

AUSTRALIAN RAIL TRACK CORPORATION LIMITED
("ARTC")

in favour of

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION
("ACCC")

ACCESS UNDERTAKING

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PART 1

ACCESS UNDERTAKING dated

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BY

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

IN FAVOUR OF

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION being a body corporate established under section 6A of the TPA ("**ACCC**")

1 PREAMBLE

1.1 Introduction

- (a) ARTC was established on 24 February 1998 as a company under the Corporations Law.
- (b) ARTC's shares are fully owned by the Australian Government. ARTC was established as the entity to manage the granting of access to rail operators to the Interstate Rail Network. ARTC was created with an objective to create a single process of access to the Interstate Rail Network consistent with the Competition Principles Agreement and the National Rail Summit Heads of Agreement.
- (c) ARTC currently owns or leases and is responsible for the granting of access to that part of the Interstate Rail Network comprising the Network.
- (d) In ARTC's view, as a vertically separated provider of access, ARTC operates in a competitive environment where competitive pressure from other modes of transport (particularly road) place constraints on rail transport and access pricing. Accordingly, in ARTC's view, it is unlikely to be able to price in any of its markets at levels which will fully recover the full economic costs of its assets.
- (e) As the manager of a significant part of the Interstate Rail Network, ARTC has adopted the concepts of equity and transparency as key elements of its pricing policies. ARTC will not discriminate price on the basis of the identity of the customer. By so doing, ARTC seeks to stimulate customer confidence, competition and market growth in the rail industry in an evolving environment in which government owned vertically integrated railways have largely been replaced by privately owned operators with access to shared track infrastructure.
- (f) As an access provider, maintenance of the Network and Associated Facilities is a large component of ARTC's current cost structure. These services are either outsourced and managed under maintenance contracts entered into on commercial terms as a result of a competitive

tender process, or, in ARTC's view, otherwise managed on an efficient basis. ARTC has adopted this practice with a view to ensuring that ARTC's cost structure will reflect efficient infrastructure practice.

- (g) ARTC has prepared this Undertaking voluntarily in pursuance of its charter objectives.
- (h) This Undertaking will be applied consistently to Access Applications where such applications are within the scope of this Undertaking as set out in Part 2.

1.2 Objectives

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

- (a) provide a framework to manage negotiations with Applicants for Access to the Network for the purpose of operating Services;
- (b) establish a workable, open, non-discriminatory, efficient and inclusive process for lodging and processing Access Applications;
- (c) use transparent and detailed methodologies, principles and processes for determining access revenue limits, terms and conditions;
- (d) reach an appropriate balance between:
 - (i) the legitimate business interest of ARTC:
 - (A) the recovery of all reasonable costs associated with the granting of Access to the Network;
 - (B) a fair and reasonable return on ARTC's investment in the Network and Associated Facilities commensurate with its commercial risk; and
 - (C) stimulate customer confidence, competition, and market growth in the rail industry;
 - (ii) the interest of the public:
 - (A) increase competition ensuring efficient use of resources;
 - (B) the promotion of economically efficient investment, use and operation of, the Network; and
 - (C) promoting other relevant social objectives, such as an increase of traffic from road to rail;
 - (iii) the interests of Applicants wanting Access to the Network, including:

- (A) providing Access to the Network on fair and reasonable terms; and
 - (B) providing Access in a open, efficient and non-discriminatory manner;
- (e) provide an efficient, effective and binding resolution process in the event that ARTC and the Applicant are unable to negotiate a mutually acceptable Access Agreement; and
- (f) operate consistently with the objectives and principles in Part IIIA of the TPA and the Competition Principles Agreement.

PART 2

2 SCOPE AND ADMINISTRATION OF UNDERTAKING

2.1 Scope

- (a) This Undertaking provides for the negotiations of Access required for the operation of Train Services by Operators on the Network, with details of the specified services and sections of the Network defined during Access negotiations. Access will include, in addition to the track, the benefit of Associated Facilities required to facilitate such Access.
- (b) This Undertaking does not extend to any Extension to the Network nor to the track and infrastructure not part of the Network that may connect to the Network.

2.2 Grant and Duration of Undertaking

- (a) ARTC undertakes to the ACCC that it will comply with the terms and conditions specified in this Undertaking in relation to the grant of Access to Operators to the Network for Services. This Undertaking takes effect twenty one (21) days after it is accepted by the ACCC under section 44ZZA(3) of the TPA ("Commencement Date") and will continue until the earlier to occur of:
 - (i) the expiry of the Term; or
 - (ii) withdrawal of this Undertaking in accordance with its terms or the TPA.
- (b) Not later than six (6) months prior to the expiry of the Term of the Undertaking ARTC will submit to the ACCC a written statement outlining whether or not it intends to submit a new voluntary undertaking to the ACCC for its consideration.
- (c) If ARTC intends to submit a new voluntary undertaking to the ACCC for its consideration; ARTC will also apply to the ACCC for an extension of the expiring Undertaking.
- (d) The application for extension would include a proposed extension period which, in ARTC's view, reasonably estimates the time it would take for ARTC to formulate a new undertaking and have that undertaking take effect following approval by the ACCC.
- (e) If ARTC does not propose to submit to the ACCC a new voluntary undertaking then clause (b) to (d) would not be applicable. Nothing in this clause would prevent ARTC from submitting a voluntary undertaking to the ACCC at any time during the Term of this Undertaking.

2.3 Term

This Undertaking will continue to be binding upon ARTC until:

- (a) 30 June 2023; or
- (b) the date upon which the ACCC consents to the withdrawal of the Undertaking by ARTC, whichever is the earlier.

2.4 Review of Undertaking

- (a) If, during the Term, ARTC is of the opinion that circumstances have changed such that this Undertaking is no longer commercially viable for ARTC or becomes inconsistent with the objectives prescribed at clause 1.2, ARTC may seek the approval of the ACCC to vary this Undertaking.
- (b) By 31 December 2011, ARTC will develop and submit to the ACCC, Capital Expenditure in the form of an extended Schedule H, applicable to the period 1 July 2012 to 30 June 2018.
- (c) Prior to seeking the approval of the ACCC under clause 2.4(a), ARTC will first consult with Operators regarding the proposed variation.
- (d) ARTC may only vary the Undertaking with the consent of the ACCC under section 44ZZA(7) of the TPA.
- (e) As soon as practicable after the fifth (5th) anniversary of the Commencement Date, ARTC will undertake a review of the Undertaking, in consultation with Operators, potential Operators and other stakeholders. The review will consider any material impact that changes to industry circumstances or Government legislation, rules or regulations may have on the extent to which the Undertaking reasonably meets its intent as prescribed at clause 1.2.

2.5 Existing Contractual Agreements

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

2.6 Insurance

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

- (a) loss of, loss of use of, and destruction or damage to, real or personal property;
- (b) injury to, or disease or death of, persons; and

- (c) ARTC's liability to the Operator under clause 15 of Schedule D to the extent coverable by insurance.

2.7 Contact Details

- (a) Persons wishing to contact ARTC for further information or to apply for Access to the Network should contact ARTC at any of the following addresses:
 - (i) Australian Rail Track Corporation Limited
Ground Floor
Off Sir Donald Bradman Drive
Passenger Rail Terminal Road
MILE END SA 5031

Attention: Chief Executive Officer
Telephone: (08) 8217 4366
Facsimile: (08) 8217 4578
 - (ii) Australian Rail Track Corporation Limited
PO Box 10343
Gouger Street
ADELAIDE SA 5000
 - (iii)
- (b) Applicants are also encouraged to search ARTC's internet web site at www.artc.com.au on which will be published various information regarding ARTC and this Undertaking including:
 - (i) illustrative maps showing a geographical description of the Network in the form of the annexures to Schedule E as amended by ARTC from time to time during the Term;
 - (ii) a narrative description of the Network;
 - (iii) Indicative Access Charges for Indicative Services; prices for which Access has been granted to Services other than Indicative Services, together with a general description of the Services to which such prices relate;
 - (iv) the Network Management Principles;
 - (v) the Indicative Access Agreement;
 - (vi) current available market terms and conditions;
 - (vii) a copy of ARTC's annual report;
 - (viii) a graphical representation of Committed Capacity on the Network (excluding track possessions for Network maintenance);

- (ix) indicative section running times for Indicative Services by corridor;
- (x) route standards by corridor; and
- (xi) the Performance Indicators.

PART 3

3 NEGOTIATING FOR ACCESS

3.1 Introduction

As part of ARTC's philosophy, it seeks to encourage utilisation of the Network and as such will negotiate with the Applicant in good faith. ARTC recognises that the process needs to be flexible to suit specific circumstances and is willing to tailor the process in consultation with the Applicant. However, ARTC also recognises that the industry seeks some certainty and provides this framework to satisfy that need.

3.2 Framework

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

- (a) preliminary meetings and exchanges of information;
- (b) submission of an Access Application by the Applicant;
- (c) preparation of an Indicative Access Proposal by ARTC;
- (d) negotiations to develop an Access Agreement for execution;
- (e) dispute resolution procedures; and
- (f) both ARTC and the Applicant to negotiate in good faith.

3.3 Provision of Information

- (a) Subject to clause 3.3(b), ARTC will, if requested by an Applicant, provide the following information to Applicants to assist with negotiations:
 - (i) path length availability;
 - (ii) Available Capacity;
 - (iii) axle load limitations;
 - (iv) maximum allowable speeds;
 - (v) infrastructure characteristics;
 - (vi) applicable safeworking requirements;
 - (vii) Segment run times;
 - (viii) DORC values in relation to the Segment to which Access is being sought;

- (ix) the incremental cost in accordance with clause 4.4(b) and the Economic Cost in accordance with clause 4.4(f) for the Segment to which Access is being sought; and
 - (x) any other information relating to Capacity or Train operations reasonably required by the Applicant in relation to the Access Application, provided ARTC is given an opportunity to provide to the Applicant an estimate of the reasonable cost of preparing the aspects of such other information which are not ordinarily and freely available to ARTC, and the Applicant agrees to pay such costs.
- (b) ARTC's obligation under clause 3.3(a) is subject to:
- (i) ARTC not disclosing any information which would breach a confidentiality obligation binding on it; and
 - (ii) the Applicant agreeing to pay the reasonable costs incurred by ARTC in obtaining information that is not ordinarily and freely available to ARTC.

3.4 Parties to Negotiation

- (a) ARTC reserves the right to negotiate only with Applicants who comply with the requirements and processes set out in this Undertaking. If an Applicant does not comply with the relevant obligations and processes, and ARTC considers that such non-compliance is material, ARTC will not be obliged to continue negotiations regarding the provision of Access for that Applicant.
- (b) ARTC will negotiate Access with an Applicant which is not an Accredited Operator where the Applicant will procure the services of an Accredited Operator to operate the proposed Services provided that all of the terms and conditions of the Access Agreement are met by the Applicant or the Operator.
- (c) At any time, before or during the negotiation process, ARTC may require the Applicant to demonstrate to ARTC that it is able to meet the prudential requirements set out in clause 3.4(d). In the event the Applicant cannot meet these prudential requirements, ARTC may refuse to commence negotiations or may cease negotiations with that Applicant.
- (d) For the purposes of clause 3.4(c), the Applicant will be required to meet the following prudential requirements:
 - (i) the Applicant must be Solvent; and
 - (ii) the Applicant, or a Related Party of the Applicant, must not be currently, or have been in the previous (2) years, in Material Default of any agreement with ARTC, or any agreement in accordance with which access to rail infrastructure not managed

by ARTC, has been provided to the Applicant or a Related Party of the Applicant; and

- (iii) the Applicant must be able to demonstrate to ARTC that it has a legal ownership structure with a sufficient capital base and assets of value to meet the actual or potential liabilities under an Access Agreement, including without limitation timely payment of access charges and payment of insurance premiums and deductibles under the required policies of insurance.
- (e) If ARTC refuses to negotiate for any reasons as described in clauses 3.4(a) or 3.4(c), it will, within ten (10) Business Days of the decision to refuse to negotiate, explain in writing to the Applicant the reasons for such refusal.
- (f) If the Applicant considers that ARTC has unreasonably refused to commence or subsequently unreasonably ceased negotiations in accordance with clause 3.4, then the Applicant may refer the matter to the arbitrator in accordance with clause 3.12.4(b). If the arbitrator determines that ARTC has unreasonably refused to commence or subsequently unreasonably ceased negotiations, ARTC will recommence negotiations immediately.
- (g) If at any time, ARTC is of the view that an Applicant's request for Access is frivolous in nature, ARTC may refer the request to the arbitrator in accordance with clause 3.12.4(b) for determination. If the arbitrator determines that the request is in fact frivolous, then ARTC will be entitled to cease negotiations and will not be obliged to comply with this Undertaking in respect of the request.

