

Further amendments to the 2010 HVAU, IAHA, and IOSA

The amendments below are changes proposed by ARTC subsequent to the changes:

- contained in the Revised 2010 HVAU and Revised 2010 IAHA (provided to the ACCC on 7 April 2011); and
- suggested revisions proposed by ARTC (provided to the ACCC on 17 May 2011).

Accordingly, in most cases, the mark ups reflect changes since 17 May 2011 revisions.

Note: Not all changes made to the relevant documents which merely correct minor typographical, auto-referencing and formatting errors are documented in the tables below. However, every change made to the last formally submitted versions of those documents provided to the ACCC on 7 September 2011 will be reflected in the marked up versions.

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1 Amendments to the HVAU

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1	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 including in relation to the grant of Access Rights to the Network. This Undertaking takes effect twenty one (21) days after it is published by the ACCC under section 44ZZA(3) of the TPA	The amendments to section 2.2 provide that, after the HVAU takes effect (being 21 days after the ACCC has published its decision to accept), all provisions of the HVAU are deemed to have commenced on 1 July 2011 and ARTC undertakes to comply with the HVAU from that date, except where a persons applies to the Australian Competition Tribunal

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	<p style="color: red;">("Commencement Date") and will continue until the earlier to occur of:</p> <p style="color: red;">(i) the tenth (10th) anniversary of the Commencement Date; or</p> <p style="color: red;">(ii) the withdrawal of this Undertaking in accordance with its terms or the TPA,</p> <p style="color: red;">being, the Term of the Undertaking.</p> <p>(a) <u>Subject to section 2.2(c):</u></p> <p>(i) <u>this Undertaking takes effect twenty one (21) days after the ACCC has published its decision to accept the Undertaking under section 44ZZA(3) of the CCA ("Effective Date"); and</u></p> <p>(ii) <u>on and from the Effective Date, all provisions of the Undertaking are taken to have commenced operation on 1 July 2011 ("Commencement Date").</u></p> <p>(b) <u>The Undertaking will continue until the earlier to occur of:</u></p> <p style="padding-left: 40px;">(A) <u>the fifth (5th) anniversary of the Commencement Date; or</u></p> <p style="padding-left: 40px;">(B) <u>the withdrawal of this Undertaking in accordance with the CCA.</u></p> <p><u>being, the Term of the Undertaking.</u></p> <p>(c) <u>If a person applies to the Australian Competition Tribunal under section 44ZZBF(1) of the CCA within the 21 day period referred to in section 2.2(a) for a review of the ACCC's decision to accept this Undertaking and the Tribunal affirms the ACCC's decision, then the Effective Date and the Commencement Date will be the time of the Tribunal's decision.</u></p> <p>(d) <u>ARTC undertakes to the ACCC that it will comply with the terms and conditions specified in this Undertaking including in relation to the grant of</u></p>	<p>(Tribunal) for review. If someone does apply for review:</p> <ul style="list-style-type: none"> the HVAU commences at the time the Tribunal makes its decision to affirm the ACCC's acceptance and ARTC will comply with the HVAU from that date; or if the Tribunal sets aside the ACCC's acceptance, then the HVAU doesn't come into effect. <p>The amendments to section 2.2(b) also provides for a 5-year term for the Undertaking, instead of the 10 year term, which is the term the industry has now indicated it will accept.</p> <p>Given the term of the HVAU has been changed to a 5-year period, the 5-year review of the HVAU previously proposed is no longer required and section 2.3(b) to (f) contained in the</p>

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	<p data-bbox="607 316 1406 371"><u>Access Rights to the Network from the earlier of the Commencement Date and the Effective Date.</u></p> <p data-bbox="376 424 855 451">2.3 Review <u>Variation</u> of Undertaking</p> <p data-bbox="477 485 1447 544">(a) —ARTC may only vary the Undertaking with the consent of the ACCC under section 44ZZA(7) of the CCA.</p> <p data-bbox="477 580 1417 667">(b) As soon as practicable after the fifth (5th) anniversary of the Commencement Date, ARTC will undertake a review of the Undertaking, in consultation with Access Holders and other stakeholders.</p> <p data-bbox="477 703 1447 790">(c) ARTC will invite submissions from Access Holders and other stakeholders, within a specified timeframe (which must be not less than 6 weeks from the publication of a request for submissions).</p> <p data-bbox="477 826 1417 853">(d) The review will consider whether the Undertaking is operating effectively in light of:</p> <p data-bbox="573 890 1249 917">(i) the objectives of the Undertaking outlined under section 1.2;</p> <p data-bbox="573 954 1146 981">(ii) the coal chain principles recognised in section 1.3;</p> <p data-bbox="573 1018 1417 1104">(iii) 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 those objectives and principles; and</p> <p data-bbox="573 1141 1424 1200">(iv) practical experience of Network and Hunter Valley Coal Chain operations and performance from the Commencement Date to the time of review.</p> <p data-bbox="477 1236 1348 1291">(e) ARTC will complete the review within 6 months of the fifth anniversary of the Commencement Date.</p> <p data-bbox="477 1327 936 1355">(f) At the completion of the review, ARTC:</p> <p data-bbox="573 1391 1433 1418">(i) will publish a report on its website (subject to confidentiality restrictions), and</p>	<p data-bbox="1473 316 2042 343">Revised 2010 HVAU have been deleted accordingly.</p>

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	<p>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;</p> <p>(ii) 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</p> <p>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).</p>	
2	<p>3.5 Confidentiality</p> <p>...</p> <p>(d) ARTC and the Access Holder may disclose Confidential Information:</p> <p>...</p> <p>(v) to the ACCC to the extent reasonably required to undertake its functions in relation to the Undertaking and the CCA;</p> <p><u>(vi) subject to entering into appropriate confidentiality arrangements with the auditor, to an auditor appointed under section 4.10(f) of this Undertaking; and or</u></p> <p>(vi) <u>(vii)</u> to the lessor of the Network, if required under the terms of the NSW Lease.</p>	<p>This amendment is consequential to the extraction of the TUT audit provisions from clause 2.8 of Schedule 2 of the IAHA into section 4.10(f) of the HVAU. See discussion about the amendments to section 4.10(f) of the HVAU below.</p>

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3	<p>3.13 Application for mutually exclusive Access Rights</p> <p>...</p> <p>(f) If in ARTC's reasonable opinion, two or more Mutually Exclusive Access Applications, <u>which relate to Coal Access Rights</u>, provide ARTC with a comparable present value of future returns to ARTC determined in accordance with subsection (e)<u>section 3.13(e)</u> 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.</p> <p>For example, ARTC would offer to pro-rate the Affected<u>affected</u> 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.</p> <p>...</p>	<p>The amendment to the first paragraph of section 3.13(f) has been made to clarify that allocation on a pro rata basis only applies if the Mutually Exclusive Access Applications relate to Coal Access Rights. This was always the intention and is appropriate because pro rata allocation is not relevant to the nature of non-coal access rights.</p> <p>The amendment in the second paragraph of section 3.13(f) merely corrects a typographical error.</p>
4	<p>3.14 Access Agreement</p> <p>...</p> <p>(c) ARTC must offer the Indicative Access Holder Agreement to an Applicant for Coal Access Rights:</p> <p>(i) if the Applicant seeks Access Rights for the operation of Indicative Services or Interim Indicative Services;</p> <p>(ii) if the Applicant meets the Network Exit Capability requirement in section 3.7(a)(ix) and the prudential requirements in section 3.4(e); and</p> <p>(iii) either:</p> <p>(A) the Network has sufficient Available Capacity to meet the</p>	<p>The amendment to section 3.14(a)(iii)(B) is to clarify that ARTC will offer an IAHA to an Application for Coal Access</p>

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	<p>Applicant's needs; or</p> <p>(B) ARTC consents to provide Additional Capacity to meet the Applicant's needs in accordance with section 8.4 or section 10.2.</p>	<p>Rights where ARTC has consented to the provision of Additional Capacity in accordance with any of the project initiation avenues under section 8.</p>
5	<p>4 ACCESS PRICING PRINCIPLES</p> <p>4.3 Ceiling Revenue Limits</p> <p>...</p> <p>(c) Access revenue for the purposes of this section 4.3 does not include Access revenue returned to a Contributor as a result of <u>through</u> the operation of a user funding agreement <u>between the Contributor and ARTC</u> in accordance with section 10.2(e)(iii).</p> <p>4.4 Regulatory Asset Base</p> <p>(a) Determination of RAB</p> <p>The Regulatory Asset Base ("RAB") for a Segment or group of Segments, will be determined in accordance with this section 4.4(a).</p> <p>...(ii)...</p> <p>In relation to the Segments identified as forming part of Pricing Zone 3 in Schedule E, the RAB will be rolled forward annually according to the following methodology</p> $RAB_{t \text{ start}} = RAB_{t-1 \text{ end}} =$ $(1 + \text{WACC} \text{RoR}) \times RAB_{t-1 \text{ start}} - \text{Out-turn Revenue}_{t-1} + \text{Out-turn Opex}_{t-1} + \text{Net Capex}_{t-1} \times (1 + 0.5 \times \text{WACC} \text{RoR})$	<p>The changes to section 4.3(c) are required to clarify that ARTC can exclude from the ceiling limit, revenue returned to a Capital Contributor, which has resulted from the operation of a user funding agreement, irrespective of whether the relevant investment related to that user funding agreement was Prudent or not.</p> <p>The amendment to the definition of WACC and the replacement of that term with "RoR" in section 4.4 is consequential to the amendment in section 4.8 (Rate of Return) of the HVAU (see below).</p> <p>This amendment to the definition of Out-turn Revenue in section 4.4(a) mirrors the amendment made to section 4.3(c)</p>

