

# EXPLANATORY GUIDE FOR THE 2024 INTERSTATE ACCESS UNDERTAKING

---

Provided in support of ARTC's submission of the 2024  
IAU to the ACCC

12 December 2023

**ARTC**

# TABLE OF CONTENTS

<b>EXECUTIVE SUMMARY</b> .....	<b>2</b>
<b>1. ARTC’S ROLE AND OBJECTIVES</b> .....	<b>6</b>
<b>2. ARTC NETWORK</b> .....	<b>7</b>
2.1. OWNED NETWORK.....	7
2.2. LEASED NETWORK.....	7
<b>3. STATUS OF THIS EXPLANATORY GUIDE</b> .....	<b>8</b>
<b>4. HISTORY OF THE IAU</b> .....	<b>8</b>
<b>5. IAU RENEWAL PROCESS</b> .....	<b>9</b>
5.1. 2018 IAU .....	9
5.2. ACCC ISSUES PAPER.....	9
5.3. ACCC GUIDANCE PAPER.....	10
5.4. PRICING METHODOLOGY .....	10
5.5. INTEROPERABILITY .....	11
<b>6. CUSTOMER ENGAGEMENT</b> .....	<b>12</b>
6.1. BACKGROUND .....	12
6.2. MANAGING ISSUES RAISED .....	12
6.3. ON-GOING ENGAGEMENT WITH STAKEHOLDERS .....	15
<b>7. ARTC PROPOSAL FOR THE IAU</b> .....	<b>15</b>
7.1. PROPOSED FRAMEWORK FOR THE IAU.....	15
7.2. CHANGES TO THE ITAA .....	16
<b>8. INTERSTATE NETWORK DEVELOPMENT STRATEGY</b> .....	<b>16</b>
<b>9. CONSISTENCY WITH ACCC REQUIREMENTS</b> .....	<b>17</b>
<b>10. ARBITRATION UNDER THE IAU</b> .....	<b>19</b>
10.1. KEY DETAILS ABOUT THE ARBITRATION PROCESS .....	20
10.2. STANDARD STEPS IN THE ARBITRATION PROCESS .....	20
10.3. MATTERS TO BE TAKEN INTO CONSIDERATION BY THE APPOINTED ARBITRATOR .....	23
<b>11. ATTACHMENTS</b> .....	<b>25</b>
Attachment 1: Customer Engagement List and Opportunities.....	26

Attachment 2: Sectional Review of amendments to the 2008 IAU in the 2024 IAU .....28

Attachment 3: Specific Changes .....32

Attachment 4: Floor Calculations.....43

Attachment 5: Arbitration Agreement Template.....45

# EXECUTIVE SUMMARY

ARTC was created in 1998 through an Inter-Governmental Agreement (IGA) signed by the Commonwealth, Victoria, South Australia, NSW, Western Australia, and Queensland. ARTC was established as a consolidated interstate rail track owner to create a single process for access and its charter at inception was to improve performance and efficiency of interstate rail infrastructure and to:

- increase capacity utilisation;
- listen, understand, and respond to the market;
- operate on sound commercial principles; and
- provide shareholders with a sustainable return on capital invested.

In 2023 ARTC's shareholders published a Statement of Expectations which outlines the Government's objectives for ARTC. Specifically, ARTC is to:

- provide safe, efficient, and effective access to the interstate rail network;
- operate, manage, maintain, and improve track infrastructure owned or controlled by ARTC;
- pursue a growth strategy for interstate rail and rail's share of the interstate freight market and to foster a commercially viable Australian rail industry; and
- implement the recommendations of 'The Delivery of Inland Rail: An Independent Review, January 2023' (Review) and deliver the Inland Rail project through its fully owned subsidiary.

These objectives are founded on expectations that ARTC will:

- continue to prioritise network resilience to ensure it provides a reliable and safe service offering in support of the national supply chain and to encourage, where appropriate, the modal shift from road to rail; and
- be commercially sustainable to support efficient investment in the interstate rail network, servicing and repaying its debt obligations, and providing an appropriate return to the Government as shareholder.

The 2024 Interstate Access Undertaking (IAU) has been developed in accordance with these expectations and objectives. It creates a regulatory framework that delivers stakeholders with regulatory certainty on the access framework whilst providing increased transparency on the cost and performance of the network and future opportunities for growth across the network. It also provides the commercial flexibility required to meet the goal of driving modal shift and supporting the investment needed to deliver a resilient network that supports that growth.

The critical aspects of ARTC's proposed new framework for the 2024 IAU on which it has engaged with stakeholders include the following:

- a revised term of 5 years;
- clarity that IAU applies to new and existing access seekers;
- incorporation of the relevant sections that were proposed in 2018 (i.e., Sydney Metropolitan Freight Network (MFN) and Queensland Border Loop to Acacia Ridge, which will be incorporated into an expanded Newcastle to Acacia Ridge segment);

- a commitment to the maintenance of real prices on current services, subject to an ability to negotiate prices for the recovery of increased investments to improve reliability and service (including resilience), and increased capacity;
- provides that negotiated price increases are subject to a dispute resolution process including commercial arbitration provisions with mediation as a first step;
- provides detail on the arbitration process and key matters which the arbitrator must consider in reaching their decision;
- improves ARTC's transparency commitments regarding ARTC's cost and revenue performance. In addition to the current commitments on performance reporting, this includes an obligation to publish an annual Interstate Network Development Strategy (INDS). The INDS will cover potential investment projects on the Interstate Network (similar to the Hunter Valley Corridor Capacity Strategy) and will specifically detail:
  - performance indicators for each segment of the Interstate Network;
  - total access revenue earned for each segment;
  - volumes on each segment of the Interstate Network;
  - maintenance costs, split by category of fixed and variable for each Segment of the Network;
  - rail infrastructure capital associated with each Segment of the Network (noting that within the INDS, capital costs will be categorised as either rail infrastructure capital or completed major project costs);
  - non-maintenance operating costs, including network control and overheads for the Interstate Network;
  - references to published financial reports; and
  - major project documentation, including a description of the relevant major projects, the published business case, and the final capital cost and associated data.

In addition to the extensive consultation undertaken by the ACCC on the appropriate regulatory framework for the IAU, ARTC has undertaken stakeholder consultation on the 2024 IAU and has engaged with over 25 stakeholders through the process; with key points raised by stakeholders considered and, where appropriate, incorporated into the documents – either through drafting changes or clarity provided in this Explanatory Guide.

Most changes were included in the IAU. However, as the IAU is a document between the ACCC and ARTC, some stakeholder suggestions were included within the Indicative Track Access Agreement (ITAA).

The final group of stakeholder issues raised did not relate directly to either the IAU or the ITAA. While not immediately relevant to the regulatory process, ARTC takes these issues seriously and is committed to working to resolve them where possible. In the interests of transparency, a diagram showing engagement opportunities that already exist between industry and ARTC is provided at Attachment 1.

