

SCHEDULE D

(Indicative Access Agreement as at Commencement Date)

AUSTRALIAN RAIL TRACK CORPORATION LIMITED
ABN 75 081 455 754

and

ACN

TRACK ACCESS AGREEMENT

Comments in blue within a box – such as this one are for information only and not intended to form part of the contract.

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TRACK ACCESS AGREEMENT

AGREEMENT dated

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BETWEEN **AUSTRALIAN RAIL TRACK CORPORATION LIMITED** ABN 75 081 455 754
a corporation having its registered office at Ground Floor, ARTC Building, Burbridge
Road, Mile End, South Australia (“**ARTC**”)

AND

 (“**Customer**”)

Definitions: “Customer”, “Other Customer”, “Operator” and “Accredited Operator”

There is some confusion within the IAA of the AAU regarding the words Customer and Operator. For the purposes of this IAA within the MUC:

- Customer is used to mean the party to the contract
- Other Customer is used to refer to another access contract holder.
- Accredited Operator is used to reflect any party accredited to run Trains.

These changes affect numerous clauses and these are not documented further unless there is a need to provide further explanation for clarity.

RECITALS

- A. ARTC is the manager of the Hunter Valley Network.
- B. ARTC agrees to grant the Customer access to the Hunter Valley Network upon the terms and conditions set out in this Agreement.

AGREEMENT

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement unless the context otherwise requires:

“**ACCC**” means the Australian Competition and Consumer Commission;

“**Access Agreement**” means an agreement, other than this Agreement pursuant to which ARTC grants an entity the non-exclusive right of access to the Hunter Valley Network;

“**Access Charges**” means the amounts to be paid by the Customer to ARTC for the provision of the Access Rights calculated in accordance with Schedule 2, as varied from time to time in accordance with clauses 4.4 or 4.5;

“**Access Rights**” means the rights to access and use the Hunter Valley Network, or any part of that Hunter Valley Network, granted to the Customer pursuant to this Agreement for the purpose of operating a Coal Train or Ancillary Train;

“**Access Undertaking**” means the access undertaking (if any) applicable to the Hunter Valley Network together with any amendments thereto from time to time, for the operation of Coal Trains

and Ancillary Trains approved by the ACCC under Division 6 of Part IIIA of the *Trade Practices Act 1974* (Cth);

Definition: “Access Undertaking”

Amended to reflect acceptance by ACCC as the criteria, not submission by ARTC.

“**Accreditation**” means to be an Accredited Operator or an Accredited Track Manager (as the case may be) given (or to be given) the force of law pursuant to the Rail Safety Act and “Accredited” bears a corresponding meaning;

“**Accredited Operator**” means an operator who is Accredited or taken to be Accredited under the Rail Safety Act;

Definition: “Accredited Operator”

Specific reference to Customer/Operator removed as this would automatically include Customer as accredited, which is contrary to the purpose of the definition. As the Access Agreement is specific to the Hunter Valley Network, the New South Wales Rail Safety Act is the only one relevant.

“**Accredited Track Manager**” means a manager who is Accredited or taken to be Accredited under the Rail Safety Act;

Definition: “Accredited Track Manager”

Specific reference to ARTC removed as this would automatically include ARTC as accredited, which is contrary to the purpose of the definition.

“**Additional Capacity**” means the capability of the Hunter Valley Network to carry additional task;

Definition: “Additional Capacity”

New definition.

“**Agreement**” means this agreement;

Definition: “Agreement”

New definition.

“**Aggregate Load Point Allocation**” means the sum of the Load Point Allocations for all Load Points;

Definition: “Aggregate Load Point Allocation”

New definition.

“**Ancillary Train**” means a Train that is incidental to the purpose of operating Coal Trains and includes;

- (a) the movement of light engines;
- (b) repositioning movements for Rollingstock,
- (c) movements of Rollingstock to and from maintenance facilities;
- (d) the testing of Rollingstock and Train consists; and

(e) the reclamation of Rollingstock from the Hunter Valley Network;

Definition: “Ancillary Train”

New definition. The separate definition of these Trains is necessary to capture movements that are paid for through the different pricing mechanism applied to coal traffic in the Hunter Valley.

“**Ancillary Train Path**” means the specification in terms of times and locations granted by ARTC to a Customer to access the Hunter Valley Network for the purpose of running of an Ancillary Train.

Definition: “Ancillary Train Path”

New definition.

“**Annual Allowance**” means, for each item of Major Periodic Maintenance, the current cost of the item divided by the life (in years) of the item;

Definition: “Annual Allowance”

New definition.

“**Annual Assessment Of System Capacity**” means the annual assessment carried out by Logistics Team of the capacity of the Hunter Valley Coal Chain and the annual demand for the movement of coal through the Hunter Valley Coal Chain;

Definition: “Annual Assessment Of System Capacity”

New definition.

“**ARTC**” means Australian Rail Track Corporation Limited described on page 1 of this Agreement;

“**ARTC Terminal**” means railway and associated facilities forming part of the Hunter Valley Network, the primary purpose of which is to facilitate the performance of activities ancillary to the running of Trains on a main line, as identified in Schedule 1.

Definition: “ARTC Terminal”

New definition. This term is a sub-set of the definition of Hunter Valley Network.

AAU Definition: “ARTC’s Reference Rates”

Deleted. Indicative Access Charges has been substituted for ‘ARTC’s Reference Rates’ to reflect the expanded role of Indicative Access Charges.

AAU Definition: “Associated Facilities”

Consistent with the changes in the Access Undertaking, the definition for Associated Facilities has been combined into the definition of the Hunter Valley Network and is therefore not required as a separate definition.

“**Business Day**” means a day which is not a Saturday, Sunday, public holiday or bank holiday in the State of New South Wales;

Definition: “Business Day”

New definition.

“**Capacity**” means the capability of the Hunter Valley Network to operate Coal Trains, including Additional Capacity, after taking the account:

- (a) any System Rules impacting the operation of Trains or the Hunter Valley Network;
- (b) the need to accommodate peaks in demand;
- (c) Hunter Valley Network track possessions reasonably required by ARTC for maintenance, repair or enhancements; and
- (d) the requirements of Trains other than Coal Trains;

Definition: “Capacity”

Modified to reflect the different needs of the Hunter Valley Network.

“**Capacity Entitlement**” means the rights granted to a customer for the operation of Trains under an access agreement in accordance with any other ARTC undertaking, in the form of Non-Coal Train Paths including the rights to participate in any the allocation of Non-Coal Train Paths that arise under Traffic Specific Capacity;

Definition: “Capacity Entitlement”

New definition.

“**Coal Train**” means a Train using the Hunter Valley Network for the predominant purpose of coal haulage and includes the empty movement of such a Train;

Definition: “Coal Train”

New definition.

“**Coal Train Path**” means a Train Path granted by ARTC to a Customer to access the Hunter Valley Network for the purpose of operating a Coal Train;

Definition: “Coal Train Path”

New definition.

“**Claim**” means any liability, loss, damage, cost or expense;

“**Combinatorial Ceiling Limit**” means the Economic Cost of a Segment or group of Segments;

Definition: “Combinatorial Ceiling Limit”

New definition.

“**Code of Practice**” means [ARTC to nominate appropriate document(s)];

“**Commencement Date**” means [] or such other date as the parties may agree in writing;

“**Community Service Obligation**” means an obligation from a Government Authority accepted by ARTC to maintain and provide Access to one or more specific Segments on terms agreed with the Government Authority in return for an identifiable set of recurrent payments intended to reduce the Access Charges payable by Access Seekers for Access to those Segments.

Definition: “Community Service Obligation”

New definition.

“**Consequential Loss**” means:

- (a) any financial or economic loss, including loss of profit or loss of anticipated profits, loss of revenue, loss of use, loss of agreement, loss of intangible assets or loss of value of intangible assets (including without limitation goodwill), loss of contracts, loss of production, loss of freight haulage tonnage, increased cost of working, loss of business opportunity, or payment of any liquidated sums, penalties or damages under any other agreement, relationship or understanding (other than this agreement);
- (b) any loss which does not arise naturally from a breach of this Agreement, irrespective of any particular knowledge that the other party may have in respect of that loss or breach; or
- (c) any loss resulting from the liability of the other party to a third person howsoever and whensoever arising,

including without limitation any indirect or consequential loss.

“**Constrained Coal Train**” means a Coal Train travelling wholly within the Constrained Network;

Definition: “Constrained Coal Train”

New definition.

“**Constrained Network**” means those Segments of the Hunter Valley Network that, in combination, generate revenue at the Combinatorial Ceiling Limit;

Definition: “Constrained Network”

New definition.

“**CPI**” means the annual percentage increase in Consumer Price Index determined by reference to the CPI All Groups, Weighted Average of Eight Capital Cities index number published by the Australian Bureau of Statistics for each March quarter;

Definition: “CPI”

Definition moved from the Charge Variation clause. Clarified that the index number is the March quarter figure.

“**Customer**” means the person described as the Customer on page 1 of this Agreement;

“**Dangerous Goods Code**” means the Australian Code for the Transport of Dangerous Goods by Road and Rail prepared by the National Transport Commission (or successor body) from time to time;

“**Depreciation**” means the notional reduction in value on a straight line basis over the useful life of the asset;

Definition: “Depreciation”

New definition.

“**Direct Cost**” means costs incurred by the relevant party which vary within a 12 month period, plus an Annual Allowance for variable Major Periodic Maintenance costs;

Definition: “Direct Cost”

New definition. This definition has been modelled on the NSW Rail Access Undertaking.

“**DORC**” means depreciated optimised replacement cost determined in accordance with the Access Undertaking;

Definition: “DORC”

New definition.

“**Economic Cost**” means with respect to a Segment;

- (a) Segment Specific Costs;
- (b) Depreciation of Segment Specific Assets;
- (c) a return on Segment Specific Assets, being determined by applying Rate of Return to the DORC value of Segment Specific Assets;
- (d) an allocation of Non-Segment Specific Costs;
- (e) an allocation of Depreciation of Non-Segment Specific Assets; and
- (f) an allocation of return of Non-Segment Specific Assets, being determined by applying Rate of Return to the DORC value of Non-Segment Specific Assets;

Definition: “Economic Cost”

New definition.

“**Environmental Condition**” means any Environmental Damage or any event, circumstance, condition, operation or activity which it is reasonably foreseeable is likely to result in Environmental Damage and which in ARTC’s reasonable opinion could result in ARTC or any other person incurring any material liability or being subjected to a direction of any competent authority;

“**Environmental Damage**” means any material injury or damage to persons, living organisms or property or any material pollution or impairment of the environment resulting from the discharge, emission, escape or migration of any substance, energy, noise or vibration;

“**Equivalent Annual Value**” means, with respect of each item of Major Periodic Maintenance, the current cost of the item divided by the life of the item;

Definition: “Equivalent Annual Value”

New definition.

“**Financial Year**” means the period between 1st July of any year and 30th June of the following year, both dates inclusive;

“**Force Majeure**” means a circumstance beyond the reasonable control of a party which occurs without the negligence of that party and includes inevitable accident, storm, flood, fire, earthquake, explosion, peril of navigation, hostility, war (declared or undeclared), insurrection, sabotage, executive or administrative order or act of either general or particular application of any government prohibition or restriction by domestic or foreign laws, regulations or policies (other than laws specifically for that purpose passed by the Commonwealth), quarantine or customs restrictions, strike, lockout or industrial dispute, break-down or damage to or confiscation of

property but does not include breakdown or delay of any Trains or Rollingstock operated by the Customer;

Definition: “Force Majeure”

Transferred from clause 21 for consistency.

“**Government Authority**” means any Commonwealth, State, Territory or Local government department or other body exercising an executive, legislative, judicial or governmental function;

Definition: “Government Authority”

New definition.

“**Hunter Valley Coal Chain**” means the system of moving coal from coal producers through a terminal in the Hunter Valley region and:

- (a) in relation to coal exported through an export terminal at Newcastle, includes those persons:
 - (i) which participate in marketing, mining, loading, transporting, unloading, stockpiling and shiploading activities,
 - (ii) which provide rail or port infrastructure or port services to facilitate those activities, or
 - (iii) which provide vessel or cargo management services, and
- (b) in relation to other coal movements in the Hunter Valley region, includes those persons:
 - (i) which participate in marketing, mining, loading, transporting, unloading and stockpiling activities; or
 - (ii) which provide rail infrastructure to facilitate those activities;

Definition: “Hunter Valley Coal Chain”

New definition.

“**Hunter Valley Network**” means the network of railway lines and ARTC Terminals defined in Schedule 1 and includes all associated track structures, rail terminals, yards, over and under track structures, supports (including support for equipment or items associated with the use of the railway lines), tunnels, bridges, buildings, facilities, train control systems, signalling systems, condition monitoring systems, communication systems and associated plant, machinery and equipment related to or connected with use of the railway lines that are owned or leased by, or under exclusive licence to, ARTC;

Definition: “Hunter Valley Network”

The definition of Hunter Valley Network from the AAU has been modified to include ARTC Terminals, yards and what was previously separately defined as Associated Facilities. This has been done to recognise that ARTC provides access to terminals at the port and other station yards on its Hunter Valley Network for the purpose of operating coal trains. For clarity, the categories of buildings, facilities (as a general “catch-all”) and condition monitoring systems have also been added.

“**Incident**” means a breakdown, accident or emergency on the Network which involves the Customer and which causes or may reasonably be expected to pose a danger of causing any one or more of the following;

- (a) material damage to or interference with the Network ;
- (b) material damage to property;
- (c) material personal injury to any person;
- (d) an Environmental Condition;
- (e) a Category A incident or a Category B incident as defined in the Standards;
- (f) an incident which requires notification under the relevant Rail Safety Act to the Administering Authority (as defined in such Act);
- (g) an incident requiring notification under the Dangerous Goods Code.

Definition: “Incident”

Definition moved here from clause 11 for consistency. Wording has not been changed.

Definition: “Initial Term”

Deleted, reflecting that there is no advantage from renewing this agreement through an internal process.

“**Instructions**” means any Train Control Direction and any instruction or direction, including instructions and directions of the kind listed in Schedule 4, issued by ARTC (acting reasonably) from time to time:

- (a) which ensure, facilitate or encourage the proper, efficient, safe and lawful:
 - (i) use of and access to the Hunter Valley Network by all Hunter Valley Network users; and
 - (ii) management of the Hunter Valley Network by ARTC;
- (b) which are consistent with the Network Management Principles; and
- (c) which are given with a view to reasonably minimising the disruption to the Customer taking into account the valid objectives of ARTC (as set out in paragraphs (a) and (b) of this definition of “Instructions”) in issuing the instruction or direction,

but does not include instructions and directions:

- (d) which prevent the Customer from running a Coal Train of the nature of the Coal Trains contemplated at the Commencement Date or as agreed between the parties from time to time; or
- (e) which are given for the purpose only of achieving ARTC internal commercial objectives unrelated to the valid objectives of ARTC as set out in paragraphs (a) and (b) of this definition of “Instructions”,

unless the instructions or directions:

- (f) are Train Control Directions properly given;
- (g) relate to safety;

-
- (h) are given to implement or support the Network Management Principles;
 - (i) are necessary to prevent or to minimise the effect of a material breach of this Agreement; or
 - (j) are otherwise authorised by this Agreement,

and a reference to “ARTC” in this definition of “Instructions” includes also a reference to ARTC’s agents;

“**Integrated Plan**” means the plan prepared by the Logistics Team in accordance with the System Rules setting out, amongst other things, the Coal Train Paths to be made available to Customers and provided to all logistics service providers in the Hunter Valley Coal Chain on a daily basis (or such other time frame as otherwise agreed by the members of the Logistics Team);

Definition: “Integrated Plan”

New definition.

Definition: “Intergovernmental Agreement”

Deleted.

“**Key Performance Indicators**” means the Key Performance Indicators referred to in clause 2.9 and further described in Schedule 5;

“**Load-Point**” means a facility connected to the Hunter Valley Network at which coal is loaded into Trains;

Definition “Load-Point”

New definition.

“**Load-Point Allocation**” means the coal tonnes allocated to the relevant Load Point by the Logistics Team in accordance with the process carried out annually by the Logistics Team;

Definition “Load-Point Allocation”

New definition.

“**Logistics Team**” means the Hunter Valley Coal Chain Logistics Team which has as members representatives of each of the logistics service providers to the Hunter Valley Coal Chain;

Definition “Logistics Team”

New definition.

“**Major Periodic Maintenance**” means non-routine maintenance of track, structures and other parts of the Hunter Valley Network carried out irregularly over a span of years that is necessary to retain the asset to a standard of “fit for purpose”, but excludes any improvement in quality, capacity or standard exceeding that of the asset in its initial condition;

Definition “Major Periodic Maintenance”

New definition.

“**Material Change**” means a substantial change in:

- (a) the operation of the Hunter Valley Coal Chain;

-
- (b) demand for Coal Trains on the Hunter Valley Network;
 - (c) in the constitution and operation of the Logistics Team, including the cessation of the Logistics Team; or
 - (d) any other event which has a material effect on the grant of the Access Rights or the legitimate business interests of either party;

Definition: “Material Change”

New definition.

“**Monthly Forecast**” means a forecast of the net mass of coal, in tonnes, to be railed from each origin to each destination for the relevant month;

Definition “Monthly Forecast”

New definition.

“**Network Management Principles**” means the principles regulating Train movements on the Hunter Valley Network, as set out in Schedule 5;

“**Non-Coal Train Path**” means a Train Path that is not a Coal Train Path;

Definition “Non-Coal Train Path”

New definition.

“**Non-segment Specific Assets**” means assets that ARTC cannot directly identify with a Segment;

Definition “Non-segment Specific Assets”

New definition.

“**Non-segment Specific Costs**” means efficient operating costs that ARTC cannot directly identify with a Segment;

Definition “Non-segment Specific Costs”

New definition.

“**Operational Document**” means a document listed in Schedule 3;

Definition: “Operational Document”

New Definition.

Definition: “Operator”

Deleted.

“**Other Customer**” means a party, other than the Customer, that has an Access Agreement with ARTC for access to the Hunter Valley Network;

Definition: “Other Customers”

New definition.

“**Other Track**” means rail track and associated infrastructure not part of the ARTC Network, owned or contemplated to be constructed, by any party other than ARTC;

Definition: “Other Track”

New definition.

“**Possession Planning Process**” means the process to be agreed by ARTC, access holders and the Logistics Team for the purpose of planning maintenance of the Hunter Valley Network in a way which minimises disruption to the Hunter Valley Coal Chain, maximises throughput of the Hunter Valley Coal Chain and which provides for consultation between ARTC, Customers and the Logistics Team in respect of possession planning;

Definition: “Possession Planning Process”

New Definition.

“**Rail Safety Act**” means the *Rail Safety Act 1993* (NSW);

Definition: “Rail Safety Act”

Modified to reflect that only the NSW Act applies to the Hunter Valley Network.

“**Rate of Return**” means the return calculated by the ACCC for the Hunter Valley Network pursuant to Part 4 of the Access Undertaking;

Definition: “Rate of Return”

New definition.

“**Regulatory Event**” means:

- (a) a material variation to the Access Undertaking approved by the ACCC pursuant to section 44ZZA(7) of the TPA as at the date of this Agreement;
- (b) the enactment, amendment, replacement or repeal of Part IIIA of the TPA;
- (c) the making of a determination or finding by the ACCC or a Court of Law that all or any part of this Agreement contravenes any provision of any law;

Definition: “Regulatory Event”

New definition.

Definition: “Renewal Term”

Deleted.

“**Rollingstock**” means a locomotive, carriage, wagon or other vehicle for use on a railway but excludes any self-propelled track maintenance vehicle;

Definition: “Rollingstock”

Modified to exclude maintenance vehicles.

“**Safeworking Rules**” means all policies and notices issued by ARTC for the purpose of ensuring the safe use of the Hunter Valley Network;

“**Segment**” means a component of the Hunter Valley Network and distinguished for the purposes of applying Access Charges;

Definition: “Segment”

New definition.

“**Segment Specific Assets**” means assets that ARTC can directly identify with a Segment;

Definition: “Segment Specific Assets”

New definition.

“**Segment Specific Costs**” means efficient operating costs that ARTC can directly identify with a Segment and shall include both routine maintenance and the Equivalent Annual Value of any items of Major Periodic Maintenance;

Definition: “Segment Specific Costs”

New definition.

“**Standards**” means the Australian Standard AS4292.1 - Railway Safety Management (General and Interstate Requirements), and any other principles and standards prepared, approved and published by the Standards Association of Australia in relation to rail safety;

“**System Rules**” means rules, standards, specifications and processes agreed by the Logistics Team for the efficient operation of the Hunter Valley Coal Chain;

Definition: “Regulatory Event”

New definition.

“**Tax Invoice**” has the meaning in clause 4.12 and containing, as a minimum, the details referred to in clause 4.2;

Definition: “Tax Invoice”

New definition.

“**Term**” means the period of [insert number] years commencing on the Commencement Date;

“**Terminal Activities**” means operational activities in an ARTC Terminal requiring the party performing the activities to be Accredited under the relevant Rail Safety Act.

Definition: “Terminal Activities”

New definition.

“**Traffic Specific Capacity**” means capacity on the Hunter Valley Network that has been reserved under another undertaking or regime for use by non-Coal Trains hauling a specific type of commodity (eg bulk grain, coal or minerals).

Definition: “Traffic Specific Capacity”

New definition.

“**Train**” means a single unit of Rollingstock or two or more units coupled together, at least one of which is a locomotive or other self-propelled unit;

“**Train Control**” means the control of Trains by ARTC or its agents on the Hunter Valley Network;

“**Train Control Centre**” means the facility or facilities maintained and operated by ARTC or its agents for the purposes of Train Control;

“Train Control Directions” means any directions issued by ARTC or its agents relating to management, continuity and safe operation of Train movements on the Hunter Valley Network, including Instructions concerning the actual movement, deployment or placement of Trains, but only to the extent such Instructions:

- (a) are consistent with the Network Management Principles; and
- (b) are made with a view to reasonably minimising the disruption to the Customer taking into account the valid objectives of ARTC in issuing the Instruction;

“Train Manifest” means a written notice (including, if agreed, in electronic form) prepared by the Customer in relation to a Coal Train or Ancillary Train and containing the following details in relation to that Train:

- (a) the number of vehicles in the Train;
- (b) the gross mass of the Train;
- (c) the length of the Train;
- (d) the motive power employed by the Train;
- (e) for each vehicle in the Train in the order in which they will be placed, leading end first, the following information:
 - (i) vehicle number;
 - (ii) vehicle classification;
 - (iii) vehicle type;
 - (iv) gross weight of vehicle;

“Train Path” means;

- (a) a Coal Train Path;
- (b) an Ancillary Train Path; or
- (c) a train path provided by ARTC under another access undertaking or regime;

Definition: “Train Path”

Modified to reflect the different definitions of trains.