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	<p>where:</p> <p>...</p> <p>WACC<u>RoR</u> is the approved nominal pre tax Rate of Return as revised from time to time in accordance with section 4.8.</p> <p>Out-turn Revenue_{t-1} is the total Access revenue earned by ARTC in the preceding calendar year (t-1) but will not include:</p> <ul style="list-style-type: none"> (i) a Capital Contribution received from an Applicant or an Access Holder; or (ii) Access revenue returned to a Contributor as a result of<u>through</u> the operation of a user funding agreement between the Contributor and ARTC in accordance with section 10.2(c)(ii). <p>4.5 Economic cost</p> <ul style="list-style-type: none"> (a) For the purposes of this section 4, Economic Cost of a Segment means: <ul style="list-style-type: none"> (i) Segment Specific Costs; (ii) Depreciation of Segment Specific Assets, where the value of those assets is determined in accordance with section 4.4(b); (iii) a return on Segment Specific Assets, being determined by applying a real pre-tax Rate of Return to the value of <u>(RAB Floor Limit_{t-1 start} + RAB Floor Limit_{t-1 end}) * 0.5 Segment Specific Assets</u>, where the value of <u>the RAB Floor Limit</u> those assets is determined in accordance with section 4.4(b); (iv) an allocation of Non-Segment Specific Costs; (v) an allocation of depreciation of Non-Segment Specific Assets -, <u>determined</u> 	<p>to exclude revenue returned by ARTC to a Capital Contributor.</p> <p>The amendment to section 4.5(a)(iii) explicitly recognises the RAB averaging for the purpose of determining return as currently applies. The explicit recognition is consistent with treatment under the NSW Rail Access Undertaking.</p> <p>The amendment to section 4.5(a)(v) clarifies the basis upon which depreciation on Non-Segment Specific Assets will be determined. The approach proposed is consistent with that adopted by ARTC in its annual financial reports, and would normally make reference to the economic useful life of Non-Segment Specific Assets prescribed in those reports.</p> <p>The amendment to section 4.5(a)(vi) clarifies that interest during construction is capitalised at the time the asset becomes serviceable as opposed to the date of commissioning which is not particularly relevant to such assets.</p> <p>The reference to “having regard to the factors identified in sub-section (b)” has been deleted from 4.5(c) to correct that sentence.</p>

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	<p><u>on a straight line basis, by reference to a reasonable estimate of the economic useful life of Non-Segment Specific Assets, and</u> determined from the time the assets become serviceable;</p> <p>(vi) an allocation of return on Non-Segment Specific Assets, being determined by applying a real pre-tax Rate of Return to the value of Non-Segment Specific Assets, from the time the assets become serviceable, where the value of those assets will include the capitalisation of interest cost incurred during construction up until the time the assets become serviceable, capitalised at that time of commissioning and determined by reference to the relevant Rate of Return; and</p> <p>(vii) the costs described in sub-sections (a)(i) to (vi) as applicable to Additional Capacity.</p> <p>(b) All costs described in sub-sections (a)(i), (iv), (v) and (iv+vi), all applicable costs described in sub-section (a)(vii), and all operating expenditure in section 4.4(a) are to be assessed on an Efficient basis.</p> <p>(c) All costs are to be assessed on a stand alone basis having regard to the factors identified in sub-section (b).</p> <p>(d) To avoid doubt, nothing in this section 4 will prevent ARTC from charging <u>Contributors and other Access Holders TOP eCharges and non-TOP Charges as a result of through the operation of a user funding agreement between Contributors and ARTC in accordance with section 10.2(e)(ii), in which case the TOP Charges and non-TOP Charges will be charged in accordance with section 10.2.</u></p> <p>...</p> <p>4.7 Depreciation</p> <p>...</p> <p>(e) — The estimate of remaining mine life will be reviewed by ARTC five years from the</p>	<p>The amendment to section 4.5(b) provides for a test of efficiency of ARTC's investment in assets not directly identified with the Hunter Valley coal network, but required for the operation of ARTC's business generally (system). Such assets include buildings, IT equipment and motor vehicles purchased to support various parts of the organisation, which exist to support ARTC businesses including the Hunter Valley coal network. This cost is allocated on a similar basis to Non-Segment Specific Costs. Such investments are generally made at the corporate or support level and are made in the context of being efficient at a broader system level. ARTC would expect that this would generally infer an efficient outcome for the ARTC's business units (e.g. interstate, Hunter Valley) supported at the broader system level.</p> <p>As such, ARTC does not consider it unreasonable that an assessment of the efficiency of such investments should have regard to the broader system-wide context in which the investments are made rather than in the specific context of only one business unit (such as interstate or the Hunter Valley business). ARTC would welcome recognition of this by the ACCC in its Decision.</p> <p>The changes to sections 4.5(d) are required to clarify that ARTC can charge for access resulting from the operation of a user funding agreement, irrespective of whether the relevant investment related to that user funding agreement was Prudent or not. Such access revenue is returned to the Capital Contributor in accordance with the user funding agreement. Other changes have also been made to refer to defined terms.</p> <p>This amendment to section 4.7(d) aligns the HVAU to the</p>

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	<p>Commencement Date and revised estimates will be proposed for ACCC approval.</p> <p>(d) Depreciation is to be charged each year on the <u>inflation adjusted</u> opening balance of the <u>RAB Floor Limit</u>Regulatory Asset Base and on the Prudent Capital Expenditure associated with all of the assets commissioned in that year, charged for a period of half of that year.</p> <p>...</p> <p>4.8 Rate of return</p> <p>(a) The Rate of Return 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 include:</p> <p>(i) a capital asset pricing model ("CAPM") method of determining the cost of equity;</p> <p>(ii) a debt to equity ratio which would be considered prudent for ARTC's business in relation to the Network by reputable lenders; and</p> <p>(iii) an appropriate adjustment (beta) factor to the equity risk margin appropriate for investment in railway infrastructure forming part of the Network.</p> <p><u>For the Term of the Undertaking, the real pre-tax Rate of Return is 9.10% and the nominal pre-tax Rate of Return is 11.83%.</u></p> <p>(b) The Rate of Return will be reviewed by ARTC five years from the Commencement Date and a revised Rate of Return will be proposed for ACCC approval. ARTC will submit a revised Rate of Return proposal to the ACCC at the same time as it provides the report to the ACCC and, if applicable, a proposed variation to Undertaking, referred to in section 2.3(f)</p> <p>...</p>	<p>financial approach employed in the financial model and currently used under the NSWRAU, and clarifies reference to the RAB Floor Limit.</p> <p>Clause 4.8 has been amended to include a real pre-tax Rate of Return is 9.10% and the nominal pre-tax Rate of Return is 11.83% for the term of the HVAU. As such acceptance of the HVAU would constitute approval of this Rate of Return for the Term. The reference to CAPM and other matters in 4.8(a)(i)-(iii) are no longer necessary.</p> <p>Given the term of the HVAU has been changed to 5 years, the mine life review and the Rate of Return review previously proposed to be conducted at 5 years from the commencement of the HVAU are no longer necessary and sections 4.7(c) and 4.8(b) have been deleted accordingly.</p>

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	<p>4.10 Annual ACCC compliance assessment</p> <p>(a) ARTC will submit to the ACCC by 30 April each year in respect of the previous calendar year:</p> <p>(i)...</p> <p>(ii)...</p> <p>(iii) where documentation in (i) above demonstrates that RAB is above RAB Floor Limit in a-Pricing Zone <u>3</u>, documentation demonstrating that Indicative Access Charges, or Interim Indicative Access Charges, as applicable, satisfies the requirements in section 4.3(b).</p> <p><u>(f) Annual TUT Audit</u></p> <p><u>(i) At least three months prior to the end of a previous calendar year, ARTC will:</u></p> <p>(A) <u>advise the ACCC in writing of the identity of the person that it proposes to appoint as the auditor (“Proposed Auditor”) to audit ARTC’s compliance with its obligations under Schedule 2 of Access Holder Agreements in relation to the performance of the system true up test in each Pricing Zone in that calendar year (“TUT Audit”); and</u></p> <p>(B) <u>provide such information or documents that the ACCC requires to assess the skill and independence of the Proposed Auditor, and the proposed terms of engagement and confidentiality arrangements.</u></p> <p><u>(ii) The Proposed Auditor must have the relevant skill to perform the TUT Audit and be independent of ARTC. Without limitation, the Proposed Auditor is not independent if he or she:</u></p>	<p>The change to 4.10(a)(iii) has been made so that the test and relevant documentation is only required in relation to Pricing Zone 3. A similar change has been made at Schedule G, clause 2(d).</p> <p>The new section 4.10(f) of the HVAU was previously contained in clause 2.8 of Schedule 2 of the IAHA. However, given that provision of the IAHA placed obligations on the ACCC, it more appropriately belongs in the HVAU. Accordingly, most of clause 2.8 of Schedule 2 of the IAHA was moved to the HVAU as the new section 4.10(f).</p> <p>Consequential amendments have been to the HVAU, IAHA and OSA as result of the above amendment (as set out in this document) including changes to permit disclosure of confidential information to the auditor and clarify, in the IAHA, the obligation on ARTC to repay any amounts of underpayment of rebates owing to an Access Holder or the</p>

