

# ATTACHMENT 1 - ARTC HVAU / AHA amendments in response to industry comments

## Item 1 - Reduction in rights if Chain Coal Capacity oversold by ports

### TRAIN PATH SCHEDULE ACCESS HOLDER AGREEMENT

#### Definitions

~~Network Exit Capability~~Capacity Condition Precedent means the condition precedent set out in clause 4.1 of this Schedule;

## 4 Conditions Precedent

### 4.1 ~~Network Exit~~Capacity Condition Precedent

(a) ARTC's obligation to first make available each tranche of the Path Usages in **clause 3** of this **Schedule** and the Access Holder's entitlement to have access to each tranche of the Path Usages in **clause 3** is conditional upon ~~the~~ Access Holder providing:

(i) ~~evidence to the reasonable satisfaction of ARTC that it has sufficient Network Exit Capability, based on the applicable Service Assumptions, to offload the anticipated coal associated with those Path Usages in that tranche (and any other unconditional Path Usages) at the discharge point specified in clause 3 of this Schedule for a period of at least 10 years from the applicable Start Date; and.~~

*[Drafting note: To avoid doubt, if parties negotiate a term less than 10 years (i.e. a non-indicative agreement), the applicant will only be required to demonstrate Network Exit Capability for that agreed term.]*

(ii) where the tranche of Path Usages are for the purpose of transporting coal to a coal terminal at the Port of Newcastle, written confirmation from the HVCCC that there is sufficient Coal Chain Capacity to offload the anticipated coal associated with the Path Usages in that tranche (and any other unconditional Path Usages) at the discharge point specified in clause 3 of this Schedule for a period commencing at the Start Date and ending at the end of the first full Contract Year after the Start Date.

The Capacity Condition Precedent does not apply to a negative tranche of Path Usages. [Explanation - in preparing schedules and changes in operators ARTC has found it easiest to deal with variations in tranches of capacity by having path usage entitlements reduced at certain times by including a row providing a reduction in path usages.]

(b) Where the tranche of Path Usages are for the purpose of transporting coal to a coal terminal at the Port of Newcastle, ARTC will be satisfied that the Access Holder has sufficient Network Exit Capability if the

Access Holder provides ARTC with a copy of an executed contract with a Terminal Operator which provides for sufficient terminal allocations to offload the anticipated coal for a period of 10 years from the applicable Start Date after taking into account any other unconditional Path Usages.

- (c) If the Access Holder is able to ~~provide evidence to the reasonable satisfaction of ARTC that it has sufficient Network Exit Capacity to offload:~~
- (i) satisfy the Capacity Condition Precedent at the Start Date for some but not all of the ~~anticipated coal associated with the~~ tranche of Path Usages; or
- (ii) subsequently satisfy the Capacity Condition Precedent in relation to some or all of the Path Usages (to the extent not already removed by ARTC under **clause 4.2** of this **Schedule**) at a later date (on the basis that the reference in the Capacity Condition Precedent to the Start Date is read as being that later date),
- ~~then at the discharge point specified in clause 3 of this Schedule, based on the applicable Service Assumptions, for a period of at least 10 years from the Start Date, the Network Exit Capacity condition~~ the Capacity Condition Precedent will be considered satisfied in respect of those number of Path Usages in that tranche identified in clause 3 of this Schedule which ARTC considers equivalent to the lesser of the Access Holder's Network Exit Capacity or the available Coal Chain Capacity relevant to those Path Usages.
- (d) In determining the number of Path Usages which are equivalent to the Access Holder's Network Exit Capacity or the available Coal Chain Capacity relevant to Path Usages, under **clause 4.1** and **clause 4.2** of this **Schedule**, ARTC may have regard to, and is entitled to rely on, the information provided by, and the recommendations ~~by and opinions of,~~ the HVCCC.
- (e) This condition precedent is for the benefit of ARTC and may only be waived by ARTC. ARTC must promptly notify the Access Holder of the satisfaction or waiver of this condition precedent.