“Unconstrained Network” means those Segments in the Hunter Valley Network that, in any combination, do not generate revenue at the Combinatorial Ceiling Limit; and

Definition: “Unconstrained Network”

New definition.

“Unconstrained Coal Train” means a Coal Train that is not a Constrained Coal Train.

Definition: “Unconstrained Coal Train”

New definition.

Clause 1.1

Figure 1 provides a schematic of the hierarchy of the various train types defined in this Access Agreement. Each lower step in the hierarchy is a subset of the higher level. Thus a “Train” is a reference to all trains regardless of whether they are specifically covered by one regulatory instrument or another.

Similarly, Figure 2 provides a schematic of the hierarchy of Train Path types.

FIGURE 1: RELATIONSHIP BETWEEN TRAIN TYPES

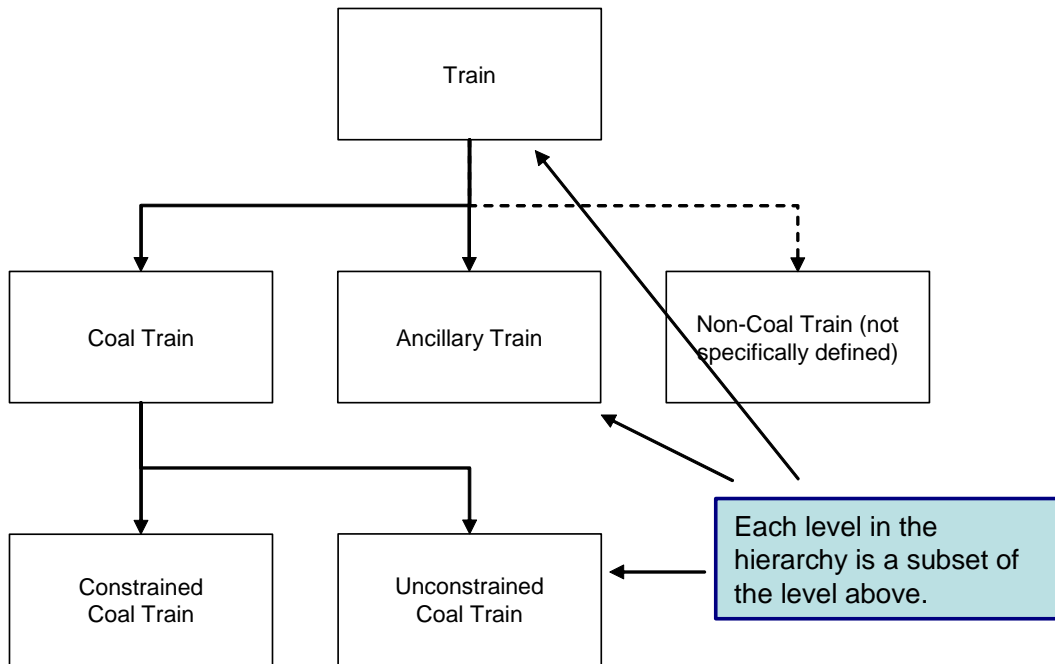
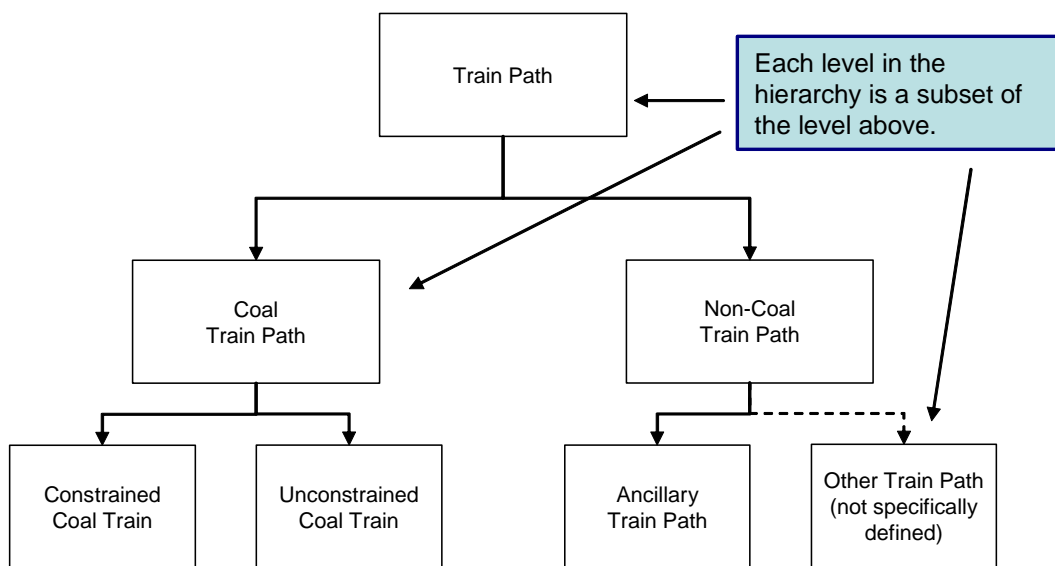


FIGURE 2: RELATIONSHIP BETWEEN TYPES OF TRAIN PATH



1.2 Interpretation

In this Agreement unless the context otherwise requires:

- (a) singular words will also have their plural meaning and vice versa;
- (b) a reference to one gender includes all genders;
- (c) a reference to a person includes companies and associations;
- (d) a reference to a party includes a party's successors and permitted assigns or any person to whom any right or obligation under this Agreement is transferred;
- (e) a reference to the consent of a party means the prior written consent of that party;
- (f) headings are for convenient reference only and do not affect the interpretation of this Agreement;
- (g) a reference to a clause or a Schedule is a reference to a clause or Schedule of this Agreement;
- (h) where any party comprises more than one person then all of those persons together as well as each of them individually must comply with that party's obligations under this Agreement; and
- (i) notices that are required to be given in writing by one party to the other may be provided in electronic form provided that appropriate acknowledgement of receipt is received by the sender.

Clause 1.2(i)

The previous caveat requiring ARTC approval with regard to electronic notices is removed and these may be provided by each party to the other in electronic form.

1.3 Consultation

Clause 1.3

New clause specifying how consultation will operate.

- (a) Where, in this Agreement, there is a requirement for consultation between the parties, each party agrees that:
 - (i) it will give bona fide consideration of any issue, opinion, point of view or position made by the other party regarding the issues which are the subject of the consultation;
 - (ii) where it is reasonable to do so, will use its best endeavours to incorporate the preferences of the other party in making any decision that impacts on the other party; and
 - (iii) where it is unable to give effect to a preference of the other party, will provide such explanation as the other party might reasonably request in any form reasonably requested by the requesting party.
- (b) In applying this clause 1.3, each party will act in good faith and recognises that the purpose of consultation is to arrive at a mutually beneficial outcome.

2. GRANT OF ACCESS RIGHTS

2.1 Capacity Management

Clause 2.1

The right that is being sold by ARTC is the right to participate in a process for the allocation of Coal Train Paths and then once allocated, ARTC has an obligation to provide the path. To underpin that right, ARTC is required to provide a level of capacity from which paths can be allocated – the purpose of clause 2.1 is to oblige ARTC to provide that level of capacity which is linked back to the annual capacity analysis conducted with the Logistics Team. In this way, if a shortfall of capacity is anticipated, then this can be fed into any rationing scheme that is in operation (eg the former Capacity Balancing System).

For each Financial Year during the Term, ARTC must make available sufficient Coal Train Paths to be allocated to each Load Point in order to move the Aggregate Load Point Allocation for the relevant Financial Year taking into account:

- (a) the requirements of the Logistics Team for the assembly of cargoes according to the System Rules; and
- (b) the physical constraints of the Customer and each component of the Hunter Valley Coal Chain.

2.2 Track Access Rights

Clause 2.2

Modified to allow for different types of Train Path and removal of requirement to present prior to departure time.

- (a) ARTC grants to the Customer during the Term the use and availability of;
 - (i) Coal Train Paths to be made available by ARTC in accordance with the relevant Integrated Plan;
 - (ii) Ancillary Train Paths in accordance with clause 2.8;
 - (iii) any ARTC Terminal for permitted Terminal Activities; and
 - (iv) the use of the Hunter Valley Network for this purpose upon the terms and conditions set out in this Agreement.
- (b) Notwithstanding clause 2.2, the availability of a Coal Train Path or Ancillary Train Path is subject to:
 - (i) presentation by the Customer to Train Control of a Train which is ready in all things for departure of that Train according to the relevant Train Path;
 - (ii) emergencies or genuine and material safety considerations;
 - (iii) matters outside of the reasonable control of ARTC (except for matters which arise due to ARTC's negligence or breach of its obligations under this Agreement);
 - (iv) material failure of the Customer's Train;
 - (v) the Network Management Principles.

-
- (c) The Customer agrees at all times during the Term not to access or attempt to access the Hunter Valley Network in any way other than is authorised by this Agreement.

2.3 Use Of A Train Path Is Not Exclusive

Subject to clause 2.2(a), the Customer's right to be allocated Coal Train Paths or Ancillary Train Paths does not give the Customer an exclusive right to any specific Train Path. Notwithstanding the foregoing, no two Trains (whether the Customer's Trains or the Trains of another user of the Hunter Valley Network) will be allotted scheduled arrival or departure times at the same locations such that there are conflicts in arrival or departure times having regard to the physical capability of the Hunter Valley Network and the Safeworking Rules.

2.4 Disclaimer

- (a) Notwithstanding any other clause of this Agreement, ARTC is not responsible for any loss, additional cost or other damage suffered by the Customer in the event that a Train Path or any part of it is not available or that a Customer's Train will not be delivered on time to its ultimate or intermediate destination if such unavailability or failure to deliver occurred by reason of any of the matters described in clause 2.2(b) and without breach of this Agreement or negligence by ARTC except to the extent that any matter arising under clause 2.2(b)(ii) was reasonably foreseeable and within the control of ARTC.

Clause 2.4(a)

Insertion of "except to the extent that any matter arising under clause 2.2(b)(ii) was reasonably foreseeable and within the control of ARTC" to avoid track provider relying on 'safety' to avoid liability for properly maintaining the track.

- (b) Nothing in this clause 2.4 derogates from ARTC's obligations under the Key Performance Indicators.

2.5 Early And Late Trains

Clause 2.5

Split into coal and non-coal to recognise different requirements.

- (a) Despite clause 2.2(b), ARTC will use its best endeavours to accommodate a Coal Train which is;
- (i) running early or late; or
 - (ii) presented at the point of entry to the Hunter Valley Network more than 15 minutes early or late;
- by providing a Train Path for that Train at ARTC's first available opportunity (subject to the Network Management Principles) such that the Train will arrive at its point of discharge in accordance with its planned sequence of arrival, as amended by the Logistics Team from time to time.
- (b) With regard to a Train that is not a Coal Train, despite clause 2.2(b), ARTC will use its best endeavours to accommodate a Train which is;
- (i) running early or late; or
 - (ii) presented at the point of entry to the Hunter Valley Network more than 15 minutes early or late;
- by providing a Train Path for that Train at ARTC's first available opportunity (subject to the Network Management Principles).

Both parties will, subject to this Agreement, use their best endeavours to:

- (iii) ensure that such Trains which are running or presented late recover the lost time; and
 - (iv) ensure that such Trains which are presented more than 15 minutes early depart the Hunter Valley Network no later than the scheduled time.
- (c) Nothing in this clause 2.5 requires ARTC to provide a Train Path where to do so would be inconsistent with the Network Management Principles or ARTC's obligations (consistent with the Network Management Principles) to an Other Customer (where such obligations had first arisen before the first entry of the Train on the Hunter Valley Network to which this clause 2.5 relates).

2.6 Warranty Of Accuracy Of Information

Each party represents and warrants to the other that all material information provided by the first-mentioned party to the other, whether pursuant to this Agreement or otherwise, in relation to use of the Hunter Valley Network is, to the first-mentioned party's knowledge, accurate in all material respects and is not, whether by omission or otherwise, misleading.

2.7 Manner Of Control Of The Hunter Valley Network By ARTC

Clause 2.7

Modified substantially to recognise that conformance to Train Paths is not a key issue for Coal Trains.

ARTC agrees at all times during the term of this Agreement to control the Hunter Valley Network in accordance with the Network Management Principles.

AAU Clause 2.8 Re-negotiation of Long-Term Contracted Path

Removed as not relevant to Coal Train Paths.

2.8 Ancillary Train Paths

Clause 2.8

New clause to deal with the provision of Ancillary Train Paths.

- (a) ARTC will provide the Customer with such Ancillary Train Paths as the Customer reasonably requires.
- (b) ARTC may use its reasonable discretion in the allocation of an Ancillary Train Path but is not required to provide an Ancillary Train Path for this purpose where to do so would:
 - (i) contravene the System Rules;
 - (ii) have a materially detrimental impact on the operation of other Trains;
 - (iii) contravene any Operational Document;
 - (iv) interfere with ARTC's performance of any pre-arranged maintenance program; or
 - (v) impose an additional cost on ARTC out of the ordinary course of its operations.
- (c) Where ARTC would incur additional costs as described in clause 2.8(b)(v) but is otherwise willing to provide the requested Ancillary Train Path and the Customer is willing to pay such costs, ARTC will;

-
- (i) provide the requested Ancillary Train Path; and
 - (ii) may charge the Customer for the additional cost incurred.

2.9 Key Performance Indicators

Clause 2.9

Modified to recognise that KPIs need to be agreed. Criteria for consideration of appropriateness has been simplified.

- (a) ARTC and the Customer recognise the importance of having Key Performance Indicators against which to measure actual service delivery and foster the achievement of the preferred level of service and will each use their reasonable endeavours to jointly develop a set of Key Performance Indicators, meeting the criteria set out in Schedule 5, to this end.
- (b) Subject to agreement to the contrary, the parties must meet not less than monthly during the Term of this Agreement for the purpose of discussing actual performance against any agreed Key Performance Indicators.
- (c) Upon the expiry of one year from the Commencement Date, the parties will jointly determine the appropriateness of the Key Performance Indicators and, if necessary, whether adjustments are required.
- (d) The provisions of clause 18 do not apply to any dispute arising from a consideration under this clause.

2.10 Stowage Of Rollingstock

Clause 2.10

New clause. Provides specifically for short term stowage.

- (a) ARTC will provide stowage on the Hunter Valley Network, free of charge, to the Customer as is required in the normal course of operations to carry out shunting, Train marshalling, Rollingstock maintenance, provisioning or other operational requirements, provided that such stowage does not reduce the availability of the Hunter Valley Network otherwise required for the operation of other Trains.
- (b) Where, due to short term or medium term system requirements, including where Rollingstock is not required due to a temporary reduction in business, but excluding any longer term requirement for storage of Rollingstock, it is necessary for a Customer to stow Rollingstock on the Hunter Valley Network, ARTC will use its reasonable endeavours to provide such stowage to the Customer, free of charge, provided that such stowage does not reduce the availability of the Hunter Valley Network otherwise required for the operation of Trains.

2.11 Storage Of Rollingstock

Clause 2.11

New clause. Provides specifically for long term storage.

- (a) ARTC will allow the Customer to store Rollingstock on the Hunter Valley Network, provided that;
 - (i) the Customer conforms to any reasonable requirement by ARTC with regard to location, safety or environment;

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- (ii) the storage does not reduce the availability of the Hunter Valley Network otherwise required for the operation of Trains, including Trains that had not been planned at the time that the storage was permitted; and
 - (iii) the Customer warrants that it will remove the relevant Rollingstock on receipt of notice from ARTC in accordance with clause 2.11(d).
- (b) The Customer is required to give ARTC at least 20 Business Days notice that it wishes to store Rollingstock on the Hunter Valley Network and identify the preferred location, quantity and type of Rollingstock and any other relevant details, including, if known, the expected duration of the storage.
 - (c) ARTC will use its reasonable endeavours to provide the storage as requested, but may, at its discretion, provide one or more alternative locations if the preferred location is not suitable or available.
 - (d) ARTC may require the Customer to remove the stored Rollingstock by giving the Customer at least 20 Business Days notice, in circumstances where the stored Rollingstock prevents or reduces the use of the Hunter Valley Network for the operation of any Train (including prospective Trains).
 - (e) Where ARTC provides storage to a Customer on the basis of this clause 2.11, it will be entitled to charge the Customer the Direct Cost of providing that storage.

2.12 Use Of Terminals

Clause 2.12

New clause. This incorporates the Terminal Protocol formally into the Agreement. The protocol sets out, at a high level, the rules for operation of the terminal.

The use by the Customer of any ARTC Terminal for permitted Terminal Activities is subject to the Customer conforming with the Terminal Management Protocol in Schedule 8.

3. TERM OF AGREEMENT

This Agreement commences on the date of this Agreement and, unless terminated earlier pursuant to clauses 15 or 24, will continue until expiry of the Term.

Clause 3

The provision for extending the agreement has been removed as this adds nothing to the rights available under the Access Undertaking. It is particularly important for Coal Trains on the Hunter Valley Network that access agreements are consistent with the Access Undertaking as it then applies due to the nature of path allocation and pricing.

4. CHARGES AND PAYMENT

AAU Clauses 4.1 & 4.2 Flagfall Charges & Variable Charges

Removed as these do not apply to the pricing of Coal Trains.

4.1 Access Charges

- (a) The Customer must pay to ARTC all Access Charges payable for each Coal Train Path.
- (b) For the purposes of the Monthly Forecast and calculation of Access Charges, any export coal rail receipt facilities within the vicinity of Carrington or Kooragang Island are deemed to be the same destination. If additional coal receipt facilities connected to the

Hunter Valley Network are constructed on or near Kooragang Island, these will also be regarded as the same destination for these purposes.

4.2 Monthly Invoice

Clause 4.2

Invoicing for Coal Trains reflects the different arrangements that currently apply.

Each month an interim invoice is issued on the 10th and 20th business day for 45% of the total forecast tonnes. This provides a strong cash-flow to ARTC and is consistent with existing processes. By invoicing 45% in each interim payment, ie covering 90% of the expected monthly volume, this avoids potential over-payment where unexpected fluctuations in volume occurs. The invoice on the 10th business day also reconciles the previous month to levy any amounts not covered under the interim payment (or if an over-recovery occurred, to credit the over-recovery against that month's interim payment).

- (a) Prior to the commencement of each month, the Customer will provide to ARTC a Monthly Forecast for that month.
- (b) On the 10th Business Day of each month, ARTC will issue a Tax Invoice to the Customer for;
 - (i) the amount equal to 45% of the Access Charges that would be payable for the coal forecast to be transported by the Customer in the Monthly Forecast as an interim payment; and
 - (ii) the balance of any Access Charges not previously invoiced for the preceding month.
- (c) On the 20th Business Day of each month, ARTC will issue a Tax Invoice to the Customer for the amount equal to 45% of the Access Charges that would be payable for the coal forecast to be transported by the Customer in the Monthly Forecast as an interim payment.
- (d) The Customer will pay the amount invoiced pursuant to clause 4.2(b) and 4.2(c) (except any amount which is the subject of a dispute by the Customer) within 5 Business Days from the date on which the Customer receives the Tax Invoice.
- (e) On the 10th Business Day of each month, ARTC will issue a statement to the Customer for Access Charges for the preceding month. The statement will, provide at least the following information;
 - (i) the details of each Coal Train, including the net tonnes hauled, for which Access Charges are levied sufficient for the Customer to verify the correctness of the Access Charges;
 - (ii) a summary of the number of Coal Trains, net tonnes and Access Charges for each origin to destination for the period;
 - (iii) the Access Charges for Ancillary Trains as agreed between the parties in accordance with clause 2.8(c);
 - (iv) the details of payments made by the Customer relating to this Agreement;
 - (v) a summary of all Access Charges by category; and
 - (vi) the total amount owing for the Tax Invoice.
- (f) Where ARTC is able to source the Monthly Forecast for the Customer from the Logistics Team in a convenient manner, ARTC will advise the Customer and the Customer is not required to provide Monthly Forecast in clause 4.2(a).

4.3 Application Of Unders And Overs Account

Clause 4.3

Annual reconciliation of ARTC's revenue receipts for the Constrained Network through the 'Under and Overs Account' occurs under the process outlined in the Access Undertaking.

- (a) At the completion of each Financial Year, ARTC will undertake the process set-out in clause 4.8 of the Access Undertaking for management of the Unders And Overs Account.
- (b) Where, as a result of the process set-out in clause 4.8 of the Access Undertaking, any amount is owed by ARTC to the Customer, ARTC will pay that amount to the Customer as soon as practicable except that, if the Customer owes an amount of Access Charges for the Financial Year to which the refund applies, ARTC is entitled to set-off as much of the refund to the Customer against the amount owing as is necessary to extinguish the debt except to the extent that the outstanding amount is subject to a dispute raised under this Agreement.

4.4 Variation Of Access Charges – Constrained Coal Trains

Clause 4.4

Annual price setting for Constrained Coal Trains occurs under the process outlined in the Access Undertaking.

Unless otherwise agreed by the parties and subject to clause 4.5(c), the Access Charges for Constrained Coal Trains will on 1 July each year during the Term be adjusted, in accordance with the Pricing Principles in Part 4 of the Access Undertaking, so that ARTC is able to earn the Combinatorial Ceiling Limit from the combination of all Access Charges applicable to Constrained Coal Trains for that Financial Year.