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	<p>(A) <u>is a current employee or officer of ARTC or its Related Bodies Corporate;</u></p> <p>(B) <u>has been an employee or officer of ARTC or its Related Bodies Corporate in the past 3 years;</u></p> <p>(C) <u>in the opinion of the ACCC, holds an interest in ARTC or its Related Bodies Corporate;</u></p> <p>(D) <u>has within the past 3 years been a professional adviser to ARTC or its Related Bodies Corporate;</u></p> <p>(E) <u>has a contractual relationship, or is an employee of a firm or company that has a contractual relationship, with ARTC or its Related Bodies Corporate.</u></p> <p><u>(iii) If, within 5 Business Days of receipt by the ACCC of the information or documents from ARTC referred to in section 4.10(f)(i), or such further period as required by the ACCC and notified to ARTC:</u></p> <p>(A) <u>the ACCC does not object to the Proposed Auditor, ARTC will appoint the Proposed Auditor as auditor to conduct the TUT Audit (“Auditor”) as soon as practicable on terms approved by the ACCC; or</u></p> <p>(B) <u>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,</u></p> <p><u>and forward to the ACCC a copy of the executed terms of engagement of the Auditor.</u></p> <p><u>(iv) Following the appointment of the Auditor in accordance with section 4.10(f)(iii), ARTC will instruct the Auditor to conduct the TUT Audit as soon as practicable in accordance with the approved terms referred to in</u></p>	<p>right to recover amounts of overpayment of rebates.</p>

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	<p><u>section 4.10(f)(iii).</u></p> <p>(v) <u>Subject to the Auditor continuing to meet the requirements in section 4.10(f)(ii) for the period of appointment, ARTC may appoint the Auditor to conduct the TUT Audit for consecutive calendar years.</u></p> <p>(vi) <u>A person who is, or who has been, appointed as Auditor is eligible for re-appointment as Auditor, and will not be taken to fail the independence requirement on the sole basis that the person was previously appointed as Auditor under this section 4.10.</u></p> <p>(vii) <u>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.</u></p> <p>(viii) <u>The actual costs reasonably incurred in connection with the conduct of the TUT Audit (which will include those costs referred to in section 4.10(f)(vii) will be included in the Economic Costs.</u></p> <p>(ix) <u>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.</u></p> <p>(x) <u>Not later than 30 April of the following calendar year, ARTC will provide the final written report of the TUT, as prepared by the Auditor ("Final Audit Report") to the ACCC to review as part of the annual compliance assessment process under this Undertaking.</u></p> <p>(f)xi <u>The ACCC will review the Final aAudit rReport 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</u></p>	

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	<p>ARTC is entitled to recover.</p> <p>(gxii) If, at any time after receiving the fFinal aAudit rReport, 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.</p> <p>(hxiii) Within 15 Business Days of receiving notification from the ACCC under section 4.10(g)(f)(xi), ARTC will inform the individual Access Holders of any amounts of underpayment of rebates owing to them or amounts of overpayment of rebates they are required to remit to ARTC as determined by the ACCC <u>in accordance with clause 2.8 of Schedule 2 of the Access Holder Agreements</u>.</p> <p>(ixiv) Within 15 Business Days of giving that notice, ARTC will make payments of the amounts owing as advised under section 4.10(h)(f)(xiii) to individual Access Holders and is entitled to recover from Access Holders any amounts owing to it <u>in accordance with clause 2.8 of Schedule 2 of the Access Holder Agreements</u>.</p> <p>...</p> <p>4.15 Charge differentiation</p> <p>(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:</p> <p>(i) <u>subject to section 4.15(a)(iii)</u>, 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</p>	<p>The reference to Coal Chain Capacity in section 4.15(a)(ii) should be removed as a consequence of a previous</p>

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	<p>(ii) have regard to a range of factors which impact on its business and Coal Chain Capacity including:</p> <p>...</p> <p>(G)(iii) <u>for the purpose of assisting transition between regulatory and contractual arrangements and to remove uncertainty to support investment decisions relating to Trains, charge the same price for the two primary existing services using the Network as at the Commencement Date in accordance with sub-paragraphs (A) and (B) below during the Regulatory Transition Period:</u></p> <p><u>(A) until 31 December 2014,</u> the Charges for the services described in section 4.18 <u>19(c)</u> as Interim Indicative Service 1 and Interim Indicative Service 2 in Pricing Zone 1 will <u>may</u> be the same, and the Charges for Interim Indicative Service 1 and Interim Indicative Service 2 in Pricing Zone 2 will <u>may</u> be the same, notwithstanding those services will no longer constitute Interim Indicative Services after the Interim Period as a result of the Indicative Services under section 4.17 coming into effect. <u>;</u> and</p> <p><u>(B) To avoid, doubt,</u> for the purposes of this section 4.15(a)(i-vii) <u>section 4.15(a)(vii)</u>, Charges are taken to mean the unit TOP price and unit Non-TOP price;-</p>	<p>amendment to separately recognise Coal Chain Capacity in section 4.15(a)(i) as advised in 17 May 2011 revisions.</p> <p>What was section 4.15(a)(vii) of the Revised 2010 HVAU (and is now section 4.15(a)(iii)) has been amended to clarify the purpose of charging the same price for the two primary existing services using the Network as at the Commencement Date. That is, to assist the transition between regulatory and contractual arrangements and to remove uncertainty to support investment decisions relating to Trains.</p>
6	<p>4.18 <u>4.19</u> Interim Indicative Services and Interim Indicative Access Charges</p> <p>(a) During the period between the Commencement Date and the time the initial Indicative Service and the initial Indicative Access Charges approved <u>accepted</u> by the ACCC come into effect under section 4.17 <u>4.16A</u> (or if not approved <u>accepted</u>, the Indicative Service being accepted by the ACCC under section 4.17 and the Indicative Access Charges approved by the ACCC under section 4.18 <u>being accepted by the ACCC under section 4.16A and the Indicative Access Charges approved by the ACCC under section 4.19(c)</u> (“the Interim Period”), the indicative services assumptions in section 4.19(c) <u>4.18(e)</u> will apply as the indicative services (“Interim Indicative Services”) and ARTC will, using reasonable endeavours, and having regard to available information, determine:</p> <p>...</p>	<p>This minor amendment has been made to recognise the recent introduction of the development and approval of the initial Indicative Service and initial Indicative Charges in the undertaking.</p>

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7	<p>5 CAPACITY MANAGEMENT</p> <p>5.1 System Assumptions</p> <p>...</p> <p>(d) If ARTC disagrees with the assumption on the basis that it considers (acting reasonably) that the practical adoption of:</p> <p>(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</p> <p>(ii) the HVCCC's assumption would have an adverse commercial implication for ARTC <u>(provided that ARTC may not rely on this paragraph (ii) to the extent that the adverse commercial implication for ARTC would arise under the operation of system true up test under Schedule 2 of Access Holder Agreements entered into pursuant to the Undertaking).</u></p> <p>then ARTC's notification under section 5.1(c) must state that this is the basis for the disagreement.</p> <p>...</p> <p>(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 <u>taking into account:</u></p> <p>(i) 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;</p> <p><u>(ii) the interests of:</u></p> <p><u>(A) Access Holders with Coal Access Rights for export coal;</u></p>	<p>This is the wording proposed by ARTC in response to the industry view of the 'commercial carve-out' at section 5.1(d)(ii) of the HVAU. ARTC has included the exception to the carve-out as proposed by the industry but have also proposed subsequent amendments at clause 5.1(g) and (i) to provide the ACCC with criteria as to the matters it is to have regard to when arbitrating disputes about system assumptions.</p>

Issue (Item No)	HVAU section reference and proposed amendment	Reason for amendment
	<p>(B) <u>Access Holders with Coal Access Rights for domestic coal;</u></p> <p>(C) <u>other users of the Network; and</u></p> <p>(D) <u>ARTC,</u></p> <p><u>including whether ARTC or the parties referred to in paragraphs (A) to (C) will be materially disadvantaged, including in the context of, and basis upon, which ARTC or the party entered into the Access Agreement or Access Holder Agreement and, where applicable, in applying assumptions in the system true up test under Schedule 2 of the Access Holder Agreements which are different to those to which ARTC or the party has previously agreed and relied upon in entering the Access Agreement or Access Holder Agreement, provided that, in considering whether ARTC or the parties referred to in paragraphs (A) to (C) are materially disadvantaged as a result of that difference, the ACCC must take account of the reasons for that difference at the applicable time.</u></p> <p>...</p> <p>(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.</p> <p>(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</p>	