#### **4.2 Removal of path usages for failure to satisfy ~~Network Exit Capacity~~Capacity Condition Precedent**

- (a) If:
- (i) the Access Holder has been unable to satisfy the ~~Network Exit Capacity~~Capacity Condition Precedent in **clause 4.1(a)** in whole or in part for a tranche of Path Usages on by the later of the applicable Start Date, and if there are Project Completion Conditions Precedent for those Path Usages, satisfaction of those Project Completion Conditions Precedent; and
- (ii) the Access Holder cannot demonstrate to ARTC's reasonable satisfaction that it will be able to satisfy ~~that the Capacity~~ the Capacity Condition Precedent within three months from receipt of a notice by ARTC to do so,

~~(iii)~~ then ARTC has the right to elect by notice in writing to the Access Holder (of not less than 60 days) to delete the Path Usages for which the Access Holder ~~does not have~~ has not satisfied the Capacity Network Exit Capability Condition Precedent from **clause 3.2** or **3.3** of this **Schedule**.

- (b) If the Access Holder was able to ~~provide evidence to the reasonable satisfaction of ARTC that it has sufficient Network Exit Capability~~ satisfy the Capacity Condition Precedent for some but not all the Path Usages ~~to offload some but not all of the anticipated coal associated with the Path Usages in accordance with clause 4.1(b) of this Schedule~~, then ARTC will not delete those number of Path Usages which ARTC considers equivalent to the lesser of the Access Holder's Network Exit Capability or the available Coal Chain Capacity relevant to those Path Usages.
- (c) If ARTC elects to delete any Path Usage under **clause 4.2(a)**, the Access Holder's obligations to pay TOP Charges for those Path Usages will be reduced from the date of deletion to reflect the removal of the Path Usages.
- (d) To avoid doubt, if the Access Holder has been unable to satisfy the ~~Network Exit Capability~~ Capacity Condition Precedent and ARTC does not elect to delete Path Usages under **clause 4.2(a)**, then the Access Holder will remain liable for the TOP Charges associated with those Path Usages from the later of the applicable Start Date, and if there are Project Completion Conditions Precedent for those Path Usages, satisfaction of those Project Completion Conditions Precedent.

## ACCESS HOLDER AGREEMENT

### 13 Indemnities and Liability

#### 13.1 Mutual releases

- (a) Except for an entitlement to a TOP Rebate under **clause 5.4**, the Access Holder releases ARTC from any Claims it may have, or Liability incurred by the Access Holder, however arising (including under this agreement, in tort including negligence, or for breach of any statutory duty), relating to:

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- (vii) ARTC relying on any information provided by, or recommendation or opinions, of the HVCCC under **clauses 11.5, 11.6, 16.4, 16.6** or clause 4 of the Train Path Schedules;

#### 13.5 Related ~~Body Corporate~~ claims

The Access Holder indemnifies ARTC for any Liability relating to Claims:

- (a) made by ~~a Related Body Corporate~~ an Associate against ARTC relating to the matters set out in **clauses 13.1(a)(i) to 13.1(a)(vii)** except to the extent such Claims are made under written agreements which ARTC has with that ~~Related Body Corporate~~ Associate; and

- (b) for contribution or cross-claims made by an Operator against ARTC which relate to Claims made by the Access Holder or ~~a Related Body~~ ~~Corporate~~ an Associate against the Operator.

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## Item 2 - Consistency of System Assumptions

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### ACCESS UNDERTAKING

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#### 5.1 CAPACITY MANAGEMENT

##### 5.1 System Assumptions

- (a) ARTC will participate in the development of System Assumptions via the HVCCC and will use reasonable endeavours to agree System Assumptions with the HVCCC, the coal terminal operators at the Port of Newcastle and other relevant service providers. To avoid doubt, if a System Assumption is based on a subset of assumptions (which at the Commencement Date includes the Relevant System Assumptions), then ARTC will also use reasonable endeavours to agree those assumptions.
- (b) ARTC will ~~have regard~~ base to the System Assumptions in carrying out each Capacity Analysis carried out under section 5.2 on the Relevant System Assumptions and ~~-~~ARTC will reflect ~~the Track Related~~ the elements (f) to (j) of the Relevant System Assumptions in the Access Holder Agreements.
- (c) If ARTC does not agree with any assumption as detailed in the System Assumption Document as issued by the HVCCC from time to time (which to avoid doubt may include any Relevant System Assumption which is not agreed between the HVCCC and ARTC or an assumption detailed in the System Assumption Document that is based on a Relevant System Assumption which is not agreed between the HVCCC and ARTC), it must, within 20 Business Days of the publication of the System Assumption Document notify the HVCCC and the ACCC of, and publish on its website:
- (i) the assumption with which ARTC does not agree;
  - (ii) the grounds on which ARTC does not agree with that assumption, together with supporting documentation for those grounds in reasonable detail;
  - (iii) the assumption which ARTC reasonably proposes should apply instead of the assumption referred to in section 5.1(c)(i) (and, if applicable, the Relevant System Assumptions on which that assumption should be based).
- (d) If ARTC disagrees with the assumption on the basis that it considers (acting reasonably) that the practical adoption of:
- (i) ARTC's proposed assumption is necessary for reasons of safe operation of the Network or to prevent an adverse impact on the condition of the Network; or