4.5 Variation Of Access Charges – Unconstrained Coal Trains And Prescribed Fees

Clause 4.5

The formula from the AAU has been adopted and adapted with the consultation part now in clause 4.7. The clause only applies to Unconstrained Coal Trains and Prescribed Fees; Constrained Coal Trains are dealt with in Clause 4.4

- (a) This clause 4.5 applies to Access Charges for Unconstrained Coal Trains and the Prescribed Fees in Schedule 2 (“**Unconstrained Prices**”).
- (b) Each Financial Year, at ARTC's discretion but subject to clause 4.7, Unconstrained Prices may be adjusted by the greater multiple of;
 - (i) 1;
 - (ii) $1 + (\text{CPI} - 2 \text{ percentage points})$, where CPI is expressed as a percentage increase over the previous year); or
 - (iii) $1 + 2/3\text{rds of CPI}$;
- (c) ARTC will apply any change in Unconstrained Prices from the date determined in accordance with clause 4.7(d) and will not seek to backdate any change to a prior date.
- (d) ARTC may exercise its discretion to not increase any Unconstrained Price by the full or any amount, that would result from application of the formulae in clause 4.5(b). For the avoidance of doubt, ARTC may increase different Unconstrained Prices, relating to particular traffics or Train characteristics, by different amounts, provided any increase does not exceed the maximum derived from the formulae in clause 4.5(b).

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- (e) Where ARTC applies less than the maximum permitted increase in any Unconstrained Price in any Financial Year, it will not include the increase foregone in any subsequent variation of the relevant Unconstrained Price.
 - (f) ARTC will not use this clause 4.5 to increase any Access Charge in the Financial Year in which this Access Agreement commences operation where the Access Charges have previously been adjusted for that Financial Year under some other mechanism.

Clause 4.5(f)

This is designed to avoid the potential for ARTC to apply two increases in the first Financial Year of operation eg one through operation of a previous instrument or transitional arrangements and then through clause 4.5 at a later date in the same Financial Year. In practice it is expected that the Charges would be negotiated prior to commencement of the Agreement.

4.6 Effect Of Taxes

Clause 4.6

Separated out so that these provisions apply to all charges. Prescribed Fees also included and the GST arrangements have been generalised as there is no benefit in restricting the clause to provision of services relating to the network.

- (a) Subject to clause 4.6(b), ARTC will immediately pass on to the Customer any net effect of any imposition of new taxes or charges, increases or decreases in taxes or charges (other than income tax) which is a tax, royalty, rate, duty, levy or impost of general application imposed on ARTC by any government or regulatory authority and which is directly attributable to the provision by ARTC to the Customer of access to the Network.
- (b) ARTC will not pass on any such tax or charge which becomes payable as a result of ARTC failing to comply with any applicable law or any applicable provision of this Agreement.
- (c) The Customer acknowledges that the Access Charges and Prescribed Fees payable by them have been calculated without regard to any GST payable by ARTC in respect of the supply of any services in accordance with this Agreement. To the extent that GST is payable by ARTC on the supply of any services in accordance with this Agreement, the Access Charges and Prescribed Fees will be varied in accordance with clause 4.12 hereof.

4.7 Consultation Regarding Access Charge Variations

Clause 4.7

The process for consultation regarding annual price changes has been separated out and amplified.

- (a) ARTC will give the Customer notice of any proposed changes to Access Charges under clause 4.4 or 4.5 at least 40 Business Days prior to the commencement of the Financial Year in which it is intended that the Access Charges apply.
- (b) The Customer may, within the period of 20 Business Days from the date of the notice provided in accordance with clause 4.7(a), make written submissions to ARTC on the proposed changes to the Access Charges.

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- (c) ARTC must consider any written submission made by the Customer in good faith and provide the following information to the Customer within 20 Business Days from the date of any written submission provided pursuant to clause 4.7(b):
- (i) the process it has used to consider the issues raised in any written submission provided by the Customer pursuant to clause 4.7(b);
 - (ii) the reasons arriving at the final determination made by ARTC with relation to each issue raised by the Customer pursuant to clause 4.7(b);
 - (iii) the final determination made by ARTC with relation to each issue raised by the Customer pursuant to clause 4.7(b);
 - (iv) the date from which the revised Access Charges are to apply; and
 - (v) the Access Charges to apply.
- (d) The increase in Access Charges proposed by ARTC shall become effective on the later of:
- (i) if no subsequent notification is given by ARTC to the Customer, 1 July in the relevant Financial Year;
 - (ii) 40 Business Days after the notice of the proposed changes to the Access Charges is given under clause 4.7(a); or
 - (iii) the date specified in any notice provided by ARTC in accordance with clause 4.7(c).
- (e) Within 40 Business Days of the Access Charges for a Financial Year having become effective in accordance with clause 4.7(d), ARTC will issue a copy of a certificate to the Customer from an independent auditor stating that the Access Charges have been calculated in accordance with the Access Undertaking.
- (f) If ARTC is not able to provide such a certificate as described in clause 4.7(e), ARTC will make such adjustments to the Access Charges as necessary to enable it to issue the certificate and will provide reasonable details of the reasons the changes were required.

4.8 Track Extensions – Unconstrained Network

- (a) This clause 4.8 applies only to Unconstrained Coal Trains.
- (b) In the event that ARTC, at its cost, constructs further railways lines or track not currently defined as part of the Unconstrained Network (“**Track Extensions**”) and the parties agree to the Customer being granted access to the Track Extensions as part of the extended Unconstrained Network, ARTC may, subject to clause 4.8(c), charge the Customer for access to the Track Extensions as a term of it agreeing to such variation. ARTC may charge the Customer such amount it determines as being reasonable after taking into account:
- (i) the costs incurred by it in constructing the Track Extensions and the recovery of such costs over the time such Track Extensions can be utilised by the Customer and Other Customers;
 - (ii) the location of the Track Extensions;
 - (iii) the number of Other Customers (including potential Other Customers) that ARTC estimates will use the Track Extensions;
 - (iv) the pricing and other principles contained in any Access Undertaking or any other relevant regulatory instrument applicable at the time; and
 - (v) any other legitimate commercial factors which ARTC might reasonably consider.

Clause 4.8(b)

The AAU removed this clause from the operation of the dispute resolution process. The MUC takes the position that the Tack Extension provisions should be subject to dispute resolution and has removed that prohibition accordingly.

- (c) If, as a result of the Track Extensions a Customer's existing Unconstrained Coal Train must be varied to include the Track Extensions, ARTC will not charge the Customer under clause 4.8(b) for access to such Track Extensions.

Clause 4.8(c)

Modification made for consistency.

- (d) Any access charge that arises under clause 4.8(b) will not exceed a rate or amount (as applicable) that was agreed between ARTC and any Customer as part of the consultation process prior to the construction of the Track Extension.

Clause 4.8(d)

Added to enforce any agreement made prior to construction, to avoid unexpected results when the parties agreed that a particular investment was appropriate.

4.9 Interest

If the Customer defaults in the due payment of any amount due to ARTC under this Agreement (including all amounts in a Tax Invoice except amounts in dispute), the Customer must pay interest on that amount, or the outstanding balance, until it is paid in full. The interest rate will be 2 percentage points above the prime lending rate charged by the Commonwealth Bank of Australia at that time on overdrafts of \$100,000 or more. That interest will accrue and be recoverable from day to day. If a dispute is subsequently resolved in ARTC's favour, the amount which is the subject of that dispute will be deemed to have accrued interest on the terms set out in this clause 4.9.

4.10 Obligation To Grant Security

- (a) Subject to clause 4.10(b), the Customer must deliver to ARTC, on receipt of notice from ARTC, and keep current at all times during the Term, security for the Customer's obligations under this Agreement in the form of an unconditional and irrevocable bank guarantee, letter of credit, performance or insurance bond ("**Security**") issued by a bank holding an Australian banking licence or such other reputable person or institution accepted to ARTC in the amount of the average of 4 weeks Access Charges and containing such other terms and conditions acceptable to ARTC.
- (b) The Security referred to in clause 4.10(a) must be provided by the Customer within 5 Business Days of the Customer receiving a notice from ARTC requesting the same. ARTC may only serve such a notice on the Customer under this clause 4.10(b) if the Customer has materially defaulted in the payment of any monies owed by it to ARTC under this Agreement and has not remedied that default within 5 Business Days of receipt of written notice of such default. For clarity, the non-payment of any amount under dispute does not constitute a default.

Clause 4.10(b)

Materiality qualification added.

Clarification added.

- (c) The request for the Security by ARTC is in addition to and without derogation from any other rights ARTC may exercise against the Customer by reason of the breach of the

Agreement. Subject to clause 4.10(d), the continuance of the Security (or any replacement thereof under clause 4.11(b)) is a condition of the performance by ARTC of its obligations under this Agreement.

- (d) If, after Security has been provided in accordance with this clause, the Customer has not been in default in the payment of monies owed by it to ARTC under this Agreement for a continuous period of three (3) months, ARTC will, on request of the Customer, notify it that the Security is no longer required and forthwith release the Security to the Customer. This clause 4.10(d) does not preclude ARTC from issuing a further notice under clause 4.10(b) if the circumstances described in that clause apply.
- (e) The amount of the Security will be reviewed every 12 months from the Commencement Date. The result of the review may not exceed the amount that would otherwise have been required under clause 4.10(a)

Clause 4.10(e)

The MUG clarifies that the review is not intended to set a higher amount than the initial security.

The AAU removed this provision from the operation of the dispute resolution mechanism – the MUG has restored access to dispute resolution on this matter.

- (f) The term of the Security must be for the same or a greater period than the Term of this Agreement under clause 3.

Clause 4.10(f)

Reference to security matching any extension deleted given the removal of extension provisions elsewhere.

- (g) Upon expiry of the Agreement, ARTC shall release the Security to the Customer provided that at such time the Customer is not in default in the payment of any monies owed by it to ARTC under this Agreement.

4.11 Exercise Of Security

- (a) The Security shall be held by ARTC as security for the performance of the obligations of the Customer under this Agreement and may be called upon by ARTC in any circumstances in which ARTC suffers any loss as a result of default by the Customer under this Agreement.
- (b) If ARTC exercises or draws on the Security, the Customer must promptly provide a replacement bank guarantee or letter of credit for the amount drawn or exercised by ARTC against the Security and otherwise on the same terms as the Security.

4.12 Goods And Services Tax

Clause 4.12

Replaces the original ARTC GST clause given that GST is now fully in place.

- (a) Except where the context suggests otherwise, terms used in this clause have the meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (as amended from time to time).
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause.

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- (c) Any payment or reimbursement required to be made under this Agreement for a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
 - (d) If GST is payable by a party (“**Supplier**”) in relation to any supply made by it under or in connection with this Agreement then the party providing consideration for that supply (“**Recipient**”) must pay an additional amount to the Supplier equal to the amount of that GST.
 - (e) Any additional amount payable under clause 4.12(d) is not payable by the Recipient unless the Supplier has first provided a tax invoice to the Recipient for that supply.
 - (f) If the GST payable in relation to a supply made under or in connection with this Agreement varies from the additional amount paid by the Recipient under clause 4.12(d) such that:
 - (i) a further amount of GST is payable in relation to the supply; or
 - (ii) a refund or credit of GST is obtained in relation to the supply,then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient.

4.13 Charges For Terminal Activities

- (a) ARTC will not charge a separate Access Charge for any of the following Terminal Activities conducted within an ARTC Terminal;
 - (i) Transiting of a Train between private rail infrastructure and the ARTC main line;
 - (ii) Queuing, staging, shunting, marshalling, provisioning or maintaining of a Train;
 - (iii) Movements of Rollingstock between different locations within the ARTC Terminal;
 - (iv) Performance of safety related activities associated with a Train or Rollingstock;
 - (v) Where the relevant Train is:
 - (A) engaged in the loading or discharge of a bulk product; or
 - (B) stowed waiting to depart on its next cycle.
- (b) Where an Applicant seeks to use an ARTC Terminal for a Terminal Activity other than described in 4.13(a) for a purpose permitted by ARTC, ARTC may levy a Charge for that Terminal Activity.

Clause 4.13

The existing ARTC Terminals are primarily for the discharge of bulk products, the servicing and holding of Trains engaged in bulk traffics or the transit of Trains between the main line and private infrastructure. The MUC provides that these traffics are not explicitly charged for these activities as they are currently included in existing main line access charges. However, it is possible that ARTC might provide a service for which it should be permitted to set a separate charge and this is provided for.

5. CONTROL AND MANAGEMENT OF ACCESS TO THE HUNTER VALLEY NETWORK

5.1 ARTC To Control

Control of the Hunter Valley Network, and, subject to this Agreement, management of access to the Hunter Valley Network, remains at all times with ARTC.

5.2 Warranty Of Entitlement To Grant Access

Clause 5.2

Added requirement that ARTC where ARTC provides access to someone else's network they provide the Customer with any relevant terms and conditions.

- (a) ARTC warrants that it is entitled to grant to the Customer all of the Customer's rights of access to the Hunter Valley Network described in this Agreement (but in the case of that part of the Hunter Valley Network owned or managed by another person, subject to the terms by which that other person permits the Customer access to such part of the Hunter Valley Network or by which that other person permits ARTC to allow the Customer to have access to such part of the Hunter Valley Network).
- (b) Where part of the Hunter Valley Network is owned or managed by another person, ARTC will advise the Customer of any terms by which that other person permits the Customer access to that part of the Network or by which that other person permits ARTC to allow the Customer to have access to such part of the Network where such terms may have a material impact on the ability of the Customer to operate Trains over such parts of the Network.

5.3 ARTC's Obligations

ARTC agrees at all times during the term of this Agreement to:

- (a) provide the function of Train Control over the Hunter Valley Network;

Clause 5.3(a)

It is not necessary that ARTC be the Train Controller, merely that it provides this function and retains responsibility for delivery of the service.

- (b) comply with the Network Management Principles;
- (c) comply with the System Rules;

Clause 5.3(c)

This extra obligation is added to recognise the necessity that ARTC complies with any System Rules. This obligation is mirrored in the obligations of the Customer.

- (d) safely and efficiently operate the Hunter Valley Network so that any permitted use of the Hunter Valley Network by the Customer is facilitated promptly and effectively and in accordance with this Agreement;

AAU Clause 5.3(d)

Removed as Associated Facilities are now included in the definition of the Network.

- (e) receive, record and collate information from the Customer and other users of the Hunter Valley Network for the purposes of;
 - (i) generating the Tax Invoices referred to in clause 4.2;

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- (ii) managing the Unders And Overs Account in accordance with clause 4.3; and
 - (iii) more effectively exercising the functions referred to in clauses 5.3(a), (b) and 5.3(d);

Clause 5.3(e)

Added references to operation of the Unders And Overs Account and safe operation of the network.

- (f) provide access to one or more Train Control Centres and a communication system for the purpose of communication with the Customer and other users of the Hunter Valley Network, and to facilitate the Customer's access to that communication system;

Clause 5.3(f)

As with clause 5.3(a), it is not necessary that ARTC owns or operates these so long as it provides these functions and retains responsibility for delivery of the service.

- (g) use its best endeavours to provide the Customer with details, as soon as reasonably practicable of all operating incidents (including an Incident) which has affected or could potentially affect the ability of any Train to retain its Train Path, or else affect its security or safety or the security and safety of the freight or passengers; and
- (h) comply with all laws in any way applicable to;
 - (i) this Agreement; or
 - (ii) ARTC's management, control and ownership of the Hunter Valley Network;

Clause 5.3(h)

This is a simplification – it is not necessary to list the types of laws with which parties are required to comply.

- (i) subject to clause 19, to provide to the Customer such information related to the operation of the Hunter Valley Network (excluding commercial information) as the Customer reasonably requires to enable it to properly perform its functions and discharge its obligations to ARTC, its owners and the public;

Clause 5.3(i)

New clause. This mirrors the obligation in 5.5(i).

5.4 Warranty In Relation To Rollingstock Standards

The Customer warrants as at the Commencement Date and at all material times during the Term to maintain each Train operated by the Customer on the Hunter Valley Network in a condition which is fit for use on the Hunter Valley Network having regard to the terms of this Agreement.

5.5 Customer's Obligations

The Customer agrees at all times during the Term of this Agreement to;

- (a) use its best endeavours to ensure that its use of the Hunter Valley Network complies with the Train Paths allocated to it;

AAU Clause 5.3(d)

Obligation to comply with the Code of Practice has been removed as this is now covered by the more general obligation to comply with all Operational Documents in clause 12.1.

- (b) comply with the System Rules;

Clause 5.5(b)

This extra obligation is added to recognise the Hunter Valley Network is part of a system and the necessity that ARTC complies with any System Rules. This obligation is mirrored in the obligations of the Customer.

- (c) comply, and conduct itself in accordance, with all Instructions issued;
- (d) notify the Train Control Centre immediately it becomes aware that material non-compliance by a Train with the applicable Train Path has occurred or is a reasonable probability;
- (e) ensure that its use of the Hunter Valley Network is carried out in such a way as to minimise obstruction of the Hunter Valley Network and so that use of the Hunter Valley Network by any other user authorised by ARTC is not prevented or delayed (other than through use of the Hunter Valley Network in accordance with this Agreement or through proper compliance with an Instruction validly given);
- (f) comply with all laws in any way applicable to;
- (i) the operation of Coal Trains or Ancillary Trains;
- (ii) the performance of Terminal Activities;
- (iii) the Customer's use of the Hunter Valley Network; or
- (iv) this Agreement;
- (g) not materially change, alter, repair, deface, damage or otherwise affect any part of the Hunter Valley Network provided that:
- (i) the obligation of the Customer in this clause extends only to such matters to the extent that they were caused or contributed to by the Customer; and
- (ii) damage to the Hunter Valley Network does not include normal wear and tear of the Hunter Valley Network where the Customer is accessing the Hunter Valley Network in accordance with the terms of this Agreement.
- (h) provide and maintain communications equipment which is compatible with the equipment used in the Train Control Centre as at the Commencement Date and to use such equipment to communicate with the Train Control Centre. Where ARTC proposes to change communications equipment in the Train Control Centre and where such proposal will result in the Customer having to replace or upgrade its communications equipment, ARTC will consult with the Customer and the Customer will, after such consultation and after reasonable notice from ARTC to the Customer, reasonably replace or upgrade the communications equipment to be compatible with the equipment used in the Train Control Centre provided that ARTC will reimburse the Customer the net cost to the Customer of replacing or upgrading the communications equipment, taking into account any reductions in Charges or other benefits that will tangibly accrue to the Customer as a result;

Clause 5.5(h)

It is not appropriate that ARTC should be able to change systems at its discretion (albeit after consultation) unless it is also willing to accept the cost of doing so. The MUC provides that ARTC bear the net cost so that ARTC is not required to bear any cost that would be recouped by the Customer through improved performance, so long as such benefit is tangible.

- (i) subject to clause 19, provides to ARTC such information related to the operation of the Coal Trains and Ancillary Trains (excluding commercial information) as ARTC reasonably requires to enable it to properly perform its functions and discharge its obligations to the Customer, other access holders, its owner, regulatory bodies and the public;

Clause 5.5(i)

New clause. This mirrors the obligation in 5.3(i).

- (j) provide to ARTC a Train Manifest in a format acceptable to ARTC for each Coal Train and Ancillary Train not less than 15 minutes prior to the relevant Train commencing use of the Hunter Valley Network and to provide written notice of any detail of the Train Manifest which changes during the course of the operation of the relevant Train over the Hunter Valley Network; and
- (k) inform ARTC as soon as reasonably practicable of any cancellation or intended cancellation by the Customer of any Coal Train or Ancillary Train.

5.6 Conduct Of ARTC

- (a) ARTC will not discriminate between the Customer and Other Customers in complying with this Agreement in terms of;
 - (i) the application of pricing principles and considerations;
 - (ii) the determination of other contractual terms; and
 - (iii) the application of the Network Management Principles;

it nevertheless being acknowledged by the Customer that these matters may be applied differently between the Customer and Other Customers by reason of the location, duration and quality of Train Paths, nature of Train consist, nature of Train and the longevity of access agreements.

- (b) Without limiting clause 5.6(a), ARTC shall treat the Customer and all Other Customers in a like manner in respect of like services purchased by them. That is to say, if the Coal Train Paths purchased by the Customer and any Other Customer are alike in respect of origin and destination, ARTC shall be obliged to treat the Customer and any Other Customer equally in respect of the application of its pricing principles to such services.
- (c) Without limiting clauses 5.6(a) or (b), if:
 - (i) ARTC sells the right to access Coal Train Paths to a third party (“**Third Party Access Rights**”); and
 - (ii) the Customer considers, acting reasonably, that the Third Party Access Rights are of a similar nature when compared to the rights to access Coal Train Paths purchased by it under this Agreement (“**Like Access Rights**”); and
 - (iii) the Customer, acting reasonably, is of the bona fide belief that the Third Party Access Rights have been sold by ARTC for a price less than that charged by ARTC to the Customer for the Like Access Rights,

then the Customer may make a written request to ARTC for an independent audit to be conducted into whether ARTC has breached clauses 5.6(a) or (b) with respect to the Customer.

AAU Clause 5.6(c)(vi)

This requirement deleted. The Customer is most unlikely to know what the charges are, and it is of little relevance as ARTC will know anyway. If this qualification was required, a Customer would probably never be able to raise its concerns due to lack of evidence.

- (d) ARTC will, within 20 Business Days of receipt of a written request under clause 5.6(c):
 - (i) arrange for the independent audit to be carried out; and
 - (ii) if the audit determines that ARTC has breached clause 5.6(a) or (b), ARTC will adjust the Customer's Access Charges to remedy the breach; and
 - (iii) will provide the Customer with the results of the audit, but is not required to reveal any confidential information including the access charges paid by any Other Customer except to the extent necessary for the audit report to be reasonably comprehensible in addressing the concerns raised by the Customer.
- (e) On receipt of the audit report, the Customer will be required to reimburse ARTC for the reasonable costs of the independent audit unless the auditor finds that ARTC has breached clause 5.6(a) or (b).

Clause 5.6(d), 5.6(e)

The AAU provided for the Customer to make a written submission to ARTC, to which ARTC would respond. The MUC takes a different approach, providing for the conduct of an independent audit. This is conceptually more appealing for Access Seekers as the result is independently determined – it is not good administration to have the party potentially at fault making a determination on itself.

If the audit supports ARTC, then the cost is borne by the Customer – this should deter any “fishing expeditions”.

AAU Clause 5.6(e)

Deleted as a dispute may be raised under the general dispute process in clause 18.1(a).

6. REPAIRS AND MAINTENANCE OF THE HUNTER VALLEY NETWORK

6.1 ARTC To Repair And Maintain The Hunter Valley Network

Despite clause 6.2, ARTC agrees at all material times during the Term to maintain the Hunter Valley Network in a condition which is fit for the Customer's purpose to use the Hunter Valley Network to provide rail transport services having regard to the terms of this Agreement.