Issue (Item No)	HVAU section reference and proposed amendment	Reason for amendment
	necessary	
8	<p>Definitions</p> <p>“Applicant” means the person seeking Access Rights under section 3, and to become an Access Holder and, to avoid doubt, does not include an Operator seeking to enter into an Operator Sub-Agreement;</p> <p>...</p> <p><u>“Effective Date” has the meaning given to it in section 2.2;</u></p> <p>“Efficient” means, in respect to costs and operating expenditure, costs incurred by a prudent service provider managing the Network, acting efficiently, having regard to any matters particular to the environment in which management of the Network <u>occurs</u> including:</p> <p>...</p> <p><u>“FCC” has the meaning described in section 4.13(a)(ii);</u></p> <p>...</p> <p><u>“NCC” has the meaning described in section 4.13(a)(iii);</u></p> <p>...</p> <p>“Parent Guarantee” means a guarantee in the form of Schedule H given by a Related Body Corporate of the Access Holder or Operator who has an Acceptable Credit Rating)</p> <p>...</p> <p><u>“Regulatory Transition Period” means the period between the Commencement Date and 31 December 2014.</u></p> <p>...</p>	<p>The change to the “Applicant” applicant is to fix a typographical error.</p> <p>See explanation regarding the amendments to section 2.2 of the HVAU at Item 1 of this table. There is now a concept of an Effective Date which:</p> <ul style="list-style-type: none"> • If no one seeks review of the HVAU, will be 21 days from publication of the ACCC’s decision to accept (and the Commencement Date will be deemed to be 21 July 2011); or • If someone seeks review of the HVAU, will be the same as the Commencement Date, both being the time the Tribunal affirms the ACCC’s decision to accept the Undertaking. <p>A definition for “FCC”, “NCC” and “VCC” has been included as the terms are used outside of section 4 in the definition of “Financial Criteria” or elsewhere.</p> <p>A definition has been inserted for the period during which the grandfathering provision at section 4.15(a)(iii) will apply on a transitional basis, namely the “Regulatory Transition Period”.</p> <p>The now redundant definition of “Segment Specific Assets”, which was mistakenly left in, needs to be deleted.</p> <p>The amendments to the definition of “Segment Specific</p>

Issue (Item No)	HVAU section reference and proposed amendment	Reason for amendment
	<p>“Segment Specific Assets” means assets that ARTC can directly identify with a Segment;</p> <p>“Segment Specific Costs” means operating costs that ARTC can directly identify with a Segment;</p> <p>“Segment Specific Assets” means assets that:</p> <p><u>(a) form part of RAB and are subject to section 4.4 of the Undertaking; and</u></p> <p><u>either</u></p> <p>(a)(b) <u>(b)</u> ARTC can directly identify with a Segment because those assets are physically or functionally part of a Segment; or;</p> <p>(b)(c) <u>(c)</u> ARTC has otherwise directly identified with a Segment having regard to recovery of relevant costs associated with those assets consistent with the beneficial use of those assets;</p> <p><u>“Segment Specific Costs” means operating costs that ARTC can directly identify with a Segment;</u></p> <p><u>“VCC” has the meaning described in section 4.13(a)(i);</u></p>	<p>Assets” provide for ARTC to align Segment Specific Assets with RAB, and so remove the need to distinguish between RAB assets and non-RAB assets in section 4.5, and so simplify section 4.5.</p> <p>The definition of “Segment Specific Costs” has been moved to ensure definitions are in the correct alphabetical order.</p>
9	<p>SCHEDULE A:1 - Elements of Coal Access Agreements</p> <p>Tier 1 (mandatory) provisions for all Access Holder Agreements for Coal Access Rights*:</p> <p>1 IAHA Clause 1.5: Tier 1 Mandatory Provisions</p> <p>2 IAHA Clause 3.1: Grant of Train Paths for transport of coal IAHA</p> <p>2 IAHA Clause 3.2: Annual Determination of BPU, MTC and NPC</p> <p>4 IAHA Clause 3.3: <u>Determination of Monthly Tolerance Cap and Tolerance</u>Tolerance</p> <p>5 IAHA Clause 3.4: Identification of Path Usages</p>	<p>These are minor amendments to ensure the item numbers and clause references correspondence to the correct provisions that are considered Tier 1 (mandatory) provisions and Tier 2 (negotiable) provisions for Access Holder Agreements for Coal Access Rights to transport coal to the Port of Newcastle and otherwise.</p>

Issue (Item No)	HVAU section reference and proposed amendment	Reason for amendment
	<p>6 IAHA Clause 3.6: Availability Exceptions</p> <p>7 IAHA Clause 3.14: Network Exit Capability requirement</p> <p>8 IAHA: Clause 5.3.4: Calculation of TOP Rebate and Ad-Hoc Charge Rebate</p> <p>9 IAHA Clause 6: Capacity shortfall</p> <p>10 IAHA Clause 11.1(bc)(iii) Variation of a Train Path for the purposes of maximising the use and reliability of the Network</p> <p>11 IAHA Clause 11.4: Removal of Path Usages for under-utilisation</p> <p>12 IAHA Clause 11.5: Use of Non-Compliant Services</p> <p>13 IAHA Clause 11.6: Cancellations of services</p> <p>14 IAHA Clause 15: Confidentiality</p> <p>15 IAHA Clause 16.4: Temporary Trade of Path Usages</p> <p>16 IAHA Clause 16.5: Treatment of Traded Path Usages</p> <p>17 IAHA Clause 16.6: CTS Administrator and HVCCC</p> <p>18 IAHA Clause 16.7: The effect of assignment (but only to the extent it relates to clause 16.4)</p> <p>19 IAHA Clause 16.8: Reduction in time period for ARTC approval of trades</p> <p>20 IAHA Clause 19.1 New or varied Access Undertaking</p> <p>21 IAHA Train Path Schedule: Clause 4.1 Network Exit Capability<u>Capacity</u> Condition Precedent; Clause 4.2 Removal of path usages for failure to satisfy Network Exit Capability<u>Capacity</u> Condition Precedent</p>	

Issue (Item No)	HVAU section reference and proposed amendment	Reason for amendment										
	<div>22 IAHA Schedule 2: System true-up test</div> <div>23 IAHA Schedule 3: Clause 4.1(c) Determination of TOP Price_{pZ} and Non-TOP Price_{pZ}, - dispute resolution provisions.</div> <div>* Except if the Access Holder Agreement is for Access Rights to transport coal to a destination other than the Port of Newcastle, in which case:</div> <div><ul style="list-style-type: none">the Tier 1 (mandatory) provisions are items 1, 3, 5, 6, 8, 9, 10, 12, 13, 17<u>20</u>, 19<u>22</u>, 20<u>23</u>items 2, 4, 7, 11,14, 15, 16, <u>17, 18, 19</u> and 18<u>21</u> will be treated as Tier 2 (negotiable) provisions.</div>											
10	<div>SCHEDULE D: Performance Measurement and Incentives</div> <div>1. Network Performance Indicators</div> <table><tr><th>Network Key Performance Indicator</th><th>Reporting Scope</th><th>Responsibility <u>for</u> <u>performance</u></th><th>Reportin g Frequen cy</th><th>Reporting Level</th></tr><tr><td>...</td><td></td><td></td><td></td><td></td></tr></table>	Network Key Performance Indicator	Reporting Scope	Responsibility <u>for</u> <u>performance</u>	Reportin g Frequen cy	Reporting Level	...					Clarification in the table that ‘Responsibility’ relates to performance in relation to the Network Performance Indicator and not reporting of the Network Performance Indicator.
Network Key Performance Indicator	Reporting Scope	Responsibility <u>for</u> <u>performance</u>	Reportin g Frequen cy	Reporting Level								
...												

Issue (Item No)	HVAU section reference and proposed amendment	Reason for amendment
11	<p>SCHEDULE G - Annual Compliance Assessment - information provision and timing</p> <p>2 Information to be provided by ARTC</p> <p>ARTC will provide the following information as a minimum to the ACCC in order for the ACCC to carry out its assessment under section 4.10 of this Undertaking:</p> <p>...</p> <p>(d) where the documentation shows RAB to be greater than the RAB Floor Limit in a Pricing Zone <u>3</u>, documentation setting out the Interim Indicative Access Charge or Indicative Access Charge, as applicable for the Pricing Zone <u>3</u> in that calendar year and the previous calendar year.</p> <p>(e) a copy of the fFinal aAudit rReport contemplated at clause 2.8 of Schedule 2 of the Indicative Access Holder Agreement<u>section 4.10(f)(x) of this Undertaking</u>.</p>	<p>The change to Schedule G, clause 2(d) has been made so that the test and relevant documentation is only required in relation to Pricing Zone 3. A similar change has been made to section 4.10(a)(iii).</p> <p>The amendment to Schedule G, clause 2(e) is consequential to the extraction of the TUT audit provisions from clause 2.8 of Schedule 2 of the IAHA into section 4.10(f) of the HVAU. See discussion about the amendments to section 4.10(f) of the HVAU above.</p>