(ii) the HVCCC's assumption would have an adverse commercial implication for ARTC;

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

- (e) Within twenty 20 Business Days of receipt of the notice referred to in **section 5.1(c)**, the HVCCC may notify ARTC that it wishes to raise a dispute based on the reasoning provided by ARTC for not adopting the relevant assumption. The HVCCC is not permitted to raise a dispute if ARTC disagrees with an assumption on the basis of one of the grounds in **section 5.1(d)** but to avoid doubt, this does not prevent the HVCCC raising a dispute on whether ARTC has acted reasonably in relying on **section 5.1(d)**.
- (f) Within 10 Business Days of the HVCCC giving a dispute notice under **section 5.1(e)**, senior representatives from ARTC and the HVCCC will meet and use reasonable endeavours, acting in good faith, to resolve the dispute by joint discussions. If the dispute is not resolved, either party may notify a dispute with the ACCC for determination by arbitration in accordance with **section 3.15(f)(ii)**.
- (g) Upon receiving dispute notice under **section 5.1(f)**, the ACCC will determine whether the assumption referred to in **section 5.1(c)(i)** or the assumption referred to in **section 5.1(c)(iii)** is the more reasonable assumption in the context of the daily operations of the Hunter Valley Coal Chain at the time of the publication of the System Assumption Document (as applicable), including for the purposes of accurately determining Capacity.
- (h) If the ACCC reasonably considers that it requires additional information from ARTC to make a determination under **section 5.1(g)**, it may request that information from ARTC and, upon receipt of such a request, ARTC must use reasonable endeavours to provide that information to the ACCC as soon as reasonably practicable.
- (i) Once the ACCC makes its determination under **section 5.1(g)** as to which assumption is the more reasonable assumption in the context of the daily operations of the Hunter Valley Coal Chain at the time of the publication of the System Assumption Document, that assumption will be regarded as a System Assumption or (where applicable) a Relevant System Assumption for the purposes of the Undertaking.
- (j) Until such time as the ACCC makes its determination, all calculations, assessments and determinations made by ARTC on the basis of the then applicable System Assumptions will be made on the basis of the assumption referred to in **section 5.1(c)(iii)**. If the determination of the ACCC is that the assumption referred to in **section 5.1(c)(i)** is to apply, that assumption will be regarded as a System Assumption or (where applicable) a Relevant System Assumption for the purposes of the Undertaking and ARTC will revise accordingly any calculations, amendments or determinations made on the basis of the assumption referred to in **section 5.1(c)(i)** in relation to the TOP rebates arising from the system true up test under clause 2.8 of Schedule 2 of Access Holder Agreements to the extent necessary.

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## 8 PROJECT INITIATION

### 8.1 Hunter Valley corridor capacity strategy

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

### DEFINITIONS - ACCESS UNDERTAKING

“**Capacity**” means the capability of the Network for Services, including Additional Capacity, based on and applying:

- (a) ~~Track Related~~ Relevant System Assumptions; and;
- (b) other assumptions related to operating the Network for non-coal Services as reasonably determined by ARTC~~;~~

“**System Assumptions**” means the assumptions for the Hunter Valley Coal Chain as detailed in the System Assumption Document as varied from time to time, including:

- (a) interface and live run losses between each element in the Hunter Valley Coal Chain;
- (b) agreed operating mode of the Hunter Valley Coal Chain;
- (c) surge and tolerance requirements;
- (d) capacities of fixed infrastructure;
- (e) rolling stock requirements;
- (f) vessel requirements;

~~(g) train lengths;~~

~~(h) train speeds;~~

~~(i) train axle loads; and~~

~~(j) section run times;~~

except if not agreed to by ARTC, then those System Assumptions reasonably determined by ARTC from time to time and published on its website in accordance with **section 5.1(c)(iii)**, unless otherwise determined in accordance with **section 5.1(g)**.

