that any item hauled is secured and does not become deposited on or adjacent to the Network;

31 the Access Holder and, where relevant, the Operator complies with applicable and appropriate safety standards;

32 the ability of ARTC to inspect and conduct audits on the Access Holder;

33 appropriate termination and suspension provisions; and

34 dispute resolution procedures.

SCHEDULE B - Network

Mainline, crossing loops, dual gauge and turnouts as summarised below:

1. Islington Junction turnouts (116A points (164.690 km)/115A points (164.633 km)) to Port Waratah (107W points (via DEP 169.731 km)/111W points (via DEP 169.552 km)/109W points (166.311 km)/113 points (116.403 km)/PWCS boundary)

2. Scholey Street Junction turnouts (95 points (164.806 km)/98 points (164.804 km))(Via Coal) to Muswellbrook 288.800 km[1]

3. Hanbury Junction turnouts (137A points (168.955 km)/136A points (168.986 km)) to Kooragang Island (107S points (via ARR 174.984 km))

4. Kooragang East Junction turnouts (142E points (168.968)/143E points (168.997 km) to Sandgate turnouts (181B points (171.334 km)/183D points (171.502))

5. Muswellbrook 288.800 km to Ulan 435.300 km

6. Muswellbrook 288.800 km to Gap[2] 416.000 km

[1] Includes Sandgate Flyover (for the purposes of **section 4** Pricing Principles only) which forms part of ARTC Sector 938 Sandgate – Maitland (via Main)

[2] To the extent where the railway line joins the rail network owned by the Country Rail Infrastructure Authority.

ANNEXURE 1 TO SCHEDULE B

See Map ARTCSHV (one (1) page) which has been provided as a separate map for illustrative purposes only, and forms part of this annexure.

The map represents the railway lines described at Schedule B as at the Commencement Date. This map may change over the Term. Applicants should refer to ARTC's website for an up to date map of the railway lines described at Schedule B.

SCHEDULE C - Network Management Principles

The Train Priority Matrix (Table D1), the Decision Matrix (Table D2) and the set of Rules proposed below are contained in the NSW Lease. In recognition of the particular objectives of Coal Trains but within the constraints of the NSW Lease, ARTC has supplemented these rules with an additional set of guidelines to be applied when Coal Trains run out of course.

The following definitions apply in this Schedule.

"**Coal Train**" means a Train, the sole purpose of which is carrying coal, whether loaded, empty, operating in or transiting through the Network.

"**Commuter Peak Services**" means RailCorp's commuter rail passenger services arriving at Newcastle Station between 0600 and 0900 hours and departing Newcastle Station between 1600 and 1800 hours and continuing until they reach their destination point.

"**Discharge Point**" means a facility connected to the Hunter Valley Network at which coal is discharged from Trains.

"Express Freight Services" means those freight services capable of maintaining sectional running times that are, or are determined by the appropriate network controller, to operate at faster sectional times than local Frequent-Stopping Services.

"Frequent-Stopping Services" means those rail passenger services that stop at most or all stations along their Train Path.

"**Healthy Train**" means a Train that, having regard to the daily train plan applicable on the day:

(a) presents to the Network on time, is configured to operate to its schedule and operates in a way that it remains able to maintain its schedule; or

(b) is running late only due to causes within the Network, but only where the root cause is outside the Operator's control; or

(c) is running on time, regardless of previous delays.

"**Hunter Valley Coal Chain**" means the system of moving coal from coal producers through a terminal in the Gunnedah, Sydney or Gloucester basin areas of New South Wales that utilise the Network and:

(a) in relation to coal exported through an export terminal at Newcastle, includes those persons:

    (i) who participate in marketing, mining, loading, transporting, unloading, stockpiling and shiploading activities;

    (ii) who provide rail or port infrastructure or port services to facilitate those activities; or

    (iii) who provide vessel or cargo management services, and

(b) in relation to other coal movements in the Gunnedah, Sydney or Gloucester basin areas of New South Wales, includes those persons:

    (i) who participate in marketing, mining, loading, transporting, unloading and stockpiling activities; or

    (ii) who provide rail infrastructure to facilitate these activities.

"**Integrated Plan**" means the plan prepared by the HVCCC in accordance with the System Rules and provided to all logistics service providers in the Hunter Valley Coal Chain on a 36 hour basis (or such other time frame as otherwise agreed by the members of the HVCCC) setting out the plan for the running of Coal Trains, assembly of cargoes and loading of vessels.

"**Limited-Stop Services**" means those rail passenger services that stop at a few selected stations along their Train Path.

"**Long-distance Passenger Services**" means those rail passenger services operating to or from points outside the Sydney metropolitan rail area, excluding RailCorp's CityRail services.

"**Network Control**" means the control and regulation of all rail operations (including Train Movements, movements of rolling stock and track maintenance vehicles) to ensure the safe, efficient and proper operation of the Network.

"**Non-Revenue Positioning Movements**" means movements of Trains required for reasons other than revenue services.

"**Special Event**" means a major community, cultural, sporting or similar event within the metropolitan rail area, which is identified as such by a relevant NSW agency, and which may require:

(a) a special timetable for the operation of RailCorp rail passenger services before, during and after the event; and

(b) significant operational priority for RailCorp rail passenger services; and

(c) consequential adjustments to other rail operators' services.