2 Amendments to the IAHA

Issue (Item No)	IAHA clause reference and proposed amendment	Reason for amendment
1	<p>1 Definitions and Interpretation</p> <p>...</p> <p>Accreditation means to be an Accredited Owner or an Accredited Operator (as the case may be) as defined under the Rail Safety Act and “Accreditation” bears a corresponding meaning;</p> <p>...</p> <p><u>Live Run Superintendent Group means the Live Run Superintendent Group, or where that body no longer exists, is a reference to the body which has the responsibility which most closely performs the functions of that organisation, as reasonably determined by ARTC;</u></p> <p>Material Default means any breach of a fundamental or essential term or repeated breaches of any of the terms of the <u>an</u> agreements;</p> <p>...</p> <p>Service means a Train run by the Operator using the Network to meet the transport needs of coal producers <u>the Access Holder</u>;</p> <p>...</p> <p>1.2 Interpretation</p> <p>In this agreement unless the context otherwise requires:</p> <p>...</p> <p><u>(e) a reference to a document or a specific provision of that document includes all</u></p>	<p>This is a minor change for better logical flow.</p> <p>A definition for the term “Live Run Superintendent Group” which is used in clause 11.6 of the AHA has been included.</p> <p>This is a minor change which clarifies that the term “Material Default” generally refers to a breach of any relevant agreement of that nature.</p> <p>This amendment clarifies that the term “Services” is appropriately limited to the Services to be provided to the Access Holder under this AHA.</p> <p>The two amendments to clause 1.2 are required to aid in interpretation of the AHA and avoid possible confusion.</p>

Issue (Item No)	IAHA clause reference and proposed amendment	Reason for amendment
	<p><u>amendments or supplements to, or replacements or novations of, that document or the specific provision of that document, as applicable (particularly in relation to the Access Undertaking which may change from time to time);</u></p> <p>...</p> <p><u>(n) terms defined in a Schedule to this agreement have the same meaning when used in the General Terms of this agreement.</u></p>	
2	<p>3.2 Annual Determination of BPU, MTC and NPC</p> <p>...</p> <p>(b) For each subsequent Contract Year, ARTC will, before the commencement of that Contract Year, determine the Access Holder's Base Path Usages for that Contract Year in accordance with the following steps.</p> <p>...</p> <p>(ii) ARTC will determine, for each Period of the following Contract Year, the Access Holder's Base Path Usages for each Train Path in accordance with the following principles</p> <p>....</p> <p>(D) If the Path Usages are for the purpose of transporting coal to the Port of Newcastle, ARTC will consult with the HVCCC with the objective of aligning a the Access Holder's Base Path Usages with the Access Holder's allocation of capacity at the relevant coal Terminals Operators and will use reasonable endeavours to achieve such alignment to the extent practicable.</p>	<p>The reference to 'Terminal Operators' is incorrect. The reference should be to the relevant coal terminals and not the operator of those terminals.</p>
3	<p>3.3 Determination of Monthly Tolerance Cap and Tolerance</p> <p>(c)...</p>	

Issue (Item No)	IAHA clause reference and proposed amendment	Reason for amendment
	<p>...</p> <p>(ii) If the Access Holder has an Allocation Period of a Quarter, the Access Holder's Tolerance in each Pricing Zone for each Quarter will be the higher of:</p> <p>(A) $10\% \times 0.33 \sum (AVPU_{TP1} \dots AVPU_{TPN})$; or</p> <p>(B) 13 Path Usages;</p> <p>where:</p> <p>$\sum (AVPU_{TP1} \dots AVPU_{TPN})$ = the sum of the Average Path Usages for each Train Path in that Pricing Zone in the Quarter <u>as set out in the Train Path Schedules</u>. If a Train Path spans more than one Pricing Zone, then the Average Path Usages for that Train Path will count towards the Tolerance in each Pricing Zone.</p>	<p>This is a minor amendment to ensure that the formula for "$\sum (AVPU_{TP1} \dots AVPU_{TPN})$" is consistent with the formula used in clause 3.3(c)(i), which relates to the sum of the Average Path Usages for each Train Path in that Pricing Zone in the Month.</p>
4	<p>3.5 Identification of Allocation Period</p> <p>(a) For the first Contract Year, the Access Holder's Allocation Period for a Train Path is set out in the Train Path Schedule.</p> <p>(b) For each subsequent Contract Year, if the Access Holder and its Associates <u>have aggregate load point allocations less than or equal to three Mtpa to the terminals operated by PWCS for any Contract Year from 1 January 2012 until the expiry of this agreement, then the Access Holder is eligible to elect, by notice in writing to ARTC, an Allocation Period of a Quarter for that Contract Year</u>:</p> <p>(i) have aggregate load point allocations less than or equal to five Mtpa at the terminals operated by PWCS for any Contract Year before 31 December 2011; or</p> <p>(ii) have aggregate load point allocations less than or equal to three Mtpa to the terminals operated by PWCS for any Contract Year from 1 January 2012 until the</p>	<p>This amendment to clause 3.5 is required as clause 3.5(b)(i) is no longer relevant given the HVAU is likely to commence on 1 July 2011.</p>

Issue (Item No)	IAHA clause reference and proposed amendment	Reason for amendment
	<p>expiry of this agreement;</p> <p>then, the Access Holder is eligible to elect, by notice in writing to ARTC, an Allocation Period of a Quarter for that Contract Year.</p>	
5	<p>4.3 Operator Sub-Agreements</p> <p>...</p> <p>(b) The Access Holder acknowledges and warrants that it has read and agrees to each Operator Sub-Agreement, including any variation from the Standard Operator Sub-Agreement that it has endorsed, following such variation.</p>	<p>This is a minor amendment to remove the unnecessary wording which does not make sense.</p>
6	<p>4.4 Nomination of new Operators</p> <p>(a) ...</p> <p>(b) ARTC will use its best endeavours to approve or reject that nomination within 10 Business Days of the later of receiving notice or the required information. ARTC is only entitled to reject a nomination if:</p> <p>...</p> <p>(iii) the nominated Operator has received a rectification notice or similar notice from ARTC for m<u>Material breach</u>-<u>Default</u> of any agreement with ARTC and the event giving rise to that rectification notice or similar notice has not been rectified;</p>	<p>This amendment was made to refer back to the defined meaning of ‘Material Default’.</p>
7	<p>5.4 Calculation of TOP Rebate and Ad-Hoc Charge Rebate</p> <p>(a) Within 35 Business Days of the end of each calendar year in which the Access Holder has an entitlement to Path Usages in a Train Path Schedule, ARTC will</p>	<p>In clause 5.4(b), the current ‘Ad Hoc Charge’ reference in the formula does not work because the charges through the year are based on actual GTK of a particular service relating to the ad hoc path notified each time. Accordingly, it will not be clear which ad hoc path ARTC is refunding charges for. Substituting ‘Ad Hoc Charge’ with “Ad Hoc TOP_{PU}” allows</p>

Issue (Item No)	IAHA clause reference and proposed amendment	Reason for amendment
	<p>...</p> <p>(b) If APU - Ad Hoc Path Usages < ACP, then the Access Holder is entitled to a rebate of Ad Hoc Charges paid to ARTC for Ad Hoc Path Usages on the Train Path in the Pricing Zone calculated in accordance with the following formula:</p> <p style="padding-left: 40px;">[ACP - (APU - Ad Hoc Path Usages)] x Ad Hoc TOP_{PU} Charge</p> <p>Where:</p> <p>APU or Actual Path Usages means the Aactual Ppath Uusages being, subject to clause 16.5, the total number of Path Usages in the Pricing Zone in respect of which the Operator actually operated a Service for the Access Holder on that Train Path in the previous Contract Year;</p> <p>ACP is the unconditional Annual Contracted Path Usages for that Train Path in the Pricing Zone specified in the Train Path Schedules less any Path Usages not made available under clause 3.14, or clause 4.5 <u>or clause 11.6</u> of this agreement <u>for the previous Contract Year</u>;</p> <p><u>Ad Hoc TOP_{PU} means the average Ad Hoc Charge associated with that Train Path in that Pricing Zone which will be calculated by dividing the total Ad Hoc Charge payable for Ad Hoc Path Usages for that Train Path in that Pricing Zone in the previous Contract Year by the total Ad Hoc Paths Usages for that Train Path in that Pricing Zone in the previous Contract Year.</u></p> <p>(c) APU < ACP,</p> <p>then the Access Holder is entitled to a TOP Rebate equal to the lesser of the rebate applicable for the annual deficiency in contracted Path Usages for that Train Path in the Pricing Zone and the sum of the accrued system rebates under Schedule 2 in respect of that Train Path in the Pricing Zone, as determined in accordance with the following formulae:</p>	<p>for the Ad-Hoc Charge Rebate to be calculated by reference to an average Ad Hoc Charge for a Train Path in the Contract Year.</p> <p>The other minor amendments have been made to ensure consistency in the application of the formula.</p>