“**Relevant System Assumptions**” means the following assumptions provided to, or agreed with, the HVCCC and published on ARTC's website (subject to any confidentiality restrictions) or as determined under **section 5.1**:

- (a) ARTC track including path numbers;

- (b) live run management;
- (c) ARTC system losses;
- (d) maintenance intervention;
- (e) train parking capacity (for shut downs).
- (f) section run times;
- (g) maximum train length;
- (h) maximum train axle load;
- (i) maximum train speed; and
- (j) any other assumptions reasonably determined by ARTC from time to time as necessary for the purposes of determining Capacity.

~~“Track Related System Assumptions” means:~~

- ~~(a) those assumptions identified as the track related assumptions in the System Assumptions Document and agreed to by ARTC, as published by the HVCCC on its website as at the Commencement Date and from time to time, or if not published by the HVCCC, then as published by ARTC on its website as at the Commencement Date and from time to time; or~~
- ~~(b) if ARTC does not agree with the track related assumptions included in the System Assumptions Document or identifies additional assumptions, then those track related system assumptions reasonably determined by ARTC from time to time and published on its website;~~

## 2.6 Contact details

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

...

~~(xvi) Track Related System Assumptions not published by the HVCCC~~

## 13.2 Negotiation of key performance indicators for each Access Agreement

- (a) ARTC will negotiate with an Applicant in good faith the key performance indicators to be included in an Access Agreement, and any changes to the key performance indicators in the Access Agreement during the term of the Access Agreement.
- (b) In negotiating the key performance indicators for an Access Agreement ARTC’s objectives include to have a consistent set of key performance indicators for all Access Holders which are also consistent with:



- (i) the applicable ~~Track-Related~~ Relevant System Assumptions;

## ACCESS HOLDER AGREEMENT

### Definitions -

**Capacity** means [same changes as to Access Undertaking definition above]

**System Assumptions** means [same changes as to Access Undertaking definition above]

## Schedule 2

### 2.3 Determination of Network Path Capability

- (a) For each Contract Year subsequent to the first Contract Year, ARTC will determine the NPC for each Period in that Contract Year in accordance with the following steps:
- (i) Following consultation with the HVCCC on the expected Capacity of the Network, ARTC will use its best endeavours to publish by 30 September of the previous Contract Year, and in any event before the commencement of the Contract Year, the number of Functional Coal Paths that the Network would be capable of providing in the Contract Year in each Pricing Zone in each Period on the theoretical assumption that the Network was only used by Coal Trains and which is consistent with the Relevant System Assumptions to the extent applicable (NPC)
- ....
- (iv) If the project to deliver Additional Capacity is delayed beyond the expected completion date, or the project delivers less Capacity than anticipated, then ARTC will, prior to the commencement of the Month when the Additional Capacity was due to be commissioned, advise the Access Holder by notice of any reduction in the NPC in those subsequent Months, which reductions will only reflect that delay to or the extent to which the project delivers less Capacity than anticipated.
- (v) If amendments are agreed to the ~~track-related~~ Relevant System Assumptions by ARTC and the HVCCC, ~~in which case~~ ARTC will vary the NPC as appropriate to reflect the number of Functional Coal Paths that would be available on the application of the new ~~track-related~~ Relevant System Assumptions.
- (b) For the purposes of this Schedule, a Functional Coal Path is one which is capable of being used by a Coal Train which complies with Assumptions elements (f) - (j) of the Relevant System Assumptions ~~the track-related System Assumptions, which are elements (g) to (j) of the definition of System Assumptions (except if not agreed to by ARTC, then those track-related System Assumptions published on the ARTC website) and any other measure of performance that ARTC reasonably considers has an~~



~~impact on the Capacity of the Network, following consultation with the HVCC.~~

- (c) To avoid doubt the Network Path Capability of a Quarter will be equal to the sum of the Network Path Capability of each Month making up that Quarter.