3.5 Confidentiality

- (a) Each party acknowledges, subject to clause 3.5(b), that all information provided by one party ("Provider") to the other ("Receiver") as part of the negotiation process for Access under this Undertaking that relates directly to:
 - (i) the Applicant's future markets;
 - (ii) the Applicant's future market and business strategies; and
 - (iii) the strategies of ARTC's or the Applicant's customers;("Confidential Information") is secret and confidential and that the Receiver of Confidential Information will treat that Confidential Information as secret and confidential and the property solely of the Provider and not use that Confidential Information for any purpose other than the provisions of this Undertaking allow.
- (b) For the purposes of this clause 3.5 Confidential Information does not include information which is:

- (i) in the public domain at the time of disclosure other than through the fault of the Receiver or of anyone to whom the Receiver has disclosed it;
- (ii) obtained lawfully from a third party without restriction on use or disclosure;
- (iii) required to be made public by operation of law (subject to the Receiver claiming any immunity, privilege or restriction on or from disclosure that it can reasonably claim), including without limitation information required by any stock exchange, rail safety or economic regulator; or
- (iv) necessary for the provision of advice to the Receiver by the Receiver's legal advisors, financiers, accountants or other consultants (provided they are under a legal obligation not to disclose the Confidential Information to any third party).

3.6 Access Application

- (a) Requests for Access are to be submitted to ARTC in the form of an Access Application and in accordance with the form requirements of Schedule A.
- (b) In order for ARTC to consider a request for Access, the information set out in Schedule B will accompany the Access Application.
- (c) Prior to submitting an Access Application, an Applicant may seek initial meetings with ARTC to discuss the Access Application and to seek clarification of the process as outlined in this Undertaking and in particular, the information requirements set out in Schedule B.

3.7 Acknowledgment

- (a) Upon receiving an Access Application from an Applicant, ARTC will acknowledge receipt of the Access Application in writing (or electronically) to the Applicant within five (5) Business Days of its receipt, or such longer period as specified in accordance with clause 3.7(c).
- (b) Prior to acknowledging the Access Application, ARTC may seek:
 - (i) additional information where ARTC can reasonably demonstrate the need for such information for the purpose of preparing an Indicative Access Proposal; or
 - (ii) clarification of the information that has been provided in the Access Application.
- (c) If ARTC seeks additional information or clarification in accordance with clause 3.7(b), it will advise the Applicant of the additional information or the clarification required within five (5) Business Days of receipt of the Access Application. Upon receiving the required information or clarification

from the Applicant, ARTC will provide written acknowledgment of the receipt of the completed Access Application within five (5) Business Days.

3.8 Indicative Access Proposal

- (a) Subject to clause 3.8(b), ARTC will use reasonable efforts to provide the Indicative Access Proposal to the Applicant within thirty (30) Business Days of the acknowledgment given under clause 3.7.
- (b) In assessing an Access Application, ARTC may consider that, due to the complexity of the Access Application or due to other extenuating circumstances, it is not reasonable for it to provide an Indicative Access Proposal within the thirty (30) Business Days referred to in clause 3.8(a). In these circumstances, ARTC will advise of such in its acknowledgment and within a further five (5) Business Days will advise the Applicant of its estimate of the time required to deliver the Indicative Access Proposal. Where the Applicant is of the view that the time estimated for preparation of the Indicative Access Proposal under this clause 3.8(b) is excessive, then the Applicant may refer the matter to the arbitrator for a determination in accordance with clause 3.12.4(b). ARTC will use reasonable efforts to provide the Indicative Access Proposal within the estimated time period provided by ARTC or as otherwise determined by the arbitrator pursuant to that clause.
- (c) The Indicative Access Proposal will set out, amongst other things:
 - (i) the results of a Capacity Analysis determining whether there is sufficient Available Capacity to accommodate the requested Access Rights;
 - (ii) in the event the Access Application requires the Applicant to have recourse to Additional Capacity, an outline of the works and an indicative estimate of the cost of such works required to provide the Additional Capacity or an outline of the requirements for an investigation into the provision of Additional Capacity for the requested Access Rights;
 - (iii) advice in respect of the existence of other Applicants who have submitted an Access Application (where negotiations are continuing in accordance with this Undertaking) in respect of Access which, if it were to be provided, would limit the ability of ARTC to provide Access in accordance with the Indicative Access Proposal;
 - (iv) a reference to the Indicative Access Agreement and a reference to the current available market terms and conditions as published on ARTC's website;
 - (v) an initial estimate of the Charges for the Access Rights, based on the pricing principles set out in Part 4;

- (vi) details of the additional information required for ARTC to progress the proposal and further develop the Charges and terms and conditions for acceptance; and
 - (vii) the indicative Train Path availability.
- (d) The Indicative Access Proposal will, unless it contains specific provisions to the contrary, contain indicative arrangements only and does not oblige ARTC to provide Access in accordance with specific terms and conditions, including Charges, contained within it.
 - (e) If, after thirty (30) Business Days following ARTC's acknowledgment of the Access Application, or if applicable, after expiration of the time estimated by ARTC or determined by the arbitrator in accordance with clause 3.8(b), the Applicant believes that ARTC is not making reasonable progress in the preparation of the proposal, then the Applicant may refer the matter to the arbitrator for a determination in relation to the progress of the Indicative Access Proposal in accordance with clause 3.12.4(b).
 - (f) In the event that ARTC is unable to provide an Indicative Access Proposal based on the Access Application, ARTC will, if possible, submit to the Applicant an Indicative Access Proposal offering alternative Access which it reasonably believes may meet the Applicant's Access requirements.
 - (g) Disputes arising from the process described in clause 3.8 will be resolved in accordance with clause 3.12.

3.9 Negotiation

- (a) If the Applicant intends to progress its Access Application under the negotiation process set out in this Undertaking on the basis of the arrangements outlined in the Indicative Access Proposal, the Applicant will notify ARTC of its intention to do so within thirty (30) Business Days of the date it receives the Indicative Access Proposal (or such other period of time that the parties agree). In the event that a notification is given after this period of time, ARTC will review the Indicative Access Proposal and, if considered necessary by ARTC, prepare a revised Indicative Access Proposal in accordance with clause 3.8 and the negotiation process outlined in this Part 3 will recommence from that point.
- (b) If the Applicant is of the view that the Indicative Access Proposal has not been prepared in accordance with this Undertaking and would therefore not be an appropriate basis for continuing with the negotiation process under this Undertaking, then the Applicant will notify ARTC of its concerns within thirty (30) Business Days of the date of receipt of the Indicative Access Proposal.
- (c) ARTC will take all reasonable steps to respond to the concerns raised by the Applicant in relation to the Indicative Access Proposal under clause 3.9(b) within thirty (30) Business Days of receipt of notification of the concerns. If ARTC is unable to address the concerns of the Applicant

within such time frame, ARTC will notify the Applicant in writing as to the reasons why and advise an intended course of action, with indicative time frames, of how the concern is being addressed. If the Applicant is satisfied with the response received from ARTC, including any revision to the Indicative Access Proposal, it will notify ARTC of its intention to proceed with negotiations within thirty (30) Business Days of receiving ARTC's response.

- (d) If the Applicant is not satisfied with the response from ARTC, including any revision to the Indicative Access Proposal, the Applicant may seek to resolve the dispute in accordance with the dispute resolution process outlined in clause 3.12. The Applicant will commence this dispute resolution process within thirty (30) Business Days of receiving ARTC's response.

3.10 Negotiation Process

- (a) If the Applicant indicates its willingness to progress negotiations under clause 3.9, then both parties will commence negotiations as soon as reasonably possible to progress towards an Access Agreement.
- (b) The negotiation period will commence upon the Applicant providing a notification pursuant to clause 3.9 and will cease upon any of the following events:
 - (i) execution of an Access Agreement in respect of Access sought by the Applicant;
 - (ii) written notification by the Applicant that it no longer wishes to proceed with its Access Application;
 - (iii) the expiration of three (3) months from the commencement of the negotiation period, or if both parties agree to extend the negotiation period, the expiration of the agreed extended period;
 - (iv) if ARTC believes that the negotiations are not progressing in good faith towards the development of an Access Agreement within a reasonable time period;
 - (v) sub-clause (iv) applies and ARTC refers the matter to the arbitrator under clause 3.12.4(b) for a determination on this issue and such determination is found in ARTC's favour; or
 - (vi) if ARTC receives evidence confirming that the Applicant no longer satisfies the prudential requirements of clause 3.4(d), on receiving such evidence ARTC will advise the Applicant of such evidence and issue a notice of intent to end the negotiation period, to become effective ten (10) Business Days after the issue of the notice. Where ARTC issues a notice of intent, ARTC will provide to the Applicant written reasons for its decision to end the negotiation period.

- (c) Upon cessation of the negotiation period, ARTC will be entitled to cease negotiations with the Applicant.
- (d) In circumstances where two or more Applicants are seeking mutually exclusive Access Rights:
 - (i) each Applicant will be so notified as soon as practicable after the relevant conflict arises;
 - (ii) Access will be granted to the Applicant who accepts an Access Agreement with ARTC which, in the opinion of ARTC, is most favourable to it. Ordinarily, but without limiting ARTC's discretion in this regard, ARTC would make such a decision based on the Access Agreement that represented the highest present value of future returns to ARTC after considering all risks associated with the Access Agreement.
- (e) If, at any time during the negotiation period, a dispute arises between the parties which, after reasonable negotiation, the parties are unable to resolve to their mutual satisfaction, then either party may seek to resolve the dispute in accordance with the dispute resolution process outlined in clause 3.12.

3.11 Access Agreement

- (a) The granting of Access will be finalised by the execution of an Access Agreement. The parties to the Access Agreement will be ARTC and:
 - (i) If the Applicant is an Accredited Operator, that Applicant; or
 - (ii) If the Applicant is not an Accredited Operator, that Applicant or the Accredited Operator or both (as the case may be).
- (b) Subject to clause 3.11(c) ARTC may offer any of the following as an Access Agreement:
 - (i) the Indicative Access Agreement subject to the Applicant satisfying the prudential requirements in clause 3.4(d); or
 - (ii) the current available market terms and conditions as published on ARTC's website; or
 - (iii) an updated Access Agreement to reflect agreed amendments to the Access Agreement. A negotiated Access Agreement will, unless otherwise agreed between ARTC and the Applicant at least address the essential elements set out in Schedule C. The details of Schedule C do not provide an exhaustive list of the issues that may be included in an Access Agreement.
- (c) ARTC must offer the Indicative Access Agreement to an Applicant if the Applicant:

- (i) seeks access to Indicative Services; and
- (ii) meets the prudential requirements in clause 3.4(d); and
- (iii) either:
 - i. the Network has sufficient Available Capacity to meet the Applicant's needs; or
 - ii. ARTC consents to provide Additional Capacity to meet the Applicant's needs in accordance with clause 6.2.
- (d) Once the Applicant has notified ARTC that it is satisfied with the terms and conditions of the Access Agreement as drafted, ARTC will, as soon as reasonably practicable, provide a final Access Agreement (or, if applicable, an amendment to an existing Access Agreement) to the Applicant for execution.
- (e) Where the ARTC offers an Access Agreement and the Applicant accepts the terms and conditions offered in that Access Agreement, both ARTC and the Applicant will execute the Access Agreement. The parties will use reasonable endeavours to comply with this clause as soon as practicable.