The 2024 IAU journey has been an extensive one involving months of consultation on the appropriate framework to apply to the Interstate Network given the competitive challenges of the freight market. ARTC firmly believes that the 2024 IAU has addressed the key points raised by the ACCC and also ensures that the ACCC's legislative requirements are met, as per the table below:

ACCC requirement	Addressed
Engage with stakeholders on the replacement undertaking	ARTC has engaged with more than 25 stakeholders throughout the process of finalising the 2024 IAU. Some issues raised either have been adopted in the IAU or, where they have not, ARTC is undertaking an ongoing process to provide feedback to the stakeholders on the reasoning.
Commit to negotiate on terms and conditions with users	The 2024 IAU provides a firm commitment by ARTC to negotiate in good faith with all new and existing users on a transparent and non-discriminatory basis per the published terms and conditions (via the ITAA and Rate Card). Under the 2024 IAU, ARTC is required to publish information on, amongst other matters, costs, revenue, performance, and future investments. Such information affords transparency to new and existing users engaged in the negotiation process.
Include a commercial arbitration model with an intermediary step of mediation to resolve disputes	The 2024 IAU has commercial arbitration as the final dispute resolution process which is binding on ARTC and involves mediation as a preliminary step. Significant detail is provided in the IAU and this Explanatory Guide on the arbitration process and the matters that must be taken into account by the arbitrator when making an award. This affords procedural transparency to users and provides them with an ability to assess the strength of their position prior to triggering the process.
Provide protections for smaller, dedicated rail users, who lack the resources and experience to negotiate effectively with ARTC	The 2024 IAU provides firm commitments on published terms, pricing, and non-discriminatory access, all of which are strong protections for smaller users. The inclusion of mediation as a preliminary step to arbitration is also designed to provide a layer of comfort for smaller users to resolve disputes prior to formal arbitration.
Decrease transaction costs for rail users in negotiating the terms and conditions of access through a focus on transparency	The 2024 IAU includes significant commitments on transparency of cost, revenue, volume, and performance at a segment and business level. In addition, the INDS provides a framework for engagement on growth opportunities, service improvements, and potential investments in the network. Additionally, the INDS provides users with the opportunity to put forward service options they believe will benefit the industry for wider consideration.
Provides detail on the capital expenditure on the network	<p>The 2024 IAU provides significant clarity on the capital expenditure profile for the network through the:</p> <ul style="list-style-type: none"> <li>• identification of, and consultation on, major projects via the INDS which incorporates current cost forecasts;</li> <li>• annual reporting and provision of supporting documentation for completed major projects; and</li> <li>• annual reporting on rail infrastructure capital by segment.</li> </ul>
Promote the economically efficient operation of, use of,	The basis for the 2024 IAU is to define a commercially flexible framework that promotes competition in the rail and freight markets

ACCC requirement	Addressed
and investment in, the Interstate Network	<p>and drives an increase in rail volume. The 2024 IAU meets these challenges through:</p> <ul style="list-style-type: none"> <li>• increased transparency measures for the benefit of new and existing user access requests;</li> <li>• ensuring non-discriminatory access for all users on the same service;</li> <li>• outlining ARTC's views on growth and investment opportunities to inform future service offerings; and</li> <li>• informing the industry of ARTC's work on addressing structural constraints (such as interoperability across network) which are not resolvable under the access framework.</li> </ul> <p>ARTC takes risk on investments and operating costs on the Interstate Network given the lack of direct linkage between costs and price. This ensures that at all times, ARTC has the strongest incentive to ensure its operating cost performance is efficient (and investments prudent) as higher costs directly result in lower operating margins.</p>
Provide efficient pricing that at least meets the incremental cost of service as per ACCC's legislative requirements	<p>The 2024 IAU continues the real pricing levels which have broadly applied since 2008. ARTC has provided historical data in Attachment 4 which demonstrates that the current pricing level has exceeded the direct cost of segments. ARTC does not anticipate any step change in either revenues or costs that would impact on this trend in relation to the CCA pricing principles. As such, the pricing should be considered efficient. ARTC notes the ACCC's requirement to consider return levels commensurate with risk as a function of its review. ARTC considers this to reflect the setting of a ceiling price, rather than the floor. Whilst the current framework does not incorporate a ceiling price, ARTC's Statement of Expectations from its shareholders sets an objective to foster a commercially viable rail industry with an expectation that ARTC provide an appropriate return to Government as shareholder. .</p>

The 2024 IAU which has emerged from this process will ensure rail is well positioned to meet the challenges of the future freight market and maximise rail volumes in a commercial manner, consistent with ARTC's Statement of Expectations outlined by the Commonwealth Government.

# 1. ARTC'S ROLE AND OBJECTIVES

Australian Rail Track Corporation Ltd is a company under the *Corporations Act 2001 (Cth)* (Corporations Act), whose shares are held by the Commonwealth of Australia. ARTC was created in 1998 through an IGA signed by the Commonwealth, Victoria, South Australia, NSW, Western Australia and Queensland. ARTC was established as a consolidated interstate rail track owner to create a single process for access, consistent with the Competition Principles Agreement and the National Rail Summit Heads of Agreement. ARTC's charter at inception was to:

- improve performance and efficiency of interstate rail infrastructure;
- increase capacity utilisation;
- listen, understand, and respond to the market;
- operate on sound commercial principles; and
- provide shareholders with a sustainable return on capital invested.

The objectives of ARTC under the IGA are to provide efficient and seamless access to the Interstate Network by:

- operating the business on commercially sound principles;
- pursuing a growth strategy for interstate rail;
- improving interstate rail infrastructure through better asset management and a program of commercial and grant funded investment; and
- promoting operational efficiency and uniformity on the Interstate Network.

The IGA provided for ARTC to have commercial performance incentives and the capacity to price, market, and manage supply of its services flexibly in the context of a competitive transport market.

In 2023 ARTC's shareholders published a Statement of Expectations which outlines the Government's objectives for ARTC as:

- to provide safe, efficient, and effective access to the interstate rail network;
- to operate, manage, maintain, and improve track infrastructure owned or controlled by ARTC;
- to pursue a growth strategy for interstate rail and rail's share of the interstate freight market and to foster a commercially viable Australian rail industry; and
- to implement the recommendations of the Review and deliver the Inland Rail project through its fully owned subsidiary.

These objectives are founded on expectations that ARTC will:

- continue to prioritise network resilience to ensure it provides a reliable and safe service offering in support of the national supply chain and to encourage, where appropriate, the modal shift from road to rail;
- be commercially sustainable to support efficient investment in the interstate rail network, servicing and repaying its debt obligations, and providing an appropriate return to the Government as shareholder.

The 2024 IAU has been developed in accordance with these expectations and objectives. It creates a regulatory framework that delivers stakeholders with regulatory certainty on the access framework



whilst providing increased transparency on the cost and performance of the network and future opportunities for growth across the network. It also provides the commercial flexibility required to meet the goal of driving modal shift and supporting the investment needed to deliver a resilient network that supports that growth.

## **2. ARTC NETWORK**

ARTC currently has responsibility for the management of around 8,500 route kilometres of standard gauge track, in South Australia, Victoria, NSW, and Western Australia over which it is responsible for:

- selling access to train above rail operators (Operators);
- the development of new business;
- capital investment;
- operational management; and
- managing infrastructure maintenance.

This network is a combination of corridors that are either owned or leased by ARTC, where the mix of segments covered by the IAU is described below.

### **2.1. OWNED NETWORK**

ARTC owns the following rail corridors:

- Adelaide – Wolseley;
- Adelaide – Pt Augusta – Kalgoorlie;
- Pt Augusta – Whyalla;
- Broken Hill – Crystal Brook; and
- parts of the Adelaide metropolitan track between Dry Creek and Outer Harbour.