## ACCESS HOLDER AGREEMENT

### Schedule 2

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#### 2.8 Annual Audit

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- (c) If, within 5 Business Days of receipt by the ACCC of the information or documents from ARTC referred to in subclause (a), or such further period as required by the ACCC and notified to ARTC:
- (i) the ACCC does not object to the Proposed Auditor, ARTC will appoint the Proposed Auditor as auditor to conduct the TUT Audit (Auditor) as soon as practicable on terms approved by the ACCC, ~~and forward to the ACCC a copy of the executed terms of engagement of the Auditor~~; or
  - (ii) the ACCC does object to the Proposed Auditor, ARTC will as soon as practicable appoint a person identified by the ACCC as the Auditor on terms approved by the ACCC,  
and forward to the ACCC a copy of the executed terms of engagement of the Auditor.
- (d) Following the appointment of the Auditor in accordance with subclause (c), ARTC will instruct the Auditor to conduct the TUT Audit as soon as practicable in accordance with the approved terms referred to in subclause (c).
- (e) Subject to the Auditor continuing to meet the requirements in subclause (b) for the period of appointment, ARTC may appoint the Auditor to conduct the TUT Audit for consecutive Contract Years.
- (ef) A person who is, or who has been, appointed as Auditor is eligible for re-appointment as Auditor, and will not be taken to fail the independence requirement on the sole basis that the person was previously appointed as Auditor under this clause 2.8.
- (fg) ARTC will maintain and fund the Auditor and will indemnify the Auditor for reasonable expenses and any loss, claim or damage arising from the performance by the Auditor of functions required to be performed in conducting the TUT Audit, except where such expenses, loss, claim or damage arises out of the negligence, fraud, misconduct or breach of duty by the Auditor.
- (gh) The parties agree that the actual costs reasonably incurred in connection with the conduct of the TUT Audit (which will include those costs referred to in subclause (fg) will be included in the Economic Cost as defined in the Access Undertaking.
- (hi) ARTC will provide to the Auditor any information or documents requested by the Auditor that the Auditor reasonably considers necessary and relevant for conducting the TUT Audit.
- (ij) Not later than 30 April of the following Contract Year, ARTC will provide the final written report of the TUT Audit, as prepared by the Auditor, to the ACCC to review as part of the annual compliance assessment process under the Access Undertaking.

- (k) If, as a result of the TUT Audit, the ACCC determines that the TOP Rebates for the Access Holder have not been calculated correctly, then ARTC will pay any underpayment and is entitled to recover any overpayment as determined by the ACCC and in accordance with the procedures set out section 4.10 of the Access Undertaking.

## ACCESS UNDERTAKING

### 4.9 Unders and overs accounting

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

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### 4.10 Annual ACCC compliance assessment

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- (f) The ACCC will review the final audit report contemplated at clause 2.8 of Schedule 2 of the Indicative Access Holder Agreement and will decide, and will notify ARTC of, any amounts of underpayment of rebates that are owing to Access Holders or amounts of overpayment of rebates ARTC is entitled to recover.
- (g) If, at any time after receiving the final audit report, the ACCC considers that a reconciliation between ARTC and Access Holders in respect of the incorrect calculation of rebates under the system true up test under schedule 2 of Access Holders Agreements will not materially affect the unders and overs accounting, then the ACCC will decide the amounts to be made or recovered by ARTC.
- (h) Within 15 Business Days of receiving notification from the ACCC under **subsection (g)**, ARTC will inform the individual Access Holders of any amounts of underpayment of rebates owing to them or amounts of overpayment of rebates they are required to remit to ARTC as determined by the ACCC.
- (i) Within 15 Business Days of giving that notice, ARTC will make payments of the amounts owing as advised under **subsection (h)** to individual Access Holders and is entitled to recover from Access Holders any amounts owing to it.