"**System Rules**" mean rules, standards, specifications and processes agreed with the HVCCC for the efficient operation of the Hunter Valley Coal Chain.

"**Train**" means a single unit of rolling stock or 2 or more units of rolling stock including a locomotive or other self propelled unit coupled together to operate on the Track as a single unit.

"**Train Movement**" means a particular trip by a Train on a Train Path.

"**Train Path**" means the series of network segments over a particular time interval through which a Train can travel and may include stopping points and intervals and fuelling stations and other set down or changeover points.

Objectives of Coal Trains and Non-Coal Trains

In general,

(a) the primary objective of a Coal Train is to arrive at the Discharge Point in sequence in accordance with the Integrated Plan; and

(b) the primary objective of a Non-Coal Train is to arrive at its destination or exit the Hunter Valley Network (as the case may be) in accordance with its schedule.

Notwithstanding the above objectives, the requirements of Customers on the Hunter Valley Network are complex and may necessitate the pursuit of different objectives from time to time. Accordingly, ARTC will manage Trains on the Hunter Valley Network having regard to the Integrated Plan and in accordance with the Network Management Principles set out in this Schedule.

In the event of a conflict between two Coal Trains running out-of-course, ARTC will manage Trains in accordance with objective (a) above and, where necessary, will liaise closely with the HVCCC and

members of the live run operations group to determine the optimum recovery strategy to benefit the Hunter Valley Coal Chain as a whole and, except where required otherwise for reasons of safety or contractual obligation, will seek to implement that course of action.

Train Decision Factors

Train Decision Factors apply to resolve the competing interests of Customer's Trains using the Hunter Valley Network.

General principles guiding train management are:

(a) all parties are to ensure operational safety is maintained through compliance with safeworking rules, regulations and procedures;

(b) ARTC is responsible for ensuring the integrity of the track and other infrastructure so that the train plan can be met;

(c) Operators are responsible for ensuring operating integrity of their Trains, including train crewing, locomotives, wagons and loading so that the train plan can be met; and

(d) where one or more Trains are late or unhealthy, they will be managed as specified in the matrices below subject to a rail operator's preferences for its own services.

The two tables are used in conjunction with each other. Table D1 will enable a person undertaking Network Control ("Network Controller") to define the relative priority of two conflicting Trains. Table D2 will specify the type of decision available to the Network Controller in delivering Network Control directions to resolve the potential conflict.

Table D1 – Train Priority Matrix

Decreasing order of priority	Type of train service in ARTC Network
From Highest	Long-distance Passenger Services
↓	Commuter Peak Services and rail passenger services likely to affect Commuter Peak Services or Special Event services
	Limited -Stop Services that are not Commuter Peak Services or Special Event Services
	Freight services likely to affect Commuter Peak Services or Special Event services
	Frequent-Stopping Services that are not Commuter Peak Services
	Freight Services
To Lowest	Non-Revenue Positioning Movements

Table D2 – Decision Matrix

Trains of Equal Health	Both Healthy One on Time & One Late	Both Late
Equal Priority Trains	Rule 1 + 2	Rule 3
Unequal Priority Trains		Rule 6 + 3
Higher Priority Train is On Time + Lower Priority is Late	Rule 5 + 2	
Higher Priority Train is Late + Lower Priority Train is On Time	Rule 4 + 2	

Trains of Unequal Health	Rule 7 + 2

Rule 1:

(a) A Healthy Train should be managed such that it will exit on time.

(b) If a Healthy Train is running late, it should be given equal preference to other Healthy Trains and advanced wherever possible to regain lost time. Any delay to other Healthy Trains as a result of such advancement must be kept to a minimum as defined in Rule 2.

Rule 2:

The following delay limits apply to the full journey of a Healthy Train being held back:

(a) the delay to the individual rail passenger service held back does not exceed 5 minutes;

(b) there is a plan in place to recover lost time so that the downstream effect on the service held back and on individual subsequent rail passenger services also does not exceed 5 minutes;

(c) the delay to a freight service held back does not exceed 15 minutes; or

(d) there is a plan in place to recover lost time so that the downstream effect on the healthy freight service held back and on individual subsequent healthy freight services also does not exceed 15 minutes. Any plan for the recovery of time by freight services must be capable of being achieved prior to their entry into the Sydney metropolitan rail area.

Rule 3: Give preference to the Train whose Train performance indicates it will lose least or no more time and even make up time and hold the gain; and consider downstream effect to minimise overall delay.

Rule 4: A lower priority Train gets preference. A higher priority Train can be given preference subject to the delay to the lower priority Train being kept to a minimum as defined in Rule 2.

Rule 5: A higher priority Train should be given preference over a lower priority Train. A lower priority Train may be given preference over higher priority Train provided the delay to that Train is kept to a minimum as defined in Rule 2.

Rule 6: A high priority Train has preference, subject to Rule 3.