### **2.2. LEASED NETWORK**

In Victoria, ARTC leases the two mainline interstate standard gauge corridors from the Victorian Government, being:

- Melbourne – Wolseley; and
- Melbourne – Albury.

ARTC also manages access to the connection from the interstate mainline network to the Appleton Dock precinct in Melbourne.

In NSW, ARTC leases the following parts of the NSW rail network:

- Albury – Macarthur;
- Woodville Junction (Newcastle) – Queensland Border;
- Cootamundra – Broken Hill;
- Parkes – Werris Creek/Ulan;
- Macarthur to Chullora (Southern Sydney Freight Line (SSFL));

- Chullora to Port Botany (MFN); and
- Moss Vale to Unanderra.

The MFN has been defined as the Chullora to Port Botany section which reflects the dedicated segment for freight haulage into Port Botany. The section from Sefton Park to Flemington Junction which is included in the MFN for the current IPART regulatory review has been incorporated into the SSFL to reflect its primary use for intermodal traffic in the north south corridor.

In Queensland, ARTC leases the section from the Queensland Border to the Acacia Ridge Terminal.

This 2024 IAU reflects the incorporation of the MFN and the Queensland Border to Acacia Ridge section into the network covered by the IAU.

### **3. STATUS OF THIS EXPLANATORY GUIDE**

This Explanatory Guide is a public document provided to assist stakeholders to understand the application of the new 2024 IAU.

### **4. History of the IAU**

Rail access policy and regulation was implemented in the 1990's as part of the microeconomic reform agenda reflecting the structural separation of the industry into above rail Operators (deemed to be the competitive and therefore unregulated) and Below Rail Networks (the monopoly segment which would be subject to economic regulation to drive cost and price efficiency). These reforms were implemented at the State level, with every state passing rail access regulation. Additionally, the Commonwealth provided an overarching framework through the (now) *Competition and Consumer Act (CCA)* and appointed the ACCC to regulate and monitor specific industries and approve voluntary access undertakings that may be submitted by companies.

In 1998, ARTC was created to establish a national rail network and provide a one stop shop for Operators to contract for network access under consistent access regulations. Since 2002 ARTC has operated under a voluntary access undertaking approved by the ACCC. ARTC was the first, and is currently the only, rail company to have submitted a voluntary undertaking to the ACCC. This 2002 IAU covered SA and Victoria (as ARTC was yet to lease the NSW networks) and incorporated the standard Track Access Agreement (TAA) which allocated risks and responsibilities of a structurally separated network, thereby facilitating above rail competition. The key principles approved under the 2002 IAU remain of critical importance today. The following principles have underpinned 20 years of ARTC operation under a (voluntary) regulated access environment:

- intermodal competition exists;
- ARTC is not vertically integrated;
- charges set by ARTC in the marketplace result in revenues that fall significantly below a level that would allow for the business to earn an adequate long term economic rate of return due to the competitive constraints of road transport;
- ARTC has adopted the concepts of equity and openness as key elements of its pricing policy, in order to stimulate market confidence and growth in the rail industry; and
- the appropriate allocation of risk and responsibility (via indemnities) between above and below rail is essential.

Key elements of the pricing methodology that have underpinned these ARTC's operations are outlined below at section 3.3.

In 2008, the IAU was renewed and incorporated NSW segments for the first time with the SSFL included via a variation in 2013. ARTC sought to include the MFN and the Queensland Border to Acacia Ridge section in its proposed 2018 version and has incorporated them in this 2024 IAU.

## **5. IAU Renewal Process**

### **5.1. 2018 IAU**

ARTC submitted a proposal to the ACCC to renew the IAU on 6 March 2018. This proposal reflected a negotiate-arbitrate model to allow for commercial flexibility within a pricing range constrained by a maximum revenue calculation derived from an asset base reflecting significant network investment from 2008 to 2018. In a December 2018 draft decision, the ACCC rejected the proposed IAU, and expressed concerns regarding the accuracy of the asset value and hence the ceiling. Following that rejection, ARTC worked with the ACCC to address their concerns and agree a process for an independent valuation of the asset.

To facilitate this process, ARTC withdrew its proposed 2018 IAU and has extended the 2008 to its current expiry of 30 June 2024. This was done to provide stakeholders with regulatory certainty whilst the necessary reviews and consultations were undertaken.

The ACCC published its draft Interstate Network Asset Valuation on 15 June 2021, assessing the asset value at \$10.6 billion (\$2019) which was reduced to \$10.2 billion (\$2019) post the removal of government grant funded assets. In its discussion paper on the proposed valuation, the ACCC highlighted its concern that such a value would not provide any regulatory pricing constraint on ARTC and flagged it would release an Issues Paper on alternative regulatory frameworks for the IAU that would be more fit for purpose.

### **5.2. ACCC ISSUES PAPER**

On 25 August 2021 the ACCC published an Issues Paper raising its concerns with the efficacy of DORC based regulation and sought comments on the need for ARTC to be regulated and what form of regulation that should take. The risk of a future privatised ARTC was raised and its ability to potentially raise prices at the expense of volume and whether this necessitates a need for stronger regulation.

Comments were sought on various alternative regulatory frameworks and whether legislation is required to compel asset owners to submit to such a framework. The models consulted on included price monitoring mechanisms, traditional cost-based revenue ceiling models, defining a revenue ceiling based on ARTC's forecast of future cash flows, price control mechanisms based on reference to CPI, and a negotiate-arbitrate framework with commercial arbitration as the mechanism to resolve pricing disputes.

ARTC has continually advocated to the ACCC on the benefits of a commercial arbitration-based framework to deliver the commercial agility required for rail volume to grow and to drive modal shift.

### 5.3. ACCC GUIDANCE PAPER

The ACCC published an IAU Guidance Paper, reflecting submissions on the Issues Paper, on 28 July 2022. This paper outlined the ACCC's expectations of the key principles to underpin the 2024 IAU. These broadly aligned with ARTC's expectations and included:

- a commitment by ARTC to negotiate on terms and conditions with users;
- a model with commercial arbitration as the final mechanism to resolve disputes with an intermediary step of mediation;
- protections for smaller, dedicated rail users who lack the resources and experience to negotiate effectively with ARTC;
- decrease transaction costs for rail users negotiating the terms and conditions of access through a focus on transparency; and
- a defined a price cap on potential price increases which should not be based on an assessment of ARTC's cost base or revenue forecasts.

ARTC considers that its proposed 2024 IAU meets these requirements and maintains the pricing structure which has underpinned the IAU from its commencement. Whilst these pricing levels are constrained by competition from rail's modal competitors of road and sea, they at least cover the incremental cost of usage of the network and therefore meets the ACCC legislative requirements to deliver efficient pricing.

The summary of segment costs, revenue and volume outlined in Attachment 5 is provided to demonstrate this principle.

### 5.4. PRICING METHODOLOGY

The approach to pricing contained in the 2002 and 2008 IAUs was based on meeting the following objectives:

- published reference pricing is open and simple – promotes usage and market confidence, enhancing above rail competition;
- pricing is non-discriminatory – promotes market confidence in equitable treatment, enhancing above rail competition;
- indicative pricing is market based – promotes rail competitiveness;
- indicative pricing – provides pricing certainty promoting investment and market entry enhancing above rail competition;
- two part pricing – encourages more efficient above rail operations, and set at less than fixed cost levels so as not to inhibit market entry; and
- pricing promotes market growth, improving cost recovery and long term asset sustainability.