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## Item 4– efficient train configuration

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### ACCESS UNDERTAKING

#### 4.15 Charge differentiation

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

(i) reflect the commercial impact on ARTC’s business of the relative consumption of Capacity and Coal Chain Capacity compared to the Indicative Service and the logistical impact on ARTC’s business of the relative reduction in Capacity and relative reduction in Coal Chain Capacity compared to the Indicative Service; and

(ii) ~~ARTC will~~ have regard to a range of factors which impact on its business and Coal Chain Capacity including:

~~(i)(A)~~ (A) the Indicative Access Charges for Indicative Services;

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

~~(iii)(C)~~ (C) the commercial impact on ARTC’s business which includes:

~~(A)(aa)~~ (aa) the term of the Access Holder Agreement;

~~(D)(ab)~~ (ab) the consumption of ARTC’s resources; ~~including Capacity;~~

~~(C)the consumption of Coal Chain Capacity;~~

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

~~(E)(ad)~~ (ad) previously negotiated Charges agreed under the terms of the Undertaking, where relevant, as published by ARTC under **section 2.7(b)**;

~~(iv)(D)~~ (D) logistical impacts on ARTC’s business which include:

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

(B) ~~reduced Capacity and reduced Coal Chain Capacity and~~ system flexibility;

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

~~(vi)~~(F) the cost of any Additional Capacity; and

~~(vii)~~(G) until 31 December 2014, the Charges for the services described in **section 4.18(c)** as Interim Indicative Service 1 and Interim Indicative Service 2 in Pricing Zone 1 will be the same, and the Charges for Interim Indicative Service 1 and Interim Indicative Service 2 in Pricing Zone 2 will be the same, notwithstanding those services will no longer constitute Interim Indicatives Services as a result of the Indicatives Services under **section 4.17** coming into effect. To avoid, doubt, for the purposes of this **section 4.15(a)(vii)**, Charges are taken to mean the unit TOP price and unit Non-TOP price.

#### **4.16A Initial Indicative Service**

(a) ARTC will, in consultation with the HVCCC:

(i) select a reasonable number of alternative Coal Train configurations in addition to the Coal Train configurations forming the Interim Indicative Services;

(ii) test the consumption of Coal Chain Capacity by those Coal Train configurations using the HVCCC modelling existing as at the Commencement Date (including, to avoid doubt, the coal chain infrastructure constraints as used by existing HVCCC modelling) unless otherwise agreed by ARTC and the HVCCC; and

(iii) select the Coal Train configuration which it considers will represent the most efficient utilisation of Coal Chain Capacity when compared to the other Coal Train configurations tested.

(b) ARTC will consult with the HVCCC, Access Holders and Operators on the initial indicative service selected under **subsection (a)**.

(c) Within 5 months of the Commencement Date, and after having regard to submissions arising from the consultation at **subsection (b)**, ARTC will:

(i) submit to the ACCC:

(A) the characteristics of the initial indicative service selected as a result of the process described in **subsection (a)**; and

(B) the indicative access charge for the initial indicative service; and

(ii) seek the approval of the ACCC to vary this Undertaking to provide for the adoption of the initial indicative service and indicative access charges applicable until ARTC develops and the ACCC accepts the indicative service and indicative charges under **section 4.17**.

- (d) Within 30 Business Days of receiving approval from the ACCC to vary the Undertaking under subsection (c), publish the characteristics of the initial Indicative Service, initial Indicative Access Charge and Charges for non-Indicative Services, including those which were Interim Indicative Services and the annual process for the finalisation of Indicative Access Charges under section 4.19 will not apply to the determination of Indicative Access Charges for that year.