Clause 6.1

Reference qualifying the obligation to apply only to the Customer's Train Paths has been deleted as Train Paths are treated in a different manner to those on the general network.

6.2 Operating Restrictions

When required by the condition of the Hunter Valley Network or any part of the Hunter Valley Network, ARTC may (to the extent of such requirement only) give notice of speed and mass restrictions and the Customer must comply with such a notice.

6.3 Restricted Network

Clause 6.3

This clause has been inserted to cater for the potential for ARTC to operate under a CSO in some instances and the consequences of a withdrawal of such funding. Though it is unlikely that this would apply to the Hunter Valley Network, this maintains consistency with the MUG and possible future changes in the network status.

- (a) If any part of the Hunter Valley Network is subject to a Community Service Obligation, as listed in Schedule 6, and the funding agency removes funding and the concomitant obligation for the on-going maintenance of that part of the Hunter Valley Network, ARTC reserves the right not to maintain or provide access to that part of the Hunter Valley Network.
- (b) If the circumstances identified in clause 6.3(a) arise or are likely to arise, ARTC will;
 - (i) advise the Customer as soon as possible of the issue and ARTC's intended course of action;
 - (ii) consult with the Customer as to;
 - (A) any alternative courses of action available;
 - (B) the impacts on the Customer if ARTC proceeds with its intended course of action;
 - (iii) provide the Customer will all reasonable assistance to mitigate the impact on the Customer's business of any line closure or reduction in quantum or quality of Train Paths that will result from ARTC implementing its proposed course of action.
- (c) If ARTC determines it will not maintain and provide access to a part of the Hunter Valley Network on the basis of clause 6.3(a) and the Customer agrees to fund that portion of the Hunter Valley Network directly to the same amount as previously funded under the Community Service Obligation, ARTC will continue to maintain and provide access to that portion of the Hunter Valley Network.

7. ACCREDITATION

7.1 Accreditation Warranty

- (a) Each party warrants that during the Term each such party has and will maintain Accreditation to the extent required by law, including, in the case of the Customer, all certification required by law in relation to Rollingstock used by the Customer on the Hunter Valley Network in accordance with the Accreditation.
- (b) The parties will notify each other of any notice received from any Government Authority materially affecting Accreditation relevant to this Agreement.

Clause 7.1(b)

Qualified to being material and relevant to this Agreement – otherwise any change in accreditation would be caught whether relevant or not.

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- (c) The Customer must not operate Rollingstock on the Hunter Valley Network in breach of clause 7.1(a).

AAU clause 7.1(d)

This clause required the Customer to provide ARTC with a copy of any audit report required by an Accrediting Authority regarding any equipment or maintenance practice. This has been deleted from the MUC as it is contrary to the approach in the IAA that each party is responsible for warranting its own Accreditation and certification.

- (d) If a party loses part or all of its Accreditation or has part or all of its Accreditation suspended, that party must use its best endeavours to regain or have restored its full Accreditation as soon as is reasonably practicable.

7.2 Evidence Of Accreditation

Clause 7.2

Each party should only be obliged to provide a copy of the relevant certificate of accreditation plus that level of contextual information to give the other party an understanding of the extent of the Accreditation. To go beyond this is to interfere into the other party's relationship with the relevant safety regulator without good reason.

- (a) Each party must on or before the Commencement Date (and in the case of Accreditation which is obtained for the first time after the Commencement Date, then as soon as practicable such Accreditation is obtained) provide to the other party evidence of its Accreditation.
- (b) A copy of any certificate or letter evidencing renewal or amendment of Accreditation must be provided by a party to the other party on the written request of the other party.

7.3 Termination Of This Agreement By Reason Of Suspension Or Cancellation Of Accreditation

If either party's Accreditation is:

- (a) suspended for a continuous period of longer than 6 months; or
- (b) cancelled for a continuous period of longer than 1 month,

the other party has the rights of termination set out in clause 15.3. This clause does not derogate from the parties' rights under clause 15 in respect of termination of this Agreement.

8. COMPLIANCE WITH INSTRUCTIONS

8.1 Issue Of Instructions By ARTC

- (a) ARTC may issue Instructions to the Customer.
- (b) Instructions may include but are not limited to Instructions;
- (i) to cease use of a Train Path by the Train and for the Train to proceed over such path on the Hunter Valley Network as ARTC nominates;
- (ii) to continue use by the Train of the Hunter Valley Network subject to such variation of the applicable Train Path or the Train or the composition or quality of Train as ARTC nominates;
- (iii) to cause the Train to proceed to a point on the Hunter Valley Network and stand there until ARTC issues a further Instruction in relation to the Train; or

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- (iv) without limiting the generality of clauses 8.1(b)(i) to (iii), to delay or redirect the Train in accordance with the Network Management Principles to allow access to the Hunter Valley Network by a Train operated by another party that would, but for the delay or redirection of the Customer's Train, be delayed or further delayed.

Clause 8.1(b)

References to 'directions' removed as these are included in the definition of 'Instruction'.

'Scheduled Train Path' changed to 'Train Path' to recognise all Train Path types.

Clause 8.1(b)(iv) modified to better reflect the intent.

- (c) ARTC must:
 - (i) in giving any Instruction have due regard to minimising the disruption to the Customer's Train; and
 - (ii) other than in an emergency, consult with the Customer in giving an Instruction concerning the use of an Customer's locomotive and its crew for the purpose of assisting in the clearing of a Hunter Valley Network blockage.

AAU clause 8.1(d)

This clause referred was only relevant to permanently allocated Train Paths and therefore is not relevant the MUC.

- (d) As soon as is reasonably practicable and in any event before an Instruction becomes effective, ARTC must give to the Customer a written copy of the Instruction if such Instruction is ordinarily advised in writing by ARTC to operators.

8.2 Compliance By The Customer With Instructions And Train Control Directions

Clauses 8.2

Substantial modification. All train operators have an obligation not to comply with any Instruction that is not lawful or contravenes the safeworking or operating rules [see Glenbrook Enquiry]. The MUC identifies those criteria that would qualify an Instruction as lawful. These are directed towards the issuer of the Instruction not knowingly requiring the operator to do something which would be unsafe.

- (a) Subject to clause 8.2(d), the Customer will comply with all lawful Instructions and will promptly advise all relevant Train crew of any changes to, or the making or giving of, Instructions.
- (b) If a lawful Instruction is a Train Control Direction, it must be complied with immediately.
- (c) To be a lawful Instruction, an Instruction must at least meet the following criteria:
 - (i) the Instruction is not contrary to the requirements of any Operational Document;
 - (ii) the Customer is qualified to perform the activities explicitly or implicitly required to comply with, and in the manner anticipated by, the Instruction;
 - (iii) the Instruction would not require either party to breach its Accreditation;
 - (iv) to the best of ARTC's knowledge the Instruction can be safely performed in the known prevailing circumstances; and
 - (v) the Instruction does not contravene, nor would cause the Customer to contravene, any law if complied with in the manner anticipated by the issuer of the Instruction.

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- (d) Unless the Train Control Centre gives an Instruction that is a Train Control Direction, the Customer need only comply with an Instruction if it was given a reasonable time before the required time for compliance.
 - (e) The Customer must comply with all lawful Instructions in such a way as to reasonably minimise disruption to any other person's use of the Network.
 - (f) Subject to clause 8.3 and clause 16, ARTC is not responsible for any delay suffered or cost incurred by the Customer in complying with a lawful Instruction of ARTC, and the Customer releases ARTC from any Claim arising from such compliance.
 - (g) Subject to clause 8.3 and clause 16, the Customer is not responsible for any delay suffered or cost incurred by ARTC in the Customer complying with an Instruction of ARTC, and ARTC releases the Customer from any such Claim arising from such compliance.

8.3 Provision Of Assistance To A Distressed Train

Clause 8.3

New clause.

- (a) Where ARTC issues an Instruction requiring the Customer, to aid a distressed Train of an Other Customer;
 - (i) ARTC will pay to the Customer the Prescribed Fee set out in Schedule 2 or, the Customer's actual reasonable Direct Costs, whichever is the greater; and
 - (ii) ARTC will indemnify the assisting Customer against any liability for damage or negligence that arises in complying with the Instruction except to the extent that the assisting Customer engages in wilful, dishonest or unlawful conduct.
- (b) Where ARTC issues an Instruction requiring an Other Customer to aid a distressed Train being operated under this Access Agreement, the Customer will indemnify ARTC against;
 - (i) the costs incurred in providing the assistance; and
 - (ii) any liability for damage or negligence that arises from ARTC arranging assistance and the Other Customer complying with the Instruction except to the extent that either ARTC or the Other Customer engages in wilful, dishonest or unlawful conduct.

9. VARIATION OR CANCELLATION OF TRAIN PATHS

9.1 Examples Of Temporary Variations Of Train Paths By The Giving Of Instructions By ARTC

- (a) For the avoidance of doubt, and without limiting the generality of clause 8.1(a), the Customer's Train Paths may be temporarily varied by the giving of Instructions:
 - (i) for the purpose of preventing any actual or potential:
 - (A) breach of the Safeworking Rules or of clause 12 by the Customer or of similar safety requirements by Other Customers on the Hunter Valley Network;
 - (B) material damage to the Hunter Valley Network;
 - (C) injury to any person or damage to any property; or

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- (D) delay to the progress of Trains on the Hunter Valley Network (but only insofar as any Trains operated by a third party have priority over the Customer's Trains having regard to the Network Management Principles); or
 - (ii) for the purpose of preventing, or in response to, any actual or threatened breach by the Customer of any of the Customer's material obligations under this Agreement.
- (b) The Instructions referred to in clause 9.1(a) may comprise, but need not be confined to, Instructions in one or more of the following terms:
- (i) to cease use of a Train Path by the Train and for the Train to proceed over such path on the Hunter Valley Network as ARTC nominates;
 - (ii) to continue use by the Train of the Hunter Valley Network subject to such variation of the applicable Train Path or the Train or the composition or quality of Trains as ARTC nominates;
 - (iii) to cause the Train to proceed to a point on the Hunter Valley Network and stand there until ARTC issues a further Instruction in relation to the Train; or
 - (iv) if the Train operates outside of its Train Paths, to delay or redirect the Train to allow access to the Hunter Valley Network by another operator of a Train whose service would, but for the delay or redirection of the Customer's Train, be delayed or further delayed.

Clause 9.1

'Service' changed to 'Train'.

AAU clause 9.2

Deleted. This clause referred to permanent alterations to fixed Train Paths which do not exist under the MUC.

9.2 Repairs, Maintenance And Upgrading Of The Hunter Valley Network

Clause 9.2

This clause has been modified to include the Possessions Planning Process and recognising the need to coordinate with other parties to minimise the disruptions from maintenance across the wider network. See also Schedule 4.

- (a) Notwithstanding any other provisions to the contrary in this clause 9, but subject only to clauses 9.2(b) to (d), ARTC may, without notice to the Customer perform repairs, maintenance or upgrading of the Hunter Valley Network, or take possession of any part of the Hunter Valley Network, at any time.
- (b) If repairs, maintenance or upgrading of the Hunter Valley Network, or taking possession of the Hunter Valley Network, are reasonably likely to materially affect the Train Paths, ARTC must, prior to commencement of the works:
 - (i) take all reasonable steps to minimise any disruption to the Train Paths or the availability of Coal Train Paths to be made available to Customers in accordance with the Integrated Plan;
 - (ii) notify the Customer of the works as soon as reasonably practicable; and
 - (iii) use its best endeavours to provide an alternative Train Path,

but need not obtain the Customer's consent to such repairs, maintenance or upgrading, or possession of the Hunter Valley Network.

- (c) Possession of the Hunter Valley Network means closure of the relevant part of the Hunter Valley Network to any or all traffic for the purpose of effecting repairs, maintenance or upgrading.
- (d) With the objective of minimising disruption to the Customer, Other Customers and the Hunter Valley Coal Chain and achieving efficient maintenance of the Network, ARTC will agree a Possession Planning Process with the Logistics Team, the Customer and such Other Customers of the Network as wish to participate as described in Schedule 4 clause S4.2. Once the Possession Planning Process has been developed, ARTC will perform repairs, maintenance and upgrades of the Hunter Valley Network in accordance with that Possession Planning Process.
- (e) ARTC will consult with the Customer before taking possession of the Hunter Valley Network (except in the case of an emergency) in accordance with the Possession Planning Process described in Schedule 4 clause S4.2.
- (f) In formulating its plans for maintenance of the Hunter Valley Network, ARTC will use its reasonable endeavours to coordinate possessions with adjoining Other Track owners and other stakeholders to minimise overall disruption to the Customer and any Other Customers.
- (g) The conduct of the Possession Planning Process and any outcomes arising from that process are not subject to clause 18 except where either party is of the view that other party has not acted in good faith or that the result is manifestly unreasonable.

9.3 Cost Of Variation

Subject to clause 16, any losses, additional costs or other damage suffered by a party in complying with a variation under clause 9, 20.2 and 23 will be borne between the parties to this Agreement in such proportion as the parties agree (based on negotiations carried on in good faith), or in the absence of such agreement, and subject to a party's obligation under clause 16 to indemnify the other in the circumstances set out in that clause, by the party which incurs such losses, additional costs or other damages.

AAU clauses 9.4, 9.5, 9.7, 9.8

Deleted. These clauses deal with the modification or cancellation of fixed Train Paths that are not relevant to the MUC.

10. INSPECTION AND AUDIT BY HUNTER VALLEY NETWORK ACCESS PROVIDER

10.1 Audit Obligation

Subject to clause 10.2, ARTC may, acting reasonably and in good faith, at any time by Instruction from ARTC to the Customer require a particular Coal Train or Ancillary Train of the Customer which is using the Hunter Valley Network to undergo an audit for the purpose of assessing:

Clause 10.1

Requirement for reasonableness and good faith added. Otherwise meaning retained without change.

- (a) the Customer's compliance with the terms and conditions of this Agreement, including whether the Train Manifest provided by the Customer under clause 5.5(j) of this Agreement is correct;

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- (b) whether any one or more of the individual wagons used by the Customer in the provision of the Coal Train or Ancillary Train is loaded in;
 - (i) excess of its rated capacity; or
 - (ii) an unsafe or potentially unsafe manner.

Clause 10.1(b)

Wording reorganised for clarity.

10.2 Limitations On Audit

ARTC must:

- (a) subject to clause 10.2(b), carry out not more than such number of audits under clause 10.1 as are reasonably necessary in all the circumstances; and
- (b) minimise the disruption to the Customer's Trains in the conduct of such audits.

Clause 10.2(b)

This should be an absolute obligation – the AAU had this as a 'best endeavours'.

10.3 Instructions

- (a) In conducting an audit under clause 10.1, ARTC may give an Instruction to the Customer, including an Instruction to divert or delay a Train, or any part of a Train and make it available for inspection or weighing providing that ARTC reimburses the Customer for any Direct Cost incurred in complying with the Instruction.
- (b) An Instruction issued under clause 10.3(a) may not require a Customer to perform any act which is unsafe or contrary to good operating practice.

Clause 10.3

It is appropriate that ARTC is responsible for any costs that it imposes on the Customer where the Instruction is issued at ARTC's discretion. Reference to 'Service' was obscure and has been removed as unnecessary. Reference is made to the Instruction being lawful.

10.4 Monitoring Equipment

- (a) ARTC or its agent may place, on or about the Hunter Valley Network, monitoring equipment which will take readings or measurements with the purpose of monitoring the operation of Rollingstock and assessing the Customer's compliance with clause 10.1. The Customer hereby authorises and consents to ARTC undertaking such monitoring and the collection of data from such monitoring equipment. ARTC shall ensure that systems are put into effect whereby any data collected by it or any approved person (on behalf of ARTC) is transmitted or forwarded direct to ARTC and will constitute "Confidential Information" of ARTC as defined in clause 19 for the sole purpose of ARTC monitoring the Customer's compliance with clause 10.1 and shall not be disclosed to any other party without the Customer's prior written consent.
- (b) Where ARTC collects data relating to the Customer's Rollingstock under clause 10.4(a), ARTC will, on request by the Customer, make that data available to the Customer in a form reasonably requested by the Customer, free of charge except that ARTC is entitled to charge for any Direct Cost incurred in making the data available in the form requested by the Customer.

Clause 10.4(b)

Where ARTC collects data on a Customer's equipment it is appropriate that ARTC share this data, particularly where it is used to monitor the Customer's compliance. The data should be provided free of charge unless the Customer seeks it in a form that imposes additional costs on ARTC to provide it in that format, in which case ARTC is entitled to charge those costs.

10.5 Audit By Customer

- (a) Subject to clause 10.5(b), the Customer may at any time, at its cost and risk, audit any of the railway tracks, safeworking systems and Train Control Centres or other systems or facilities comprising the Network for the purpose of monitoring ARTC's compliance with clause 6.1.
- (b) The Customer's audit under clause 10.5(a) shall:
 - (i) be subject to the ability of ARTC to issue an Instruction to the Customer at any time during the audit to ensure the proper, efficient, safe and lawful use of and access to the Hunter Valley Network by the Customer and Other Customers;
 - (ii) be conducted in such a manner so that it does not cause any disruption to any Train of any Other Customer granted access to the Hunter Valley Network by ARTC or the provision of services by ARTC to such Other Customers.

11. EMERGENCIES AND INCIDENTS**11.1 Plans For Dealing With Incidents**

- (a) In consultation with the Customer, ARTC will formulate and periodically review and update plans which are consistent with ARTC's Accreditation requirements for dealing with Incidents, and make such plans available to the Customer.
- (b) The Customer will formulate a plan for dealing with Incidents and provide it to ARTC. The Customer's plan must be consistent with any plan prepared by ARTC under clause 11.2(a) and is subject to the approval of ARTC, such approval not to be unreasonably withheld.
- (c) Where any plan for dealing with Incidents prepared by ARTC or the Customer is inconsistent by virtue of an Accreditation requirement, the parties will resolve the inconsistency in such a manner as to provide for each party to fulfil its Accreditation requirements.

Clause 11.1(c)

This sub-clause has been added to recognise that both parties may operate across more than one regulatory jurisdiction and therefore may have Accreditation and incident management plans that are tailored to meet all of the requirements in each jurisdiction. To the extent possible this sub-clause requires the parties to resolve any inconsistency to allow both to manage this complex environment.

11.2 Compliance With Plans And Directions And With Rail Safety Act

The Customer and ARTC will follow any plan of the type referred to in clause 11.1 and will comply with their respective obligations under the Rail Safety Act.

11.3 Notification Of Incidents

The Customer and ARTC each agree to notify the other party to this Agreement of any relevant Incident as soon as possible after it comes to their attention.

11.4 Investigation Of Incidents

- (a) Incidents will be investigated as required by law, or, in the absence of a requirement by law, as agreed between the parties with the aim of determining the causes of the Incident.

Clause 11.4(a)

The AAU required compliance with a Rail Safety Act in the absence of any law. This must be ineffective as the Rail Safety Act will be a law. In its place action by agreement is used.

- (b) Each party will co-operate with an investigation under this clause and make available records and personnel relevant to the Incident.
- (c) The parties will consult with each other to determine any action to be taken as a result of any investigation.
- (d) Any records, interviews, documents or other evidence revealed or provided by one party to the other as part of an investigation into an Incident, is revealed or provided on a “without prejudice” basis for the purpose only of conducting the investigation and determining the causes of the Incident.

Clause 11.4(d)

It is important that the parties are protected from disclosure of documents in order to ensure that any investigation is not hampered by claims for privilege against possible future legal action.

11.5 Customer’s Report

Clause 11.5

The AAU had a reference to the equivalent of clause 11.3. This appears to be in error and it would be more relevant to refer to clause 11.4 – the MUC has taken this course.

Reference to loss or damage has been adjusted by reference to the Customer’s “Rollingstock and its contents” in place of “Train” to more broadly reflect the items that might have suffered loss or damage.

Without limiting clause 11.4, if an Incident occurs which involves the Customer and in relation to which ARTC has given written notice to the Customer that a report is required, the Customer must promptly prepare and submit to ARTC a written report which must include the following (to the extent relevant to the Incident and reasonably possible for the Customer to ascertain):

- (a) the time and location of the Incident;
- (b) available details of all loss or damage to the Customer’s Rollingstock and its contents, and to the Hunter Valley Network;
- (c) the factors which may have contributed to the cause of the loss or damage to the Customer’s Rollingstock and its contents, and to the Hunter Valley Network (the parties acknowledging that such statement will not be binding on the Customer and will not be taken to be an admission by the Customer for any purpose, including insurance and indemnification purposes (notwithstanding the terms of any insurance policy to the contrary));

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- (d) names of the Customer's staff including volunteers in any way involved in the Incident either as principals or as witnesses;
 - (e) an analysis in printed format of speed recorder charts or other relevant data for the Customer's Train (if available);

Clause 11.5(e)

Added "or other relevant data".

- (f) such other information which is required to be disclosed in a report to the Administering Authority under the Rail Safety Act;
- (g) such other information which is required to be disclosed in a report under the Dangerous Goods Code.

11.6 No Disposal Of Equipment

Subject to any contrary requirement at law or a pre-existing contract to which the Customer or ARTC is a party, the Customer and ARTC must not engage in conduct which would prejudice an investigation into an Incident, including the disposal of any equipment involved in such Incident (but only to the extent that such non-disposal is necessary to such investigation).

11.7 Interim Responsibility For Recovery Costs

Until fault can be properly determined or agreed in relation to an Incident, ARTC will be responsible for recovery costs in relation to the Hunter Valley Network and the Customer will be responsible for recovery costs in relation to all above-rail matters (including the Customer's Rollingstock).

Clause 11.7

Customer's "Train" changed to "Rollingstock".

12. SAFETY STANDARDS AND OPERATIONAL DOCUMENTS

12.1 Compliance By The Parties

The parties will, in relation to their respective responsibilities and rights under this Agreement:

- (a) comply with all applicable safety standards and laws dealing with safety;
- (b) comply with the Safeworking Rules;
- (c) comply with the Dangerous Goods Code;
- (d) comply with any other Operational Document agreed between the parties as necessary for the safe and efficient operation of Trains or Rollingstock on the Hunter Valley Network;
- (e) comply with the Standards (including any codes of practice developed under the Standards);

Clause 12.1(e)

Added obligation to comply with any other Operational Document.