The 2008 IAU defined the tariff associated with the indicative access service, being the transport of general freight on a super freighter train, as the Super Freight service. The tariffs associated with non-indicative services were not prescribed in the IAU and were therefore subject to negotiation between ARTC and the Operators.

The current two part tariff structure applying to the Interstate Network (for all services except the non-indicative coal service which has historically been priced on a net tonne basis) is applied to every path booked by an Operator and has two parts:

- a flagfall component based on \$/km; and
- a variable component based on \$/gtkm.

The flagfall component is effectively the take or pay component of charging and persists for up to 12 months or more beyond the cancellation of a path. The split of the two part tariff (between flag fall and variable charges) was also set low to encourage competition and bring new Operators onto the network. This resulted in flagfalls at c 25-30% of revenue compared to c 70% in other regimes.

The use of \$/gtkm was based on driving contestability, as valuing on train km, or by train path, disadvantaged new entrants in developing their business as they could not commence services at the maximum efficiency of train length. \$/gtkm based tariffs therefore ensured competitive neutrality with the existing Operators and ensured that the tariff structure was not a barrier to entry.

Within the pricing constraints provided by road competition, the main driver for both the structure and the level of ARTC tariffs has been the promotion of above rail competition. ARTC has been prepared to accept the volume risk represented in highly variable charges to promote above rail competition and to drive more freight on rail.

The 2024 IAU, for the first time, extends regulatory coverage of its price offering to all existing services based on segment, commodity, train configuration, priority, and speed. Further, ARTC has, for all existing services, committed to maintain the real pricing level (based on current network capacity) for the term of the 2024 IAU. This is reflected by the inclusion of the rate card current at the time of submission as a schedule in the IAU. ARTC will also continue to publish the rate card on its website to provide further clarity. This commitment delivers significant regulatory and pricing certainty to existing and potential users of these services and is considered to meet the ACCC's requirement of a price cap under a commercial arbitration framework.

The pricing model defined in the IAU is replicated in the commercial contracts with Operators, with the price is explicitly defined in the contract rather than referencing the price path in the IAU.

## 5.5. INTEROPERABILITY

ARTC does not control the entirety of the below rail service provision in many markets. As such ARTC recognises the need to coordinate its activities (such as train planning and day of operations) with other track managers, both on the Interstate Network and regional networks. Cooperation and coordination are essential elements for seamless access and the provision of safe, efficient, and reliable services. Both of which are critical for rail to compete and sustain itself.

ARTC notes comments from stakeholders about the interoperability and harmonisation issues of rail networks. In addition to ARTC's commitment to rail network coordination outlined above, ARTC is actively involved in industry fora to address these issues. In particular, ARTC is a key member of a National Transport Commission working group that is actively seeking to improve network interoperability and harmonisation. ARTC is committed to removing barriers to efficient rail operation where it can, but this commitment is best reflected in policy and industry fora where ARTC can advocate and lead change across the industry. This commitment will be reflected in a chapter of the INDS which outlines the steps ARTC is taking to support the resolution of rail network interoperability issues.

## 6. CUSTOMER ENGAGEMENT

### 6.1. BACKGROUND

In its July 2022 Guidance Paper, the ACCC set an expectation that ARTC would engage with stakeholders to seek feedback on ARTC's proposed IAU prior to submitting the draft to the ACCC. Equally, stakeholders were encouraged to raise concerns with ARTC prior to making formal submissions to the ACCC on the IAU. As highlighted above, the Guidance Paper was the output of a process that involved extensive industry consultation by the ACCC on the Interstate Rail Network and the regulatory framework which should apply to it. ARTC's consultation with stakeholders should therefore be viewed as an extension of this engagement process.

In the second half of 2023, ARTC commenced engagement with stakeholders. ARTC acknowledged that Customers and other stakeholders would have varying degrees of engagement with the draft IAU consultation process. An effort was made to engage deeply with organisations who had previously made submissions regarding the IAU. Other organisations were sent a package of material with an offer to meet and discuss any aspects of interest.

Over a three month period, more than 25 stakeholders were contacted directly and given the opportunity to provide feedback on the draft IAU. These included Rail Operators, Rail Infrastructure Managers, ports, and a grain handler. The list of companies engaged is provided in Attachment 1.

### 6.2. MANAGING ISSUES RAISED

The range of issues raised throughout the consultation was broad. Of the issues that related to the IAU, these were either:

- adopted within updated wording of the IAU; or
- not adopted where ARTC considered they were not appropriate with explanations given as to that decision.

Given the IAU is a document between ACCC and ARTC, some stakeholder suggestions were included in the ITAA.

The final group of issues raised did not relate directly to either the IAU or the ITAA. While not immediately relevant to the regulatory process, ARTC takes these issues seriously and is committed to working to resolve them where possible and has committed to a chapter in the INDS to inform the industry of ARTC's actions in this area.

A summary of the issues raised and ARTC's responses is provided in the table below:

Stakeholder comment	ARTC response
<b>PATHING</b>	
Concern around equivalence of train paths	ARTC does not price differentiate between individual train paths. ARTC encourages engagement with the Interstate Commercial and Customer team on all matters, including access charges and pathing.

Process for migrating paths over from existing north south line to Inland Rail on Inland Rail commencement.	This is not an issue for the term of this IAU. The change of the definition of "Applicant" in the IAU to include existing customers clarifies there is access to IAU arbitration for disputes in respect of new pathing requests.
Questions in respect of the schedule in the master train plan and deidentification of paths.	ARTC works with all Customers to provide an optimal schedule based on the needs of the Network which maximises utilisation and, where possible based on confidentiality requirements, maximises transparency. ARTC takes volume risk on its Network and therefore is fully incentivized to maximise the freight tonnage on its Network and optimise pathing to facilitate this. There is always opportunity to engage with Interstate Commercial and Customer team to discuss pathing.
<b>PRICING</b>	
Would like to see flexibility of pricing to reflect seasonally-based commodities	We encourage engagement with the Interstate Commercial and Customer team on all matters, including access charges. We are always willing to work with stakeholders and beneficial freight owners to develop solutions and maximise freight on rail.
Concerned that ARTC access charges aren't waived when other networks have possessions that impact the ability to use a path	ARTC engages with other RIMs to align possessions wherever possible. However it is not within ARTC's remit to waive access charges when another RIM's possession affects usage of a path.
Concern in respect of the manner of price escalation	ARTC's escalation clauses in its Access Agreements requires a 60 day consultation on its pricing proposal for the coming year. We encourage engagement with the Interstate Commercial and Customer team on all matters, including access charges. We are always willing to work with stakeholders and beneficial freight owners to develop solutions and maximise freight on rail.
<b>INTERSTATE NETWORK DEVELOPMENT STRATEGY (INDS) AND REPORTING</b>	
What will be included in the INDS	The INDS is an annual snapshot of ARTC's view of the opportunities for the commodities that underpin the use of the rail network, the investments (and forecast costs) required to improve service and deliver increased capacity to capture those opportunities, a summary of actions ARTC has taken to address broader policy issues such as interoperability and an ability for stakeholders to propose alternatives based on industry wide consultation. A draft will be provided for consultation, then a final version published.
What will be included in annual performance reporting	Annual reporting will include, by segment, maintenance costs, revenue, utilisation (by GTK