#### 4.17 Determination of the Indicative Service (efficient train configuration)

- (a) ARTC ~~must~~will develop, in consultation with the HVCCC, the proposed characteristics of the indicative service which ARTC considers will deliver the optimum utilisation of Coal Chain Capacity, given certain System Assumptions. The intention is that this process will be a more robust modelling exercise than that used for selecting the initial Indicative Service under section 4.16A and will include scenarios under which System Assumptions are also varied in addition to the Coal Train configurations.
- (b) Within ~~[to be determined]~~30 months of the Commencement Date ~~of ARTC being reasonably satisfied that the modelling undertaken by the HVCCC under section 4.17(a) is sufficiently robust to enable an efficient train configuration that optimises Coal Chain Capacity to be accurately determined and, in any event within [to be determined] of the Commencement Date,~~ ARTC will:
- (i) consult with the HVCCC, Access Holders and Operators on the characteristics of the indicative service that will deliver the optimum utilisation of Coal Chain Capacity, given certain System Assumptions, and whether gtkm is the appropriate pricing unit to encourage efficient consumption of Capacity;
  - (ii) submit to the ACCC proposed characteristics of the indicative service developed in consultation with the HVCCC which ARTC considers will deliver the optimum utilisation of Coal Chain Capacity, given certain System Assumptions and, having reasonable regard to submissions arising from the consultation at subsection (i) above, if ARTC considers that gtkm is not an appropriate pricing unit to encourage efficient consumption of Capacity, an alternative pricing unit that ARTC considers will encourage efficient consumption of Capacity; and
  - (iii) seek the approval of the ACCC to vary this Undertaking to provide for the adoption of the proposed characteristics as those of the indicative service and the alternative pricing unit (if any).
- (c) In consulting with the HVCCC, Access Holders and Operators, ARTC will:
- (i) assist the HVCCC to undertake modelling; and
  - (ii) will follow the principles of consultation set out in **Schedule F**,
- with the objective of determining the Coal Train configuration which will deliver optimum utilisation of Coal Chain Capacity and ARTC and

will use its best endeavours to agree with the HVCCC the characteristics to be submitted to the ACCC as the proposed indicative service.

- (d) In support of its application to vary the Undertaking and the adoption of the characteristics proposed in **section 4.17(b)** as the indicative service, ARTC will submit to the ACCC:
  - (i) proposed characteristics of the Indicative Service which it considers will deliver optimum utilisation of Coal Chain Capacity including:
    - (A) maximum train axle load;
    - (B) maximum train speed;
    - (C) ~~T~~train length; and
    - (D) section run times;
  - (ii) the proposed indicative access charges for the proposed indicative service; and
  - (iii) supporting documentation.
- (e) If the ACCC accepts the characteristics proposed by ARTC in consultation with the HVCCC as the Indicative Service, and accepts the variation sought by ARTC to this Undertaking, ARTC will:
  - (i) promptly publish on its website:
    - (A) the characteristics proposed under **section 4.17(b)** as the Indicative Service; and
    - (B) the indicative access charges accepted by the ACCC for the Indicative Service as the Indicative Access Charges, in the format set out in **section 4.14(c)**.
  - (ii) offer the Indicative Access Charges to Applicants seeking Coal Access Rights for the Indicative Service (including Access Holders seeking to vary their Access Holder Agreements so as to operate Indicative Services on existing contracted Train Paths) to apply in the year immediately following the date the variation to the Access Undertaking accepting the Indicative Service and Indicative Access Charge comes into effect and the annual process for the finalisation of Indicative Access Charges under **section 4.19** will not apply to the determination of Indicative Access Charges for that year; and
  - (iii) determine Charges for Coal Access Rights other than Access Rights for the Indicative Service to apply in the year immediately following the date the variation to the Access Undertaking accepting the Indicative Service and Indicative Access Charge comes into effect, in accordance with **section 4.15** and in doing so will take into account the Indicative Access Charges accepted by the ACCC in determining those Charges.



- (f) If the ACCC does not accept the ~~train configuration~~ characteristics proposed by ARTC as the indicative service. ÷
- ~~(i) the Interim Indicative Services and the Interim Indicative Access Charges will continue to apply; and~~
- ~~(ii)~~ ARTC will, within a timeframe reasonably specified by the ACCC (not to be less than 3 months) having regard to the need for further modelling and industry consultation, submit revised characteristics to the ACCC and seek the approval of the ACCC to vary this Undertaking to provide for the adoption of the revised characteristics as the indicative service.

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#### 4.18 Interim Indicative Services and Interim Indicative Access Charges

- (a) During the period between the Commencement Date and the time the initial Indicative Service and the initial Indicative Access Charges accepted by the ACCC come into effect under ~~section 4.17~~ section 4.16A(e) (or if not accepted, the Indicative Service being accepted by the ACCC under section 4.17) (“the Interim Period”), the indicative services assumptions in section 4.18(c) will apply as the indicative services (“**Interim Indicative Services**”) and ARTC will, using reasonable endeavours, and having regard to available information, determine:

...