- (f) in addition to the Accreditation required by ARTC, the Customer obtain and maintain such additional accreditation, licences and approvals, and maintain such additional standards, which are required by law;

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- (g) except to the extent that such obligations are binding by virtue of the Accreditation requirements referred to in clause 7, to ensure that their respective employees, agents and subcontractors engaged by the parties in or in connection with the operation of Trains are competent and appropriately qualified and obtain and maintain any applicable or appropriate Accreditation and training, and to provide to the other party evidence of any such matters upon reasonable request; and
 - (h) except to the extent that such obligations are binding by virtue of the Accreditation requirements referred to in clause 7, to ensure that their respective employees and subcontractors of the parties engaged in or in connection with the use by the Customer of the Hunter Valley Network submit to drug and alcohol tests or to such other tests as ARTC or the Customer is in the practice of requiring of its own employees or subcontractors.

12.2 Notification Of Breach

As soon as ARTC becomes aware of a breach by the Customer of any Safeworking Rules which occurs during or as a result of the use by the Customer of the Hunter Valley Network (“**Breach**”) it must give written notice to the Customer setting out:

- (a) the time, place and a general description of the Breach;
- (b) what, in ARTC’s opinion, caused the Breach and which person or persons were responsible for the Breach;
- (c) the consequences, if any, of the Breach for operation of the Customer’s Coal Trains or Ancillary Trains or the use by other users of the Hunter Valley Network;
- (d) any proposed modification of its procedures which ARTC intends to make; and
- (e) any Instruction requiring modification to the Customer’s procedures which ARTC considers that the Customer must make.

12.3 Provision Operational Documents

Clause 12.3

Broadened from the Safeworking Rules to include all Operational Documents.

On request by the Customer, ARTC will provide to the Customer a copy of any Operational Document that is relevant to the Customer, and must thereafter forward to the Customer a copy of all amendments to any Operational Document provided.

12.4 Modification To Operational Documents

Clause 12.4

This provides for a formal consultation process before any Operational Documents are amended.

- (a) Where ARTC intends to modify an Operational Document, it will consult with the Customer regarding the proposed modification.
- (b) ARTC will not modify an Operational Document without the written consent of the Customer without having previously provided sufficient notice of the proposed modification to allow the Customer to consider the proposed modifications and to comment and, or, implement any changes necessary to accommodate the proposed modification, but such notice shall not be less than 20 Business Days.
- (c) The notice requirement set out in clause 12.4(b) may be set aside in case of genuine emergency, but any modification to an Operational Document made under this

circumstance will be considered to be temporary and the parties will endeavour to consult and agree on a permanent modification as soon as practicable.

- (d) In consulting with the Customer in accordance with clause 12.4(a), ARTC will take into account any concerns raised by the Customer and make a bona fide effort to mitigate such concerns. ARTC is not obliged to make any modification to which it does not agree and, provided it is able to demonstrate that it has made bona fide efforts to mitigate any issue raised by the non-modifying party, may make any reasonable modifications it requires for the safe and efficient operation of the Hunter Valley Network, Trains or Rollingstock as the case may be.

13. ENVIRONMENTAL REQUIREMENTS; DANGEROUS GOODS

13.1 Compliance With Environmental Requirements

Each party must comply with all environmental laws and with their respective environmental policies (insofar as they comply with the law), including all applicable laws and lawful policies dealing with dangerous goods.

13.2 Environmental Management Plans

Clause 13.2

Clause 13.2(b) has been added to recognise that the Customer is required to have environmental plans that cross a number of jurisdictions. The emphasis is on:

- a) the Customer's plan not being inconsistent with ARTC's plan (rather than consistent with it).
- b) where it is not possible to form a plan that is not inconsistent with different requirements across jurisdictions, ARTC will work with the Customer to overcome the problem, potentially modifying its own plan if necessary.
- (a) After ARTC has given to the Customer a copy of its plan for dealing with environmental effects of operating Trains on the Network, the Customer must within a reasonable time prepare its own plan for dealing with environmental effects of its operations on the Hunter Valley Network, the plan to not be inconsistent with ARTC's plan subject to clause 13.2(b), and give a copy of its plan to ARTC.
- (b) ARTC acknowledges that the Customer's environmental management plan may be required to be not inconsistent with the environmental management plans of more than one rail network manager and, where the Customer's plan cannot reasonably be made consistent with ARTC's plan without making the plan incompatible with the requirements of another network manager, the parties will use their best endeavours to adjust their respective plans to be compatible without requiring the Customer's plan to be incompatible with the requirements of another network manager.

13.3 Notification Of Carriage Of Certain Materials

Other than in the case of Trains which are wholly passenger Trains, the Customer must include in all Train Manifests such detail in relation to the identification of dangerous goods as is required by the Dangerous Goods Code and as is otherwise reasonably required by ARTC (on terms not inconsistent with the Dangerous Goods Code).

13.4 Notification Of Incident Involving Dangerous Goods

Other than in the case of Trains which are wholly passenger Trains, the Customer will provide to ARTC details, at the earliest practicable time after the Customer becomes aware, of all Incidents (including non-compliance with relevant codes, regulations, by-laws or other statutory provisions,

whether or not an Incident) involving dangerous goods including but not limited to any spillage, leakage or container or package damage associated with the movement of any Train on the Hunter Valley Network.

13.5 Notification Of Environmental Condition

Where:

- (a) ARTC becomes aware that, as a result of the activities of the Customer under this Agreement, an Environmental Condition exists or has occurred and ARTC reasonably considers that action or intervention is required to prevent, mitigate or remedy that Environmental Condition; or
- (b) ARTC is given a direction by a competent authority that some action or intervention is required to prevent, mitigate or remedy an Environmental Condition resulting from the activities of the Customer under this Agreement,

then ARTC must inform the Customer of the relevant requirements and, where practicable, any steps which ARTC reasonably considers will be necessary to prevent, mitigate or remedy the situation, and the Customer must, as soon as reasonably practicable after receiving such notice, implement such requirements and steps and any other necessary action so that the Environmental Condition is no longer present or the Environmental Damage is rectified.

Clause 13.5

No value is added by the inclusion of 'immediately' where 'as soon as reasonably practical' is also allowed, therefore 'immediately' has been deleted.

14. INVESTMENT

Clause 14

Investment in both the Constrained Network and Unconstrained Network is comprehensively covered in the main body of the MUC, recognising the system nature and the need for agreement across a number of parties and therefore the general investment provisions from the MUG IAA are not reproduced in the MUC IAA.

14.1 Network Connections

Clause 14.1

It is appropriate for ARTC to provide assurance of reasonable assistance to the Customer to make a connection to the network. Often regulatory authorities will require a party in ARTC's position to participate in the approval process or give some undertaking with regard to the connection (eg amend ARTC's rail safety accreditation, environmental plans). Also, as ARTC is in the best position to know its own standards and requirements, it is appropriate that ARTC provide assistance in this area as well. It would be inappropriate for ARTC, through unreasonable inaction, to delay or altogether avoid the connection where all the other criteria have been or could be met if cooperation was forthcoming.

- (a) In the event that the Customer wishes to connect rail track to the Hunter Valley Network, ARTC will consent to such a connection provided:
 - (i) all relevant approvals from all relevant Government Authorities have been obtained, or will be obtained prior to commissioning of the new connection;

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- (ii) the configuration of the connection to the Hunter Valley Network is such that the connection will not, by virtue of its existence, materially reduce the capacity of the Network;
 - (iii) the procedural and physical interface arrangements comply with ARTC's existing interface arrangements and Safeworking Rules and the connection is in accordance with the requirements of the Rail Safety Act;
 - (iv) the Customer ensures that all users of such track comply with any Train Control Directions regarding entry to and exit from the Hunter Valley Network to the extent that this is within the legitimate authority of ARTC's Train controllers;
 - (v) the connection is not incompatible with ARTC's engineering and operational standards; and
 - (vi) the Customer meets the initial and continued costs associated with constructing and maintaining the connection.
- (b) ARTC will provide all reasonable assistance to the Customer to obtain any relevant approvals required under clause 14.1(a)(i) and to comply with ARTC's requirements under clauses 14.1(a)(iii) and 14.1(a)(v), and may recover the reasonable costs in providing such assistance.
- (c) If ARTC refuses consent under clause 14.1(a)(ii), ARTC will notify the Customer in writing of the reasons why the connection would, in its view, materially reduce the capacity of the Hunter Valley Network.

14.2 Customer Related Investments

Clause 14.2

This clause has been inserted to cover the situation where the Customer needs to make an investment that requires some form of interaction with ARTC. An example of such a request would be the installation of a monitoring device for use by the Customer that was required to be affixed to ARTC's infrastructure.

The intent is that ARTC will provide such assistance as is necessary to accommodate or facilitate the investment. Where ARTC incurs costs to do so, it is entitled to recover these.

- (a) From time to time, the Customer may require assistance, accommodation or facilitation by ARTC in order to make an investment associated with the operation of Trains.
- (b) Where ARTC receives a request from the Customer to facilitate an investment of the type in clause 14.2(a), ARTC will provide the appropriate assistance, accommodation or facilitation provided that:
 - (i) the resulting asset;
 - (A) does not compromise the safe and reliable operation of the Hunter Valley Network;
 - (B) does not compromise ARTC's Accreditation;
 - (C) meets any relevant ARTC engineering and operational standards; and
 - (D) does not interfere with ARTC's assets in a manner unacceptable to ARTC, acting reasonably.
 - (ii) ARTC is not required to engage disproportionate resources, time or expenditure;

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- (iii) the Customer agrees to;
 - (A) pay ARTC's reasonable costs associated with providing the assistance, accommodation or facilitation;
 - (B) indemnify ARTC against all liability with respect to any assistance, accommodation or facilitation provided for the purposes of Access Seeker's investment except to the extent that ARTC is negligent or engages in wilful misconduct; and
 - (C) where relevant, pay ARTC's reasonable on-going costs associated with the physical accommodation of the asset on the ARTC's property.
 - (c) Where ARTC agrees, it will provide the relevant assistance, accommodation or facilitation on the basis of this clause 14.2, notwithstanding that it may be required to amend its Accreditation or modify existing engineering or operational standards. In such case, ARTC will seek the relevant amendments and/or make the relevant modifications.
 - (d) Where ARTC is required to create an engineering or operational standard to provide the relevant assistance, accommodation or facilitation, it will create the standard in consultation with the Customer.
 - (e) In providing the required assistance, accommodation or facilitation, ARTC will act in a timely manner.
 - (f) Where the resulting asset requires physical accommodation on ARTC's property,
 - (i) ARTC will not seek any lease or licence fee for such accommodation beyond any Direct Costs incurred by ARTC,
 - (ii) ARTC will provide, without cost, any permission, licence or authority required by the Customer in order to gain access to the asset provided that such access is exercised by the Customer in accordance with any reasonable safety requirements imposed by ARTC.
 - (g) The Customer retains ownership of and responsibility for the asset at all times.
 - (h) The Customer is responsible for removal of the asset once it is no longer required for operational purposes. In circumstances where the Customer ceases to be a Customer, ARTC may require the Customer to remove the asset.
 - (i) In considering any matter with regard to this clause 14.2 requiring ARTC's permission, approval, agreement, cooperation or assistance, ARTC will give the matter bona fide consideration and will not unreasonably refuse to give any permission, approval, agreement, cooperation or assistance as required.

15. TERMINATION

15.1 Termination For Breach

- (a) If a party ("**Defaulting Party**") defaults in the performance of any of its material obligations under this Agreement, the other party ("**Aggrieved Party**") may give notice in writing ("**Rectification Notice**") to the Defaulting Party requiring the Defaulting Party to:
 - (i) cure the default within a reasonable time; and

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- (ii) respond in writing to the Aggrieved Party, within 2 Business Days of the receipt of the Rectification Notice:
 - (A) indicating to the Aggrieved Party the steps to be taken to rectify the default within such reasonable time and a reasonable timetable for the completion of such steps; and
 - (B) confirming that the performance of the steps has commenced (“**Rectification Response**”).

Clause 15.1(a)(ii)

“48 hours” replaced with “2 Business Days” to allow the Defaulting Party a reasonable time to respond.

- (b) If the Defaulting Party:
 - (i) does not cure the default within a reasonable time;
 - (ii) does not provide a Rectification Response within the time specified in clause 15.1(a)(ii);
 - (iii) does not provide a satisfactory Rectification Response meeting the requirements of clause 15.1(a)(ii)(A) and (B); or
 - (iv) does not comply with the timetable set out in the Rectification Response;

subject to clause 15.1(a) the Aggrieved Party may at any time thereafter suspend such rights of the Defaulting Party under this Agreement as are necessary to prevent a continuation of the default by giving not less than;

Clause 15.1(a)

“subject to 15.1(a)” relocated. Its previous location as part of 15.1(b)(iv) looked to be in error.

- (v) 5 Business Days written notice in relation to a default relating to safety; or
 - (vi) 10 Business Days written notice in relation to defaults other than relating to safety.
- (c) If the Defaulting Party does not within a reasonable time after the suspension of some or all of the Defaulting Party’s rights this Agreement under clause 15.1(b) cure the default, this Agreement may be terminated by giving not less than the period of notice described in clauses 15.1(b)(v) and (vi).
 - (d) Notwithstanding that ARTC may be the Defaulting Party, nothing in clause 15.1(b) derogates from or affects ARTC’s rights and powers to manage the Hunter Valley Network and any of its other rights or powers under this Agreement or any other agreement with any other person, including any Access Agreement with any Other Customer.

15.2 Immediate Termination

A party has the right to immediately terminate this Agreement by notice in writing to the other party upon the occurrence of any of the following events;

- (a) the other party assigns or attempts to assign this Agreement in breach of clause 20;
- (b) if any execution is levied against the assets of the other party which are necessary or material for the conduct of the Customer’s business of running the Trains or if any such assets of the other party are taken or sold by an encumbrancer or if the other party ceases to carry on business, stops payment or fails to maintain normal and continuous operation of its

business for a period of in excess of 10 continuous Business Days except for reasons wholly beyond its control;

- (c) if the other party:
- (i) goes into liquidation otherwise than for the purpose of reconstruction or a meeting was called for the purpose of considering liquidation;
 - (ii) has a receiver or a receiver and manager appointed over any of its property;
 - (iii) proposes or enters into any scheme of arrangement or a composition with its creditor; or
 - (iv) has an official manager or inspector or administrator appointed pursuant to the provisions of the *Corporations Act 2001* (Cth).

15.3 Termination Of This Agreement By Reason Of Suspension Or Cancellation Of Accreditation

If either party's Accreditation is suspended for a continuous period of 6 months or cancelled for a continuous period of 1 month, the other party may terminate this Agreement by notice in writing to the party which has had its Accreditation so suspended or cancelled.

15.4 Suspension

- (a) Without in any way limiting the rights of a party under clause 15.1, 15.2 or 15.3, a party who is entitled to terminate this Agreement under any of those clauses may elect instead to suspend the obligations of both parties under this Agreement (subject to clause 15.4(b)) until such time as the cause giving rise to the right to terminate is remedied.
- (b) An election referred to in clause 15.4(a) is revocable at any time by the party who made it and has no effect upon obligations, debts or liabilities which have accrued before the election to suspend this Agreement.

15.5 Effect Of Termination Or Suspension

- (a) Upon termination or suspension of this Agreement all rights of the Customer to use the Hunter Valley Network will cease immediately.
- (b) Termination or suspension of this Agreement under any circumstances shall not abrogate, impair, release or extinguish any debt, obligation or liability of one party to the other which may have accrued under this Agreement including without limitation any such debt, obligation or liability which was the cause of termination or suspension or arose out of such cause.
- (c) Upon termination or suspension of this Agreement under any circumstances all covenants and agreements between ARTC and the Customer which by their terms or reasonable implication are to be performed in whole or in part after the termination or suspension of this Agreement shall survive such termination or suspension.

Clause 15.5(c)

Reference to 'Authority Network Access Provider' in the AAU presumed to be in error and replaced by 'ARTC'.

15.6 Storage Of Rollingstock In Case Of Suspension

Clause 15.6

The nature of the Hunter Valley Network is such that it has never been contemplated that the above rail operators would be able to store the Rollingstock normally involved in providing coal haulage services “off the network” ie no storage yards have been constructed to hold the 35 kilometres of Rollingstock currently in service. This is somewhat (though not wholly) different from most other rail traffics which do have some “off network” locations where storage of at least a reasonable part of the fleet might occur. Thus the MUC provides that ARTC will treat the Customer’s plight sympathetically and where suspension of the Agreement occurs will allow the Rollingstock to remain on the network provided it does not prevent other traffic using the network.

- (a) Where ARTC has suspended the Customer’s rights in accordance with clause 15.4, the Customer will do all that is necessary to store its Rollingstock in a manner that does not reduce the capacity of the Hunter Valley Network required by other users of the Hunter Valley Network.
- (b) In the circumstances described in clause 15.6(a), ARTC will use its reasonable endeavours to assist the Customer to store its Rollingstock on the Hunter Valley Network to the extent that such assistance does not reduce the capacity of the Hunter Valley Network required by other users of the Hunter Valley Network.
- (c) In the event that the suspension of Access Rights is expected to exceed a period of 1 month, the Customer is required to put in place arrangements to remove its Rollingstock from the Hunter Valley Network, provided that ARTC gives all reasonable assistance to allow the Customer to complete this action in an orderly and cost effective manner.

16. INDEMNITIES AND LIABILITIES

Clause 16

Experience with the indemnities contained in agreement modelled on the AAU IAA is that they are difficult to apply in practice. The MUC adopts a much simpler form of indemnity that is reciprocal between the parties.

16.1 Indemnity By The Customer

Subject to clause 16.4, the Customer must indemnify, and keep indemnified, ARTC from and against all Claims whatsoever and howsoever, whether directly or indirectly, and whether or not foreseeable, suffered or incurred by ARTC in respect of, or in relation to or in connection with:

- (a) any negligent act or omission of the Customer, its employees, agents, contractors, customers, licensees or visitors or anyone acting on its behalf or under its control in the performance of this agreement;
- (b) any breach of this agreement by the Customer;

except to the extent caused or contributed to by the negligence or wilful misconduct of ARTC or any breach by ARTC of this agreement.

16.2 Indemnity By ARTC

Subject to clause 16.4, ARTC must indemnify, and keep indemnified, the Customer from and against all Claims whatsoever and howsoever, whether directly or indirectly, and whether or not foreseeable, suffered or incurred by the Customer in respect of, or in relation to or in connection with:

-
- (a) any negligent act or omission of ARTC, its employees, agents, contractors, licensees or visitors or anyone acting on its behalf or under its control in the performance of this agreement; or
 - (b) any breach of this agreement by ARTC,
- except to the extent caused or contributed to by the negligence or wilful misconduct of the Customer or any breach by the Customer of this agreement.

16.3 Defence Of Claims

- (a) The parties shall render each other all reasonable assistance in the defence of any claim made against a party by a third party arising out any Incident or other event giving rise to a Claim.
- (b) To the extent that a party (“**responsible party**”) is obliged to indemnify the other party (“**indemnified party**”) against a Claim by a third party against the indemnified party, the responsible party may, subject only to the terms of any applicable insurance which the indemnified party may have, at its own expense defend and settle any action or proceedings in the name of the indemnified party and execute such documents in the action or proceedings as the responsible party sees fit. The responsible party indemnifies the indemnified party in respect of all costs, expenses and losses which the indemnified party may incur on account of the action or proceedings.

AAU Clause 15.4

This clause relating to ‘Cost Of Recovery’ has been deleted as it did not add anything.

16.4 Limitation On Liability

- (a) Neither party is liable (under the indemnities in clauses 16.1 or 16.2 or otherwise) for any Consequential Loss suffered by the other for which the other becomes liable.
- (b) Each party agrees that, subject to clauses 16.4(d) and (e), it will not make a Claim against the other under clause 16.1 or 16.2 (as the case may be) or otherwise if the total loss or damage the subject of the Claim does not exceed \$50,000 in respect of any one event or cause of action or series of related events or causes of action.
- (c) In the event that either party proposes making a Claim against the other under clause 16.1 or 16.2 (as the case may be) or otherwise to recover loss or damages for an amount greater than \$50,000 but less than \$200,000 in respect of any one event or cause of action or series of related events or causes of action, the party making the Claim must give notice of a dispute under clause 18.1 and otherwise comply with the terms of clause 18 before taking any other action to prosecute its Claim. Nothing in this clause 16.4(c) prohibits a party from seeking and obtaining appropriate injunctive relief.
- (d) The limitation in clause 16.4(b) will not apply to a Claim if the loss or damage the subject of that Claim, when aggregated with any other Claims made (including Claims for loss or damage which, but for clause 16.4(b), would be recoverable under clauses 16.1 and 16.2 or otherwise) exceeds the sum of \$500,000 per annum commencing from the Commencement Date. For the purposes of clarification, once the aggregation of Claims under this clause exceeds \$500,000 per annum, the limitation in clause 16.4(b) does not apply to any further Claims made during that year.
- (e) The limitation in clause 16.4(b) does not apply to Claims made by one party against the other for monies presently due and payable under the terms of this Agreement including, without limitation, payment by the Customer of the Access Charges or Prescribed Fees.

17. INSURANCE

17.1 Customer's Insurance Policies

The Customer will during the term of this Agreement:

- (a) take out and maintain:
 - (i) a public liability insurance policy;
 - (ii) a policy of insurance with respect to the Customer's liability to ARTC pursuant to the indemnity provisions contained in clause 16 to the extent coverable by insurance (it being acknowledged that such indemnity provisions exclude the liability of the Customer for loss of or damage to Hunter Valley Network except to the extent that the same was caused or contributed (to the extent of such contribution) by any act or omission of the Customer) with a reputable and solvent insurer for an amount of \$200,000,000 in respect of each policy containing provisions which are standard industry terms for railway operators (it being acknowledged that the Customer is not exempted from any liability in excess of the sum insured nor from any liability to which such insurance does not apply); and
- (b) deliver to ARTC when reasonably requested by ARTC copies of such parts of the policies as are relevant to the insurances required under this Agreement and the Certificates of Currency in relation to the policies referred to in clause 17.1(a)(i) and (ii) subject to the details of such policies being kept confidential by ARTC (other than for the purpose of seeking indemnification thereunder).