Issue (Item No)	IAHA clause reference and proposed amendment	Reason for amendment
	<p>(i) $\text{if } (\text{ACP} - \text{APU}) \times \text{TOP}_{\text{PU}} \leq \sum (\text{SPR}_1 \dots \text{SPR}_N),$</p> <p>$(\text{ACP} - \text{APU}) \times \text{TOP}_{\text{PU}}$</p> <p>(ii) $\text{if } (\text{ACP} - \text{APU}) \times \text{TOP}_{\text{PU}} > \sum (\text{SPR}_1 \dots \text{SPR}_N),$</p> <p>$\sum (\text{SPR}_1 \dots \text{SPR}_N)$</p> <p>Where:</p> <p>$\text{TOP}_{\text{PU}}$ is the <u>average</u> Train Path TOP Charge associated with a Path Usage for that Train Path in that Pricing Zone which will be calculated by dividing the -monthly <u>Aggregate</u> Train Path TOP Charge for that Pricing Zone in that Contract Year (the Train Path TOP Charge for each Month for the initial year are set out in column 10 of the tables in clause 3.2 and 3.3 of the Train Path Schedule) by the <u>Aggregate</u> Average Path Usages;:</p> <p><u>Aggregate Train Path TOP Charge is, for the first Contract Year, the sum of the amounts for that Pricing Zone set out in column 10 for each applicable tranche of Path Usages (which for the initial year are set out in column 4 in the tables in clause 3 of all the Train Path Schedules, and for each following Contract Year, the sum of the Train Path TOP Charges for that Pricing Zone calculated using the relevant TOP Prices as re-determined in accordance with Schedule 3 and any changes agreed to the relevant Input Information in the Train Path Schedules for that Contract Year;</u></p> <p><u>Aggregate Average Path Usages is, for the first Contract Year, the sum of the figures for that Pricing Zone set out in column 4 for each applicable tranche of Path Usages in the tables in clause 3-2 and 3.3 of all the Train Path Schedule)s, and for each following Contract Year, the sum of the Average Path Usages for that Pricing Zone using any changes agreed to the relevant Input Information in the Train Path Schedules for that Contract Year;</u></p> <p><u>(To avoid doubt, the calculation of the Aggregate Train Path TOP Charge and the Aggregate Average Path Usages will include all tranches of Path Usages in that Pricing Zone which have a Start Date before the end of the Contract Year and does</u></p>	<p>The definition of TOP_{PU} has been clarified and amended to ensure that the formula works not only in the first Contract Year, by reference to values in the Train Path Schedules, but also in each following Contract Year, by making reference to the applicable relevant input values, which are subject to change from time to time.</p>

Issue (Item No)	IAHA clause reference and proposed amendment	Reason for amendment
	<u>not include tranches of Path Usages having a Start Date after the end of the Contract Year);</u>	
8	<p>11.1 Permanent variation to Train Paths</p> <p>...</p> <p>(d) The Notified Party's response as to whether it consents or not under clause 11.1(b)(ii) to the Requesting Party's notice given under clause 11.1(b)(i) and if the Notified Party is ARTC, its response as to whether it will adjust the Access Holder's of its obligation to pay TOP Charges, will be given to the Requesting Party within 28 days of such notice being received by the Notified Party or within such shorter time if reasonably practicable. If the Notified Party's response is to refuse consent, the Notified Party will within such time also provide full reasons for refusal in writing to the Requesting Party.</p> <p>(e) Unless clause 11.1(b)(iii) applies or unless otherwise agreed by ARTC (in its absolute discretion), a variation agreed under this clause 11.1 will not relieve the Access Holder of its obligations to pay the TOP Charges.</p> <p>(f) If ARTC has advised the Access Holder, in accordance with clause 11.1(d) that it will not adjust the Access Holder's TOP Charges, then the Access Holder is entitled to withdraw a notice provided under clause 11.1(b)(i), notwithstanding that ARTC may have consented to that notice.</p> <p>...</p> <p>11.4 Removal of Path Usages for Under-utilisation</p> <p>(a) Subject to clause 11.4(b), if, following the end of a Period for a Train Path the:</p> <p style="padding-left: 40px;">Actual Path Usages_{M,...,M-5} / Base Path Usages_{M, M-5} < 85%</p> <p style="padding-left: 40px;">then, ARTC will request the Access Holder to provide reasons to ARTC demonstrating that it has a sustained requirement for the Path Usages that were not utilised in the previous six months, and if the Access Holder fails to establish that it has a sustained requirement for those Path Usages to ARTC's reasonable</p>	<p>The amendment to clause 11.1(d) is to correct the sentence and clarify ARTC's obligation to provide a response in relation to whether it will adjust the Access Holder's TOP Charges following receipt of a notification from the Access Holder that it wishes to vary the rights of the Access Holder to a Train Path. This clause ties in with clause 11.1(f) under which the Access Holder is entitled to withdraw its notice should ARTC decide not to adjust the Access Holder's TOP Charges.</p>

Issue (Item No)	IAHA clause reference and proposed amendment	Reason for amendment
	<p>satisfaction, then ARTC has the right to elect, by notice in writing to the Access Holder (of not less than 30 days), to delete Path Usages from the relevant Train Path Schedule in accordance with clause 11.4(b).</p> <p>Where:</p> <p>Actual Path Usages_{M,...,M-5} is the aggregate number of <u>Actual</u> Path Usages for that Train Path on which the Operator operated a Service for the Access Holder in that Month and the immediately preceding five Months as determined under clause 11.4(d);</p> <p>Base Path Usages_{M,...,M-5} is the aggregate Monthly Base Path Usages for that Train Path in that Month and the immediately preceding five Months, or if the Access Holder has an Allocation Period of a Quarter for that Contract Year, the Quarterly <u>aggregate</u> Base Path Usages in that Quarter and the immediately preceding Quarter;</p>	<p>These minor amendments to clause 11.4 of the AHA are made to ensure consistency and clarity in the application of the formulas.</p>
9	<p>13.1 Mutual releases</p> <p>(a) Except for an entitlement to a TOP Rebate under clause Error! Reference source not found., 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:</p> <p>...</p> <p>(vi) any breach of this agreement which directly or indirectly causes ARTC to fail to make a Path Usage or Train Path available to the Access Holder (including clauses 4, 8 and 9),</p> <p>...</p> <p>unless:</p> <p>(vii) <u>(viii)</u> the event giving rise to the Liability is caused by the fraudulent</p>	<p>The amendment to clause 13.1(b) of the IAHA was made so that the exception applies to the whole of clause 13.1(a) and</p>

Issue (Item No)	IAHA clause reference and proposed amendment	Reason for amendment
	<p>or Wilful Misconduct of ARTC; or</p> <p>(ix)(xi) the particular Claim is not able to be excluded or limited pursuant to the provisions of any legislation.</p> <p>(b) To avoid doubt, clause 13.1(a)(vi) does not prevent the Access Holder from seeking equitable non-monetary relief, including an injunction or declaration, in relation to a breach or anticipated breach of this agreement by ARTC except that such relief cannot include any form of damages or monetary compensation for a failure to provide a Path Usage or an obligation on ARTC to make a replacement Path Usage available.</p>	not just clause 13.1(vi).
10	<p>13.4 Mutual Liability cap</p> <p>(b) The annual cap will be [\$2 million in 20102011] for the first Contract Year] and will be escalated at the commencement of each subsequent Contract Year in accordance with the following formula:</p>	Amendment made to clarify the annual cap is \$2 million for first contract year.
11	<p>14.4 Expert determination</p> <p>If a Dispute is referred under this agreement to proceed to expert determination, then the following provisions apply:</p> <p>...</p> <p>(c) unless the parties agree otherwise, they <u>must procure the</u> Expert must to use reasonable endeavours to make its determination or finding in respect of the Dispute within 30 Business Days of their appointment and the parties must co-operate with the expert for this purpose;</p> <p>(d) any determination made by the eExpert is binding on the parties (other than for manifest error);</p>	Given the Expert is not a party to the AHA and cannot be compelled, the amendment to clause 14.4(c) and (d) instead place an obligation on the parties to ensure the Expert (which is a term defined within clause 14.4) “uses reasonable endeavours”.
12	<p>15.3 Permitted disclosure</p>	The amendment to clause 15.3 of the IAHA is consequential to the extraction of the TUT audit provisions from clause 2.8