	and TKM), rail infrastructure capital and non-maintenance operating costs (including Network control and overheads) at the Network level as well as the existing performance metrics. In addition, upon completion of major capital projects, ARTC will publish costs and supporting project documentation.
Request to put out a draft of the INDS to operators to make sure it meets their needs	A draft will be provided for consultation, then a final version published.
What is the process for agreeing upon a capex project, what the cost recovery is, whether a rail operator has a say in it.	<p>The INDS will be a dynamic document that is consulted on and updated annually. It provides a forecast of what capital costs are expected to be for projects, but is not a commitment by ARTC to develop referenced projects. Through the consultation process, there will be opportunity to provide feedback on any planned network improvements.</p> <p>Where ARTC seeks to recover the costs of investments from Customers via negotiation, these negotiations are covered by the clauses of the IAU (including non-discrimination and dispute resolution).</p>
<b>CONTRACTUAL DOCUMENTS</b>	
Various requests in requests in respect of the matters to be considered by the Arbitrator and the dispute resolution process	ARTC has accommodated many of these requests (such as inclusion of CEO negotiation prior to mediation) however some requests were not incorporated to ensure consistency with the provisions of the CCA and other access regimes.
Would like more detail around what is involved in arbitration	ARTC has provided detail on the arbitration process in this Explanatory Guide.
Would like to see "reasonable requests for information" included in ITAA	The IAU allows for reasonable requests for information, and this is covered off by the change to the definition of "Applicant" which clarifies there is access to IAU arbitration for disputes in respect of new pathing requests.
<b>INTEROPERABILITY</b>	
Concern regarding new technologies and interfacing across networks	As one of National Cabinet's five priorities for collective action, we are focussed on improving national rail interoperability and working with governments and industry in contributing to the development and harmonisation of processes and systems to increase productivity and safety in the sector. ARTC has committed to provide an update on its actions to address this issue in the INDS.
Concerned with interoperability of multiple networks, and the resolution of disputes across networks	ARTC recognises the challenges of interfacing with other networks and RIMs. While the interoperability of the standard gauge network doesn't fit within the scope of IAU discussions,



	ARTC works with government and industry to streamline transitions between RIMs wherever possible. ARTC has committed to provide an update on its actions to address this issue in the INDS.
<b>NON-ROLLINGSTOCK INTERESTS</b>	
Concerned regarding rights of non-rollingstock access users	The IAU is a document for negotiation of track access agreements for all traffic .Where access to the network is not the subject of an Access Agreement, the IAU is not the appropriate forum for management of such access.
<b>NETWORK RELIABILITY</b>	
Concern regarding network reliability	The INDS is an ongoing vehicle for stakeholders, regardless of their contractual relationship, to provide input into ARTC’s investment planning and Network development to support and protect current volumes and meet future demand.
<b>OPERATIONS</b>	
Need a better system to get access to track to recover rollingstock	We note the varied efficiency of processes to access track in instances of network disruption. We note this feedback and are working to improve the system for operators and the broader supply chain.

### 6.3. ON-GOING ENGAGEMENT WITH STAKEHOLDERS

ARTC continues to follow up with Customers and other stakeholders to provide an update on matters raised during consultation. This feedback is part of ARTC’s ongoing stakeholder engagement and will form the basis for further consultation on matters such as the INDS. A specific section within the INDS has been created to leverage this engagement and provide an ongoing framework for stakeholders to raise potential commercial improvements. Any such stakeholder suggestions can be used to form the basis for broader industry engagement on those issues.

Attachment 1 provides a diagram showing engagement opportunities that already exist between industry and ARTC.

## 7. ARTC PROPOSAL FOR THE IAU

Attachment 2 provides a sectional review of amendments to the IAU and ITAA. For more specific detail on the changes made see Attachment 3.

### 7.1. PROPOSED FRAMEWORK FOR THE IAU

The critical aspects of ARTC’s proposed new framework for the 2024 IAU on which it has engaged with stakeholders are:

- has a revised term of 5 years;

- clarity that the IAU applies to new and existing access seekers;
- incorporation of the relevant sections that were proposed in 2018 (i.e., MFN and Queensland Border Loop to Acacia Ridge, which will be incorporated into an expanded Newcastle to Acacia Ridge segment);
- commits to the maintenance of real prices on current services, subject to an ability to negotiate prices for the recovery of increased investments to improve reliability and service (including resilience), and increase capacity;
- provides that any negotiated price increases are subject to a dispute resolution process including commercial arbitration provisions with mediation as a first step;
- details the arbitration process and key matters which the arbitrator must consider in reaching their decision;
- improves ARTC's transparency commitments regarding ARTC's cost and revenue performance. In addition to the current commitments on performance reporting, this includes an obligation to publish the INDS on an annual basis. The INDS will cover potential investment projects on the Interstate Network (similar to the Hunter Valley Corridor Capacity Strategy) and will specifically detail:
  - performance indicators for each segment of the Interstate Network;
  - total access revenue earned for each segment;
  - volumes on each segment of the Interstate Network;
  - maintenance costs, split by category of fixed and variable for each Segment of the Network;
  - rail infrastructure capital associated with each segment of the Interstate Network (noting that within the INDS, capital costs will be categorised as either rail infrastructure capital or completed major project costs);
  - non-maintenance operating costs, including network control and overheads for the Interstate Network;
  - references to published financial reports; and
  - major project documentation, including a description of the relevant major projects, the published business case, and the final capital cost and associated data.

## 7.2. CHANGES TO THE ITAA

Amendments to the ITAA have been proposed to ensure consistency with the current Track Access Agreements in place with Customers and reflect amendments negotiated over the period from 2008.

# 8. INTERSTATE NETWORK DEVELOPMENT STRATEGY

As raised above, the 2024 IAU will, for the first time, provide for the annual publishing of the INDS which will outline ARTC's assessment of market opportunities, the investments required to capture them (with indicative estimates of capital costs provided), a summary of ARTC's actions to progress solutions on interoperability issues. Additionally, the INDS will provide a forum for Operators to raise potential changes to the service offering to deliver improved network performance.

The INDS will also facilitate stakeholder engagement on major projects which are required to meet demand growth on the Interstate Network.

It is envisaged that the following topics will be covered within the INDS:

- representation of the network and its current capabilities;
- completed Interstate Network investments by ARTC;
- future investments in development/progress;
- Projections of the interstate rail task;
  - intermodal;
  - steel;
  - grain;
  - minerals;
  - general freight;
  - passenger;
- network performance (current state);
- additional capacity enhancements to meet the projections of the rail task;
- rail market challenges and opportunities;
- operational improvements (including a separate section for stakeholder suggestions that can be consulted on more broadly);
- network resilience; and
- actions taken by ARTC to improve interoperability and harmonisation.

It is important to note that this outline serves as an interim guide as to the content. Once complete, a draft will be provided for consultation, then a final version published. The INDS will be updated annually, with consultation occurring on the draft each year.

## 9. CONSISTENCY WITH ACCC REQUIREMENTS

ARTC considers that the changes incorporated into the 2024 IAU meet the requirements expressed by the ACCC for a new regulatory framework and are consistent with their legislative approval requirements.