17.2 ARTC's Insurance Policies

ARTC will:

- (a) take out and maintain:
 - (i) a public liability insurance policy;
 - (ii) a policy of insurance with respect to ARTC's liability to the Customer pursuant to the indemnity provisions contained in clause 15 to the extent coverable by insurance with a reputable and solvent insurer for an amount of \$200,000,000 in respect of each policy containing provisions which are standard industry terms for railway track owners (it being acknowledged that ARTC is not exempted from any liability in excess of the sum insured nor from any liability to which such insurance does not apply);
- (b) deliver to the Customer when reasonably requested by the Customer copies of such parts of the policies as are relevant to the insurances required under this Agreement and the Certificates of Currency in relation to the policies referred to in clause 17.1(a)(i) and (ii) subject to the details of such policies being kept confidential by the Customer (other than for the purpose of seeking indemnification thereunder);
- (c) advise the Customer annually the amounts paid by it by way of premiums for the insurances referred to in clause 17.2(a); and

Clause 17.2(c)

The use of the word 'publish' in the AAU IAA could be interpreted as making the information public. This may not be in ARTC's interests and it would be appropriate that the premiums be communicated to Customers only. The MUC adopts this latter position.

- (d) in the event that there is a substantial reduction in the amounts paid by way of premiums as disclosed under clause 17.2(c), ARTC will, in consultation with all operators granted access

to the Hunter Valley Network, apply any such savings towards repairs, maintenance or upgrading of the Hunter Valley Network or as otherwise agreed between the parties.

18. RESOLUTION OF DISPUTES

18.1 Procedure To Settle Disputes

- (a) If there is a dispute between the parties relating to or arising out of this Agreement (“**Dispute**”) then, unless otherwise expressly agreed to the contrary by both parties, such Dispute shall be resolved in accordance with this clause 18. 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 under this clause 17. The parties must use reasonable endeavours, acting in good faith, to settle the dispute as soon as practicable.
- (b) The procedure that is to be followed to settle a Dispute arising under this Agreement is as follows:
 - (i) first, negotiation of the Dispute under clause 18.2;
 - (ii) second, if the parties agree, mediation of the Dispute under clause 18.3; and
 - (iii) third, determination of the Dispute under clause 18.4.

18.2 Negotiation

If there is a Dispute between the parties relating to or arising out of this Agreement, then within 5 Business Days of a party giving the other a Dispute Notice, senior representatives from each party must meet and use reasonable endeavours acting in good faith to resolve the Dispute by joint discussions.

18.3 Mediation

- (a) If the Dispute is not resolved under clause 18.2 within 15 Business Days after the date of the Dispute Notice then:
 - (i) if the parties agree, they shall attempt to resolve the Dispute by mediation pursuant to this clauses 18.3(b), (c), (d) and (e); or
 - (ii) if the parties do not wish to resolve the Dispute by mediation under clauses 18.3(b), (c), (d) and (e), either party may by notice in writing to the other, refer the Dispute to be determined by arbitration under clause 18.4(b).
- (b) If this clause applies to the Dispute, the Dispute will be referred to the chief executive officers of both parties who will attempt to resolve the Dispute, including by informal mediation.
- (c) If the Dispute is not resolved within 10 Business Days after being referred to the chief executive officers under clause 18.3(b), the Dispute will be referred to formal mediation in New South Wales to be mediated by a single mediator appointed by agreement of the parties or if they fail to agree within 10 Business Days, a mediator appointed by the President of the Law Society of New South Wales acting on the request of either party.
- (d) Unless the parties otherwise agree:
 - (i) the mediation shall be conducted by a mediator under the “Guidelines for Legal Practitioners Acting as Mediators” of the Law Society of New South Wales (whether or not the mediator is a legal practitioner);

Clause 18.3(d)(i)

A copy of these guidelines is available at

http://www.lawsociety.com.au/uploads/filelibrary/1098240091625_0.9820372869515228.pdf.

- (ii) the parties may appoint a person, including a legally qualified person to represent it or assist it in the meditations;
- (iii) each party will bear their own costs relating to the preparation for and attendance at the mediation; and
- (iv) the costs of the mediator will be borne equally by the parties.
- (e) Nothing in this clause 18.3 prohibits a party from seeking and obtaining appropriate injunctive relief.

18.4 Arbitration

- (a) If the Dispute is not resolved within 1 month of the appointment of the mediator (if any) under clause 18.3(c), either party may by notice in writing to the other terminate the mediation proceedings and refer the Dispute to be determined by arbitration under this clause 18.4(b).
- (b) Where a Dispute is referred to arbitration under this clause 18.4(b) (whether under clauses 18.3(a)(ii) or 18.4(a)), the following shall apply:
 - (i) the parties shall appoint an arbitrator, or where the parties cannot reach agreement within 10 Business Days, by the President of the Institute of Commercial Arbitrators;
 - (ii) the arbitrator so appointed shall have no interest or duty which conflicts or may conflict with his or her functions as an arbitrator, he or she being required to fully disclose any such interest or duty before his or her appointment and cannot be an employee of the Customer, ARTC or a related party of any of them;
 - (iii) the arbitration will be conducted in accordance with the *Commercial Arbitration Act 1984* (NSW) except that:
 - (A) the arbitrator must observe the rules of natural justice but is not required to observe the rules of evidence;
 - (B) the parties may appoint a person, including a legally qualified person, to represent it or assist it in the arbitration;
 - (C) the arbitrator does not have the power conferred by section 25 of the *Commercial Arbitration Act 1984*;
 - (D) the arbitrator must include in the arbitration award the findings on material questions of law and fact, including references to evidence on which the findings of fact were based;
 - (E) the arbitrator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of the appointment and performance of his or her duties;
 - (iv) the arbitrator will when conducting the arbitration:
 - (A) proceed as quickly as is possible and consistent with a fair and proper assessment of the matter;

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- (B) 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;
 - (C) call on any party the arbitrator believes necessary to give evidence;
 - (D) decide how to receive evidence and consider the need to keep evidence confidential and the need to protect the confidentiality of the arbitration process;
 - (E) present his or her award in a draft form to the parties and hear argument from the parties before making a final award; and
 - (F) hand down a final award in writing which includes all his or her reasons for making the award;
- (v) the arbitrator may at any time terminate an arbitration (without making an award) if it thinks that:
- (A) the notification of the Dispute is vexatious;
 - (B) the subject matter of the Dispute is trivial, misconceived or lacking in substance; or
 - (C) the party who notified the Dispute has not engaged in negotiations in good faith;
- (vi) in deciding a Dispute the arbitrator must take into account:
- (A) the principles, methodologies and provisions set out in the negotiated Agreement; and
 - (B) only in the event there is any ambiguity after consideration of the negotiated Agreement:
 - (I) the objectives and principles enunciated in Part IIIA of the *Trade Practices Act 1973 (Cth)* (“**TPA**”) and the Competition Principles Agreement;
 - (II) ARTC’s legitimate business interests and investment in the Hunter Valley Network;
 - (III) the costs that ARTC incurs in providing access, including any costs of extending the Hunter Valley Network, but not costs associated with losses arising from increased competition in upstream or downstream markets nor any costs incurred due to arrangements with any Government Authority that require ARTC to incur costs above efficient costs;

Clause 18.4(b)(vi)(B)(III)

Reference added regarding any costs imposed on ARTC due to the lease arrangements entered into between ARTC, the Commonwealth and NSW Governments. As these costs (to the extent that they exist) represent a non-transparent transfer of costs at the discretion of governments, it is inappropriate that they be included in any calculation of efficient cost of providing the Network.

- (IV) the economic value to ARTC of any additional investment that the Customer or ARTC has agreed to undertake;

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- (V) the interests of the Customers and all Other Customers;
 - (VI) the firm and binding contractual obligations of ARTC or Other Customers (or both) already using 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 Customer's legitimate business interests and investment in Rollingstock, infrastructure and other assets associated with the operation of Trains;
 - (X) the costs that the Customer incurs in operating Trains on the Network, but not costs associated with losses arising from increased competition with Other Customers or in upstream or downstream markets;
 - (XI) the economic value to the Customer of any additional investment that the Customer or ARTC has agreed to undertake;
 - (XII) the seriousness of the issue relative to the remedy being sought by each party;
 - (XIII) the consequence of the outcome on each party; and
 - (XIV) any other matters that the arbitrator thinks are appropriate to have regard to.

Clause 18.4(b)(vi)(B)

The MUC has added items IX, X, XI, XII, XIII and deleted 'the benefit to the public from having competitive markets' to provide a more balanced set of criteria. Note that in a settled contract, it is not appropriate to consider wider policy issues more suited to an undertaking.

- (vii) in the absence of manifest error, the decision of the arbitrator shall be final and binding on the parties subject to any rights of appeal;
- (viii) the costs of the arbitrator and any advisers shall be borne by the parties in such proportions as determined by the arbitrator; and
- (ix) the parties will indemnify the arbitrator from any claims made against it arising in connection with the performance by the arbitrator of its duties under clause 18, such indemnity excluding circumstances where the conduct of the arbitrator constitutes wilful negligence, dishonest or unlawful conduct.

19. CONFIDENTIALITY

19.1 Acknowledgment Of Confidentiality

Each party acknowledges, subject to clause 19.2, that the terms of this Agreement and all information provided by one party ("**Provider**") to the other ("**Receiver**") under this Agreement ("**Confidential Information**") are 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 Agreement allow.

19.2 Exclusions From “Confidential Information”

For the purposes of this clause 19 “Confidential Information” does not include information which is:

- (a) 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;
- (b) obtained lawfully from a third party without restriction on use or disclosure;
- (c) 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;
- (d) the amount of the Access Charges disclosed by the Customer to its customers or potential customers; or
- (e) information reasonably necessary to be disclosed:
 - (i) by the Customer to customers, potential customers, agents or contractors in the course of and for the purposes of furthering its business;
 - (ii) by ARTC in connection with any of the matters described in clause 20.1; or
 - (iii) by either party to members of the Logistics Team for the purposes of maximising Capacity and, therefore, throughput of the Hunter Valley Coal Chain through the coordinated and integrated planning of logistics services to the coal producers served by the Hunter Valley Network, or otherwise to facilitate the operation of this Agreement.

Clause 19.2(e)(iii)

The operation of the Logistics Team is a key to the efficient functioning of the Hunter Valley Coal Chain and relies on parties exchanging information of a confidential nature; it is therefore appropriate to specifically exclude the Logistics Team from the operation of the Confidentiality clause, noting that members of the team have entered into separate confidentiality arrangements.

20. ASSIGNMENT OR NOVATION

20.1 By ARTC

- (a) Other than to a successor of ARTC or to any body established by any person in relation to the management of the Hunter Valley Network or any relevant or material part of it, ARTC may not assign or novate this Agreement, its interest in the subject matter of this Agreement or any right under this Agreement without the prior written consent of the Customer which consent will not be unreasonably withheld.
- (b) Nothing in clause 20.1(a) prevents ARTC from entering into any sub-contracting or agency agreements or arrangements in relation to any of its functions.

20.2 By The Customer

- (a) Subject to the following provisions of this clause 20.2, the Customer may not license, assign or novate this Agreement, its interest in the subject matter of this Agreement or any right under this Agreement (in this clause 20.2, “assign”):
 - (i) without the prior written consent of ARTC, which consent is not to be unreasonably withheld; and

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- (ii) unless on or before such assignment the assignee enters into a track access or other agreement with ARTC on such terms not inconsistent with this Agreement as ARTC may reasonably determine.
 - (b) The Customer may without obtaining consent under clause 20.2(a)(i):
 - (i) assign this Agreement, its interest in this Agreement or any right under this Agreement to a related body corporate if on or before such assignment the related body corporate enters into a track access or other agreement with ARTC on such terms not inconsistent with this Agreement as ARTC may reasonably determine; and
 - (ii) sub-contract the performance of any rights and obligations under this Agreement provided that any right or obligation that requires the party performing that activity to be Accredited is only sub-contracted to an Accredited Operator.

Clause 20.2(b)(ii)

This has been added to clarify (similar to clause 20.1(b)) that the Customer is not prevented from sub-contracting any of its rights or obligations.

AAU Clause 19.2(c)

The AAU (and the MUG) has a clause allowing the Customer to assign access rights to another train operator. This has been omitted from the MUC owing to the nature of the rights held by a Customer. As these rights are not in the nature of holding any particular Train Path, there is no advantage to be gained by allowing an assignment of the type contemplated in the AAU.

20.3 Effect Of Assignment

Assignment of or subcontracting of rights and obligations under this Agreement will not abrogate, impair, release or extinguish any debt, obligation or liability of one party to the other which may have accrued under this Agreement prior to the date of such an assignment.

20.4 Effect Of Sub-Contracting

Clause 20.4

This has been added to clarify the Customer's rights and obligations in the event that it sub-contracts anything under this contract.

- (a) Where, in accordance with clause 20.2(b)(ii), the Customer sub-contracts any right or obligation under this Agreement;
 - (i) any right or indemnity owed by ARTC to the Customer is extended to the sub-contractor as though it was the Customer; and
 - (ii) the Customer at all times remains responsible to perform its obligations to ARTC under this Agreement and any indemnity owed to ARTC by the Customer is extended to cover any activities performed on the Customer's behalf by another party.
- (b) Where the Customer sub-contracts any activity relating to the operation of a Train on the Network or any Terminal Activity that requires Accreditation, prior to the sub-contractor engaging in any relevant operation, the Customer will;
 - (i) notify ARTC the identity of the sub-contractor;
 - (ii) provide ARTC with evidence that the sub-contractor is appropriately Accredited to perform the relevant operation; and

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- (iii) provide to ARTC any other information regarding the sub-contractor that ARTC may reasonably require for it to safely manage the Network.

21. FORCE MAJEURE

21.1 Suspension Of Obligations

The obligations of a party are suspended during the time and to the extent that a party is prevented from or delayed in complying with its obligations for reasons of Force Majeure.

21.2 Obligations Of A Party

If a party is unable to perform its obligations due to Force Majeure it will:

- (a) as soon as possible after being affected, give to the other party full particulars of the Force Majeure and the manner in which its performance is thereby prevented or delayed; and
- (b) promptly and diligently take all reasonable and appropriate action to enable it to perform the obligations prevented or delayed by Force Majeure, except that the other party is not obliged to settle a strike, lockout or other industrial dispute.

AAU Clause 20.3

The Force Majeure definition has been moved to the definitions clause 1.1.

22. GOVERNING LAW

22.1 Law Of The Agreement

The law of this Agreement is the law of New South Wales.

Clause 22.1

ARTC now manages more track in NSW than in any other State – it is appropriate that NSW law govern the Agreement.

22.2 Jurisdiction

The parties submit themselves to the jurisdiction of the Courts of New South Wales for all proceedings arising from this Agreement.

Clause 22.2

Follows from clause 22.1.

23. VARIATION

23.1 Variation To Be In Writing

The variation or waiver of a provision of this Agreement, or a party's consent to a departure from a provision by another party, will be ineffective unless in writing, signed by the parties.

23.2 Change Of Address

A party may change its address for service by giving written notice of that change to the other party.

23.3 Twenty-Four Hour Contact Details

Each party must provide to the other party, and maintain as current, the name and full details of one or more persons who, together, are available at any time on any day for emergency contact by the other party.

24. MATERIAL CHANGE AND REGULATORY EVENT

- (a) In the event a Material Change occurs, the parties will (without prejudice to any other rights of the parties) enter into good faith negotiations as soon as practicable, to vary this Agreement to the extent necessary to address the Material Change.
- (b) In the event a Regulatory Event occurs, either party may (without prejudice to any other rights it may have) give notice to the other party that it wishes to vary this Agreement.
- (c) If a party gives notice pursuant to clause 24(b), the parties must enter into good faith negotiations as soon as practicable, to vary this Agreement to the extent necessary to address the Regulatory Event.

Clause 24

This clause is more specifically drafted in the MUC than in either the AAU or the MUG reflecting the importance of external considerations such as the existence and effective operation of the Logistics Team to the functioning of this Agreement. The equivalent in the AAU and the MUC is contained at [AAU Clause 22.2](#) and MUC IAA clause 23.2.

25. SEVERABILITY

If any provision of this Agreement is voidable, illegal, or unenforceable, or if the Agreement would, if a particular provision were not omitted be void, voidable, illegal or unenforceable, that provision shall (without in any way affecting the validity, legality and enforceability of the remainder of the Agreement) be severed from the Agreement and the Agreement must be read and construed and take effect for all purposes as if that provision were not contained in this Agreement.

26. NOTICES

26.1 Notice

A notice or other communication required or permitted to be given by a party to another must be in writing and:

- (a) delivered personally;
- (b) sent to an address in Australia by security post or certified mail, postage prepaid; or
- (c) sent by facsimile transmission, to the facsimile number described below.

26.2 Deemed Notice

A notice or other communication is deemed given if:

- (a) personally delivered, upon delivery;
- (b) mailed to an address in Australia, on actual delivery to the addressee, as evidenced by Australia Post documentation;

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- (c) sent by facsimile (and is other than a notice of termination or suspension of this entire Agreement), on the next business day after being sent if following transmission the sender receives a transmission confirmation report or if the sender's machine is not so equipped to issue a transmission confirmation report then upon the sender receiving acknowledgment of receipt.

26.3 Addresses For Service

Each party's address for service is:

- (a) in the case of ARTC:

Name: Australian Rail Track Corporation Limited
Address: Ground Floor
ARTC Building
Burbridge Road
MILE END SA 5031

Attention: Chief Executive Officer

Facsimile: (08) 8217 4578

- (b) and in the case of the Customer:

Name: [.....]
Address: [.....]
[.....]
[.....]

Attention: [.....]

Facsimile: [.....]

26.4 Change Of Address

A party may change its address for service by giving written notice of that change to the other party.

26.5 Twenty-Four Hour Contact Details

Each party must provide to the other party, and maintain as current, the name and full details of one or more persons who, together, are available at any time on any day for emergency contact by the other party.

27. RISK AND COST OF PERFORMING OBLIGATIONS

Subject to this Agreement:

- (a) whenever the Customer is obliged or required hereunder to do or effect any act, matter or thing then the doing of such act, matter or thing will, unless this Agreement otherwise provides, be at the sole risk and expense of the Customer; and
- (b) whenever ARTC is obliged or required hereunder to do or effect any act, matter or thing then the doing of such act, matter or thing will unless this Agreement otherwise provides, be at the sole risk and expense of ARTC.

28. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement shall constitute or be deemed to constitute a partnership between the parties or be deemed to constitute the Customer as agent of ARTC for any purpose whatever and the Customer has no authority or power to bind ARTC or to contract in its name or to create a liability against it in any way or for any purpose.

29. OTHER AGREEMENTS

This document comprises the whole Agreement between the parties relating to use of the Hunter Valley Network, and to the extent to which it is inconsistent with any existing agreement between the parties, will prevail over those existing agreements.

Clause 28

Corrected typographic error in AAU (reference to “other” instead of “over”).

30. COUNTERPARTS

This Agreement may be signed in any number of separate counterparts, which taken together are deemed to comprise the one instrument.

EXECUTED as an Agreement.

THE COMMON SEAL of AUSTRALIAN)
RAIL TRACK CORPORATION LIMITED)
ACN 081 455 754 was affixed in the presence)
of:)

Signed

Signed

Full Name (Print)

Full Name (Print)

Position

Position

THE COMMON SEAL of)
_____))
_____))
_____))
was affixed in the presence of:)

Signed

Signed

Full Name (Print)

Full Name (Print)

Position

Position

SCHEDULE 1

HUNTER VALLEY NETWORK

S1.1 Hunter Valley Network Description

General description of the Hunter Valley Network including the network boundaries consistent with the MUC.

S1.2 Segments

Segments in the Hunter Valley Region/Network to be defined.

The Hunter Valley Region and the Segments it contains will need to be consistent between the MUC and the MUG. It is not intended that the Hunter Valley Network be split into smaller regions, however there is nothing to prevent this if it better meets ARTC's accounting requirements. If this was envisage, the MUC and MUG might need to be adjusted.

S1.3 ARTC Terminals

ARTC owned or leased infrastructure, or infrastructure for which ARTC has exclusive licence to provide Access to other parties within the rail terminals at Port Waratah, Bullock Island, Kooragang Island and Walsh Point.

ARTC Terminals

Note that an ARTC Terminal is defined as ARTC "owned" infrastructure and therefore excludes privately owned infrastructure within the terminal complex. Thus the terminal is a more extensive set of infrastructure than just the ARTC portion of it.

The definition would need to be consistent with the MUC.

SCHEDULE 2

CHARGES

S2.1 PRICES ARE EXCLUSIVE OF GST

All prices in this Schedule 2 are exclusive of GST.

S2.2 ESCALATION OF CHARGES

The prices in this Schedule 2 will be varied annually by ARTC in accordance with the processes described in clauses 4.4 and 4.5.

S2.3 ACCESS CHARGES

Access Charges for Coal Trains will be levied in the form of a rate per net tonne for each origin - destination combination. The prices for the calculation of Access Charges as at the Commencement Date are set out in the tables below.

TABLE S2.1-1: CONSTRAINED COAL TRAINS - EXPORT

Origin	Destination	Cusp Tonnage (,000)	\$ per Tonne	
			Pre-Cusp	Post-Cusp

TABLE S2.1-2: CONSTRAINED COAL TRAINS - DOMESTIC

Origin	Destination	Cusp Tonnage (,000)	\$ per Tonne	
			Pre-Cusp ^{#1}	Post-Cusp

#1 Where no Cusp Tonnage applies, the Pre-Cusp price applies to all tonnes railed.

TABLE S2.1-3: UNCONSTRAINED COAL TRAINS - EXPORT

Origin	Destination	Cusp Tonnage (,000)	\$ per Tonne	
			Pre-Cusp ^{#1}	Post-Cusp

#1 Where no Cusp Tonnage applies, the Pre-Cusp price applies to all tonnes railed.

TABLE S2.1-4: UNCONSTRAINED COAL TRAINS - DOMESTIC

Origin	Destination	Cusp Tonnage (,000)	\$ per Tonne	
			Pre-Cusp ^{#1}	Post-Cusp

#1 Where no Cusp Tonnage applies, the Pre-Cusp price applies to all tonnes railed.