Rule 7: A Healthy Train should be given preference over an unhealthy Train. An unhealthy Train may be given preference over a Healthy Train provided the delay to that Train is kept to a minimum as defined in Rule 2**.**

SCHEDULE D - Performance Measurement and Incentives

1. Network Performance Indicators

Network Key Performance Indicator	Reporting Scope	Responsibility for performance	Reporting Frequency	Reporting Level
Network Performance				
Transit Time – Infrastructure Configuration Capability[1]	Coal Trains Only[2]	ARTC Industry RCG	Quarterly	Pricing Zone
Transit Time – Infrastructure Practical Capability[3]	Coal Trains Only[4]	ARTC	Quarterly	Pricing Zone
Maximum Axle load[5]	Coal only	ARTC Industry RCG	Quarterly	Pricing Zone
Maximum Speed[6]	Coal only	ARTC Industry RCG	Quarterly	Pricing Zone
Train Length[7]	Coal only	ARTC Industry RCG	Quarterly	Pricing Zone
System Performance				
Transit Time – Scheduled/Actual[8]	Coal Trains Only	ARTC Industry	Quarterly	Pricing Zone
Infrastructure Maintenance Requirement (planned/actual)[9]	ARTC Requirements	ARTC	Quarterly	Pricing Zone
Coal Chain Losses – ARTC cause[10]	Coal only	ARTC	Quarterly	Network
Coal Chain Losses – non-ARTC cause[11]	Coal only	Industry	Quarterly	Network

1 A measure of transit time over the Network, delivered by the infrastructure given its configuration (alignment, grades, curves and associated permanent speed restrictions). Measured by simulated operation of a reference Indicative Service over the Network (excluding prevailing temporary speed restrictions). Reported on the basis of average speed.

2 Separate reporting will be undertaken in relation to an Indicative Service (or an average of Interim Indicative Services as applicable) over each Pricing Zone. Reported performance will only relate to that on the Network.

3 A measure of transit time over the Network, delivered by the infrastructure given its configuration (as measured by Transit Time – Infrastructure Configuration Capability) and maintenance requirements (including the simulated transit time impact of temporary speed restrictions). The transit time impact of temporary speed restrictions is determined by applying the temporary speeds restrictions in place on the Network to a simulation model designed to determine the total of time lost by reference Indicative Service subject to each temporary speed restriction. Reported on the basis of average speed.

4 Separate reporting will be undertaken in relation to an Indicative Service (or an average of Interim Indicative Services as applicable) over each Pricing Zone. Reported performance will only relate to that on the Network.

5 Lowest at any point in a Pricing Zone.

6 Lowest at any point in a Pricing Zone.

7 Lowest at any point in a Pricing Zone. Pricing Zone 1 is reliant on Port capability.

8 A measure of transit time required by and used by the market. Difference between schedule and actual Network entry time and Network exit time. Reported on the basis of average speed.

9 Path usages required by ARTC. Measured by reference to the long term planning requirement (as determined during annual sculpting), short term adjustments (daily train plan) and actual requirements.

10 Path usages unavailable or cancelled due to actual system losses arising from ARTC. Measured by reference to the long term planning requirement (as determined in accordance with System Assumptions), short term adjustments (daily train plan) and actual requirements. Refer System True Up prescribed at Schedule 2 of the Indicative Access Holder Agreement.

11 Path usages unavailable or cancelled due to actual system losses arising from parties other than ARTC. Measured by reference to the long term planning requirement (as determined in accordance with System Assumptions), short term adjustments (daily train plan) and actual requirements. Refer System True Up prescribed at Schedule 2 of the Indicative Access Holder Agreement.

Network Key Performance Indicator	Reporting Scope	Responsibility for performance	Reporting Frequency	Reporting Level
Workable Alignment				
Coal Throughput (tonnes)[12] – actual/planned	Coal only	Industry	Quarterly	Network
Rail Capacity Group				
Project Implementation Delay[13] (not Prudent)	RCG Projects	ARTC	Quarterly	Network
Track Condition[14]				
Track quality measured by index.	Not available for individual AHAs	ARTC	Quarterly	Pricing Zone
Unit Cost				
Infrastructure Maintenance[15] per GTK	Not available for individual AHAs	ARTC	Annually	Network
Network Control and Operations Cost[16] per train km	Not available for individual AHAs	ARTC	Annually	Network
Operating Cost[17] per GTK	Not available for individual AHAs	ARTC	Annually	Network
Capital Cost[18] per GTK[19]	Coal Only Not available for individual AHAs	ARTC Industry RCG	Annually	Network

12 Actual/planned port inbound receivals as reported by HVCCC, plus sum of all actual/planned domestic coal moved on the Network.

13 Delay arising under section 9.6(e)(iii) to the extent where any interest in respect of construction is not deemed Prudent under that section.

14 To be measured by Track Quality Index (TQI) and averaged over each Segment. The TQI is calculated over 100m sections, using 0.5m raw data from the AK car. TQI is the sum of the standard deviations (x3) in each rail for a 20m inertial top (average over left and right rail), horizontal alignment (versine over a 10m chord (average over left and right rail)), twist over 2.0m and gauge.

15 Total annual expenditure associated with infrastructure maintenance directly identified with, or allocated to the Network determined in accordance with section 4.