ACCC requirement	Addressed
Engage with stakeholders on the replacement undertaking	ARTC has engaged with more than 25 stakeholders throughout the process of finalising the 2024 IAU. The issues raised were either adopted in the IAU or ITAA, considered further in this Explanatory Guide, or declined where not appropriate with explanations provided for that decision.
Commit to negotiate on terms and conditions with users	The 2024 IAU provides a firm commitment by ARTC to negotiate in good faith with all new and existing users on a transparent and non-discriminatory basis per the published terms and conditions

ACCC requirement	Addressed
	(via the ITAA and Rate Card). Under the 2024 IAU, ARTC is required to publish information on, amongst other matters, costs, revenue, performance, and future investments. Such information affords transparency to new and existing users engaged in the negotiation process.
Include a commercial arbitration model with an intermediary step of mediation to resolve disputes	The 2024 IAU has commercial arbitration as the final dispute resolution process which is binding on ARTC and involves mediation as a preliminary step. Significant detail is provided in the IAU and this Explanatory Guide on the arbitration process and the matters that must be taken into account by the arbitrator when making an award. This affords procedural transparency to users and provides them with an ability to assess the strength of their position prior to triggering the process.
Provide protections for smaller, dedicated rail users, who lack the resources and experience to negotiate effectively with ARTC	The 2024 IAU provides firm commitments on published terms, pricing, and non-discriminatory access, all of which are strong protections for smaller users. The inclusion of mediation as a preliminary step to arbitration is also designed to provide a layer of comfort for smaller users to resolve disputes prior to formal arbitration.
Decrease transaction costs for rail users in negotiating the terms and conditions of access through a focus on transparency	The 2024 IAU Includes significant commitments on transparency of cost, revenue, volume, and performance at a segment and business level. In addition, the INDS provides a framework for engagement on growth opportunities, service improvements, and potential investments in the network. Additionally, the INDS provides users with the opportunity to put forward service options they believe will benefit the industry for wider consideration.
Provides detail on the capital expenditure on the network	<p>The 2024 IAU provides significant clarity on the capital expenditure profile for the network through the:</p> <ul style="list-style-type: none"> <li>• identification of, and consultation on, major projects via the INDS which incorporates current cost forecasts;</li> <li>• annual reporting and provision of supporting documentation for completed major projects; and</li> <li>• annual reporting on rail infrastructure capital by segment.</li> </ul>
Promote the economically efficient operation of, use of, and investment in, the Interstate Network	<p>The entire basis for the 2024 IAU is to define a commercially flexible framework that promotes competition in the rail and freight markets and drives an increase in rail volume. The 2024 IAU meets this challenge through:</p> <ul style="list-style-type: none"> <li>• increased transparency measures for the benefit of new and existing user access requests;</li> <li>• ensuring non-discriminatory access for all users on the same service;</li> <li>• outlining ARTC's views on growth and investment opportunities to inform future service offerings; and</li> </ul>

ACCC requirement	Addressed
	<ul style="list-style-type: none"> <li>informing the industry of ARTC's work on resolving structural constraints (such as interoperability across network) which are not resolvable under the access framework.</li> </ul> <p>ARTC takes 100% of the cost risk on investments and operating costs on the Interstate Network given the lack of direct linkage between costs and price. This ensures that at all times, ARTC has the strongest incentive to ensure its operating cost performance is efficient (and investments prudent) as higher costs directly result in lower operating margins.</p>
<p>Provide efficient pricing that at least meets the incremental cost of service as per ACCC's legislative requirements</p>	<p>The 2024 IAU continues the real pricing levels which have broadly applied since 2008. ARTC has provided historical data in Attachment 4 which demonstrates that the current pricing level has exceeded the direct cost of segments. ARTC does not anticipate any step change in either revenues or costs that would impact on this trend in relation to the CCA pricing principles. As such, the pricing should be considered efficient. ARTC notes the ACCC's requirement to consider return levels commensurate with risk as a function of its review. ARTC considers this to reflect the setting of a ceiling price, rather than the floor. Whilst the current framework does not incorporate a ceiling price, ARTC's Statement of Expectations from its shareholders sets an objective to foster a commercially viable rail industry with an expectation that ARTC provide an appropriate return to Government as shareholder.</p>

## 10. ARBITRATION UNDER THE IAU

Where an access dispute between the ARTC and an Applicant is referred to arbitration in accordance with the 2024 IAU, this arbitration will be conducted in accordance with the Australian Centre for International Commercial Arbitration (ACICA) rules of arbitration (Rules) that are in force at the date of service of the relevant Notice of Dispute (discussed in further detail below), as amended and supplemented by clause 3.12.5 of the 2024 IAU.

A party that knows that any requirement of the Rules has not been complied with and yet proceeds with the arbitration without promptly stating its objection to such non-compliance will be deemed to have waived its right to object to the non-compliance.

The 2024 IAU provides that there will be one arbitrator and that the arbitration shall be governed by the laws of South Australia. The IAU also incorporates as a Schedule the Arbitration Agreement that will be required to be executed by all parties as part of the dispute resolution process. This process has arbitration as a final step following executive escalation and then mediation. Note that the arbitrator's decision is binding on ARTC however users have the option not to proceed with the access application. For clarity, the Arbitration Agreement template is included in this Explanatory Guide at Attachment 5.

As commercial arbitration is a new feature of the IAU and it references the ACICA Rules rather than setting out the detail in the IAU, ARTC provides a detailed explanation of the arbitration process below.

## 10.1. KEY DETAILS ABOUT THE ARBITRATION PROCESS

The key details of an arbitration process in respect of an access dispute under the Undertaking are as follows:

- Prior to referring a dispute to arbitration, the parties must enter into an Arbitration Agreement under which they agree to be bound by the arbitration process.
- There will be one arbitrator, to be agreed upon by the parties or appointed by ACICA if the parties cannot agree.
- All documents or information supplied to the arbitrator by one party shall at the same time be communicated to the other party.
- The decision of an arbitration is called an “award”.
- There will be no oral hearing unless the arbitrator or parties require one.
- Matters relating to the arbitration (including its existence) are confidential, except that the details of the award shall be given to the ACCC.
- The parties can be legally represented.
- There are limited rights to appeal an arbitral award. The appeal rights are contained in Part 7 of the Commercial Arbitration Act 2011 (SA) (Commercial Arbitration Act).
- The periods of time fixed by the arbitrator for the communication of written statements should not exceed 45 days, however, these periods may be extended by the arbitrator if necessary.
- Multiple Applicants can be party to the one arbitration with ARTC either by way of consolidation or joinder. Arbitrations can be consolidated or multiple Applicants can be joined to an arbitration via agreement between all the parties.<sup>1</sup> Although consolidation can occur after arbitrators have been appointed, the Rules suggest that consolidation should take place in the early stages of each arbitration. However, an Applicant can be joined to an arbitration that is already on foot.
- The unsuccessful party will pay the costs of the successful party, unless the arbitrator considers a different allocation is required.

## 10.2. STANDARD STEPS IN THE ARBITRATION PROCESS

### Step 1: Notice of Arbitration

The party initiating the arbitration, the Claimant, submits a Notice of Arbitration to both Respondent and ACICA and pays the registration fee.