S2.4 PRESCRIBED FEES

S2.4.1 Assisting Distressed Train

- (a) Fee for Customer assisting a distressed Train: \$XXX per hour per locomotive used.
- (b) The time the assistance is provided will be:
 - (i) If assistance is provided by one or more locomotives from a Train;
 - (A) the assistance commences when the assisting locomotive commences to be detached from its originating Train;
 - (B) the assistance ends when the assisting Train departs the point from which the Train was held to provide the assistance to resume its normal operation,
 - (ii) If one or more light engines only are used, the assistance commences from the time the light engine departs its point of origin and the assistance ends with the earlier of:
 - (A) the light engine returns to the point of departure, or
 - (B) if for the convenience of the assisting Customer, the engine is taken to another depot, then the time that the engine arrives at that alternative depot.
- (c) For the purpose of calculating the fee payable, the time will be rounded up to the nearest quarter hour and the hourly rate will be applied on a pro-rata basis to part hours.

SCHEDULE 3

INSTRUCTIONS & OTHER OPERATIONAL DOCUMENTS

The content of this schedule has been essentially retained but the format has been modified to categorise the various forms in which Instructions might be issued.

S3.1 Operational Documents

Any Operational Document is an Instruction unless specifically designated otherwise by ARTC.

S3.2 Nominated Operational Documents

[ARTC to insert appropriate documents as relevant of the types listed below.

- (a) Codes of Practice
- (b) Network Interface Co-ordination Plan TA02, being the Operational Interface Plan in accordance with AS4292.]
- (c) Advices for train running information, including speed restrictions and train notices of the following types:
 - (i) daily, standing and temporary standing
 - (ii) Weekly notices issued on Network in Victoria
 - (iii) Safeworking circulars
 - (iv) Weekly operational notices
 - (v) WOLO heat restriction notices
- (d) Safeworking rules.
- (e) Train Control Directions.
- (f) Network Operating Standards and Network Services Plan.
- (g) Signalling instructions.
- (h) Safety directions or instructions.]

SCHEDULE 4

NETWORK MANAGEMENT PRINCIPLES

The Network Management Principles have been substantially modified to cater for:

- (a) the incompatible requirements of coal trains compared with intermodal and other trains traversing the Hunter Valley Network;
- (b) a mechanism for the allocation of train paths;
- (c) a description of key requirements for a possessions planning process, and
- (d) enhancement of the ARTC concept of allowing the Customer to determine priorities where the trains in conflict are operating under the Customer's Agreement.

Where possible, the MUC and MUG have been made equivalent to ensure compatibility.

S4.1 MANAGEMENT OF TIMETABLING & CAPACITY ALLOCATION PROCESS

S4.1.1 Periodic Review Of Capacity & Train Path Allocation

ARTC will engage in a process of reviewing Capacity and the allocation of Non-Coal Train Paths as often as required, but at least every 12 months, in accordance with clause 5.9 of the Access Undertaking, for the purpose of:

- (a) efficient allocation of Non-Coal Train Paths and Capacity given Hunter Valley Network constraints with the objective of minimising overall transit times on each corridor, and, in the case of Coal Trains, taking into account the requirements of the Hunter Valley Coal Chain, subject to Customer requirements;
- (b) minimising loss of Capacity; and
- (c) allowing for adjustment of Non-Coal Train Paths and allocations of Capacity both internal to the Hunter Valley Network and any other relevant Hunter Valley Network to meet Customer requirements.

S4.1.2 Adjustment Of Capacity Entitlement

In respect of any existing Non-Coal Train Path which is part of a Capacity Entitlement, if ARTC determines that the Non-Coal Train Path may be allocated in a more efficient way to achieve the purposes set out in clause S4.1.1 or would otherwise allow for ARTC to fulfil a request for a Non-Coal Train Path from an Other Customer:

- (a) ARTC may request the Customer to agree to amend its Capacity Entitlement with respect to that Non-Coal Train Path, including, but not restricted to, undertaking the following activities:
 - (i) convene meetings with the Customer and Other Customers either separately or jointly;
 - (ii) make formal or informal proposals regarding amendments to Non-Coal Train Paths, alternative Non-Coal Train Paths or operational changes to the Customer or an Other Customer;

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- (iii) formally request the Customer to consent to amending its Capacity Entitlement to accommodate an Access Application.
 - (b) If the Customer agrees, the parties will amend this Access Agreement to reflect the agreed alterations.
 - (c) ARTC will amend the Non-Coal Train Path as required to reflect the agreement referred to in clause S4.1.2(b).

S4.1.3 Allocation Of Non-Coal Train Paths

Non-Coal Train Paths will be allocated on a “first come first served” basis provided that:

- (a) Passenger Trains will be allocated in accordance with the requirements of legislation.
- (b) Non-Coal Train Paths forming part of this Agreement will not be available for allocation to any Other Customer except;
 - (i) where the Customer has agreed to a modification to one or more Non-Coal Train Paths in accordance with the process outlined in clause S4.1.2;
 - (ii) the allocation is for purposes of transferring the Non-Coal Train Paths to the same Customer’s Capacity Entitlement under a new access agreement in accordance any other ARTC access undertaking; or
 - (iii) the Non-Coal Train Paths have been withdrawn by ARTC or otherwise relinquished by the Customer in accordance under any other ARTC access agreement.
- (c) Non-Coal Train Paths forming part of Traffic Specific Capacity will not be available for allocation to the Customer or any Other Customer as Non-Coal Train Paths except where;
 - (i) the Customer or Other Customers who have an interest in accessing the relevant sub-category of Traffic Specific Capacity and ARTC can agree that such Non-Coal Train Paths are no longer required to be designated as Traffic Specific Capacity, or
 - (ii) the provisions of any other ARTC access undertaking apply to this effect.
- (d) Capacity reserved for Coal Train Paths will not be allocated as Non-Coal Train Paths except in accordance with clause 5.9 of the Access Undertaking.

S4.1.4 Circumstance Where Schedule 4 Does Not Apply

This Schedule 4 does not apply to the resolution of conflicts in the allocation of Non-Coal Train Paths that are subject to any other ARTC access undertaking except to the extent that any resolution involves adjustment of Coal Train Paths.

S4.1.5 Shortfall Of Capacity

Any shortfall of Capacity will be identified and dealt with in accordance with clause 5.2 of the Access Undertaking

S4.1.6 ARTC To Advise Capacity Availability To Logistics Team

ARTC will communicate Coal Train Capacity availability to the Logistics Team for the day-to-day allocation of Coal Train Paths, taking into account any adjustments required to accommodate maintenance or other special arrangements and the allocation processes of Traffic Specific Capacity.

S4.1.7 Prospective Other Customers

- (a) For the purpose of this Schedule 4, a prospective Other Customer is a party that is actively negotiating an access agreement with ARTC for access to the Network at the relevant time.
- (b) A reference in this Schedule 4 to an Other Customer includes a prospective Other Customer where the context so allows.

S4.2 POSSESSION PLANNING PROCESS

S4.2.1 Requirement To Adjust Train Paths Temporarily

From time to time as required, ARTC will adjust any or all Non-Coal Train Paths and Capacity for Coal Trains on a temporary basis in accordance with the Possession Planning Process described in this clause S4.2 of Schedule 4 to meet to efficiently maintain the Hunter Valley Network.

S4.2.2 Possession Planning Process

In order to plan maintenance of the Hunter Valley Network effectively and minimise the disruption to the Customer and Other Customers, ARTC will agree with the Customer and Other Customers and the Logistics Team a Possession Planning Process that will determine, at least on a quarterly basis, for the following year;

- (a) the scope of work requiring possession of the Hunter Valley Network;
- (b) options for aligning track possessions with shut-downs in other parts of the Hunter Valley Coal Chain;
- (c) the impact of the work on the Customer's Capacity Entitlement, Traffic Specific Capacity, and Capacity reserved for Hunter Valley Coal Trains;
- (d) the priority for allocation of Non-Coal Train Paths and Capacity reserved for Hunter Valley Coal Trains under any alternative temporary arrangements;
- (e) the opportunities for aligning possessions with maintenance closures of other rail infrastructure providers and any other parties that will impact on the ability of Customer to operate Trains; and
- (f) the opportunities for mitigation of any disruptive effects on the Customer.

S4.2.3 Determination Of Priority

In determining the priority for allocation of Non-Coal Train Paths and Capacity reserved for Hunter Valley Coal Trains in the Possession Planning Process:

- (a) ARTC will attempt, in good faith, to minimise the disruption to the Customer's business, recognising that it may not be able to satisfy all of the Customer's requirements.
- (b) ARTC will, to the extent it is practical to do so, implement any preferences for priority determined by the Customer for its own Trains.
- (c) A Train will not be given low priority merely because it is a Train that would use a Non-Coal Train Path allocated from Traffic Specific Capacity or is Capacity reserved for Hunter Valley Coal Trains.

S4.2.4 Requirement For Consultation & Cooperation

The Possession Planning Process will involve extensive consultation with Customers and will provide opportunity for close cooperation between ARTC, the Logistics Team and Customers to minimise disruption to Customers while allowing ARTC to maintain the Hunter Valley Network with reasonable efficiency.

S4.3 NETWORK MANAGEMENT PRINCIPLES

S4.3.1 Train Conflict Resolution Matrix

Table S4.1 applies to resolve the competing interests of Customer's Trains using the Hunter Valley Network.

S4.3.2 Train Management Principles

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) ARTC is responsible for managing the Hunter Valley Network on behalf of the Customer and Other Customers;
 - (i) the general objective of Train Control is to manage Trains other than Coal Trains to minimise the overall transit time on the Hunter Valley Network;
 - (ii) the general objective of Train Control is to manage Coal Trains to arrive at their destination in the sequence identified in the Integrated Plan; and
- (d) The Customer and Other Customers are responsible for ensuring operating integrity of their Trains, including train crewing, locomotives, wagons and loading so that the train plan can be met.

Table S4.1: General Principles for Train Management

- a) In an emergency, ARTC will manage Trains on the Hunter Valley Network in the first instance to ensure safety to people and property, and to secondly to minimise disruption to Trains.
- b) Where a train control decision is required to be made regarding a conflict between Trains managed by a single Customer, ARTC will seek direction from the Customer regarding the priorities of the respective trains. Where it is practical to do so, ARTC will implement the Customer’s stated preference.
- c) Where there is a conflict between one or more Coal Trains destined for an export port, priority will be given so that the Coal Trains arrive at the destination port in the sequence in which they were planned.
- d) For the purposes of this Table D1, all Trains conveying passengers will be designated as “Premium”.
- e) For the purposes of this Table D1, Trains that are not specifically designated as “Premium” or “High” will be designated as “Standard”.
- f) For all other train control decisions regarding the priority of Trains, including where a Customer has not stated a preference, this Table D1 will apply.

TRAIN PLAN		AGREED HUNTER VALLEY NETWORK ENTRY/EXIT TIMES									
Train B	Train A TRAIN RUN	Actual Performance	OT running Premium	Running ahead Premium	Late running Premium	OT running High	Running ahead High	Late running High	OT running Standard	Running ahead Standard	Late running Standard
		Actual Performance	TC OBJECTIVE	OT Exit	OT Exit	1 No more time lost 2 Make up time 3 Hold the gain	OT Exit	OT Exit	1 No more time lost 2 Make up time 3 Hold the gain	OT Exit	OT Exit
OT running Premium	OT Exit	Scheduled Cross	A or B Rule 2	B Rule 3	Scheduled Cross	B or A Rule 2	B Rule 3	Scheduled Cross	B or A Rule 2	B Rule 3	
Running ahead Premium	OT Exit	A or B Rule 2	A or B Rule 2	B Rule 3	B or A Rule 2	B or A Rule 2	B Rule 3	B or A Rule 2	B or A Rule 2	B Rule 3	
Late running Premium	1 No more time lost 2 Make up time 3 Hold the gain	A Rule 1	A Rule 1	A or B Rule 4	A Rule 1	A Rule 1	B Rule 6	A Rule 1	A Rule 1	B Rule 6	
OT running High	OT Exit	Scheduled Cross	A or B Rule 2	B Rule 3	Scheduled Cross	A or B Rule 2	B Rule 3	Scheduled Cross	B or A Rule 2	B Rule 3	
Running ahead High	OT Exit	A or B Rule 2	A or B Rule 2	B Rule 3	B or A Rule 2	A or B Rule 2	B Rule 3	B or A Rule 2	B or A Rule 2	B Rule 3	
Late running High	1 No more time lost 2 Make up time 3 Hold the gain	A Rule 1	A Rule 1	A Rule 5	A Rule 1	A Rule 1	A or B Rule 4	A Rule 1	A Rule 1	B Rule 6	
OT running Standard	OT Exit	Scheduled Cross	A or B Rule 2	B Rule 3	Scheduled Cross	A or B Rule 2	B Rule 3	Scheduled Cross	B or A Rule 2	B Rule 3	
Running ahead Standard	OT Exit	A or B Rule 2	A or B Rule 2	B Rule 3	A or B Rule 2	A or B Rule 2	B Rule 3	B or A Rule 2	B or A Rule 2	B Rule 3	
Late running Standard	1 No more time lost 2 Make up time 3 Hold the gain	A Rule 1	A Rule 1	A Rule 5	A Rule 1	A Rule 1	A Rule 5	A Rule 1	A Rule 1	A or B Rule 4	

Rule 1 – Train B may be given preference on condition Train A will still meet OT exit objective
 Rule 2 – Both trains must meet OT exit objective
 Rule 3 – Train A may be given preference on condition Train B will still meet OT exit objective
 Rule 4 – Give priority to train where performance indicates it will lose least or no more time and even make up time and hold the gain
 Rule 5 – Train B may be given preference if Train A will continue to lose time and any gains made cannot be held
 Rule 6 – Train A may be given preference if Train B will continue to lose time and any gains made cannot be held
 Note: For the purposes of this Table D1, “OT” means “on time”.

SCHEDULE 5

KEY PERFORMANCE INDICATORS

S5.1 KEY PERFORMANCE MEASURE CRITERIA

In agreeing to a set of Key Performance Measures ARTC and the Customer will take into account the following criteria;

- (a) predictable and beneficial behaviours – each indicator will encourage behaviour in a way that is predictable and desirable; further, the indicators will, together, be carefully constructed to avoid the rewarding of undesirable outcomes or the discouragement of beneficial outcomes.
- (b) relevance - each indicator should be an important and direct measure of the performance of a key aspect of the Hunter Valley Network;
- (c) easily measured - each indicator should be easy to measure and preferably the data will be inexpensive to collect and collate;
- (d) simple – each indicator should be easy to report and interpret, in terms of both the effort required and consistency over time;
- (e) sparse - there should only be a few performance indicators that are genuinely key to the management of the activities under review.

S5.2 KEY PERFORMANCE MEASURES

The Key Performance Indicators will be determined in accordance with clause 2.9.

SCHEDULE 6

RESTRICTED NETWORK

S6.1 Line Segments Supported Directly By Government Funding

SCHEDULE 7

INVESTMENT CRITERIA

S7.1 Safety And Technical Requirements

In the opinion of ARTC (acting reasonably) the provision of the investment:

- (a) is technically feasible;
- (b) is consistent with the safe and reliable operation of the Network; and
- (c) meets ARTC's relevant engineering and operational standards.

S7.2 Demand

There is an identified level of Additional Capacity required to provide for a level of traffic task that:

- (a) is forecast on a reasonable basis by ARTC in consultation with the Logistics Team, the Customer and any relevant Other Customers; and either
- (b) it can reasonably be expected that demand for the Additional Capacity is likely to be sustained for at least 5 years after the completion of the investment; or
- (c) where the predicted demand is not expected to be sustained for at least 5 years after the completion of the Additional Capacity, then the demand is expected to be maintained for the period over which ARTC intends reasonably to depreciate the investment where this is less than 5 years.

S7.3 Capacity Created

The investment will provide sufficient Additional Capacity to meet the additional demand for which it is designed.

S7.4 Efficiency

The investment is the most efficient method of providing the Additional Capacity, taking into account:

- (a) timeliness of providing the Additional Capacity to meet demand;
- (b) cost of providing the Additional Capacity;
- (c) appropriateness of the investment for facilitating future expansions of capacity; and
- (d) impact on the Customer and Other Customers using the Hunter Valley Network both during and after construction;

or if the investment is not the most efficient, it is otherwise the most desirable method taking into account the criteria in paragraphs (a) to (d) above.

S7.5 Standards

As a minimum, the investment meets the existing standard for rail infrastructure on the relevant part of the Hunter Valley Network and does not inhibit the utilisation of the Hunter Valley Network for existing or planned train configurations.

S7.6 Maintenance Of Existing Capacity

The investment does not materially reduce the capacity of the Hunter Valley Network.

S7.7 Return On Investment

Either:

- (a) ARTC can reasonably expect to earn a return on the investment at the Combinatorial Ceiling Limit (for that investment) over the relevant Segments over the life of the asset created taking into account;
 - (i) the efficient incremental costs and revenues forecast to be generated by the investment; and
 - (ii) any capital contributions made by other parties to the investment;

or

- (b) regardless of the expected investment return, the investment otherwise meets the requirements of ARTC's Board of Directors.

SCHEDULE 8

TERMINAL MANAGEMENT PROTOCOL

Background

This Terminal Protocol is intended to provide a rule set to govern operations within a common use terminal to give all parties some certainty as to their rights and obligations, allow for orderly management of the terminal and provide a clear avenue for resolution of disagreements. The initial terminal to which these would operate is the “Hunter Bulk Terminal” in Newcastle owned by ARTC. The protocol has been created so that it could be adapted readily to other terminals.

A formal rule set has not been required to date in common use terminals in the past due to the relatively few interactions with other operators and a satisfactory informal process of dealing with those parties. A major exception to this is the management of safety, which is currently subject to a comprehensive Safety Interface Agreement (SIA), signed by all operators where there is more than one operator accessing the terminal.

This Terminal Protocol is not intended to cover issues relating specifically to safety or interface matters otherwise covered by the SIA. It is expected that an SIA, under the control of the Terminal Manager, would govern the safe management of operations within the Terminal, and the SIA is referenced by these rules where appropriate, along with the requirement for accreditation.

S8.1 Scope & Definitions

S8.1.1 Geographic Scope Of Rules

For the purpose of this Terminal Management Protocol, the Terminal is:

[Name and description of the terminal]

Description of the terminal to be entered sufficient to allow parties to recognise the boundaries of the terminal to which the protocol would apply.

A diagram indicating the Common Use Infrastructure should be attached to the protocol in Schedule A.

S8.1.2 Application Of Terminal Management Protocol

- (a) This Terminal Management Protocol will apply to the planning and performance of any activity within the Terminal that requires the use of Common Use Infrastructure.
- (b) Without limiting the generality of paragraph S8.1.2(a), this Terminal Management Protocol will apply to any party undertaking activities within the Terminal, including:
 - (i) the CUIO;
 - (ii) the Terminal Operator and its officers and employees;
 - (iii) Rail Operators; and
 - (iv) contractors to any of the above.

S8.1.3 Relationship To Access Agreement

- (a) It is intended that this Terminal Management Protocol will form part of:
 - (i) the Access Agreement; and
 - (ii) any existing Access Agreement providing access to the Terminal, by agreement between the parties to such agreements.
- (b) In case of conflict between this Terminal Management Protocol and the relevant Access Agreement, the Access Agreement will prevail, as between the parties to that Access Agreement.
- (c) Nothing in this protocol confers any right of access to the Terminal or right of use of Common Use Infrastructure to any party.

S8.1.4 Definitions

For the purposes of this Terminal Management Protocol:

“Access Agreement” means the access agreement under which a Rail Operator has rights to access the Terminal.

“Accreditation” means having accreditation as a Rail Operator or rail infrastructure owner as the case may be under the relevant Rail Safety Act of the State or Territory in which the Terminal is located, and “Accredited” has a corresponding meaning;

“Common Use Infrastructure” means the CUIO’s infrastructure within the Terminal outlined in [insert colour] in the diagram attached to Schedule A to this Schedule 8.

“CUIO” means Common Use Infrastructure owner.

“Disagreement” means a dispute between a Rail Operator and the Terminal Manager in relation to the implementation of this protocol.

“Formal Proposal” means a proposal to change one or more procedures or processes relevant to the Terminal which must contain sufficient detail so as to allow the affected parties to form a view on the proposal in considering whether to approve or reject it, which must contain as a minimum:

- (a) a description of the proposed changes and the procedures or process in respect of which the changes are proposed;
- (b) an assessment of the impact that the proposed changes will have on the Terminal, the operations or management of the Terminal and any affected party;
- (c) an assessment of the impact on any rules, regulations, processes or procedures applicable to the operation or management of the Terminal;
- (d) an initial risk assessment;
- (e) an analysis of any expected material cost increases or new costs that might result to parties other than the proponent if the proposed changes were implemented; and
- (f) an indicative timeline for the approval process and implementation of the proposal.

“Integrated Plan” means a daily plan prepared by the Logistics Team of all rail related movements through the Terminal and other related non rail activities at the Terminal.

“**Mandatory Trains**” means [to be completed];

“**Operator**” means a Rail Operator or the Terminal Operator;

“**Integrated Planner**” means a person engaged by the Logistics Team who prepares the Integrated Plan.

“**Private Infrastructure**” means rail infrastructure within the Terminal that is;

- (a) not Common Use Infrastructure; and
- (b) is available for use by an Operator through arrangements made between the owner of the rail infrastructure and the Operator.

“**Rail Operator**” means an Accredited rail operator that;

- (a) has a right to enter the Terminal under a current Access Agreement with the CUIO for access to the Terminal; or
- (b) provides rail haulage services and is contracted to provide such services by the holder of a current Access Agreement for access to the Terminal.

“**Rail Safety Act**” means any legislation enacted by the Commonwealth, any State or Territory and any subordinate legislation relating thereto with respect to the safe operation of a railway;

“**Safety Interface Agreement**” means the safety interface agreement required under the Rail Safety Act and any conditions of Accreditation.

“**Terminal**” means the terminal identified in paragraph S8.1.1 of these rules.

“**Terminal Manager**” means the person, or in that person’s absence, his or her authorised delegate, appointed by the Terminal Operator with responsibility for management of the safe operation of the Terminal.

“**Terminal Operator**” means a person engaged by the CUIO to manage the operations of the Terminal.

“**Terminal Plan**” means the daily plan of activity within the Terminal prepared by the Terminal Manager in accordance with paragraph S8.3 of this Terminal Management Protocol.

S8.1.5 Ownership Of Infrastructure Defined

For the purposes of this Terminal Management Protocol, a reference to the ownership of infrastructure by a party includes any formal arrangement giving that party the right to control access to that infrastructure and includes legal ownership, lease or exclusive licence for use of the relevant infrastructure.