Issue (Item No)	IAHA clause reference and proposed amendment	Reason for amendment
	<p>ARTC and the Access Holder may disclose Confidential Information:</p> <p>...</p> <p>(e) to the ACCC, to the extent reasonably required to undertake its functions in relation to the Access Undertaking and the CCA;</p> <p><u>(f) subject to entering into appropriate confidentiality arrangements with the auditor, to an auditor appointed under section 4.10(f) of the Access Undertaking to conduct a review of the system true up test under Schedule 2; or</u></p> <p>(g) to the lessor of the Network, if required under the terms of the NSW Lease.</p>	<p>of Schedule 2 of the IAHA into section 4.10(f) of the HVAU. See discussion about the amendments to section 4.10(f) of the HVAU in the HVAU table above.</p>
13	<p>16.3 Permanent assignment and trades</p> <p>...</p> <p><u>(c) As contemplated in clause 16.6(c), in deciding whether to provide consent under this clause 16.3, ARTC will consult with the HVCCC.</u></p> <p>16.4 Temporary trade of Path Usages</p> <p>(a) (Safe harbour trades) An access holder (“Former Access Holder”) may trade (“Trade”) a Path Usage (for a period of less than 12 months) to a person who has an access holder agreement with ARTC (“New Access Holder”) without ARTC’s consent subject to the following conditions:</p> <p>...</p> <p>(iv) the Former Access Holder and New Access Holder must provide evidence that the HVCCC accepts that the Trade will not have an adverse impact on Coal Chain Capacity and on the Capacity entitlements of other access holders (in the form of a recommendation made by the HVCCC under clause 16.6(c)) and each warrant that the Trade will not adversely impact Coal Chain Capacity and agree that ARTC is entitled to rely, and is under no obligation to review the accuracy of, this warranty;</p>	<p>The new clause 16.3(c) was added to clarify that ARTC will be consulting with the HVCCC in relation to whether it will consent to the permanent assignment or novation of the entire agreement or some or all of the Path Usages for a Train Path. Without the amendment, the obligation is only obvious later, when it is referred to in clause 16.6(c).</p> <p>The reference to clause 16.6(c) in clause 16.4(iv)(a) has been deleted because clause 16.6(c) talks about HVCCC advice being sought by ARTC, which is not the case under clause 16.4(a)(iv) where it the Access Holders who must acquire the HVCCC recommendation for safe harbour trades.</p>

Issue (Item No)	IAHA clause reference and proposed amendment	Reason for amendment
	<p>16.6 CTS Administrator and HVCCC</p> <p>...</p> <p>(c) In deciding whether consent should be given under clauses 16.3 or clause 16.4(d), ARTC will seek the advice of the HVCCC.</p> <p>(d) ARTC will consider in good faith, and is entitled to rely on, <u>the information provided by, and recommendations made by the or opinions of, the</u> HVCCC under clauses 16.4(a)(iv) and 16.6(c) as to the impact of the Trade on Coal Chain Capacity and the Capacity entitlements of access holders and has no Liability to access holders where it has relied on an HVCCC recommendation. ARTC will not be taken to be unreasonably withholding its consent or terminating a Trade where the HVCCC raises material objections to the assignment, novation or trade.</p> <p>16.8 Reduction in time period for ARTC approval of trades</p> <p>(a) By Within 12 months from the Commencement Date <u>date the Access Undertaking first takes effect</u>, ARTC will conduct a review of the appropriate time period for ARTC to inform the HVCCC of its decision to approve or reject trades including a decision to approve a trade subject to conditions, which do not meet the conditions set out in clause 16.4(a) (“Trade Consent Period”).</p>	<p>The amendment in clause 16.6(c) is made for similar reasons as above. That is, ARTC will be the party to seek HVCCC advice for permanent assignments and ‘non-safe harbour trades’ and not for ‘safe harbour trades’.</p> <p>However, ARTC is entitled to rely on any information provided by, and recommendations or opinions of, the HVCCC, in relation to permanent assignments, ‘non-safe harbour trades’ and ‘safe harbour trades’, regardless of who sought that advice. The amendments in clause 16.6(d) clarify this and are consistent with the wording in other provisions which provide for ARTC reliance on HVCCC recommendations.</p> <p>Clause 16.8 has been amended to correctly refer to the time period for review of Trade Consent Period which is 12 months from commencement of the HVAU and not from the commencement of the AHA.</p>
14	<p>21.6 Other agreements</p> <p>This document and the Operator Sub-Agreements comprise the whole agreement between the parties relating to use of the Network, and to the extent to which it is inconsistent with any existing agreement between the parties, will prevail over those existing agreements. <u>To avoid doubt, this document and the Operator Sub-Agreements will not effect the ability of the parties to enter into any user funding agreement as contemplated in the Access Undertaking.</u></p>	<p>This is an amendment to clarify that the AHA will not prevent the parties from entering into an user funding agreement as contemplated in the Access Undertaking.</p>
15	Schedule 2 - System True-Up Test	

Issue (Item No)	IAHA clause reference and proposed amendment	Reason for amendment
	<p>...</p> <p>2.4 Entitlement to TOP rebate accrual in a Period</p> <p>(a) Subject to clause 2.6(a) of this Schedule if the applicable system true-up test shows that for a Pricing Zone spanned by a Train Path of the Access Holder under this agreement:</p> <p>System Availability Shortfall is greater than zero</p> <p>then the Access Holder will accrue a rebate of the Train Path TOP Charge (defined in clause 1.2 of Schedule 3) paid for each Train Path within that Pricing Zone in that Period (System Period Rebate) equal to:</p> $AH\ TOP_{PU}(\$) \times AH\ IS \times [SAS / \sum(AH1\ IS \dots AHN\ IS)]$ <p>where:</p> <p>AH TOP_{PU}(\$) is the <u>Access Holder's average Train Path TOP Charge calculated using the same method for calculating TOP_{PU} as described in clause 5.4(c) of this agreement</u>Train Path TOP Charge associated with a Path Usage for that Train Path within that Pricing Zone which will be calculated by dividing the Train Path TOP Charge for that Pricing Zone (the Train Path TOP Charge for each Month for the initial year are set out in column 10 of the table in clause 3.2 and 3.3 of the Train Path Schedule) by the Average Path Usages for the Train Path (which are set out in column 4 of the table in clause 3.2 and 3.3 of the Train Path Schedule);</p> <p>...</p> <p>2.6 Exceptions and limitations</p>	<p>For consistency, this amendment ensures that the same method is used for calculating both the AH TOP_{PU}(\$) in clause 2.4(a) of Schedule 2 of the AHA and the TOP_{PU} as described in clause 5.4(c) of the AHA.</p>

Issue (Item No)	IAHA clause reference and proposed amendment	Reason for amendment
	<p>(a) To avoid doubt, the Access Holder will not accrue a rebate in respect of a Train Path if in that Period, subject to clause 16.5 of this agreement, the number of Path Usages for which an Operator actually operated a Service for the Access Holder on that Train Path in a Pricing Zone to transport coal, is equal to or exceeds the aggregate of the Access Holder's Base Path Usages and Allowed Tolerance in that Pricing Zone for that Period less any Path Usages not made available under clause 3.14, or clause 4.5 <u>or clause 11.6</u> of this agreement.</p> <p>2.8 <u>Amounts owing and payable from Annual TUT audit</u></p> <p>(a) At least three months prior to the end of a Contract Year, during the term of an access undertaking contemplated in paragraph (a) of the definition of 'Access Undertaking', ARTC will:</p> <p>(i) advise the ACCC in writing of the identity of the person that it proposes to appoint as the auditor (Proposed Auditor) to audit ARTC's compliance with its obligations under Schedule 2 of ARTC's access holder agreements in relation to the performance of the system true up test in each Pricing Zone in that Contract Year ("TUT Audit"); and</p> <p>(ii) provide such information or documents that the ACCC requires to assess the skill and independence of the Proposed Auditor, and the proposed terms of engagement and confidentiality arrangements.</p> <p>(b) The Proposed Auditor must have the relevant skill to perform the TUT Audit and be independent of ARTC. Without limitation, the Proposed Auditor is not independent if he or she:</p> <p>(i) is a current employee or officer of ARTC or its Related Bodies Corporate;</p> <p>(ii) has been an employee or officer of ARTC or its Related Bodies Corporate in the past 3 years;</p> <p>(iii) in the opinion of the ACCC, holds an interest in ARTC or its Related</p>	<p>The amendment to clause 2.8 of Schedule 2 of the IAHA is consequential to the extraction of the TUT audit provisions from clause 2.8 of Schedule 2 of the IAHA into section 4.10(f) of the HVAU. See discussion about the amendments to section 4.10(f) of the HVAU in the HVAU table above.</p>

Issue (Item No)	IAHA clause reference and proposed amendment	Reason for amendment
	<p style="text-align: center;">Bodies Corporate;</p> <p>(iv) has within the past 3 years been a professional adviser to ARTC or its Related Bodies Corporate;</p> <p>(v) has a contractual relationship, or is an employee of a firm or company that has a contractual relationship, with ARTC or its Related Bodies Corporate.</p> <p>(e) 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:</p> <p>(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; or</p> <p>(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,</p> <p>and forward to the ACCC a copy of the executed terms of engagement of the Auditor.</p> <p>(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).</p> <p>(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.</p> <p>(f) 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</p>	

Issue (Item No)	IAHA clause reference and proposed amendment	Reason for amendment
	<p>Auditor under this clause 2.8.</p> <p>(g) — 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.</p> <p>(h) — 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 (g)) will be included in the Economic Cost as defined in the Access Undertaking.</p> <p>(i) — 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.</p> <p>(j) — 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.</p> <p>If, as a result of the <u>annual audit of ARTC’s compliance with its obligations under this Schedule</u> in relation to the performance of the system true up test TUT Audit, <u>conducted in accordance with section 4.10(f) of the Access Undertaking</u>, 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 in section 4.10-<u>10(f)</u> of the Access Undertaking.</p>	
16	Schedule 3 - Charges	The changes are required to account for the fact there could be more than one Operator servicing the Access Holder under a Train Path Schedule so that the “Train Path TOP Charge” will be the “Total Assumed Monthly GTK per PZ” for each