16 Total annual expenditure associated with network control, transit management, logistics, terminal operations, operations planning and management directly identified with, or allocated to the Network determined in accordance with section 4.

17 Total annual expenditure associated with infrastructure maintenance, network control and operations cost and system management functions directly identified with, or allocated to the Network determined in accordance with section 4.

18 Depreciation and return based on RAB Floor Limit determined in accordance with section 4.

19 Contracted coal GTK.

SCHEDULE E - Segments

Pricing Zone	Segment	Description	Length
3	0401	Dartbrook - Werris Creek	114.3
3	0402	Werris Creek - Gap	5.2
1	0915	Islington Jct – Scholey St Jct	0.7
1	0916	Scholey St Jct – Port Waratah	3.0
1	0917	Scholey St Jct – Waratah (Via Coal)	0.9
1	0925	Waratah – Hanbury Jct (Via Coal)	1.7
1	0926	Hanbury Jct – Sandgate (Via Coal)	2.9
1	0927	Hanbury Jct – Kooragang East Jct	2.4
1	0929	Kooragang East Jct - NCIG Jct	0.8
1	0930	NCIG Jct To Kooragang Island	5.9
1	0931	Kooragang East Jct To Sandgate	0.5
1	0936*	Sandgate To Thornton (Via Coal)	11.7
1	0937	Thornton To Maitland (Via Coal)	10.4
1	0944	Telarah To Farley	0.8
1	0946	Maitland To Farley	1.4
1	0947	Farley To Branxton	21.7
1	0948	Branxton To Whittingham	18.4
1	0951	Whittingham To Saxonvale Jct	8.3
1	0952	Saxonvale Jct To Mount Thorley	2.8
1	0955	Whittingham To Camberwell Jct	12.9
1	0956	Camberwell Jct To Glennies Creek	6.9
1	0957	Glennies Creek To Newdell Jct	8.4
1	0958	Newdell Jct To Draytons Jct	9.7
1	0959	Newdell Branch	2.7
1	0961	Draytons Jct To Muswellbrook	16.8
3	0962	Muswellbrook To Dartbrook Jct	7.8
1	0970	Muswellbrook To Bengalla Jct	5.4
2	0971	Bengalla Jct To Anvill Hill	12.8
2	0972	Anvill Hill to Sandy Hollow Junction	22.6
2	0973	Sandy Hollow Jct To Wilpinjong	95.1
2	0974	Wilpinjong To Ulan Colliery Jct	9.7

* Includes Sandgate Flyover (for the purposes of **section 4** Pricing Principles only) which forms part of ARTC Sector 938 Sandgate – Maitland (via Main)

SCHEDULE F - Principles to guide ARTC/ HVCCC Consultation

Where ARTC is required to consult with the HVCCC under this Undertaking or IAHA and a specific process is not set out in that provision, ARTC will use reasonable endeavours to follow the following steps to the extent practical and in light of the specific circumstances:

- ARTC will request the HVCCC to provide ARTC with its view by a specified date, as reasonably determined by ARTC;
- Where the HVCCC provides its view by the notified date, ARTC will consider that view in good faith;
- Where ARTC disagrees with the view and there is sufficient time for the HVCCC to reconsider its view, as reasonably determined by ARTC, ARTC will provide its reasons to the HVCCC and will ask the HVCCC to reconsider in light of ARTC's reasons by a specified date, as reasonably determined by ARTC;
- Where the HVCCC provides its revised view by the notified date, ARTC will consider the revised view expressed by the HVCCC in good faith;
- Ultimately, ARTC is not obliged to follow the HVCCC's recommendation.

SCHEDULE G - Annual Compliance Assessment - information provision and timing

1. ARTC annual reporting obligations

As set out in **section 4.10** of this Undertaking, ARTC will submit to the ACCC by 30 April each year in respect of the previous calendar year:

(i) documentation detailing roll-forward of the RAB and the RAB Floor Limit, and comparisons between RAB and RAB Floor Limit; and

(ii) where documentation in (i) above demonstrates that RAB is at or below RAB Floor Limit, documentation detailing calculations relevant to reconciliation of Access revenue with the applicable Ceiling Limit and calculation of any allocation of the total unders and overs amount.

2. Information to be provided by ARTC

ARTC will provide the following information as a minimum to the ACCC in order for the ACCC to carry out its assessment under **section 4.10** of this Undertaking:

(a) a covering letter from ARTC stating that it submits documentation on its compliance with this Undertaking and the relevant year to which it relates.

(b) documentation demonstrating ARTC's compliance with the annual RAB and RAB Floor Limit roll forward as set out at **section 4.4** of this Undertaking, including:

(i) an explanation of how each component[20] of the RAB and RAB Floor Limit has been calculated in accordance with the formula in this Undertaking, and any assumptions used;

(ii) a breakdown of values for each component of the RAB and RAB Floor Limit, including a split into Constrained Network and non-Constrained Network and, for Capital Expenditure, values to Segment and asset (project) level (where values are zero, this should be stated);

(iii) a table summarising the values for each component of the RAB and RAB Floor Limit and the outcome of the calculations, including the average closing value for the RAB and RAB Floor Limit;

(iv) evidence of any endorsement by the RCG of any proposed Capital Expenditure where relevant;

(v) evidence of disposals value including any endorsement by the RCG of any proposed disposals, and where possible, appropriate references to the Booz Allen Hamilton DORC database which established the regulatory asset base value as at 1 July 1999[21], and any references to the depreciated optimised replacement cost in relation to assets in Segments not ascribed a regulatory asset value in accordance with the NSW Rail

[20] This refers to the components used to calculate the RAB and RAB Floor Limit as set out in the formulae in Section 4.3 of this Undertaking.