The Notice of Arbitration contains:

- a demand that the dispute be referred to arbitration;
- contact information of the parties and their legal representatives (if applicable);
- a copy of the arbitration clause in the 2024 IAU and the separate arbitration agreement between the parties;

---

<sup>1</sup> Separate arbitrations can also be consolidated if the claims involve a common question of law or fact, or if the relief claimed in the arbitrations arises out of the same transaction or series of transactions, and ACICA finds the separate arbitration agreements compatible. Additionally, an Applicant can be joined as a party to an arbitration if the additional Applicant is bound by the same Arbitration agreement, however this is unlikely to arise in practice.

- identification of the 2024 IAU as the agreement in respect of which the dispute has arisen;
- the general nature of the dispute and an indication of the amount involved, if any; and
- the relief sought by the Claimant.

### **Step 2: Answer to the Notice of Arbitration**

Within 30 days of receiving the Notice of Arbitration, the Respondent is to submit an Answer to the Notice of Arbitration to the Claimant and ACICA.

The Answer to Notice of Arbitration contains:

- contact information of the Respondent and its legal representatives (if any);
- any submission that the arbitrator does not have jurisdiction to determine the dispute;
- comments on the particulars of the dispute contained in the Claimant's Notice of Arbitration; and
- comments on the relief sought by the Claimant in its Notice of Arbitration.

### **Step 3: Appointment of arbitrator**

ARTC and the Applicant will seek to agree on the choice of arbitrator.

If the parties cannot reach agreement within 10 Business Days of the referral of a dispute to arbitration under the 2024 IAU, the arbitrator will be appointed by ACICA and either party may write to ACICA notifying ACICA that the parties have not been able to agree on the choice of arbitrator and requesting that ACICA make that appointment.

The arbitrator is required to observe the rules of natural justice and will have power to grant all legal, equitable and statutory remedies.

### **Step 4: Preliminary Conference**

As soon as practicable, the arbitrator will hold a preliminary meeting with the parties in person or virtually by conference call, videoconference or using other technology with participants in one or more geographical places.

During this conference, a procedural timetable for the Arbitration will be determined and this may include provisional hearing dates.

The arbitrator may, at any time, on application by either party, extend or vary the procedural timetable.

### **Step 5: Pleadings**

#### Statement of Claim

The Claimant is required to submit a Statement of Claim, which must include:

- a statement of the facts supporting its position in the dispute;
- the Claimant's view on the points in issue between the parties;
- the relief sought; and
- the legal grounds or arguments supporting the Claimant's position in the dispute.

As far as possible, the Claimant must annex to its Statement of Claim all documents and other evidence on which it relies (or contain references to them).

#### Statement of Defence

The Respondent submits a Statement of Defence which must include the following details as contained in the Statement of Claim:

- a statement of the facts supporting the Respondent's position in the dispute;
- the Respondent's view the points in issue between the parties;
- the Respondent's view on the relief claimed by the Claimant; and
- the legal grounds or arguments supporting the Respondent's views.

The Respondent must, as far as possible, annex to its Statement of Defence the documents and other evidence on which it relies for its defence (or contain references to them).

### Reply

The procedural timetable may make provision for the Claimant to provide a Reply. A Reply is generally limited in scope to responding to matters raised in the Respondent's Statement of Defence, rather than raising new matters.

### Amending statements or making further written statements

Unless the arbitrator considers it inappropriate to allow an amendment, either party may amend or supplement its claim or defence.

The arbitrator will decide if further written statements, in addition to the claim and defence, will be required from the parties and will fix the periods of time for submitting those.

## **Step 6: Discovery and Subpoenas**

There is no express provision for discovery or disclosure in either the ACICA Rules or the 2024 Undertaking, but discovery can be ordered by the arbitrator as part of the procedural timetable.

Either party may apply to the arbitrator for leave to approach the Supreme Court of South Australia to issue a subpoena (i.e., an order of the Court requiring production of certain specified documents) to any relevant third parties.

## **Step 7: Evidence**

Each party has the burden of proving the facts relied upon to support its claim or defence.

Whilst the parties are required, to the extent possible, to include or refer to documents and other evidence on which they rely in their pleadings, there are often orders made for a separate stage of evidence exchange.

The arbitrator may also order a party to produce documents they believe to be relevant and any failure to produce any relevant document without good reason permits the arbitrator to draw an adverse inference from such failure.

## **Step 8: Submissions**

In the lead up to a hearing, further procedural orders may be made about the exchange of submissions and conduct of the hearing.

Submissions are documents that summarise the parties' respective factual and legal arguments.

'Opening submissions' are usually exchanged, either simultaneously or sequentially, shortly before the commencement of a hearing.

Parties to an arbitration are often then required to make 'closing submissions' either orally or in writing at the end of the hearing or shortly after it has concluded.



## Step 9: Hearings

Upon request from either party, the arbitrator can hold hearings for the presentation of evidence by witnesses, including expert witnesses, and/or for oral argument.

Otherwise, the arbitrator shall decide whether to hold such hearings or whether to determine the matter on the basis of the documents and other materials provided by the parties.

## Step 10: Award

An award shall be made in writing and shall be final and binding on the parties.

The parties undertake to carry out the award without delay.

The arbitrator shall state the reasons upon which an award is based, unless the parties have agreed that no reasons are to be given.

Note that in addition to making a final award, the arbitrator will be entitled to make interim and interlocutory awards as needed in the circumstances of the Arbitration.

## 10.3. MATTERS TO BE TAKEN INTO CONSIDERATION BY THE APPOINTED ARBITRATOR

In making an award the arbitrator must take into account:

- the principles, methodologies and provisions set out in the IAU – the award should be consistent with the IAU and its objectives;
- ARTC's legitimate business interests and investment in the Network – this reflects section 44X(a) of the CCA;
- any additional investment that the Applicant or ARTC has agreed to undertake – for example, if additional expenditure is required to facilitate the service requested, the costs and funding of this expenditure will be relevant to the award;
- the interests of all persons who have rights to use the Network— this reflects section 44X(c) of the CCA as existing users should not generally be adversely affected by the award;
- the operational and technical requirements necessary for the safe and reliable operation of the Network – safety is of paramount importance and any impacts on the reliability of network for all users needs to be considered;
- the economically efficient operation of the Network – operational efficiency is a key objective of the IAU and ARTC's operation of the network;
- the costs of providing the Services requested, including the particular characteristics of the relevant Service, which includes axle load, speed, wheel diameter, Train length, origin and destination, number and length of intermediate stops, departure and arrival times and days of the week – for example, any special characteristics of the Service requested should be considered particularly if they impact safety, other users or reliability or efficiency of the network;
- the commercial and logistical impacts on ARTC's business of the Services requested compared to the Standing Offer for Reference Services – for example, any efficiency impacts of a non-Reference Service on ARTC's business should be considered;
- formal offers tabled and rejected by the parties – this provides the arbitrator with a clear understanding of the parties' respective positions and should incentivise parties to put in reasonable offers before proceeding to arbitration;

- the factors listed in clause 4.2 of the IAU (as applicable) which are the factors to be considered by ARTC in differentiating charges between Services, being:
  - the term of the Access Agreement;
  - the potential for growth of the business;
  - the opportunity costs to ARTC
  - the consumption of ARTC's resources, including relative Capacity consumption;
  - the credit risk associated with the business;
  - the market value of the Train Path sought;
  - the Segments of the Network relevant to the Access being sought;
  - previously negotiated Charges agreed under the terms of the IAU, where relevant as published by ARTC; and
  - changes request by the Applicant to the ITAA;
- factors relating to the industry, on the basis that the arbitrator should be cognisant of industry issues including:
  - comparative rates of return;
  - risks to the rail industry; and
  - relativity of price to overall supply chain costs; and
- any other matters that the Arbitrator thinks are appropriate to have regard to.