3.12 Dispute Resolution

3.12.1 Disputes

- (a) If any dispute arises under this Undertaking or in relation to the negotiation of Access between an Applicant and ARTC ("**Dispute**") then, unless otherwise expressly agreed to the contrary by both parties, such Dispute will be resolved in accordance with this clause 3.12 and either party may give to the other party to the Dispute notice in writing ("**Dispute Notice**") specifying the Dispute and requiring it to be dealt with in the manner set out in this clause 3.12. The parties will use reasonable endeavours acting in good faith to settle the Dispute as soon as is practicable.
- (b) Disputes in relation to an Access Agreement once executed will be dealt with in accordance with the provisions of that Access Agreement and are not dealt with under this Undertaking.

3.12.2 Negotiation

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

3.12.3 Mediation

- (a) If the Dispute is not resolved under clause 3.12.2 within ten (10) Business Days after the date of the Dispute Notice then:

- (i) if the parties agree, they will attempt to resolve the Dispute by mediation pursuant to clauses 3.12.3(b), (c) and (d); or
 - (ii) if the parties do not wish to resolve the Dispute by mediation under clauses 3.12.3(b), (c) and (d), either party may by notice in writing to the other and the arbitrator, refer the Dispute to be determined by arbitration under clause 3.12.4(b).
- (b) If the parties agree to attempt to resolve the Dispute by mediation, the Dispute will be referred to the chief executive officers of both parties who will attempt to resolve the Dispute, including by informal mediation.
- (c) If the Dispute is not resolved within ten (10) Business Days after being referred to the chief executive officers under clause 3.12.3(b), the Dispute will be referred to formal mediation in South Australia to be mediated by a single mediator appointed by agreement of the parties or if they fail to agree within ten (10) Business Days, a mediator appointed by the President of the Law Society of South Australia acting on the request of either party.
- (d) Unless the parties agree otherwise:
- (i) the mediation will be conducted by a mediator under the “Guidelines for Legal Practitioners Acting as Mediators” of the Law Society of South Australia (whether or not the mediator is a legal practitioner);
 - (ii) the parties may appoint a person, including a legally qualified person to represent it or assist it in the mediation;
 - (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.

3.12.4 Arbitration

- (a) If the Dispute is not resolved under clause 3.12.2, or at any time after the appointment of the mediator (if any) under clause 3.12.3(c), either party may by notice in writing to the other and the arbitrator terminate the mediation proceedings and notify the arbitrator of a Dispute to be determined by arbitration under this clause 3.12.4(a). If the Applicant serves notice on the arbitrator under this clause 3.12.4(a), that notice will also include an agreement by that Applicant to:
- (i) pay the amounts and rates described in clause 3.12.4(b)(xiii); and
 - (ii) indemnify the arbitrator from any claims made against the arbitrator arising in connection with the performance by the arbitrator of its duties under clause 3.12.4, such indemnity excluding circumstances where the conduct of the arbitrator constitutes wilful negligence, dishonest or unlawful conduct.

- (b) Where a Dispute is referred to arbitration in accordance with this clause 3.12.4(b), the following will apply:
- (i) The arbitrator will be the ACCC. For the purposes of a particular arbitration, the arbitrator is to be constituted by two (2) or more members of the ACCC nominated in writing by the chairperson of the ACCC.
 - (ii) The arbitrator will not proceed with the arbitration unless and until the Applicant has agreed to pay costs in accordance with the amounts or rates described in clause 3.12.4(b)(xiii) as determined by the arbitrator under that clause.
 - (iii) ARTC and the Applicant agree to adopt the arbitration procedures in Division 3 Subdivision D of Part IIIA of the TPA, except that:
 - (A) the arbitrator will observe the rules of natural justice but is not required to observe the rules of evidence;
 - (B) a party may appoint a person, including a legally qualified person, to represent it or assist it in the arbitration; and
 - (C) the arbitrator will include in the determination findings on material questions of law and fact, including references to evidence on which the findings of fact were based.
 - (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;
 - (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 their determination in a draft form to the parties and hear argument from the parties before making a final determination; and
 - (F) hand down a final determination in writing which includes all their reasons for making the determination.
 - (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 will take into account:
- (A) the principles, methodologies and provisions set out in this Undertaking;
 - (B) the objectives and principles enunciated in Part IIIA of the TPA and the Competition Principles Agreement;
 - (C) ARTC's legitimate business interests and investment in the Network;
 - (D) all costs that ARTC incurs in providing Access, including any costs of extending the Network, but not costs associated with losses arising from increased competition in upstream or downstream markets;
 - (E) the economic value to ARTC of any additional investment that the Applicant or ARTC has agreed to undertake;
 - (F) the interests of all persons who have rights to use the Network;
 - (G) the operational and technical requirements necessary for the safe and reliable operation of the Network;
 - (H) the economically efficient operation of the Network;
 - (I) the benefit to the public from having competitive markets; and
 - (J) any other matters that the arbitrator thinks are appropriate to have regard to.
- (vii) In making its determination, the arbitrator:
- (A) may deal with any matters referred to in section 44V of the TPAI;
 - (B) will not make a determination that would have any of the effects described in section 44W of the TPA;
 - (C) will take into account the matters referred to in section 44X of the TPA; and

- (D) otherwise comply with sub-clause 3.12.4(b)(iii).
- (viii) The arbitrator may publish its determination at its discretion subject to consideration of submissions by either party to the arbitration that information supplied by them contains commercially sensitive or confidential information. At any time prior to the making of the determination, either party may give notice to the arbitrator of the information supplied by it which is either commercially sensitive to it or subject to confidentiality obligations, including the reasons why such information is commercially sensitive or confidential. After considering such submissions, the arbitrator may decide not to publish as part of its determination the information that is commercially sensitive or confidential to either party to the arbitration.
- (ix) The arbitrator may join the conduct of separate arbitrations if the arbitrator considers that:
 - (A) there are one or more issues common to the arbitrations; and
 - (B) the joining of the arbitrations will not unreasonably delay the process, or unreasonably increase the costs, of the arbitrations.
- (x) The arbitrator may join one or more additional persons as a party to an arbitration if:
 - (A) the person applies in writing to be made a party and can demonstrate to the arbitrator an interest which is significant enough to reasonably warrant being made a party; and
 - (B) the arbitrator considers that making the additional person a party to the arbitration will not unreasonably delay the process, or unreasonably increase the costs, of the arbitration.
- (xi) If the arbitrator joins the conduct of separate arbitrations or joins an additional person as a party to the arbitration, the arbitrator will have regard to the wishes of the parties and the need for commercial confidentiality in determining how it will conduct the arbitration.
- (xii) The determination of the arbitrator will be final and binding subject to any rights of review by a court of law.
- (xiii) The arbitrator may charge for its costs of conducting an arbitration of a Dispute the amounts and rates (if any) prescribed by the Trade Practices Regulations 1974. If the Trade Practices Regulation 1974 do not prescribe such amounts or rates, the

arbitrator may charge the amounts and rates mentioned in regulation 6F of those regulations as amended from time to time.

- (xiv) The costs of the parties to the arbitration will be borne by the parties in such proportions as the arbitrator determines. Each party may make submissions to the arbitrator on the issue of costs at any time prior to that determination.
- (xv) Except where the determination or direction is subject to a review by a court of law, if an Applicant does not comply with a determination or direction of the arbitrator, then ARTC will no longer be obliged to continue negotiations regarding the provision of Access for that Applicant.
- (xvi) Except where the determination or direction is subject to a review by a court of law, ARTC will comply with the lawful directions or determinations of the arbitrator.
- (xvii) ARTC will indemnify the arbitrator from any claims made against it arising in connection with the performance by the arbitrator of its duties under clause 3.12.4, such indemnity excluding circumstances where the conduct of the arbitrator constitutes wilful negligence, dishonest or unlawful conduct.

PART 4

4 PRICING PRINCIPLES

4.1 Objectives

ARTC will develop its Charges with a view to achieving the objective set out in clause 1.2(d).

4.2 Charge Differentiation

In formulating its Charges, ARTC will have regard to a range of factors which impact on its business including, but not limited to, the following:

- (a) in particular, the Indicative Access Charges for Indicative Services set out in clause 4.6;
- (b) the particular characteristics of the relevant Service, which without limitation include axle load, speed, wheel diameter, Train length, origin and destination (including number and length of intermediate stops), departure and arrival times and days of the week;
- (c) the commercial impact on ARTC's business, which without limitation includes factors such as:
 - (i) the term of the Access Agreement;
 - (ii) the potential for growth of the business;
 - (iii) the opportunity costs to ARTC;
 - (iv) the consumption of ARTC's resources, including Capacity;
 - (v) the credit risk associated with the business;
 - (vi) the market value of the Train Path sought;
 - (vii) the Segments of the Network relevant to the Access being sought; and
 - (viii) previously negotiated Charges agreed under the terms of this Undertaking, where relevant, as published by ARTC as set out in clause 2.7(b);
 - (ix)
- (d) logistical impacts on ARTC's business which without limitation include:
 - (i) the impact on other Services and risk of failure of the Operator to perform; and

- (ii) reduced Capacity and system flexibility;
- (e) capital or other contributions by the Applicant to ARTC's costs; and
- (f) the cost of any Additional Capacity.

For the purpose of Clause 4.2 (c)(iv), ARTC will have regard to the predominant usage of the Network being for Indicative Services to which Indicative Access Charges apply. ARTC will also recognise that investment in the development of the Network is primarily to improve utilisation and performance of Indicative Services. As such, Capacity consumption in relation to Trains operating with characteristics other than that of Indicative Services will be determined having regard to the Capacity consumption of Indicative Services on a Network utilised by Indicative Services.

4.3 Limits on Charge Differentiations

- (a) Subject to Clause 4.2 above, in formulating its Charges, and subject to ARTC having an obligation under Clause 2.3 of the Indicative Access Agreement, ARTC will not have regard to:
 - (i) the identity of the Applicant; and
 - (ii) whether or not the Applicant is a Government Authority.
- (b) Subject to Clause 4.2 above, in formulating its Charges, ARTC will not differentiate between Applicants in circumstances where:
 - (i) the characteristics of the Services are alike; and
 - (ii) the Applicants are operating within the same end market.

For the purposes of this clause, ARTC will determine whether the characteristics of two Services are alike having regard to matters including but without limitation location, duration and quality of the Train Path, nature of Train consist, characteristics of the Service, longevity of Access, arrival and departure times of the day and week.

4.4 Revenue Limits

- (a) Notwithstanding any other clause within this Part 4, the Charges formulated by ARTC for the Services will be such that the revenue generated by ARTC for a Segment or group of Segments (applicable to the Service as the case may be) will:
 - (i) not be lower than the Floor Limit for that Segment or group of Segments (unless otherwise agreed by ARTC); and
 - (ii) not be higher than the Ceiling Limit for that Segment or group of Segments .

(b) The Floor Limit means revenue for ARTC sufficient to cover the incremental cost of that Segment or group of Segments. For the purpose of this clause, incremental costs means the costs that could have been avoided if a Segment was removed from the Network including Segment Specific Costs and Non-Segment Specific Costs relating to the following activities:

- (i) track and signalling and communication maintenance;
- (ii) maintenance contract support, administration and management and project management;
- (iii) train control and communication;
- (iv) train planning and operations administration; and
- (v) system management and administration;

but excluding Depreciation and return on assets relating to Segment Specific Assets and Non-Segment Specific Assets, such return being determined by applying a real Rate of Return to the value of these assets.