Issue (Item No)	IAHA clause reference and proposed amendment	Reason for amendment
	<p>...</p> <p>1.2 Train Path TOP Charge</p> <p>Train Path TOP Charge is <u>the sum of the total take or pay payments due under a Train Path Schedule in a Month calculated as follows:</u></p> <p>\sum (Monthly GTK_{PZ} x TOP Price_{PZ}) for each <u>specified Operator for each</u> Pricing Zone spanned by the Train Path,</p> <p><u>(for example, for each Month in the first Contract Year, the Train Path TOP Charge will be the sum of the amounts specified in column 10 of the applicable tranches of Path Usages tables in clause 3 of the relevant Train Path Schedule)</u></p> <p>where:</p> <p>Monthly GTK_{PZ} is the <u>“Total Assumed Monthly GTK per PZ”</u> for the each specified Operator for each Pricing Zone as set out in column 8 of clause 3.2 and clause 3.3 <u>the applicable tranches of the Train-Path Usages tables in clause 3 of each Train Path Schedule</u> for each Train Path;</p> <p>TOP Price_{PZ} is the take or pay price for the each specified Operator for each Train Path in each Pricing Zone (in c/GTK):</p> <p>(a) for the first Contract Year of this agreement - the amount set out in column 9 of <u>the applicable tranches of Path Usages tables in clause 3.2 and clause 3.3</u> of the Train Path Schedule for each Pricing Zone spanned by the Train Path; and</p> <p>(b) for each following Contract Year - determined in accordance with clause 4 of <u>Schedule 33</u>.</p> <p>...</p> <p>2.1 Non-TOP Charge for each Service</p>	<p>specified Operator for each Pricing Zone (as set out in column 8 of each tranche of Path Usage table).</p> <p>The term Monthly GTK_{PZ} has been clarified to refer to “Assumed Monthly GTK” amount(s) contained in the Tranche of Path Usages Tables in the Train Path Schedule.</p> <p>These minor amendments to clauses 1.2(a) and 2.1 of Schedule 3 of the AHA have been made to ensure consistency and clarity in the application of the formulas.</p>

Issue (Item No)	IAHA clause reference and proposed amendment	Reason for amendment
	<p>NTP_{PZ} is the Non-TOP Price for each <u>specified Operator for each</u> Pricing Zone (in c/GTK):</p> <p>(a) for a Train Path included in a Train Path Schedule:</p> <p>(ii) for the first Contract Year of this agreement - the amount set out in column 11 of <u>the applicable tranches of Path Usages tables in clause 3.2 and clause 3.3</u> of the relevant Train Path Schedule for each Pricing Zone spanned by the Train Path; and</p> <p>(iii) for each following Contract Year - determined in accordance with clause 4 of Schedule 3; or</p> <p>(b) for a Train Path which is not included in a Train Path Schedule, the price notified to the Access Holder from time to time.</p>	
17	<p>Schedule 3 - Charges</p> <p>3.1 Ad Hoc Charges</p> <p>For each Ad Hoc Path Usage, and each Path Usage which is agreed by ARTC and the Access Holder to be provided on an ad-hoc basis, the Access Holder must pay an <u>a Charge</u> (“Ad Hoc Charge”) (in addition to the Non-TOP Charge) as follows:</p> <p>$\sum (\text{Actual GTK}_{PZ} \times \text{TOP Price}_{PZ})$ for each Pricing Zone spanned by the Train Path,</p> <p>where:</p> <p>Actual GTK, AGT_E and AGT_L have the meaning set out in clause 2 of this Schedule;</p> <p>TOP Price PZ has is the <u>TOP Price PZ for the specified Operator whose service used the Ad Hoc Path Usage as determined in accordance</u>meaning set out in with clause 1 of this Schedule unless the <u>Operator or the</u> Train Path is not included in a Train Path Schedule, in which case it is the price notified by ARTC to the Access Holder from time to time;</p>	<p>This is a minor amendment to ensure Ad Hoc Charge is correctly defined.</p> <p>Again, amendments are required in contemplation there could be more than one Operator servicing the Access Holder</p>

Issue (Item No)	IAHA clause reference and proposed amendment	Reason for amendment
	Train Path Kms _E and Train Path Kms _L have the meaning set out in clause 2 of this Schedule.	under a Train Path Schedule.
18	<p>Train Path Schedule 1 – <i>[insert relevant mine]</i></p> <p>...</p> <p>2.5 Extension of Schedule</p> <p>(e) If, on receipt of an access application satisfying clause 2.5(b), ARTC is required to provide two or more access holders with an opportunity to extend their train path schedule and ARTC receives a valid extension notice from two or more access holders, ARTC will:</p> <p>(i) if there is sufficient Available Capacity, provide the path usages sought under each extension notice received; and</p> <p>(ii) if there is insufficient Available Capacity to provide the path usages sought under each extension notice, allocate the path usages sought to the access holder whose extension is, in ARTC's opinion, most favourable to it. <u>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.</u> Ordinarily, but without limiting ARTC's discretion in this regard, ARTC would make a decision based on the extension that represented the highest present value of future returns to ARTC after considering all risks associated with the extension.</p>	Amendment required for consistency with the wording in section 3.13(e) of the HVAU, except that it is not necessary in the circumstance of an extension of a Schedule to incorporate a 'pro-rata' option.

Issue (Item No)	IAHA clause reference and proposed amendment	Reason for amendment																		
19	<p>Train Path Schedule 1</p> <p><i>Delete the figures and other insertions in the tranche of Path Usages tables (clauses 3.1 and 3.2 of the Train Path Schedule), which were provided for illustrative purposes only</i></p> <p>3.1 Train Path Description and Service Assumptions</p> <p>...</p> <table border="1"> <thead> <tr> <th>Service Assumptions</th><th>Operator 1</th><th>Operator 2 [If applicable]</th></tr> </thead> <tbody> <tr> <td>Train axle load</td><td>xx</td><td>xx</td></tr> <tr> <td>Train length (metres)</td><td>xx</td><td>xx</td></tr> <tr> <td>Maximum speed (km/hr)</td><td>xx</td><td>xx</td></tr> <tr> <td>Section run times (minutes)</td><td>xx</td><td>xx</td></tr> <tr> <td><u>Assumed GT per service - loaded and unloaded</u></td><td><u>xx</u></td><td><u>xx</u></td></tr> </tbody> </table> <p>3.2 Tranche 2 of Path Usages</p> <p>...</p> <p>1 If the Effective Date <u>or Start Date</u> is not the start of a Month or a calendar year or the <u>Schedule agreement</u> does not expire on the end of a Month or a calendar year, then the number of Path Usages in column 4 and column 5 (as applicable) will be pro rated by reference to that part of the Month or calendar year over a full Month or calendar year <u>as applicable for the relevant period</u> and the resulting Path Usages will be rounded down.</p> <p>2 An outward journey from the Port or discharge point to the load point with a return inward journey from the load point to the Port or discharge point will be considered a single Path Usage.</p> <p>3 An Allocation Period will be a Month unless the criteria in clause 3.5(a) of this agreement are satisfied and ARTC receives an election notice from the Access Holder in accordance with clause 3.5(b) of the agreement.</p> <p>4 All prices are exclusive of GST.</p> <p>5 All TOP Charges will be calculated, and payable, on a monthly basis regardless of the Access Holder's Allocation Period in any Contract Year.</p>	Service Assumptions	Operator 1	Operator 2 [If applicable]	Train axle load	xx	xx	Train length (metres)	xx	xx	Maximum speed (km/hr)	xx	xx	Section run times (minutes)	xx	xx	<u>Assumed GT per service - loaded and unloaded</u>	<u>xx</u>	<u>xx</u>	<p>This amendment was made because “Assumed GT per service - loaded and unloaded” should appropriately be treated as a Service Assumption and was brought up from the body of the Train Path Schedule to give effect to this.</p> <p>The amendments in the footnotes are required for clarity</p>
Service Assumptions	Operator 1	Operator 2 [If applicable]																		
Train axle load	xx	xx																		
Train length (metres)	xx	xx																		
Maximum speed (km/hr)	xx	xx																		
Section run times (minutes)	xx	xx																		
<u>Assumed GT per service - loaded and unloaded</u>	<u>xx</u>	<u>xx</u>																		

3 Amendments to the IOSA

Issue (Item No)	OSA section reference and proposed amendment	Reason for amendment
1	<p>18.3 Permitted disclosure</p> <p>Either party may disclose Confidential Information:</p> <p>....</p> <p>(e) to the ACCC to the extent reasonably required to undertake its functions in relation to the under the Access Undertaking or under the <u>Competition and Consumer Act 2010 (Cth)</u> CCA;</p> <p><u>(f) subject to entering into appropriate confidentiality arrangements with the auditor, to an auditor appointed under section 4.10(f) of the Access Undertaking to conduct a review of the system true up test under Schedule 2 of the Access Holder Agreement; or</u></p> <p>(g) <u>(g)</u> to the lessor of the Network, if required under the terms of the NSW Lease.</p>	<p>This is a very minor amendment to fix a typographical error and expand the term ‘CCA’ as it is not a defined term in the OSA</p> <p>The new clause 18.3(f) is consequential to the change to section 4.10(f) of the HVAU (see above).</p>