S8.1.6 Use Of Terms

Within this Terminal Management Protocol, unless the context dictates otherwise;

- (a) a capitalised word that is not specifically defined in this Terminal Management Protocol has the same meaning as the corresponding defined term in the Access Agreement;
- (b) singular words will also have their plural meaning and vice versa;
- (c) a reference to one gender includes all genders;
- (d) a reference to a person includes an incorporated body; and

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- (e) a reference to a section or paragraph is a reference to that section or paragraph within these rules.

S8.2 Safety

S8.2.1 Operations To Be Conducted Safely

Each Operator agrees to conduct its activities within the Terminal in accordance with:

- (a) its Accreditation;
- (b) the rules, processes and procedures relevant to the Terminal, as advised to the Operator from time to time;
- (c) its Operator specific procedures;
- (d) all relevant Safety Interface Agreements applicable to the Terminal to which that Operator is a party; and
- (e) this Terminal Management Protocol.

S8.2.2 Requirement To Enter Into Safety Interface Agreement

Each Rail Operator agrees to enter into a Safety Interface Agreement with the Terminal Operator prior to commencement of operations within the Terminal.

S8.3 Planning

S8.3.1 Preparation Of Terminal Plan

The Terminal Manager will provide each Operator with a copy of the daily plan for activities within the Terminal (Terminal Plan), based on:

- (a) Rail Operator requirements for use of Common Use Infrastructure;
- (b) where relevant and for each movement, the arrival or departure time from Private Infrastructure;
- (c) the planned infrastructure maintenance activities for the Terminal as advised to Rail Operators in accordance with paragraph S8.5.4;
- (d) where relevant, the Integrated Plan; and
- (e) any constraints previously advised by Rail Operators relating to operations or Private Infrastructure.

S8.3.2 Plan Required To Be Consistent

The Terminal Plan must be consistent with:

- (a) the Terminal Operator's Accreditation;
- (b) any Terminal rules, processes and procedures in force at the relevant time; and
- (c) this Terminal Management Protocol.

S8.3.3 Operator To Advise Requirements

Any Operator seeking to access the Terminal or Private Infrastructure, and use of the Common Use Infrastructure must provide details of its specific access and use (including Rollingstock maintenance) requirements to the Terminal Manager for the purpose of the preparation of the Terminal Plan;

- (a) in the format required, where relevant, by the Integrated Planner and the Terminal Manager; and
- (b) within the nominated time-frame, as advised by the Terminal Manager from time to time;

with the exception of details of scheduled main-line arrivals to, and departures from, the Terminal, which will be in accordance with;

- (c) the daily train plan prepared by the connecting main-line rail infrastructure owner; and
- (d) to the extent applicable, train movements detailed in a Integrated Plan.

S8.3.4 Advice Regarding Private Infrastructure

Where a Rail Operator has use of Private Infrastructure, the Operator must advise the Terminal Manager of any restrictions of access to the Private Infrastructure, including, where relevant;

- (a) any specific order the trains are required to arrive or depart the Private Infrastructure;
- (b) any maintenance activities that will occur within the Private Infrastructure that will restrict access;
- (c) any known occupancy of the Private Infrastructure; and
- (d) any hours of operation of, or other operational matter with respect to, the Private Infrastructure that might impact on the operation of the remainder of the Terminal.

The purpose of this rule is to ensure that the Terminal Manager is able to make informed decisions with regard to the allocation of activities within the Terminal. For example if a train is due to arrive and enter a private siding several hours prior to the time the siding is available, the train would need to be held in some other part of the Terminal and this needs to be planned to ensure capacity is available.

S8.3.5 Plan Not Determined By Operator Constraints

Planning of Terminal activities is not determined by the constraints of any particular Operator.

The purpose of this rule is to prevent a Rail Operator forcing a particular outcome through not being able to provide appropriate resources for the management of its Rollingstock within the Terminal. For example, if a Rail Operator wanted to park a train on Common Use Infrastructure, the determination of whether this should be allowed or not should be on the basis of whether this can be accommodated within the Terminal without impacting the requirements of other Rail Operators. It should not be determined because the Rail Operator has no crew available to redeploy the Rollingstock to another location, and thereby causing other Rail Operators to work around the obstruction.

S8.3.6 Blockage Of Private Infrastructure

The Terminal Manager will not schedule any activity at the Terminal in a manner which results in the blockage of access to Private Infrastructure within the Terminal, except when no access

to or from the Private Infrastructure has been planned during the planned period of the blockage.

S8.3.7 Planning Priority For Activities

- (a) The Terminal Manager will use reasonable endeavours to plan Train movements and other activities within the Terminal in the following order of priority:
 - (i) Mandatory Trains;
 - (ii) modified Mandatory Trains and other non-mandatory trains, which will be given provisional approval subject to the requirements of the Integrated Plan, however any subsequent adjustment to the provisionally approved activity will not be such as to significantly disrupt any related main-line activity;

The purpose of this rule is to allow the indicative allocation of capacity within the Terminal prior to preparation of the Integrated Plan which may be prepared only a relatively short time prior to the time of its commencement.

The restriction on amendment to the provisional approval is necessary to give sufficient certainty to Rail Operators and access providers that allocated train paths will not be invalidated by a very late amendment to Terminal activities, given the potentially short time horizon for the Integrated Plan. It is therefore important that the provisional approval is only given where it is reasonably certain that the activity will not significantly disrupt the expected Integrated Plan program.

- (iii) trains incorporated in the Integrated Plan;
 - (iv) activities within the Terminal not related to presenting a train ready to depart “on time”, which will be planned to occur as opportunity permits;
- (b) Where it is necessary to resolve a conflict between non-mandatory trains, priority will be determined by:
 - (i) the requirements to assemble cargoes for shipping;
 - (ii) next hook-up for the consists involved in the conflict; or
 - (iii) otherwise by negotiation between the Terminal Manager and the relevant Operators; but
 - (iv) as a last resort, the Terminal Manager may use his discretion to resolve any planning conflict.

S8.4 Operations

S8.4.1 Safety Is Paramount Within The Terminal

The safety of people and property is paramount and over-rides any other consideration in the operation of the Terminal.

S8.4.2 Authority To Issue Instructions Relating To Safety Matters

Where the safety of people or property is imperilled, the Terminal Manager may instruct any Rail Operator, or any Rail Operator’s employees, contractors, agents or visitors within the Terminal to;

- (a) perform, or continue to perform, any action; or

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- (b) desist from, or avoid, performing any action;

to the extent necessary to minimise the perceived danger; and the party so instructed must comply with the instruction except where to do so would put the party or its property in peril.

S8.4.3 Authority To Issue Instructions Relating To Non-Safety Events

In the case of an event that does not imperil the safety of people or property, but otherwise causes, or has the potential of causing, a disruption to the operation of the Terminal, the Terminal Manager may instruct any Rail Operator to provide such assistance as is necessary to minimise or avoid the disruption, and the Operator must comply with the instruction, provided that:

- (a) the CUIO pays the direct costs incurred by the Rail Operator in complying with the instruction;
- (b) the instruction is one that;
- (i) the Rail Operator is able and qualified to comply with;
 - (ii) compliance with which does not contravene any conditions of the Rail Operator's Accreditation; and
 - (iii) can be safely complied with.
- (c) The CUIO will not rely on being able to issue such an instruction to another Rail Operator in order to authorise an activity by a Rail Operator for which the Rail Operator has insufficient or inappropriate resources available to complete that activity without causing the disruption.

The purpose of paragraph S8.4.3(c) is to avoid a situation where the Terminal Manager allows a Rail Operator to perform an activity where the Rail Operator does not have resources available to avoid causing a disruption, on the basis that the Terminal Manager can instruct another Rail Operator to perform the action and thereby alleviate the disruption.

An example might be where a Rail Operator seeks to occupy a road that is required later in the day for the smooth operation of the Terminal, knowing that its locomotive will still be under repairs at the time it is required to move the Rollingstock, thus relying on another Rail Operator to perform the move, (without having subcontracted the task itself previously).

S8.4.4 Priority For Movements Within Terminal

Notwithstanding paragraph S8.3.7, priority for dealing with real time movements of trains or rollingstock within the Terminal on a particular day is:

[To be completed for each terminal taking into account the specific purposes and needs of the parties using the terminal.]

This area is probably specific to each particular terminal and therefore left unspecified. However, as an example the rules for Hunter Bulk Terminal would include the following:

- (a) for conflicts between coal trains, the planned sequence or the sequence as adjusted by the Live Run Management Group from time to time; and
- (b) for other conflicts, priority is to be determined by the Terminal Manager at his discretion, provided that such discretion is exercised in good faith with the intention of;
- (i) minimising disruption to operations within the Terminal; and

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- | |
|--|
| (ii) enabling the presentation of trains ready for departure as planned. |
|--|

S8.5 Infrastructure Maintenance

S8.5.1 Types Of Infrastructure Maintenance

Infrastructure maintenance within the Terminal will be of 3 types:

- (a) emergency maintenance to prevent or minimise the risk of damage to or loss of property, or personal injury or death;
- (b) out of course maintenance; and
- (c) planned.

S8.5.2 Emergency Infrastructure Maintenance

- (a) Emergency infrastructure maintenance takes precedence over previously planned activities and will be carried out as necessary by the Terminal Manager.
- (b) Where it is reasonable and practicable to do so, the Terminal Manager will adjust the Terminal Plan to minimise disruption to Rail Operators.
- (c) The Terminal Manager will make reasonable efforts to advise any Rail Operator affected by the disruption, of the nature of the disruption, the expected time that normal operations will be restored and any amendment to the Terminal Plan.

S8.5.3 Out Of Course Infrastructure Maintenance

- (a) Out of course, or otherwise unplanned infrastructure maintenance requiring amendment to previously planned activities will be carried out by the Terminal Manager in consultation with affected Rail Operators, with the intention of minimising overall disruption to activity within the Terminal.
- (b) The Terminal Manager is required to consider, in good faith, any objection raised, or altered priorities sought, by any affected Operator, and use reasonable endeavours to achieve the Rail Operator's preferred outcome.
- (c) Where the nature of the problem is such that the consequence of conducting the consultation set out in paragraph S8.5.3(a) with any one or more Rail Operators would unnecessarily delay the restoration of normal operations within the Terminal, the Terminal Manager may perform the infrastructure maintenance without consulting with the relevant Rail Operators, provided that subsequently, the Terminal Manager informs the affected Rail Operators and uses his reasonable endeavours to mitigate any disruption to the planned activities at the Terminal that arise due to the maintenance being performed.
- (d) Notwithstanding paragraph S8.5.3(b), the Terminal Manager is not required to postpone the out of course infrastructure maintenance where, in the Terminal Manager's opinion, that course of action will result in the least overall disruption to activity within the Terminal.

S8.5.4 Planned Infrastructure Maintenance

Planned maintenance that will impact on the movement of Rollingstock within the Terminal will be programmed at least 7 days in advance with advice given to all Rail Operators expected to be active within the Terminal during the planned maintenance. The advice will include the effect on operations within the Terminal, including any impact on access to Private Infrastructure.

S8.6 Rollingstock Maintenance

S8.6.1 Planned Rollingstock Maintenance On Common Use Infrastructure

The Terminal Manager will permit the use of Common Use Infrastructure for the conduct of planned Rollingstock maintenance provided that;

- (a) sufficient capacity is available within the Terminal to allow the maintenance to be performed without significantly disrupting the activities of other Operators that are included in the Terminal Plan; and
- (b) sufficient notice is provided to the Terminal Manager to allow for consideration whether or not to include the Rolling stock maintenance in the Terminal Plan.

S8.6.2 Unplanned Rollingstock Maintenance On Common Use Infrastructure

The Terminal Manager will permit the use of Common Use Infrastructure for the conduct of unplanned rollingstock maintenance either;

- (a) to the extent necessary to allow the Rollingstock to be safely moved to Private Infrastructure as soon as reasonably possible; or
- (b) if there is sufficient capacity within the Common Use Infrastructure to conduct the unplanned Rollingstock maintenance without disrupting the operations of other Rail Operators, until such maintenance is completed; but
- (c) in any case, the Rollingstock must be removed from the Common Use Infrastructure or put back into service as promptly as reasonably possible in the circumstances.

S8.6.3 Rollingstock Maintenance On Private Infrastructure

Any Rail Operator intending to perform Rollingstock maintenance on Private Infrastructure must notify the Terminal Manager so that the maintenance can be included in the Terminal Plan.

Nominally, what a party does on its own (or other privately owned) infrastructure would be its own affair and not subject to the rules. However, it is important for the good management of the Terminal that all parties are aware that certain roads within the Terminal are expected to be occupied for particular periods and therefore it is good practice that planned maintenance should be reported.

S8.7 Performance Review

S8.7.1 Monthly Performance Review Meeting

Each month, the Terminal Manager will meet with each Rail Operator separately to discuss the performance of each party with regard to operations within the Terminal. As a minimum, the Terminal Manager will;

- (a) report on the overall performance of the Terminal for both the Terminal Manager and all Rail Operators combined in accordance with a common suite of performance measures;
- (b) report on the performance of the Terminal Manager (with respect to the relevant Rail Operator) and that Rail Operator in accordance with a mutually agreed suite of performance measures;

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- (c) consider, and within a reasonable period report back on, any issues raised by the Rail Operator regarding the management of the Terminal or any operational matter relevant to the efficient operation of the Terminal; and
 - (d) bring to the attention of the Rail Operator any concerns as to the Rail Operator's performance, including any complaints made by another Rail Operator using the Terminal.

S8.7.2 Issues Raised By Rail Operator

Where an issue is raised by a Rail Operator with the Terminal Manager, whether in accordance with paragraph S8.7.1(c) or otherwise, regarding the efficient operation of the Terminal, and the potential solution is likely to require a variation to existing processes or procedures of a Rail Operator or the Terminal Manager, the Rail Operator and the Terminal Manager will jointly attempt, in good faith, to determine a solution to remedy the issue, and where appropriate engage in the process change mechanism described in paragraph S8.8.

S8.7.3 Complaint Made Against Operator

- (a) Where a complaint has been raised against a Rail Operator, either by the Terminal Manager directly, or on behalf of another Rail Operator, the Terminal Manager will notify the Rail Operator against whom the complaint is made, in writing, and request the Rail Operator to provide an explanation or justification as appropriate.
- (b) Having regard to any response provided by the relevant Operator to a notice issued in accordance with paragraph S8.7.3(a);
 - (i) if the Terminal Manager is of the view that the complaint is prima facie justified, the Rail Operator who is the subject of the complaint and the Terminal Manager will jointly attempt, in good faith, to determine and implement a solution to remedy the matter complained of; or
 - (ii) if the Terminal Manager is satisfied that the Rail Operator against whom the complaint is made, is not at fault, or the complaint is otherwise not justified or is vexatious or trivial, then the Terminal Manager will advise the relevant parties of its investigations and that the matter will not be pursued further.
- (c) Where the Terminal Manager and the relevant Rail Operator are unable to resolve a matter, it will be dealt with as a Dispute in accordance with the Rail operator's Access Agreement.

S8.7.4 Common Performance Measures

The common suite of performance measures referred to in paragraph S8.7.1(a) is to be agreed between the Terminal Manager and Rail Operators from time to time, or in the absence of agreement, as determined by the Terminal Manager, acting reasonably.

S8.7.5 Quarterly Terminal Meeting

Approximately every 3 months, the Terminal Manager will convene a meeting of all Rail Operators that make regular use of the Terminal for the purpose of discussing matters of common interest with regard to the Terminal.

S8.8 Process Change

S8.8.1 Direction By Competent Authority

- (a) Where a competent authority has issued a lawful direction to the Terminal Manager or a Rail Operator operating within the Terminal to modify a process or procedure with

respect to Terminal operations, the party issued with the direction will make the modifications as directed.

- (b) Where a modification occurs under paragraph S8.8.1(a), any other party subject to this Terminal Management Protocol will make any necessary modifications to its processes and procedures relating to Terminal operations to accommodate the changes arising as a consequence of the direction.
- (c) Any costs that arise to any party as a result of complying with a lawful direction or a consequence thereof, will be borne by the party incurring the cost.

S8.8.2 Operator Seeking Change To Submit Formal Proposal

Where a Rail Operator wishes to change one or more processes or procedures that may impact on the operation of the Terminal or any other Operator therein, the Rail Operator will make a Formal Proposal to the Terminal Manager and request the Terminal Manager to initiate the process to consider approval of the proposed change.

S8.8.3 Terminal Manager To Advise Proposal For Change Via Formal Proposal

Where the Terminal Manager wishes to change one or more processes or procedures that impact on the operation of the Terminal or any Rail Operator therein, the Terminal Manager will advise all Rail Operators operating within the Terminal by means of a Formal Proposal and request the Rail Operators to participate in the process to consider approval of the proposed change.

S8.8.4 Terminal Manager To Facilitate Joint Investigation

On either:

- (a) receipt by the Terminal Manager of a Formal Proposal from a Rail Operator; or
- (b) the Terminal Manager initiating a Formal Proposal;

the Terminal Manager will facilitate a joint investigation between the Terminal Manager and such Rail Operators who operate within the Terminal as wish to participate.

S8.8.5 Investigation To Be Carried Out Expediently

- (a) Provided that the timeline for the approval process provided by the proponent in the Formal Proposal is reasonable in the circumstances, the Terminal Manager will make every reasonable effort to manage the approval process in accordance with the timeline as submitted.
- (b) If, in the opinion of the Terminal Manager, the timeline as submitted in the Formal Proposal is not reasonable, then the Terminal Manager and the proponent will agree a revised timeline for the approval process.
- (c) In the event that the parties cannot agree on a timeline, the Terminal Manager will impose a timeline for the conduct of the approval process and will provide a formal notice to the proponent of the reasons for the decision.

S8.8.6 Approval Of Proposed Change

- (a) The investigation of the proposed change will consider whether the proposed change is;
 - (i) safe;
 - (ii) efficient;

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- (iii) logical; and
 - (iv) legal.
 - (b) In determining whether the criteria in paragraph S8.8.6(a)(i)-(iv) have been met, the participants will conduct the investigation in good faith and due diligence.
 - (c) In the event that the participants are unable to reach a unanimous decision with regard to the criteria in paragraph S8.8.6(a)(i)-(iv), the Terminal Manager will approve the proposed change if;
 - (i) the majority of participants approve of the proposed change; and
 - (ii) the Terminal Manager is of the view that:
 - (A) the proposed change meets the criteria in paragraph S8.8.6(a)(i)-(iv); and
 - (B) due consideration has been given during the investigation to the objections raised by the participants seeking to disapprove of the proposed change,otherwise the Terminal Manager will disapprove of the proposed change.
 - (d) A proposed change is approved if;
 - (i) the participants unanimously approve of the proposed change or the conditions in paragraph S8.8.6(c) have been satisfied;
 - (ii) the proposed change has been subject to a dispute resolution process and the result of that dispute resolution process is that the proposed change must be approved by the Terminal Manager.
 - (e) A party that was invited to participate in the investigation, but failed to do so, or who participated to some extent but did not, in the Terminal Manager's reasonable opinion satisfactorily exercise good faith or diligence is deemed to have approved the proposed change.
 - (f) If the proposed change has been approved, then:
 - (i) the Terminal Manager will amend the then existing processes and procedures at the Terminal to implement the approved change, with the cooperation of each party; and
 - (ii) all Rail Operators will comply with the amended processes and procedures at the Terminal.

S8.8.7 Investigation Requirements

In determining whether a proposed change would meet the criteria in paragraph S8.8.6(a)(i)-(iv), the investigation will include:

- (a) providing an opportunity for any affected party to be consulted as to the impact the change will have on that party;
- (b) carrying out such risk assessment processes as appropriate; and
- (c) such other processes and considerations as the participants think appropriate and prudent.

S8.8.8 Modification To Proposal During Investigation

- (a) If, during the investigation, it is apparent that a better outcome would be achieved through a modification to the proposed change, and the proponent is agreeable, the proposed change may be modified.
- (b) For the purposes of paragraph S8.8.8(a) a better outcome is one which;
 - (i) results in a more efficient operation of the Terminal; or
 - (ii) is more likely to receive approval of the participants of the investigation.

S8.8.9 Resolution Of Disputes

For the avoidance of doubt, where;

- (a) the Terminal Manager has approved a proposal to change one or more processes or procedures against the objections of a Rail Operator; or
- (b) the Terminal Manager has refused to approve a proposal made by a Rail Operator;

the Rail Operator may seek resolution through the dispute resolution process as provided for in the Rail Operator's Access Agreement.

S8.9 Disagreement Resolution Process

- (a) A Rail Operator seeking to resolve a Disagreement shall bring the matter to the attention of the Terminal Manager, as soon as practicable after the event giving rise to the Disagreement.
- (b) A Disagreement does not have to be evidenced in writing and may be advised to the Terminal Manager orally, but in any case, sufficient detail must be provided in an appropriate form to the Terminal Manager to allow him to reasonably consider the matter.
- (c) The Terminal Manager will attempt to resolve any Disagreement as expeditiously as possible, in accordance with these rules, having regard to;
 - (i) the nature and subject matter of the Disagreement;
 - (ii) the impact of any delay in resolving the Disagreement; and
 - (iii) the urgency of resolving the matter compared to any other matters of higher priority

The reference urgency is to allow the Terminal Manager to set an appropriate priority on the matter compared with any other duties, for example safety critical matters.

- (d) The Terminal Manager will communicate a decision to the relevant parties with regard to any Disagreement, whether escalated or not within 48 hours of the matter being brought to his attention except under exceptional circumstances as provided for in paragraph S8.9(e).
- (e) If, in exceptional circumstances, the matter is not reasonably capable of being resolved within the period nominated in paragraph S8.9(d), the Terminal Manager will, within 48 hours advise the relevant parties;
 - (i) as to when a decision will be communicated;

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- (ii) any relevant information regarding the process being undertaken to reach a determination; and
 - (iii) any impediment to reaching a determination; but

in any case will attempt to resolve the matter within a maximum of 2 weeks from the date when the Disagreement was first advised to the Terminal Manager.

- (f) Until the Disagreement is resolved,
 - (i) the Terminal Manager's original decision will apply, or
 - (ii) if the Terminal Manager's original decision leads to a contravention of paragraph S8.4.1, the Terminal Manager will amend his decision to remedy the contravention, or
 - (iii) the Terminal Manager may, at his/her absolute discretion, make an interim decision.

Schedule A – Diagram of Common Infrastructure

[diagram of the Terminal to be attached]