(c) Where applicable, the Ceiling Limit means revenue sufficient to cover the Economic Cost of that Segment or group of Segments.

(d) In calculating the Economic Cost for the purposes of the Ceiling Limit, the Network and Associated Facilities will be:

- (i) valued initially using the depreciated optimised replacement cost method of valuing assets (“Initial Regulatory Asset Base (Initial RAB)”);
- (ii) revalued annually by roll forward according to the following methodology:

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

$$(1 + CPI_{t-1}) * RAB_{t-1 \text{ start}} + \text{Net Capex}_{t-1} - \text{Depreciation}_{t-1}$$

where

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

$RAB_{t-1 \text{ end}}$ is the RAB at the end of the preceding year (t-1) as applicable. $RAB_{t-1 \text{ start}}$ is the RAB at the start of the preceding year (t-1) as applicable.

CPI_{t-1} is the inflation rate for the preceding year (t-1), determined by reference to the All Groups Consumer Price Index Statistics published for the March quarter of that year.

Net_Capex_{t-1} is the net additions to the RAB in year t-1 (that is out-turn Capital Expenditure by ARTC less any disposals during period t-1) on a Prudent basis.

$Depreciation_{t-1}$ is the Depreciation applicable to the RAB in year t-1.

For the purpose of this clause, the optimised replacement cost means the cost of replacement by commercially efficient application of best known currently available technology based on existing capacity and performance characteristics of the asset.

- (e) For the purpose of this Part 4, any increase to Capital Expenditure would be limited to that which may result from:
- (i) the addition of a capital or renewals project by ARTC needed to meet market demand for capacity and performance of the Network, or needed to extend the economic life of the Network;
 - (ii) an increase in the scope of works identified in the applicable ARTC Corridor Strategy current as at the Commencement Date or as varied from time to time; the addition of a capital or renewals project by ARTC resulting from what is considered to represent an efficient means to achieve that demand or extend that economic life;
 - (iii) a change in what is consistent with existing standard and configuration of adjacent and/or existing infrastructure with similar utilisation and market requirements, or its modern engineering equivalent;
 - (iv) whether expenditure is incurred efficiently in implementing the capital or renewals project, in the context of prevailing access and operating requirements, and input costs;
 - (v) adjustments in relation to the timing of commencement and/or commissioning of projects; or
 - (vi) the removal or addition of a capital or renewals project by ARTC that is supported by the industry.

For the purpose of this clause, ARTC will obtain the approval of the ACCC, having regard to the factors in this clause, for any increase to Capital Expenditure exceeding 20% of Capital Expenditure on the Network in any single year.

- (f) For the purposes of this Part 4, Economic Cost of a Segment means:
- (i) Segment Specific Costs;
 - (ii) Depreciation of Segment Specific Assets;

- (iii) a return on Segment Specific Assets, being determined by applying a real Rate of Return to the value of Segment Specific Assets;
 - (iv) an allocation of Non-Segment Specific Costs;
 - (v) an allocation of Depreciation of Non-Segment Specific Assets;
 - (vi) an allocation of return of Non-Segment Specific Assets, being determined by applying a real Rate of Return to the value of Non-Segment Specific Assets; and
 - (vii) the costs described in clause 4.4(f)(i) to (vi) as applicable to Additional Capacity.
- (g) For the purposes of clause 4.4(f), Non-Segment Specific Costs and Depreciation of, and return on, Non-Segment Specific Assets will be allocated to Segments in accordance with the following principles:
- (i) where possible, costs will be directly attributed to a Segment;
 - (ii) where possible, Non-Segment Specific Costs and Non-Segment Specific Assets will be identified with a corridor, corridors or identified as system-wide;
 - (iii) Non-Segment Specific Costs and Depreciation of, and return on, Non-Segment Specific Assets identified with a corridor or corridors, or identified as system-wide, will be allocated to those parts of Segments in that corridor or corridors, or, where identified as system wide, to Segments owned, leased or licensed by ARTC respectively, in proportion to:
 - (A) gtkm with respect to Non-Segment Specific Costs and Depreciation of, and return on, Non-Segment Specific Assets associated with track maintenance; and
 - (B) Train kilometres with respect to Non-Segment Specific Costs and Depreciation of, and return on, Non-Segment Specific Assets not associated with track maintenance.

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

- (h) The Rate of Return for the purposes of this Part will be equivalent to ARTC's weighted average cost of capital ("**WACC**") as accepted by the ACCC after consideration of all risks with the commercial environment in which ARTC operates on the Network, the elements of which will comprise:
- (i) a capital asset pricing model ("**CAPM**") method of determining the cost of equity;

- (ii) a debt to equity ratio which would be considered prudent for ARTC's business in relation to the Network by reputable lenders; and
- (iii) an appropriate adjustment (beta) factor to the equity risk margin appropriate for investment in railway infrastructure forming part of the Network.

4.5 Structure of Charges

- (a) Access charges will comprise:
 - (i) a variable component, which is a function of distance and gross mass (\$/gtkm); and
 - (ii) a flagfall component, which is fixed and specific to each Train service type and Segment (\$/km), and may comprise,
 - (iii) an excess network occupancy component, which is a function of time (\$/hr or part thereof) sought by an Applicant for a Train Path on the Network, which is in excess of:
 - (A) a reasonable allowance for section run times for the applicable Train service type as determined by ARTC;
 - (B) dwells for crossing and passing other Trains as determined and made available by ARTC for the Train Path; and
 - (C) an allowance for the reasonable requirements for operational activities whilst the Train occupies the Network as specified at clause 4.6(c).
- (b) Subject to clause 4.5(c), the application of the excess network occupancy component relates only to the contracted Train path, and not the utilisation of the Train Path.
- (c) In determining the excess network occupancy component (if applicable), ARTC will pro-rata the flagfall component back to an amount per hour by reference to the total of section run times applicable to the relevant Segment to which the flagfall component applies.
- (d) Except as otherwise provided in the Access Agreement, the flagfall component and excess network occupancy component of the Charges, as applicable, are levied from the date ARTC grants access to the Train Path to the Operator until the expiry of that Train Path irrespective of whether such Train Path is utilised.
- (e) The excess network occupancy component will only apply where the Applicant seeks to contract a Train Path on the Network, which is in excess of:

- (i) a reasonable allowance for section run times for the applicable Train service type as determined by ARTC;
 - (ii) dwells for crossing and passing other Trains as determined and made available by ARTC for the Train Path; and
 - (iii) an allowance for the reasonable requirements for operational activities whilst the Train occupies the Network as specified at clause 4.6(c).
- (f) In relation to utilisation of a contracted Train Path, the excess network occupancy component will not be charged in instances where ARTC is not able to provide the contracted Train Path or an agreed substitute Train Path except where the failure to provide the contracted Train Path is a result of an Incident, Third Party Works or an emergency.
- (g) Notwithstanding the structure described above, all elements of the Charge are open to negotiation. Any variation to the structure described above will be agreed between ARTC and the Applicant.

4.6 Indicative Access Charge

- (a) As part of this Undertaking, ARTC will offer the Indicative Access Charges described in clauses 4.6(b) and 4.6(c) below for Applicants seeking Access for a Service with the following characteristics (Indicative Services):
- (i) maximum axle load of 21 tonnes;
 - (ii) maximum speed of 110 km/h; and
 - (iii) length not exceeding
 - (A) 1800 metres west of Adelaide and Parkes;
 - (B) 1500 metres east of Adelaide and Parkes (until Capital Expenditure is commissioned on the Segments Melbourne - Macarthur and Parkes - Cootamundra);
 - (C) 1800 metres on the Segments Melbourne - Macarthur, Parkes- Cootamundra (following commissioning of Capital Expenditure on the Segments Melbourne - Macarthur and Parkes - Cootamundra) and Southern Sydney Freight Line
- (b) The Indicative Access Charge will include the sum of the flagfall and variable components as follows:

Note: Effective as at 1 February 2008

Note: These Charges are exclusive of GST.

Segment	Variable \$/kgtkm (exclusive of GST)	Flagfall \$/km (exclusive of GST)
Adelaide - Parkeston	2.531	3.263
Adelaide - Melbourne	2.831	1.756
Melbourne - Macarthur	2.320	0.923
Newcastle - Queensland Border	2.950	0.855
Crystal Brook - Parkes	3.300	0.911
Cootamundra - Parkes	3.248	0.880
Adelaide - Pelican Point	3.727	2.343
Tarcoola - Asia Pacific Interface	4.741	3.954
Port Augusta - Whyalla	4.269	2.202
Moss Vale - Unanderra	3.730	0.949

Note: Effective as at 1 March 2013
 Note: These Charges are exclusive of GST.

Segment	Variable \$/kgtkm (exclusive of GST)	Flagfall \$/km (exclusive of GST)
Southern Sydney Freight Line	8.564	3.426

- (c) Where applicable, the Indicative Access Charge will include an excess network occupancy component as follows:

Note: Effective as at 1 February 2008
 Note: These Charges are exclusive of GST.

Segment	Excess network occupancy charge \$/hr or part thereof (exclusive of GST)	Allowance for reasonable requirement s for operational activities (hr)
Adelaide - Parkeston	261	1.2
Adelaide - Melbourne	124	0.7
Melbourne - Macarthur	69	0.2
Newcastle - Queensland Border	55	0.2
Crystal Brook - Parkes	80	0.6

Cootamundra - Parkes	54	0.1
Tarcoola - Asia Pacific Interface	150	0.1

- (d) ARTC may annually vary the Indicative Access Charges for Indicative Services (“Review Date”) by up to an amount determined in accordance with the following formula:

$$AC_t = AC_{t-1} * (1 + TV_i)$$

Where

AC_t is the Indicative Access Charges for Indicative Services following the relevant Review Date;

AC_{t-1} is the Indicative Access Charges for Indicative Services immediately preceding the relevant Review Date;

TV_i is the maximum variation to Indicative Access Charges (measured as a percentage) that may be applied from 1 July 2008 and thereafter from each 1 July during the Term (“Determination Date”) and is to be determined in accordance with the following formula;

TV_i is the greater of

(A) $((CPI\ Index_i \mid CPI\ Index_0) \mid CV_{i-1}) - 1) * 100$

(B) Zero

Where

$CPI\ Index_i$ is the All groups Consumer Price Index, Weighted Average of Eight Capital Cities, Index Number for the March quarter preceding the relevant Determination Date;

$CPI\ Index_0$ is the All groups Consumer Price Index, Weighted Average of Eight Capital Cities, Index Number for the March quarter of the year 2007, being 155.6.

CV_{i-1} is the cumulative effect of the variations actually applied by ARTC to the Indicative Access Charges for Indicative Services from 1 July 2008 to the relevant Determination Date (“i”). The cumulative effect is to be determined in accordance with the following formula:

$$CV_{i-1} = (1 + V_1) * (1 + V_2) * \dots * (1 + V_{i-1})$$

Where

$V_1, V_2 \dots V_{i-1}$ are the actual % variations which have been applied to the Indicative Access Charges for Indicative Services from 1 July 2008 to the relevant Determination Date.

For the purpose of determining TV_i for the sixth Determination Date, $CPI\ Index_0$ will be reset to $CPI\ Index_5$ and CV_5 will be reset to 1.

ARTC will publish:

- (a) $(CV_i - 1) \times 100$; and
- (b) $\left(\left(\frac{CPI\ Index_i}{CPI\ Index_0}\right) / CV_i - 1\right) * 100$ following each Review Date.