[21] The Booz-Allen and Hamilton report, Valuation of Certain Assets of the Rail Access Corporation, 14 May 2001, was the basis for the Independent Pricing and Regulatory Tribunal of NSW's June 2001 recommendation (accepted by the Minister for Transport in December 2001) which established the depreciated optimised replacement cost (DORC) value for rail assets in the Hunter Valley coal network.

Access Undertaking in force at the time immediately preceding the Commencement Date of this Undertaking, and approved by the ACCC from time to time, and demonstrating adjustments to derive the current value of disposals;

(vi) the spreadsheet or other models underlying calculations (not for publication);

(vii) the name, address, contact details (including email address) of stakeholders considered by ARTC to be relevant Applicants and Access Holders and other parties consulted regarding compliance matters. This is to include a contact at CEO/Executive level for the purpose of an ACCC letter and a regular operational contact for email notification. Where a stakeholder identified by ARTC is not a relevant Applicant or Access Holder, ARTC will indicate their relationship with ARTC and/or their interest in ARTC's compliance, for instance: end user, industry advocate, etc. This information is not provided for publication.

(c) details as to ARTC's compliance with the ceiling test, including allocation of the total unders or overs amount to Constrained Coal Customers, including:

(i) a table indicating the values for the total unders or overs amount for the review period including:

(A) Access revenue;

(B) Full Economic Costs for the review period, with a detailed breakdown into standard operating cost line items, return, depreciation;

(C) the total unders or overs amount (for publication), and the proposed allocation of the total unders or overs amount to Constrained Coal Customers (not for publication);

(D) comparative values from the previous review period;

(ii) an explanation of the assumptions and methodology used to derive the above values, and any changes made since the previous review period;

(iii) the spreadsheet or other models underlying calculations relevant to reconciliation of Access revenue with the applicable Ceiling Limit and calculation of any allocation of the total unders or overs amount to Constrained Coal Customers (not for publication) which should clearly indicate which Segments formed part of the Constrained Network for the review period;

(iv) evidence of any relevant Access Holders' endorsement of the total unders or overs amount;

(d) where the documentation shows RAB to be greater than the RAB Floor Limit in Pricing Zone 3, documentation setting out the Interim Indicative Access Charge or Indicative Access Charge, as applicable for Pricing Zone 3 in that calendar year and the previous calendar year.

(e) a copy of the Final Audit Report contemplated at **section 4.10(f)(x)** of this Undertaking.

(f) the name, title and contact details of the person or persons authorised by ARTC to provide more information in relation to the submission.

(g) Where the ACCC considers that ARTC has not provided a complete submission, it will notify ARTC of what further documents and information are required by the ACCC to enable it to make determinations required under **section 4.10** of this Undertaking. Upon receipt of this notification,

ARTC will use reasonable endeavours to provide this information to the ACCC as soon as practical.

3. Further information requests by the ACCC

(a) If the ACCC requests further information from ARTC in order to carry out the compliance assessment under **section 4.10**, ARTC will use reasonable endeavours to provide the information sought by the ACCC as soon as practicable.

(b) Further, if the ACCC decides to engage an independent expert consultant to assist with certain aspects of the annual compliance assessment, the ACCC may request reasonable additional information from ARTC. Upon receipt of such a request, ARTC will use reasonable endeavours to provide the information to the ACCC as soon as practicable.

4. Confidentiality of material provided to the ACCC

(a) Other than material expressly excluded from publication in this Schedule G, and in the interests of a transparent process and to facilitate informed submissions from stakeholders, the ACCC may publish on its website any submissions made by ARTC, relevant to the annual review.

(b) Where ARTC considers that any documents or information provided to the ACCC, which may be published by the ACCC in accordance with (a) above, is confidential or commercially sensitive, this must be clearly stated in writing at the time that it is provided, accompanied by reasons for this claim. In this event, the ACCC may request ARTC to, in addition to the submission containing confidential or commercially sensitive information; also provide a version of the submission omitting such information; that would be suitable for publication.

5. Indicative timetable for annual review

(a) Ideally, the annual compliance assessment should be completed within the calendar year following the year which is the subject of the review. Table 1 below is an indicative timetable that sets out the key steps in the annual compliance assessment and assigns an indicative timeframe, which the ACCC and ARTC will endeavour to adhere to, but is subject to change to in light of the prevailing circumstances.