Related definitions in the Access Undertaking

“**Indicative Services**” means Services operating on the Network with characteristics as determined in accordance with section 4.16A or 4.17;

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#### Item 6 – Mutually Exclusive Applications

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#### ACCESS UNDERTAKING

#### 3.13 Application for mutually exclusive Access Rights

- (a) This ~~clause~~ section 3.13 applies to the extent ~~where~~ two or more Applicants have submitted an Access Application for Access Rights to Available Capacity existing and commissioned at the time each of the Access Applications is received, each of which satisfies the requirements of section 3.7(a)(ix)(A) and it is not reasonably possible for ARTC to fulfil, in whole, the request for Access Rights made under those Access Applications (each a “**Mutually Exclusive Access Application**”).
- (b) An Access Application may become a Mutually Exclusive Access Application at any time before an Access Agreement is executed pursuant to that Application.
- (c) An Applicant will be notified as soon as practicable after ARTC has identified that its Application has become a Mutually Exclusive Access

Application and the extent to which the Access Rights sought are affected.

- (d) ARTC will, if requested, provide reasonable assistance to an access seeker to identify whether its Access Application can be modified so that it is no longer a Mutually Exclusive Access Application.
- (e) Subject to **section 3.13(f)**-, ARTC will allocate the affected Access Rights to the Applicant under a Mutually Exclusive Access Application who accepts an Access Agreement with ARTC which, in the opinion of ARTC, is most favourable to it. Unless impracticable, ARTC would make such a decision based on the Access Agreement that represented the highest present value of future returns to ARTC after considering all risks associated with the Access Agreement (including the relative time likely to be required to finalise an Access Agreement with each party).
- (f) ~~An Applicant will not be allocated Coal Access Rights unless it is able to satisfy the Network Exit Capability requirement in section 3.7(a)(ix).~~ If in ARTC's reasonable opinion, two or more Mutually Exclusive Access Applications provide ARTC with a comparable present value of future returns to ARTC determined in accordance with subsection (e) and after considering all risks associated with the Access Agreements, ARTC will offer to allocate the affected Access Rights on a pro rata basis to the relevant Applicants.  
  
For example, ARTC would offer to pro-rate the Affected Access Rights to export producers if the two applications satisfied certain criteria including the same zone, same terms and conditions and the term of each was greater than 10 years.
- (g) To avoid doubt, if an Access Holder seeks to renew Coal Access Rights in accordance with a specific right of renewal provided in its Access Holder Agreement, that request for a renewal will not be treated as an Access Application and will have, to the extent provided in the Access Holder Agreement, priority over an Access Application for Access Rights which are mutually exclusive with the Coal Access Rights sought to be renewed.

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## Issue 6 - RCG Voting Rights

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### ACCESS UNDERTAKING

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## 9 INDUSTRY CONSULTATION

### 9.2 Unders and overs accounting

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- (f) In determining voting entitlement, other than for the purposes of endorsing project assessment at section 9.4(d) and any stage beyond that, ARTC may, at its discretion, include any coal gtkm in the Pricing Zone

which ARTC reasonably expects will become contracted coal gtkm, for the current calendar year or for any of the following nine calendar years, immediately following the completion of the proposed project. To avoid doubt ARTC may, in exercising this discretion, determine that a prospective access holder which is not a current member of RCG has a voting entitlement.

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## Issue 7 - Review of Undertaking

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### ACCESS UNDERTAKING

#### 2.3 Review of Undertaking

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- (f) At the completion of the review, ARTC:
  - (i) will publish a report on its website (subject to confidentiality restrictions); ~~and provide a copy to the ACCC~~, setting out its view on the effectiveness of the Undertaking and responding to any material concerns raised by Access Holders or stakeholders in the context of the review;
  - (ii) will provide a copy of the report and any written submissions provided by Access Holders and other stakeholders to the ACCC;
  - (iii) may submit a proposed variation to the Undertaking to the ACCC for approval, or if it chooses not to, will set out in the report reasons why it is not submitting a proposed variation; and
  - (iv) where ARTC submits to the ACCC a proposed variation to the Undertaking for approval, it will do so at the same time as it submits a revised Rate of Return proposal to the ACCC for approval under **section 4.8(b)**.