(e)

PART 5

5 MANAGEMENT OF CAPACITY

5.1 Capacity Analysis

- (a) A Capacity Analysis will be undertaken by ARTC as part of the preparation of the Indicative Access Proposal. The Capacity Analysis will identify whether, indicatively, there is sufficient Available Capacity to meet the Applicant's requirements and, if not, indicatively, the extent to which Additional Capacity is required.
- (b) Where ARTC believes that there are major impediments to the provision of Additional Capacity to meet the requirements of the Applicant, and that the Capacity enhancement that might be necessary would have a significant bearing on the economics of the proposed operation, the Capacity Analysis may be done in more detail which may require more time for the preparation of the Indicative Access Proposal (see clause 3.8(b)). Where a Capacity Analysis is to be done in more detail pursuant to this clause, ARTC may charge a fee that is based on reasonable cost and agreed with the Applicant.
- (c) The finalisation of the Capacity Analysis will enable the finalisation of the resultant Capacity Entitlement, Train Paths, Charges and terms and conditions of the resultant Access Agreement.

5.2 Capacity Allocation

- (a) In the event of multiple Applicants and subject to clause 5.2(b), Access Rights will be allocated to the Applicant with whom ARTC can negotiate and execute an Access Agreement which, in the opinion of ARTC, is most favourable to it.
- (b) As previously stated in this Undertaking, if, at any time, two or more Applicants are seeking access with respect to mutually exclusive Access Rights, each of the Applicants who have received an Indicative Access Proposal with respect to those mutually exclusive Access Rights will be so advised. In such circumstances, ARTC is entitled to seek to finalise an Access Agreement in respect of such Access with the Applicant with whom ARTC can agree terms and conditions, including Charges, which are considered in the opinion of ARTC, to be most favourable to it. Ordinarily, but without limiting ARTC's discretion in this regard, ARTC would make such a decision based on the Access Agreement that represented the highest present value of future returns to ARTC after considering all risks associated with the Access Agreement.

5.3 Capacity Transfer

- (a) The terms of the Access Agreement will provide that ARTC may reduce Train Paths by removing particular Train Paths where a Customer has under-utilised its Capacity Entitlement granted to it under that Access Agreement. Any decision by ARTC in this regard is subject to the dispute resolution provision in the Access Agreement.
- (b) A Customer may also reduce its Capacity Entitlement by cancelling Train Paths in accordance with the terms of the Access Agreement.
- (c) Train Paths may be assigned by a Customer to a third party with approval from ARTC in accordance with the assignment provisions of that Access Agreement.

PART 6

6 NETWORK CONNECTIONS AND ADDITIONS

6.1 Network Connections

- (a) In the event that other owners of track not part of the Network wish to connect such track to the Network, ARTC will consent to such a connection provided:
- (i) all relevant approvals from all relevant Government Authority have been obtained;
 - (ii) the configuration of the connection to the Network is such that the connection will not, by virtue of its existence, reduce Capacity;
 - (iii) procedural and physical interface arrangements are in compliance with ARTC's existing interface arrangements and there is no impact on the safety of all users of the Network;
 - (iv) the owners of track not part of the Network ensure that all users of such track comply with the directions of ARTC's Train controllers regarding entry to and exit from the Network;
 - (v) the connection meets ARTC's engineering and operational standards; and
 - (vi) the owners of track not part of the Network meet the initial and continued costs associated with constructing and maintaining the connection.
- (b) If ARTC has refused consent under clause 6.1(a)(ii), ARTC will, if requested to do so by the Applicant, notify the Applicant in writing of the reasons why the connection would, in its view, reduce Capacity.

6.2 Additional Capacity sought by Applicants

- (a) As indicated in clauses 3.8 and 5.1, ARTC will consider as part of the negotiation process, any requests by Applicants for Additional Capacity. ARTC will consent to the provision of Additional Capacity if:
- (i) in ARTC's opinion, such provision is commercially viable to ARTC having regard to the relevant Access Agreement and ARTC's total business activity; or
 - (ii) the Applicant agrees to meet the cost of the Additional Capacity; and
 - (iii) the Additional Capacity of the Network is, in the opinion of ARTC, technically and economically feasible, consistent with the safe and reliable operation of the Network, will not impact on the safety of

any user of the Network, does not reduce Capacity, meets ARTC's engineering and operational standards and does not compromise ARTC's legitimate business interests.

- (b) In the event ARTC agrees to the creation of Additional Capacity, ARTC's costs of providing that Additional Capacity may be met;
 - (i) by the Applicant reimbursing the relevant costs as and when they are incurred by ARTC; or
 - (ii) through increased Charges, or making other periodic payments, reimbursing ARTC for recurring costs, plus an annuity in advance calculated by application of WACC to ARTC's capital outlay; or
 - (iii) by such other way that ARTC and the Applicant agree.
- (c) The option of increasing Charges or making periodic payments including an annuity as set out in clause 6.2(b)(ii) is only available to an Applicant if arrangements are made which satisfy ARTC that the risk of the Applicant failing to make such payments is commercially acceptable and is at ARTC's discretion.
- (d) Any Additional Capacity, once created, will be owned and managed by ARTC.
- (e) Where requested to do so by an Applicant, ARTC will provide the Applicant written reasons for the basis of decisions made by it in relation to Additional Capacity.

6.3 Additional Capacity sought by ARTC for the benefit of the rail industry

- (a) ARTC may make an application to the ACCC to provide Additional Capacity, including a variation to Indicative Access Charges to reflect the cost of that Additional Capacity, at any time during the Term.
- (b) The ACCC may approve ARTC's application if it considers that ARTC has demonstrated that the provision of the Additional Capacity is worthwhile and beneficial to the industry having regard to:
 - (i) the pricing principles specified in section 44ZZCA of the TPA;
 - (ii) the legitimate business interests of ARTC;
 - (iii) the public interest, including the public interest in having competition in markets;
 - (iv) the interests of Applicants who might want access to the service;
 - (v) the need to meet market demand for capacity and performance of the Network, or need to extend the economic life of the Network;

- (vi) whether the scope of works is consistent with that identified in the applicable ARTC Corridor Strategy current as at the Commencement Date or as varied from time to time;
- (vii) the efficiency of the proposed means to achieve that demand or extend that economic life;
- (viii) what is consistent with existing standard and configuration of adjacent and/or existing infrastructure with similar utilisation and market requirements, or its modern engineering equivalent; and
- (ix) any other matters that the ACCC thinks are relevant;

irrespective of whether or not the provision of the Additional Capacity is supported by all Operators.

- (c) Where approved by the ACCC, expenditure incurred efficiently in providing the Additional Capacity, in the context of prevailing access and operating requirements and input costs, will be included in Capital Expenditure.

6.4 The ACCC may also have regard to expenditure incurred efficiently in providing the Additional Capacity, where approving a variation to Indicative Access Charges to reflect the cost of that Additional Capacity. Transport Act 1983 (Vic)

If:

- (a) the Operator is or becomes a train operator for the purposes of section 10 of the Transport Act 1983 (VIC); and
- (b) the Director of Public Transport gives a lawful direction to ARTC under section 10 of the Act requiring or approving a timetable change; and
- (c) the effect of the direction by the Director of Public Transport is to interfere with any existing train paths granted by ARTC to other rail operators; and
- (d) in order to minimise or prevent any interference to such existing train paths, ARTC, acting reasonably, chooses to effect improvements or extensions to the Network or Associated Facilities,

the reasonable costs incurred by ARTC in effecting such improvements or extensions will be payable by the Operator.

6.5 Industry Consultation

In regard to the planning for Additional Capacity on the Network sought in accordance with clauses 6.2 and 6.3 ARTC will:

- (a) provide Operators with a reasonable opportunity to present their views regarding Additional Capacity;

- (b) outline its views regarding Additional Capacity; and
- (c) circulate a summary of the results of consultation regarding Additional Capacity to the Operators including, where applicable, reasons for disagreeing with Operators' views.

PART 7

7 NETWORK TRANSIT MANAGEMENT

ARTC's objective in Train management is to exit Trains according to their contracted exit time. Where conflicts arise between Trains in transit, Train management will be conducted according to the Network Management Principles.

PART 8

8 PERFORMANCE INDICATORS

8.1 Commitment by ARTC

ARTC undertakes during the Term to maintain the Network (but only insofar as the Network is relevant to the Operator's Scheduled Train Paths) in a condition which is fit for use by the Operator to provide rail transport services having regard to the terms of the Access Agreements.

8.2 Reporting

- (a) Set out in Schedule G are the Performance Indicators relating to the Network which ARTC will publish on its website referred to in clause 2.7(b). The Performance Indicators will be published at the frequency referred to in Schedule G and will comprise the industry performance and not that of individual Operators. ARTC's obligations to report Performance Indicators with quarterly reporting frequency will not commence until the completion of the first full calendar quarter that is at least three months after the date of the acceptance by the ACCC of this Undertaking and will only relate to performance on the Network during that first full calendar quarter. ARTC's obligations to report Performance Indicators with annual reporting frequency will not commence until the completion of the first full financial year that is at least twelve months after the date of the acceptance by the ACCC of this Undertaking and will only relate to performance on the Network during that first full financial year.
- (b) ARTC will incorporate into its annual internal audit process a review of Performance Indicator reporting. The internal audit will be conducted by ARTC's internal auditor, which will be an entity independent of ARTC. The auditor will prepare a written report on the process and the reporting of the Performance Indicators together with a finding on the measurement of the Performance Indicators. ARTC will publish the findings on its website and make the report available to the ACCC upon request. ARTC's obligations to audit under this clause will not commence until the date that is six months after the date of the acceptance by the ACCC of this Undertaking and will only relate to Performance Indicator reporting occurring after the audit obligation commences.

PART 9

9 DEFINITIONS AND INTERPRETATION

9.1 The following terms will have the meaning set out below unless the context otherwise requires:

“**Access**” means access to use the Network, or any part thereof, for the purpose of running a Service;

“**Access Rights**” means the specific configuration and nature of Access sought by the Applicant;

“**Access Agreement**” means an access agreement entered into between ARTC and the Customer, the current indicative terms and conditions of which are set out in Schedule D;

“**Access Application**” means the application for Access as described in clause 3.6;

“**Accredited**” means in relation to an Operator, having accreditation as an operator as defined under the Rail Safety Act of each State in which such Operator runs its Services on the Network and “**Accreditation**” bears a corresponding meaning;

“**Additional Capacity**” means, in relation to the Network, the capability of the Network to carry additional task by an enhancement or improvement of the infrastructure associated with the Network;

“**Applicant**” means the person seeking Access from ARTC and seeking to become a Customer;

“**ARTC’s Environmental Licence**” means ARTC’s:

- (a) environment protection licence under the Protection of the Environment Operations Act 1997 (NSW) in respect of the Network that is situated in New South Wales; and
- (b) environment protection authority licence under the Environment Protection Act 1993 (SA) in respect of the Network that is situated in South Australia;

or such other replacement licences that may be issued from time to time;

“**Associated Facilities**” means all associated track structures, over and under track structures, supports (including supports for equipment or items associated with the use of the Network), tunnels, bridges, train control systems, signalling systems, communication systems and associated plant, machinery and equipment from time to time but only to the extent that such assets are related to or connected with the Network but does not include any sidings or yards;

“Available Capacity” means Capacity that is not Committed Capacity (including Committed Capacity in instances where it will cease being Committed Capacity prior to the time in respect of which Capacity is being assessed);

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

“Capacity” means the capability of the Network for Services, including Additional Capacity, after taking the account:

- (a) possessions of the Network reasonably required by ARTC for maintenance, repair or enhancements; and
- (b) the operation of work Trains;

“Capacity Analysis” means the assessment by ARTC as to the Available Capacity of the Network and whether or not there is sufficient Available Capacity to accept the Access Application and, if not, an assessment of the Additional Capacity required to accept the Access Application as described in Part 5;