Table 1: Indicative timetable for annual review of compliance

Date	Action (and any relevant provision of the Undertaking)	Who
End April	Submission of documents demonstrating compliance **(section 4.10 (a))** and information outlined under Section 2 of this Attachment	ARTC
Mid May	Publish complete, non-confidential submission on ACCC website or request further information from ARTC	ACCC
End May	Any further information to be provided	ARTC
Early June	Invite comments from stakeholders on ARTC's compliance with the annual RAB and RAB Floor Limit roll forward. Invite comments from stakeholders on ARTC's compliance with the ceiling test and determination of the total unders or overs amount	ACCC
Mid July	Due Date for stakeholders submissions	ACCC

Mid July	Publish non-confidential comments from Access Seekers on ACCC website	ACCC
Mid July	Invite comments from ARTC in relation to stakeholder comments	ACCC
Mid August	Comments from ARTC due	ARTC
End October	Determinations made **(section 4.10 (d))**	ACCC
End October	Publish findings on ACCC website **(section 4.10(d)(iv))** and advise ARTC	ACCC

SCHEDULE H - Parent Guarantee

Parent Guarantee and Indemnity

Dated

#insert party name and ABN/ACN/ARBN# ("**Guarantor**")

AUSTRALIAN RAIL TRACK CORPORATION LIMITED (ABN 75 081 455 754) ("**Beneficiary**")

Parent Guarantee and Indemnity

Details

Parties	**Guarantor and Beneficiary**	
Guarantor	Name	
	ABN	
	Address	
	Telephone	
	Fax	
	Attention	
Beneficiary	Name	**AUSTRALIAN RAIL TRACK CORPORATION LIMITED**
	ABN	75 081 455 754
	Address	Ground Floor, ARTC Building, Off Sir Donald Bradman Drive, Passenger Terminal Road, Mile End South Australia 5031
	Telephone	
	Fax	
	Attention	
Obligator	Name	**[Access Holder/Operator]**
	ABN	
	Address	
	Telephone	
	Fax	
	Attention	
Recitals	**A**	The Obligator has entered into the Agreement with the Beneficiary under the Hunter Valley Coal Network Access Undertaking.
	B	The Guarantor agrees to guarantee the performance of the Obligator's obligations under the Agreement.
Governing law	New South Wales	
Date of deed	See Signing page	

Parent Guarantee and Indemnity

General terms

1 Interpretation

1.1 Definitions

These meanings apply unless the contrary intention appears:

Agreement means the [Access Holder Agreement/Operator Sub-Agreement] for Indicative Services in the Hunter Valley.

Authorised Officer means, in respect of a party, a director or secretary of the party or another person appointed by the party to act as an Authorised Officer under this guarantee and indemnity.

Beneficiary means the person or persons so described in the Details.

Corporations Act means the Corporations Act 2001 (Cwlth).

Costs includes charges and expenses, including those incurred in connection with advisers.

Details means the section of this guarantee and indemnity headed "Details".

Guarantor means the person or persons so described in the Details. If there are more than one, the Guarantor means each of them individually and every two or more of them jointly.

Obligor means the person or persons so described in the Details.

Taxes means taxes, levies, imposts, charges and duties imposed by any authority (including stamp and transaction duties) together with any related interest, penalties, fines and expenses in connection with them, except if imposed on, or calculated having regard to, the net income of the Beneficiary.

1.2 References to certain general terms

Unless the contrary intention appears, a reference in this guarantee and indemnity to:

(a) **(variations or replacement)** a document (including this guarantee and indemnity) includes any variation or replacement of it;

(b) **(clauses, annexures and schedules)** a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this guarantee and indemnity;

(c) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

(d) **(law)** law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);

(e) **(singular includes plural)** the singular includes the plural and vice versa;

(f) **(person)** the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any authority;

(g) **(executors, administrators, successors)** a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;

(h) **(two or more persons)** an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;

(i) **(jointly and severally)** an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;

(j) **(reference to a group of persons)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;

(k) **(dollars)** Australian dollars, dollars, A$ or $ is a reference to the lawful currency of Australia;

(l) **(calculation of time)** a period of time dating from a given day or the day of an act or event it is to be calculated exclusive of that day;

(m) **(reference to a day)** a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;

(n) **(accounting terms)** accounting standards is a reference to the accounting standards as defined in the Corporations Act and a reference to an accounting term is a reference to that term as it is used in those accounting standards, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;

(o) **(meaning not limited)** the words "include", "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;

(p) **(time of day)** time is a reference to #insert place eg Sydney# time;

(q) **(reference to any thing)** any thing (including any amount) is a reference to the whole and each part of it.

1.3 Number

The singular includes the plural and vice versa.

1.4 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this guarantee and indemnity.

2 Guarantee and indemnity

2.1 Consideration

The Guarantor acknowledges that the Beneficiary is acting in reliance on the Guarantor incurring obligations and giving rights under this guarantee and indemnity.

2.2 Guarantee

The Guarantor unconditionally and irrevocably guarantees to the Beneficiary the Obligor's compliance with the Obligor's obligations in connection with the Agreement, including each obligation to pay money.

If the Obligor does not comply with those obligations on time and in accordance with the Agreement, then the Guarantor agrees to comply with those obligations on demand from the Beneficiary. A demand may be made whether or not the Beneficiary has made demand on the Obligor.