“Capacity Entitlement” means the Capacity granted to the Operator under the Access Agreement in the form of Train Paths;

“Capital Expenditure” means annual expenditure as incurred by ARTC incorporated in annual re-valuation of the Network and Associated Facilities as contemplated in clause 4.4(d) and as estimated in Schedule H;

“Ceiling Limit” has the meaning described in clause 4.4(c);

“Charges” means the charges payable by the Operator to ARTC for the provision of Access under the Access Agreement;

“Committed Capacity” means that portion of the Capacity that is required to meet the Capacity Entitlement of Operators;

“Competition Principles Agreement” means the agreement entered into by the Commonwealth of Australia and each State and Territory of Australia in 1995 to implement the national competition policy of Australia;

“CPI” means the CPI All Groups, Weighted Average of Eight Capital Cities index number published by the Australian Bureau of Statistics;

“Customer” means an Applicant who has been granted Access and, where such Customer is also the Accredited Operator to operate the Trains relating to such Access, the expression “Customer” will also mean “Operator”;

“Depreciation” means matching asset cost, valued by the depreciated optimised replacement cost method (“**DORC**”) on a straight line basis over the useful life of the asset;

“Director of Public Transport” means the Director of Public Transport under the Transport Act 1983 (Vic), his successors, permitted substitutes and permitted assigns;

“Economic Cost” means the cost described in clause 4.4(f);

“Extension” means the addition of infrastructure not forming part of the Network when the addition is proposed as part of an Access Application or during the negotiation process;

“Floor Limit” has the meaning described in clause 4.4(b);

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

“Incident” has the meaning described in Schedule D;

“Indicative Access Charges” mean the Access Charges described in clause 4.6 as varied from time to time in accordance with clause 4.6(d);

“Indicative Access Proposal” means the preliminary Access proposal submitted by ARTC under clause 3.8;

“Indicative Access Agreement” means the indicative access agreement in Schedule D;

“Indicative Services” means Services operating on the Network with characteristics as prescribed in Clause 4.6(a);

“Interstate Rail Network” means the standard gauge rail network linking the mainland State capital cities and their ports, with connecting lines to Whyalla, Port Kembla, Newcastle, Alice Springs, Westernport and Kwinana;

“kgtkm” means a thousand gross tonnes multiplied by kilometres travelled;

“Material Default” means any breach of a fundamental or essential term or repeated breaches of any of the terms of the agreements referred to in clause 3.4(d)(ii);

“Network” means the network of railway lines delineated or defined in Schedule E, excluding the annexures to Schedule E;

“Network Management Principles” means the principles set out in Schedule F;

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

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

“**Operator**” means the Accredited Operator that will operate the Trains in accordance with the Access Agreement;

“**Performance Indicators**” means the performance indicators described in Schedule G;

“**Provider**” means a provider as defined by section 44B of the TPA;

“**Prudent**” means in relation to Capital Expenditure, capital and renewals projects identified, and expenditure incurred, having regard to:

- (a) the need to meet market demand for capacity and performance of the Network, or the need to extend the economic life of the Network;
- (b) whether the scope of works is consistent with that identified in the applicable ARTC Corridor Strategy current as at the Commencement Date or as varied from time to time;
- (c) what is considered to represent an efficient means to achieve that demand or extend that economic life;
- (d) what is consistent with existing standard and configuration of adjacent and/or existing infrastructure with similar utilisation and market requirements, or its modern engineering equivalent;
- (e) expenditure incurred efficiently in implementing the project, in the context of prevailing access and operating requirements, and input costs;
- (f) adjustments in relation to the timing of commencement and/or commissioning of projects; and
- (g) support by the industry;

“**Rail Safety Acts**” means the Acts passed by the Commonwealth, the States, the Northern Territory and the Australian Capital territory, which relate to rail safety, including the:

- (a) Rail Safety Act 1998 (WA);
- (b) Rail Safety Act 1996 (SA);
- (c) Rail Safety Act 2006 (Vic);
- (d) Rail Safety Act 2002 (NSW);

“**Rate of Return**” has the meaning described in clause 4.4(h);

“**Related Party**” has the meaning given to Related Body Corporate in the Corporations Law;

“**Rolling Stock**” means a locomotive, carriage, wagons or other vehicle for use on a railway;

“Segment” means a component of the Network as defined in Schedule I and distinguished for the purposes of applying Charges and is the smallest component for which the Ceiling Limit and Floor Limits apply;

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

“Segment Specific Costs” means operating costs that ARTC can directly identify with a Segment;

“Services” means a Train run by the Operator using the Network which provides railway freight or passenger services including work Trains;

“Solvent” means that, in the last five years:

- (a) the Applicant has been able to pay all its debts as and when they become due and has not failed to comply with a statutory demand under section 459F(1) of the Corporations Act 2001 (Commonwealth);
- (b) a meeting has not been convened to place it in voluntary liquidation or to appoint an administrator;
- (c) an application has not been made to a court for the Applicant to be wound up without that application being dismissed within one month;
- (d) a controller (as defined in the Corporations Act 2001 (Commonwealth)) of any of the Applicant’s assets has not been appointed; or
- (e) the Applicant has not proposed to enter into or enters into any form of arrangement with its creditors or any of them, including a deed of company arrangement;

“Term” means the term of this Undertaking as described in clause 2.3;

“Third Party Works” has the meaning described in Schedule D;

“TPA” means the Trade Practices Act, 1974 (Commonwealth);

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

“Train Path” means the entitlement of the Operator to use the Network between the times and between the locations as specified in an Access Agreement entered into between ARTC and the Operator (whether being scheduled or on an ad hoc basis);

“Undertaking” means this undertaking as amended from time to time in accordance with clause 2.4;

9.2 In this Undertaking 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 consent of a party means the prior written consent of that party;
- (e) headings are for convenient reference only and do not affect the interpretation of this Undertaking;
- (f) a reference to a clause, Part or a Schedule is a reference to a clause, Part or Schedule of this Undertaking;
- (g) a reference to a party includes its successors and permitted assigns;
- (h) notices that are required to be given in writing to ARTC may, if so agreed by ARTC, be provided in electronic form;
- (i) a reference to any Act includes all statutes regulations codes by-laws or ordinances and any notice demand order direction requirement or obligation under that Act (and vice versa) and unless otherwise provided in that Act includes all consolidations amendments re-enactments or replacements from time to time of that Act and a reference to "law" includes a reference to any Act and the common law; and
- (j) a reference to \$ and dollars is to Australian currency.

DATED the day of 2008.

SIGNED for and on behalf of **AUSTRALIAN RAIL TRACK CORPORATION LIMITED**
by its duly authorised Officer:

..... (Signature)

..... (Name)

..... (Position)

**ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION
PURSUANT TO SECTION 44ZZA OF THE TRADE PRACTICES ACT 1974 (CTH) ON XXX
XXXX**

.....
XXX
Chairperson
For and on behalf of the Australian Competition and
Consumer Commission

SCHEDULE A

(Access Application)

Any Electronic or written form is acceptable providing it clearly states:

“This is an application made in accordance with the ARTC Access Undertaking of [Date undertaking becomes effective]”

SCHEDULE B

(Information to Accompany Access Application)

The Applicant will furnish ARTC with the following information:

1. Applicants details including:
 - (a) Business Name of Applicant
 - (b) ACN and ABN of Applicant
 - (c) Business Address of Applicant
 - (d) Telephone contact details
 - (e) Fax contact details
 - (f) Email contact details
 - (g) Contact person for progression of Access Application
2. Access Requirements including:
 - (a) Required entry and exit locations to and from Network
 - (b) Frequency and times of entry and exit
 - (c) Any additional requirements relating to path scheduling to meet above-rail needs
 - (d) Term of access requirement including approximate commencement date
 - (e) Service category (maximum speed) of train or if not applicable alternative proposed train characteristics for path schedule required
 - (f) Maximum intended axle load of Service
 - (g) Physical Length of Service in metres
3. Details of all Rolling Stock

SCHEDULE C

(Essential Elements of Access Agreement)

- non-exclusive access to Network;
- contracted Train Paths subject to the matters outside ARTC's control, safety and Network Management Principles;
- each party warranting the accuracy of information provided;
- a process for renegotiation of Scheduled Train Paths consistent with the provisions of clause 2.9 of Schedule D;
- Customers paying an access charge based on flagfall, gtkm and, where applicable, the excess network occupancy component of Charges;
- charges varying in accordance with clause 4.5 of Schedule D;
- payment by the Customer of charges and premiums to the Transport Accident Commission in respect of the Network in Victoria;
- the right of ARTC to seek security from the customer;
- ARTC to conduct Train Control, issue Instructions, maintain and operate the Network in a non-discriminatory manner;
- the Customer providing warranties regarding Rolling Stock;
- the Customer complying with the Codes of Practice as published by ARTC from time to time and Instructions issued by ARTC;
- the party operating the Trains relating to the contracted Train Paths having appropriate Accreditation and insurance;
- ARTC having the ability to vary (temporarily or permanently), remove and review contracted Train Paths in appropriate circumstances and to take possession of the Network for repairs, maintenance, new works and upgrades;
- the ability of ARTC to conduct audits on the Operator;
- compliance by the Operator with plans dealing with Incidents, preservation of evidence and environmental requirements;
- compliance by the Operator with applicable and appropriate safety standards;
- contracted capacity not utilised seven out of twelve times may be withdrawn by ARTC;

- appropriate termination and suspension provisions;
- indemnities by the Operator and ARTC;
- dispute resolution procedures;
- provisions which allow ARTC to meet its obligations under its NSW lease, including without limitation:
 - the provision of all train paths will be subject to ARTC's obligations regarding passenger priority; and
 - the train decision factors which detail the allocation of train priority in real time train control;
- implementation and compliance with ARTC's Environmental Licence and environmental management system manual;
- provisions which allow ARTC to meet its obligations in relation to third parties' rights to conduct works on the Network;
- payment of, if payable, legal costs of execution (including without limitation any associated stamp duty, fees, fines and penalties thereon) in all relevant jurisdictions on the Access Agreement and any document contemplated or allowed by the access agreement;
- termination of Access Agreements on termination or cessation of ARTC's leasehold rights;
- warranties or guarantees from Operators sufficient to meet obligations or potential obligations under the Access Agreement.

SCHEDULE D

(Indicative Access Agreement as at Commencement Date)

(see attached fifty seven (57) pages)

SCHEDULE E

Network

South Australia, part Western Australia (Kalgoorlie to WA/SA border) and part New South Wales (SA/NSW border to Broken Hill)

1. Tarcoola - Asia Pacific Interface Point

Mainline from the 504.5 kms mark to the 510.85 kms mark.

2. Kalgoorlie to Crystal Brook

Mainline from the eastern end of Kalgoorlie at 1780.600 kms to Crystal Brook including all tracks, turnouts and signals forming the Crystal Brook and Coonamia triangle.

3. Port Augusta to Whyalla

Mainline from the point of connection with the Kalgoorlie to Port Augusta line to the main line facing points located at 166.590 kms at the northern entrance to the Whyalla yard.

4. Crystal Brook to Broken Hill

Mainline from the eastern end of the Crystal Brook triangle to the western end of Broken Hill at 391.990 kms.

5. Crystal Brook to Dry Creek

Mainline from the southern end of the Crystal Brook triangle to the southern apex of the Dry Creek triangle.

6. Adelaide Metropolitan Area

6.1 Mainline from Dry Creek including all tracks, points and signals forming the Dry Creek triangle to Port Adelaide Junction (signal 1155).

6.2 Mainline from Glanville (signal 1456) to Pelican Point/Outer Harbour.

6.3 Mainline from Gillman Junction to a point approximately 100 metres before the Eastern Parade level crossing at Port Adelaide flat.

7. Dry Creek to the South Australian/Victorian border

Mainline from the southern apex of Dry Creek Triangle to the Victorian border at 313.209 kms.

8. Crossing Loops

All crossing loops within each corridor described above.

9. Authority Points

All other rail track connecting with those running lines within each corridor described above between the mainline and the last signal, derail or other point of authority on that rail track protecting access to the running line.

Victorian Lease

Part 1 - Mainline South Australia to Melbourne*

Location	Boundary
SA/VIC Border	Marked distance 463.610 km
Mainline including crossing loops, dual gauge, turnouts, and diamond	Last long timber at turnouts to sidings and diamond crossings
Dimboola	Last long timber to Yaapeet branch line
Murtoa	Last long timber to Hopetoun branch line
Maroona	Last long timber to Portland branch line
Gheringhap	Last long timber at Divergence of dual gauge at Butcher Road 81.600 km
North Geelong "C"	Last long timber at divergence of dual gauge
Newport Last	Long timber at divergence of dual gauge
Brooklyn Last	Long timber at divergence of dual gauge
Sims Street Junction	Ref "Part 3 - Melbourne Boundaries"

Part 2 - Mainline New South Wales to Melbourne*

Location	Boundary
Albury**	Marked distance 304.163 km
Mainline including crossing loops, cripple roads, dual gauge, turnouts, and diamond	Last long timber at turnouts to sidings (other than cripple roads) and diamond crossings
Somerton	Last long timber in turnout to No. 3
McIntyre Last	Long timber in turnout No. 2
Sims Street Junction Ref	"Part 3 - Melbourne Boundaries"

* To the extent that such railway lines are owned by ARTC or leased by Victorian Rail Track to ARTC.

** To the extent that such railway lines are leased by RIC and SRA to ARTC.

Part 3 - Melbourne* Boundaries

South Dynon Junction to Spencer Street Location	Boundary
Spencer Street signal	SST184
Reversing Loop Junction	Last long timber in the mixed gauge
Contrans Siding	Dwarf Signal 204
South Dynon Terminal (east end)	Dwarf Signals 214 & 210
South Dynon Terminal (west end)	Dwarf Signals 126, 228, 230 & 232
<hr/>	
Sims Street Junction to North Dynon Location	Boundary
North Dynon Intermodal Terminal	Dwarf Signals 92 & 94
North Dynon Agents Area	Dwarf Signal 90
<hr/>	
South Dynon Junction to Appleton Dock Location	Boundary
Operations Terminal (west end)	Dwarf Signal 142
Operations Terminal (east end)	Dwarf Signal 236 Note: track on crossover between MOT No. 3 track and MOT no. 2 track, beyond the last long timber and turnout No. 235, does not form part of the ARTC Network. Dwarf Signal 238, although beyond the ARTC boundary, forms part of the ARTC Network.
Appleton Dock	Footscray Road Level Crossing

Other Areas Location	Boundary
Track to NRC Wagon maintenance Centre	Dwarf Signal 154
Locomotive Provisioning Centre (west end)	Dwarf Signal 130
Locomotive Provisioning Centre (east end)	Dwarf Signal 128 Note: track between the last long timber turnout No. 127D and the last long timber on turnout No. 123U, does not form part of the ARTC Network.
Sims Street Triangle	Sims Street Junction Weighbridge Junction South Dynon Junction

*To the extent that such railway lines are owned by ARTC or leased by Victorian Rail Track to ARTC.

New South Wales Lease

Mainline, crossing loops, dual gauge and turnouts as summarised below:

1. 648.000 km Albury¹ to 57.965 km Macarthur
2. 57.965 km Macarthur to 21.285 km Sefton Park East Junction (Southern Sydney Freight Line)²
3. Newcastle (Islington Junction)² 163.920 km on the Down Relief/Down Islington Loop/Up Islington Loop (Woodville Junction to Islington Junction) and 164.045 km on the Up and Down Mains (Islington to Hamilton) to 875.980 km Queensland Border (Border Loop Tunnel)^{3*}
4. 428.300 km northern apex and 428.900 km southern apex of the Cootamundra West Triangle to 1126.640 km Broken Hill⁴
5. 144.500 km northern end of north fork and 145.000 km southern end of south fork at Moss Vale Junction to 91.080 km Unanderra²

*Excludes Sandgate Flyover (for the purposes of Part 4 Pricing Principles only) and the following Newcastle Coal Lines:

ARTC Sector

915 Islington Junction - Scholey Street Junction

917 Scholey Street Junction - Waratah (via Coal)

925 Waratah - Hanbury Junction (via Coal)

926 Hanbury Junction - Sandgate (via Coal)

927 Hanbury Junction - Kooragang East Junction

931 Kooragang East Junction - Sandgate

936 Sandgate - Thornton (via Coal)

937 Thornton - Maitland (via Coal)

944 Telarah - Farley

- 1 To the extent where the railway line joins that part of the Network leased by Victorian Rail Track to ARTC.
- 2 To the extent where the railway line joins the rail network owned by RailCorp.
- 3 To the extent where the railway line joins the rail network owned by Queensland Rail.
- 4 To the extent where the railway line joins the rail network owned by ARTC.

ANNEXURE 1 TO SCHEDULE E

This annexure illustrates the Network in South Australia, part Western Australia (Kalgoorlie to WA/SA border) and part New South Wales (SA/NSW border to Broken Hill) as it was on 15 July 2008. The precise details of the Network in South Australia, part Western Australia (Kalgoorlie to WA/SA border) and part New South Wales (SA/NSW border to Broken Hill) will change over the duration of the Undertaking, but not in such a way as to be inconsistent with the textual descriptions in Schedule E. Applicants should refer to ARTC's website for an up to date map of the Network in South Australia, part Western Australia (Kalgoorlie to WA/SA border) and part New South Wales (SA/NSW border to Broken Hill).

Attached A3 Map ARTCS3070002 one (1) page.

ANNEXURE 2 TO SCHEDULE E

This annexure illustrates the Network forming part of the Victorian Lease as it was on 15 July 2008. The precise details of the Network forming part of the Victorian Lease will change over the duration of the Undertaking, but not in such a way as to be inconsistent with the textual descriptions in Schedule E. Applicants should refer to ARTC's website for an up to date map of the Network forming part of the Victorian Lease.

Attached A3 Map ARTCS3070003 one (1) page.

ANNEXURE 3 TO SCHEDULE E

This annexure illustrates the Network forming part of the New South Wales Lease as it was on 15 July 2008. The precise details of the Network forming part of the New South Wales Lease will change over the duration of the Undertaking, but not in such a way as to be inconsistent with the textual descriptions in Schedule E. Applicants should refer to ARTC's website for an up to date map of the Network forming part of the New South Wales Lease.

Attached A3 Maps ARTCS3070011, ARTCS3060214, ARTCS3060216, ARTC3060217 four (4) pages.

ANNEXURE 4 TO SCHEDULE E

This annexure illustrates the Network forming part of the New South Wales Lease as it was on 1 March 2013. The precise details of the Network forming the Southern Sydney Freight Line will change over the duration of the Undertaking, but not in such a way as to be inconsistent with the textual descriptions in Schedule E. Applicants should refer to ARTC's website for an up to date map of the Network forming the Southern Sydney Freight Line.

Attached A3 Map ARTCS one (1) page.

SCHEDULE F

(Network Management Principles)

This schedule applies in circumstances where Train Paths are interrupted due to matters outside ARTC's control and there is a need to resolve competing interests of users of the Network. Refer to the following three (3) pages.

NETWORK MANAGEMENT PRINCIPLES

Train Decision Factors

The following definitions apply in this Schedule F except where expressly limited.

“Commuter Peak Services” means RailCorp’s commuter rail passenger services arriving at Sydney Central Station or Newcastle Station between 0600 and 0900 hours and departing Sydney Central Station or Newcastle Station between 1600 and 1800 hours and continuing until they reach their destination point.

“Express Freight Services” means those freight services capable of maintaining sectional running times that are, or are determined by the appropriate Train Controller, to operate at faster sectional times than local Frequent-Stopping Services.

“Frequent-Stopping Services” means those rail passenger services that stop at most or all stations along their Train Path.

“Healthy Train” means a Train that, having regard to the daily train plan applicable on the day:

- (a) presents to the Network on time, is configured to operate to its schedule and operates in a way that it remains able to maintain its schedule; or
- (b) is running late only due to causes within the Network, but only where the root cause is outside the Operator’s control; or
- (c) is running on time, regardless of previous delays.

“Limited-Stop Services” means those rail passenger services that stop at a few selected stations along their Train Path.

“Long-distance Passenger Services” means those rail passenger services operating to or from points outside the Sydney metropolitan rail area, excluding RailCorp’s CityRail services.

“Non-Revenue Positioning Movements” means movements of Trains required for reasons other than revenue services.

“Special Event” means a major community, cultural, sporting or similar event within the metropolitan rail area, which is identified as such by a relevant NSW agency, and which may require:

- (a) a special timetable for the operation of RailCorp rail passenger services before, during and after the event; and
- (b) significant operational priority for RailCorp rail passenger services; and
- (c) consequential adjustments to other rail operators’ services.

“Train” means a single unit of rolling stock or 2 or more units of rolling stock including a locomotive or other self propelled unit coupled together to operate on the Track as a single unit.

“Train Control” means the control and regulation of all rail operations (including Train Movements, movements of rolling stock and track maintenance vehicles) to ensure the safe, efficient and proper operation of the Network.

“Train Movement” means a particular trip by a Train on a Train Path.

“Train Path” means the series of network segments over a particular time interval through which a Train can travel and may include stopping points and intervals and fuelling stations and other set down or changeover points.

TRAIN DECISION FACTORS:

1. **Where Trains are on-time**, they will be managed as specified in the daily train plan.
2. **Where one or more Trains are late or unhealthy**, they will be managed as specified in the matrices below subject to a rail operator’s preferences for its own services.

The 2 tables are used in conjunction with each other. Table 1 will enable a person undertaking Train Control (“**Train Controller**”) to define the relative priority of two conflicting Trains. Table 2 will specify the type of decision available to Train Controller in delivering Train Control directions to resolve the potential conflict.

Table 1 - Train Priority Matrix


Decreasing order of priority	Type of train service in ARTC Network
From Highest	Long-distance Passenger Services
	Commuter Peak Services and rail passenger services likely to affect Commuter Peak Services or Special Event services.
	Limited - Stop Services that are not Commuter Peak Services or Special Event Services.
	Freight services likely to affect Commuter Peak Services or Special Event services.
	Express Freight Services
	Frequent-Stopping Services that are not Commuter Peak Services.
	Non-express Freight Services
To Lowest	Non-Revenue Positioning Movements

Table 2 - Decision Matrix

Trains of Equal Health	Both Healthy One on Time & One Late	Both Late
Equal Priority Trains	Rule 1 + 2	Rule 3
Unequal Priority Trains		Rule 6 + 3
Higher Priority Train is On Time + Lower Priority is Late	Rule 5 + 2	
Higher Priority Train is Late + Lower Priority Train is On Time	Rule 4 + 2	
<hr/>		
Trains of Unequal Health	Rule 7 + 2	

Rule 1:

- (a) A Healthy Train should be managed such that it will exit on time.
- (b) If a Healthy Train is running late, it should be given equal preference to other Healthy Trains and advanced wherever possible to regain lost time. Any delay to other Healthy Trains as a result of such advancement must be kept to a minimum as defined in Rule 2.