2.3 Indemnity

The Guarantor indemnifies the Beneficiary against any liability or loss arising from, and any costs, charges or expenses it incurs, if:

(a) the Obligor does not, or is unable to, comply with an obligation it has (including an obligation to pay money) in connection with the Agreement; or

(b) an obligation the Obligor would otherwise have under the Agreement (including an obligation to pay money) is found to be void, voidable or unenforceable; or

(c) an obligation the Guarantor would otherwise have under clause 2.2 ("Guarantee") is found to be void, voidable or unenforceable; or

(d) a representation or warranty by the Obligor in the Agreement is found to have been incorrect or misleading when made or taken to be made.

The Guarantor agrees to pay amounts due under this clause on demand from the Beneficiary.

The Beneficiary need not incur expense or make payment before enforcing this right of indemnity.

2.4 Extent of guarantee and indemnity

Each of the guarantee in clause 2.2 ("Guarantee") and the indemnity in clause 2.3 ("Indemnity") is a continuing obligation despite any intervening payment, settlement or other thing and extends to all of the Obligor's obligations in connection with the Agreement. The Guarantor waives any right it has of first

requiring the Beneficiary to commence proceedings or enforce any other right against the Obligor or any other person before claiming from the Guarantor under this guarantee and indemnity.

2.5 Variations and replacements

The Guarantor acknowledges that the Agreement may be varied or replaced from time to time.

The Guarantor confirms that the obligations guaranteed under clause 2.2 ("Guarantee") include any obligations under the Agreement as varied or replaced. The Guarantor confirms that this applies regardless of:

(a) how the Agreement is varied or replaced; and

(b) the reasons for the variation or replacement; and

(c) whether the obligations decrease or increase or the Agreement is otherwise more onerous as a result of the variation or replacement.

This clause does not limit clause 2.11 ("Rights of the Beneficiary are protected").

2.6 Acknowledgment

The Guarantor acknowledges that, before entering into this guarantee and indemnity, it:

(a) was given a copy of the Agreement (and all documents giving rise to an obligation of the Obligor in connection with the Agreement) and had full opportunity to consider their provisions; and

(b) is responsible for making itself aware of the financial position of the Obligor and any other person who guarantees any of the Obligor's obligations in connection with the Agreement.

2.7 Obligation to pay interest

The Guarantor agrees to pay interest on any amount under this guarantee and indemnity which is not paid on the due date for payment and is not otherwise incurring interest.

The rate of interest applying to each daily balance is the rate 4% per annum above the 60 day Bank Bill Swap Reference Rate last published on or before that day in The Australian Financial Review (or if that rate has not been published, another rate set by the Beneficiary in good faith.

The interest accrues daily from (and including) the due date to (but excluding) the date of actual payment and is calculated on actual days elapsed and a year of 365 days.

The Guarantor agrees to pay interest under this clause on demand from the Beneficiary.

2.8 Compounding

Interest payable under clause 2.7 ("Obligation to pay interest") which is not paid when due for payment may be added to the overdue amount by the Beneficiary at

intervals which the Beneficiary determines from time to time or, if no determination is made, every 30 days. Interest is payable on the increased overdue amount at the Interest Rate and in the manner set out in clause 2.7 ("Obligation to pay interest").

2.9 Payments

The Guarantor agrees to make payments under this guarantee and indemnity:

(a) in full without set-off or counterclaim, and without any deduction in respect of Taxes unless prohibited by law; and

(b) in the currency in which the payment is due, and otherwise in Australian dollars, in immediately available funds

2.10 No merger

This guarantee and indemnity does not merge with or adversely affect, and is not adversely affected by, any of the following:

(a) any other guarantee, indemnity, mortgage, charge or other encumbrance, or other right or remedy to which the Beneficiary is entitled; or

(b) a judgment which the Beneficiary obtains against the Guarantor, the Obligor or any other person in connection with the Agreement.

The Beneficiary may still exercise its rights under this guarantee and indemnity as well as under the judgment, mortgage, charge or other encumbrance or the right or remedy.

2.11 Rights of the Beneficiary are protected

The rights given to the Beneficiary under this guarantee and indemnity, and the Guarantor's liabilities under it, are not affected by any act or omission or any other thing which might otherwise affect them under law or otherwise. For example, those rights and liabilities are not affected by:

(a) any act or omission:

(i) varying or replacing in any way and for any reason any agreement or arrangement under which the obligations guaranteed under clause 2.2 ("Guarantee") are expressed to be owing;

(ii) releasing the Obligor or giving the Obligor a concession (such as more time to pay);

(iii) releasing any person who gives a guarantee or indemnity in connection with any of the Obligor's obligations;

(iv) by which a person becomes a Guarantor after the date of this guarantee and indemnity;

(v) by which the obligations of any person who guarantees any of the Obligor's obligations (including obligations under this guarantee and indemnity) may become unenforceable;

(vi) by which any person who was intended to guarantee any of the Obligor's obligations does not do so, or does not do so effectively;

(vii) by which a person who is co-surety or co-indemnifier is discharged under an agreement or by operation of law;

(b) a person dealing in any way with the Agreement or this guarantee;

(c) the death, mental or physical disability, or liquidation, administration or insolvency of any person including the Guarantor or the Obligor;

(d) changes in the membership, name or business of any person; or

(e) acquiescence or delay by the Beneficiary or any other person.