Rule 2: The following delay limits apply to the full journey of a Healthy Train being held back:

- (a) the delay to the individual rail passenger service held back does not exceed 5 minutes;
- (b) there is a plan in place to recover lost time so that the downstream effect on the service held back and on individual subsequent rail passenger services also does not exceed 5 minutes;
- (c) the delay to a freight service held back does not exceed 15 minutes; or
- (d) there is a plan in place to recover lost time so that the downstream effect on the healthy freight service held back and on individual subsequent healthy freight services also does not exceed 15 minutes. Any plan for the recovery of time by freight services must be capable of being achieved prior to their entry into the Sydney metropolitan rail area.

Rule 3: Give preference to the Train whose Train performance indicates it will lose least or no more time and even make up time and hold the gain; and consider downstream effect to minimise overall delay.

Rule 4: A lower priority Train gets preference. A higher priority Train can be given preference subject to the delay to the lower priority Train being kept to a minimum as defined in Rule 2.

Rule 5: A higher priority Train should be given preference over a lower priority Train. A lower priority Train may be given preference over higher priority Train provided the delay to that Train is kept to a minimum as defined in Rule 2.

Rule 6: A high priority Train has preference, subject to Rule 3.

Rule 7: A Healthy Train should be given preference over an unhealthy Train. An unhealthy Train may be given preference over a Healthy Train provided the delay to that Train is kept to a minimum as defined in Rule 2.

SCHEDULE G

(Performance Indicators)

Table I - Service Quality Performance Reporting

Performance Measure	Responsibility	Reporting Frequency
Reliability¹		
Number and percentages of healthy ² Services ³ that exit the Network within tolerance ⁴ .	ARTC	Quarterly
Number and percentage of unhealthy Services that do not deteriorate further, within tolerance.	ARTC	Quarterly
Number and percentage of Services which are operated in a healthy manner.	Operator	Quarterly
Number and percentage of Services which exit the Network no later than schedule, within tolerance.	Both	Quarterly
Number and percentage of Services which enter the Network no later than schedule, within tolerance.	Operator	Quarterly
Number and percentage of Services which exit the Network no later than one hour ⁵ after schedule.	Both	Quarterly
Network Availability⁶		
Transit Time - Infrastructure Configuration Capability ⁷	ARTC	Quarterly
Transit Time - Infrastructure Practical Capability ⁸	ARTC	Quarterly
Transit Time - Availability to Market ⁹	ARTC	Quarterly
Transit Time¹		
Number and percentage of Services which transit ¹⁰ the Network no later than schedule transit, within tolerance.	Both	Quarterly
Sum of minutes delay (and minutes per hour transit) attributed to below rail cause by type of delay eg track, signals/communications, train management/control.	ARTC	Quarterly
Sum of minutes delay (and minutes per hour transit) attributed to above rail cause by type of delay eg late entry, yard/terminal, crew, locomotive, rollingstock, running.	Operator	Quarterly
Sum of minutes delay (and minutes per hour transit) unable to be attributed to a cause or beyond either party's reasonable control.	Neither	Quarterly
Temporary Speed Restrictions¹¹		
Number of kilometres and percentage of track under temporary speed restriction on the Network at the end of a reporting period.	ARTC	Quarterly
Track Condition¹¹		
Track quality measured by index. ¹²	ARTC	Quarterly

1. Separate reporting will be undertaken in relation to Services segregated by ARTC (and averaged or aggregated as applicable) as East- West, Melbourne - Sydney, Sydney - Brisbane and Melbourne - Brisbane. Reported performance will only relate to that on the Network. All measures would not reflect Services materially affected by a Force Majeure event (as defined in the Indicative Access Agreement).
2. For this purpose, a healthy service is one which:

- a. presents to the Network within tolerance⁴, is configured to operate to its schedule and operates in a way that it remains able to maintain its schedule; or
 - b. is running late only due to causes within the Network, but only where the root cause is outside the rail operator's control; or
 - c. is running within tolerance⁴, regardless of previous delays.
3. Services include all Committed and scheduled Capacity (excludes adhoc Services).
 4. For this purpose tolerance is to be 15 minutes (unless otherwise agreed).
 5. It may be appropriate to employ shorter or longer timeframes as appropriate depending on corridor transit times.
 6. Separate reporting will be undertaken in relation to an Indicative Service (and averaged as applicable) movement on Melbourne - Parkeston, Melbourne - Sefton Park East Junction, Newcastle - Queensland Border , and Cootamundra - Crystal Brook. Reported performance will only relate to that on the Network.
 7. A measure of transit time over the Network, delivered by the infrastructure given its configuration (alignment, grades, curves and associated permanent speed restrictions). Measured by simulated operation of a reference Indicative Service over the Network (excluding prevailing temporary speed restrictions). Reported on the basis of average speed.
 8. A measure of transit time over the Network, delivered by the infrastructure given its configuration (as measured by Transit Time - Infrastructure Configuration Capability) and maintenance requirements (including the transit time impact of temporary speed restrictions). The transit time impact of temporary speed restrictions is determined by applying the temporary speeds restrictions in place on the Network to a simulation model designed to determine the total of time lost by reference Indicative Service subject to each temporary speed restriction. Reported on the basis of average speed.
 9. A measure of transit time offered to the market, delivered by the infrastructure given its configuration, maintenance requirements and network usage (scheduled delays for path interactions). Measured by average scheduled transit time for Indicative Services adjusted for any Operator requirements (dwells, deviation from offered section run times). Reported on the basis of average speed.
 10. Transit time is the difference between entry and exit times and so includes all time for all enroute activities (scheduled and actual).
 11. Separate reporting will be undertaken in relation to Segments segregated by ARTC (and averaged or aggregated as applicable) as East- West, Melbourne - Sydney, Sydney - Brisbane. Reported performance will only relate to that on the Network.
 12. To be measured by Track Quality Index (TQI) and averaged over each Segment. The TQI is calculated over 100m sections, using 0.5m raw data from the AK car. TQI is the sum of the standard deviations (x3) in each rail for a 20m inertial top (average over left and right rail), horizontal alignment (versine over a 10m chord (average over left and right rail)), twist over 2.0m and gauge.

Table 2 - Periodic Reporting of ARTC Unit Costs

Cost Area	Unit Cost	Frequency
Infrastructure Maintenance ¹	\$/track km, \$/GTK	Annually
Train Control ²	\$/train km	Annually
Operations ³	\$/train km	Annually

1. Total annual expenditure associated with outsourced infrastructure maintenance and associated ARTC maintenance contract management function.
2. Total annual expenditure associated with ARTC train control and transit management function.
3. Total annual expenditure associated with 2 above, and ARTC operations planning and management function.

SCHEDULE H
(Capital Expenditure)

Segment/Activity	Estimated Expenditure*											
	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
1. Adelaide (Dry Creek) – Parkeston												
Improvement Project Works	597	1,629	1,913	1,913	1,913	-	14,000	54,825	40,825	-	-	-
ATMS Roll-out	-	-	-	-	-	-	-	-	36,200	36,962	-	-
Corridor Infrastructure Investment	9,476	10,151	10,313	10,243	10,363	10,563	5,754	6,189	6,591	6,321	6,399	6,399
Total Capital Expenditure	10,073	11,779	12,226	12,156	12,276	10,563	19,754	61,014	83,616	43,283	6,399	6,399
2. Adelaide (Dry Creek) – Melbourne (Spencer Street)												
Improvement Project Works	7,756	42,966	7,049	1,913	1,913	-	-	-	-	-	-	50,000
ATMS Roll-out	-	-	-	-	-	-	-	-	-	17,338	45,300	38,225
Corridor Infrastructure Investment	7,270	7,222	4,205	4,205	3,364	4,310	2,443	2,628	2,799	2,684	2,717	2,717
Total Capital Expenditure	15,026	50,189	11,254	6,118	5,277	4,310	2,443	2,628	2,799	20,022	48,017	90,942
3. Melbourne (Tottenham) – Macarthur												
Main South Track Improvement Works	118,322	300,807	194,873	-	-	-	-	-	-	100,000	100,000	50,000
Train Control Consolidation - South	48,852	5,691	-	-	-	-	-	-	-	-	-	-
Corridor Infrastructure Investment	6,783	11,586	2,330	2,082	2,405	2,170	4,511	7,560	4,600	6,410	6,353	6,353
Total Capital Expenditure	173,957	318,084	197,203	2,082	2,405	2,170	4,511	7,560	4,600	106,410	106,353	56,353
4. Newcastle (Islington Junction via mains) – Queensland Border (Border Tunnel)												
North Coast Improvement Works	80,266	125,752	27,799	728	-	-	-	-	-	-	-	-
North Coast Signals/Train Control Improvement Works	2,447	-	-	-	-	-	-	-	-	-	-	-
Northern Train Control Consolidation (allocation)	8,754	2,834	4,279	-	-	-	-	-	-	-	-	-
ATMS Roll-out	-	-	-	-	-	-	-	-	-	-	-	7,075
Corridor Infrastructure Investment	12,914	13,271	5,796	7,880	6,461	5,987	1,949	3,267	1,988	2,770	2,746	2,746
Total Capital Expenditure	104,381	141,857	37,874	8,608	6,461	5,987	1,949	3,267	1,988	2,770	2,746	9,821

5. Crystal Brook – Parkes												
Western NSW Improvement Works	8,834	9,986	417	-	-	-	14,000	21,000	-	-	-	-
Corridor Infrastructure Investment	3,569	3,775	2,166	4,256	3,723	1,616	3,082	3,314	3,530	3,385	3,427	3,427
Total Capital Expenditure	12,403	13,760	1,740	4,256	3,723	1,616	17,082	24,314	3,530	3,385	3,427	3,427
6. Cootamundra - Parkes												
Corridor Infrastructure Investment	1,771	783	3,660	2,807	1,399	970	569	612	651	625	632	632
Total Capital Expenditure	1,771	783	3,660	2,807	1,399	970	569	612	651	625	632	632
7. Adelaide (Dry Creek) – Pelican Point												
Corridor Infrastructure Investment	23	-	-	-	-	-	57	61	65	62	63	63
Total Capital Expenditure	23	-	-	-	-	-	57	61	65	62	63	63
8. Port Augusta – Whyalla												
Corridor Infrastructure Investment	-	50	50	-	-	-	216	232	247	237	240	240
Total Capital Expenditure	-	50	50	-	-	-	216	232	247	237	240	240
9. Moss Vale - Unanderra												
Corridor Infrastructure Investment	337	494	117	876	766	738	198	332	202	282	279	279
Total Capital Expenditure	337	494	117	876	766	738	198	332	202	282	279	279
10. Network (allocation)												
Track Investment (eg Wayside Detection, Wagons, Plant & Equipment)	2,520	2,558	-	5,677	5,722	-	-	-	-	-	-	-
Signals & Train Control Investment (ATMS Concept)	552	13,940	20,351	32,053	-	-	-	-	-	-	-	-
Communications Investment (eg 3G 850, NTCS, ICE)	3,670	28,330	17,920	-	-	-	-	-	-	-	-	-
Total Capital Expenditure	6,742	44,828	38,271	37,730	5,722	-	-	-	-	-	-	-
11. Other												
Southern Sydney Freight Line	3,464	94,518	143,651	-	-	-	-	-	-	-	-	-
Total Capital Expenditure	3,464	94,518	143,651	-	-	-	-	-	-	-	-	-

* Forward years show annual indicative investment expenditure based on preliminary forecasts and are subject to adjustment in scope and cost.

SCHEDULE I

(Segments)

- 1 Adelaide (Dry Creek) – Parkeston
- 2 Adelaide (Dry Creek) - Melbourne (Spencer Street)Melbourne (Tottenham) – Macarthur
- 3 Newcastle (Islington Junction via mains) - Queensland Border (Border Tunnel)
- 4 Crystal Brook – Parkes
- 5 Cootamundra – Parkes
- 6 Adelaide (Dry Creek) - Pelican Point
- 7 Port Augusta – Whyalla
- 8 Moss Vale – Unanderra

SOUTHERN SYDNEY FREIGHT LINE