2.12 Guarantor's rights are suspended

As long as any obligation is required, or may be required, to be complied with in connection with this guarantee and indemnity, the Guarantor may not, without the Beneficiary's consent:

(a) reduce its liability under this guarantee and indemnity by claiming that it or the Obligor or any other person has a right of set-off or counterclaim against the Beneficiary; or

(b) exercise any legal right to claim to be entitled to the benefit of another guarantee, indemnity, mortgage, charge or other encumbrance given in connection with the Agreement or any other amount payable under this guarantee and indemnity; or

(c) claim an amount from the Obligor, or another guarantor (including a person who has signed this guarantee and indemnity as "Guarantor"), under a right of indemnity or contribution; or

(d) claim an amount in the liquidation, administration or insolvency of the Obligor or of another guarantor of any of the Obligor's obligations (including a person who has signed this guarantee and indemnity as "Guarantor").

This clause continues after this guarantee and indemnity ends.

2.13 Reinstatement of rights

Under any Insolvency Law, a person may claim that a transaction (including a payment) in connection with this guarantee and indemnity or the Agreement is void or voidable. If a claim is made and upheld, conceded or compromised, then:

(a) the Beneficiary is immediately entitled as against the Guarantor to the rights in connection with this guarantee and indemnity or the Agreement to which it was entitled immediately before the transaction; and

(b) on request from the Beneficiary, the Guarantor agrees to do anything (including signing any document) to restore to the Beneficiary any mortgage, charge or other encumbrance (including this guarantee and indemnity) held by it from the Guarantor immediately before the transaction.

The Guarantor's obligations under this clause are continuing obligations independent of the Guarantor's other obligations under this guarantee and indemnity and continue after this guarantee and indemnity ends.

2.14 Costs

The Guarantor agrees to pay or reimburse the Beneficiary on demand for:

(a) the Beneficiary's Costs in making, enforcing and doing anything in connection with this guarantee and indemnity including legal Costs in accordance with any written agreement as to legal costs or, if no agreement, on whichever is the higher of a full indemnity basis or solicitor and own client basis; and

(b) all duties, fees, Taxes and charges which are payable in connection with this guarantee and indemnity or a payment or receipt or other transaction contemplated by it.

3 Notices and other communications

3.1 Form - all communications

Unless expressly stated otherwise in this guarantee and indemnity, all notices, certificates, consents, approvals, waivers and other communications in connection with this guarantee and indemnity must be in writing, signed by the sender (if an individual) or an Authorised Officer of the sender and marked for the attention of the person identified in the Details or, if the recipient has notified otherwise, then marked for attention in the way last notified.

3.2 Form - communications sent by email

Communications sent by email need not be marked for attention in the way stated in clause 3.1 ("Form - all communications"). However, the email must state the first and last name of the sender.

Communications sent by email are taken to be signed by the named sender.

3.3 Delivery

Communications must be:

(a) left at the address set out or referred to in the Details; or

(b) sent by prepaid ordinary post (airmail, if appropriate) to the address set out or referred to in the Details; or

(c) sent by fax to the fax number set out or referred to in the Details; or

(d) sent by email to the address set out or referred to in the Details.

However, if the intended recipient has notified a changed address or fax number, then communications must be to that address or number.

3.4 When effective

Communications take effect from the time they are received or taken to be received under clause 3.5 ("When taken to be received") (whichever happens first) unless a later time is specified.

3.5 When taken to be received

Communications are taken to be received:

(a) if sent by post, three days after posting (or seven days after posting if sent from one country to another); or

(b) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent; or

(c) if sent by email:

(i) when the sender receives an automated message confirming delivery; or

(ii) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first.

4 General

4.1 Set-off

The Beneficiary may set off any amount due for payment by the Beneficiary to the Guarantor against any amount due for payment by the Guarantor to the Beneficiary under this guarantee and indemnity.

4.2 Indemnities

The indemnities in this guarantee and indemnity are continuing obligations, independent of the Guarantor's other obligations under this guarantee and indemnity and continue after this guarantee and indemnity ends.

4.3 Partial exercising of rights

If the Beneficiary does not exercise a right or remedy fully or at a given time, the Beneficiary may still exercise it later.

4.4 Remedies cumulative

The Beneficiary's rights and remedies under this guarantee and indemnity are in addition to other rights and remedies given by law independently of this guarantee and indemnity.

4.5 Each signatory bound

This guarantee and indemnity binds each person who signs as Guarantor even if another person who was intended to sign does not sign it or is not bound by it.

4.6 Counterparts

This guarantee and indemnity may consist of a number of copies, each signed by one or more parties to the guarantee and indemnity. If so, the signed copies are treated as making up the one document.

4.7 Governing law

This guarantee and indemnity is governed by the law in force in the place specified in the Details. The Guarantor and the Beneficiary submit to the non-exclusive jurisdiction of the courts of that place.

EXECUTED as a deed

Annexure A - Indicative Access Holder Agreement