## **11. ATTACHMENTS**

# ATTACHMENT 1: CUSTOMER ENGAGEMENT LIST AND OPPORTUNITIES

3801 Ltd
Aurizon Operations Ltd
Bowmans Intermodal Pty Ltd
OneRail FLA
Journey Beyond
John Holland Pty Ltd
Lachlan Valley Railway Society Co-operative Ltd
Martinus Rail Pty Ltd
Metro Trains Melbourne Pty Ltd
NSW Trains
Pacific National Pty Ltd
QUBE Logistics (Rail) Pty Ltd
Rail Motor Society Inc
SCT Opco Pty Ltd
Southern ShortHaul Railroad Pty Ltd
Speno Rail Maintenance Australia Pty Ltd
Sydney Rail Services
Sydney Trains
Transport Heritage NSW
UGL Regional Linx Pty Ltd
V/Line Passenger Pty Ltd
Ventia Australia Pty Ltd
<b>Other</b>
GrainCorp
Dept of Transport Vic
Port of Melbourne
Transport for NSW
ARC Infrastructure



## CUSTOMER ENGAGEMENT OPPORTUNITIES

### FORMAL OPPORTUNITIES

#### Agreements

- Safety Interface Agreements
- [2024 Interstate Access Undertaking](#)
- Interstate Track Access Agreements

#### Processes

- Safety Interface Agreements
- Network notifications (incidents, disruptions, weather alerts, safety notices, train control reports)
- Annual pricing review and customer consultation
- Annual engagement re Interstate Network Development Strategy
- Regular performance reporting
- Application for a contracted path
- Request for an adhoc train path
- Annual Customer Survey
- Resilience Strategy

#### Meetings

- Industry meetings (ALC)
- Freight on Rail Group (FORG)
- Biennial Board customer dinner
- ARA Rail Freight Executive Committee
- Senior managers quarterly meeting
- Biannual operator forum

### INFORMAL OPPORTUNITIES

- customer enquiries
- issue-specific workshops
- establishment of protocols
- safety management
- new business opportunities
- train control communication
- pathing engagement
- wayside monitoring

## ATTACHMENT 2: SECTIONAL REVIEW OF AMENDMENTS TO THE 2008 IAU IN THE 2024 IAU

Section of the Undertaking	Title	Scope of the Section	Basis for Change
Part 1:	Preamble	Covers the background and objectives of the IAU, including ACCC information requests.	Clause inserted to meet ACCC requests for information. This reflects the ACCC's legislative powers but simplifies the request process for the ACCC.
Part 2:	Scope and Administration of Undertaking	Covers scope of the IAU, legislative basis for its approval, term, ability to vary during the term and contact details.	Term extended to 30 June 2029 to provide for 5 year term with consequent deletion of 2008 IAU specific clauses in respect of midterm reviews.
Part 3:	Negotiating for Access	Defines the obligations on each party and the process and timelines for negotiating access, including information to be provided and dispute resolution.	Section contains significant amendments to reflect the switch to a commercial arbitration framework for dispute resolution. ARTC believes that commercial arbitration is better equipped to deliver the commercial agility required to grow rail volume and drive modal shift.
Part 4:	Pricing Principles	Defines the key principles underpinning pricing for the reference service, including the limits on charge differentiation, the structure of charges, the standing offer and the publication of charges.	<p>Section contains significant amendments given the new framework.</p> <p>References to maximum revenue and the parameters that establish that limit (e.g., Asset Bases, DORC, etc) are removed.</p> <p>Pricing limits are removed from this section and replaced with a reference to current pricing per a new Schedule J.</p> <p>CPI formula amended to cap Charge increases at CPI each year (maintaining catch-up mechanism).</p>

Section of the Undertaking	Title	Scope of the Section	Basis for Change
Part 5:	Management of Capacity	Outlines methodology for analysing impact on capacity of access requests and how that capacity is allocated and potentially transferred by Operators.	No material changes.
Part 6:	Network Connections and Additions	Defines the process for the management of projects related to new connections or additional capacity to the network.	New clause added committing ARTC to the annual publication of, and consultation on, an INDS which frames the potential projects required to meet growth scenarios. This provides the ACCC and other stakeholders comfort on project transparency given removal of Schedule H.
Part 7	Network Transit Management	Defines ARTC's objective in Train Management.	No material changes.
Part 8	Performance Indicators	Defines ARTC's commitment to maintain the network and publish KPI's consistent with that commitment.	No material changes.
Part 9	Definitions and Interpretation	Defines key terms used throughout the Undertaking.	Amended as required to give effect to amendments discussed elsewhere including changes to titles of legislation.
Schedule A	Access Application	Template form for potential Access Seeker to complete and form of Arbitration Agreement.	This form requires both parties to enter into an Arbitration Agreement to ensure there are no questions of jurisdiction for the arbitrator.
Schedule B	Information to Accompany Access Application	Specific requirements which must be met by potential applicants.	No material changes.

Section of the Undertaking	Title	Scope of the Section	Basis for Change
Schedule C	Essential Elements of Access Agreement	Defines the essential elements of any Access Agreement entered into by ARTC under the IAU.	No material changes.
Schedule D	Indicative Track Access Agreement as at Commencement Date	Provides transparency on the Track Access Agreement and commercial arrangements which underpin current pricing.	Includes amendments proposed in 2018 to ensure ITAA is consistent with the actual TAA's in place with current Customers.
Schedule E	Network	Provides specific details on the parts of ARTC's network covered by the IAU.	Expanded to include key segments currently not part of the 2008 IAU – MFN and Border Loop to Acacia Ridge.
Schedule F	Network Management Principles	Outlines the key Train Decision Factors that underpin operations on ARTC's Interstate Network.	No material changes.
Schedule G	Performance Indicators	Defines Service Quality Performance measures covering Reliability, Network Availability, Transit Time, Track condition and temporary speed restrictions as well as periodic reporting of ARTC unit costs.	No material changes.
Previous Schedule H	Capital Expenditure	Defined the expected projects to be undertaken on the network from 2008 and their expected cost – with obligations to inform the ACCC of cost variances.	Schedule has been omitted given removal of asset base references and inclusion of INDS to address project transparency.
New Schedule H	Segments	Defines the regulatory segments included in the Undertaking.	Segments updated for accuracy – removal of Appleton Dock Jct to Footscray Road and inclusion of MFN and Border Loop to Acacia Ridge.



Section of the Undertaking	Title	Scope of the Section	Basis for Change
New Schedule I	Annual Reporting - information provision and timing	New schedule to meet ACCC requirements of transparency on ARTC's cost and revenue performance.	<p>ARTC to publish Performance Indicators, Access revenue, volumes, maintenance costs, rail infrastructure capital, non-maintenance operating costs, published financial reports, and major project capital data in addition to the current reporting requirements set out in Schedule G.</p> <p>If the data contains Confidential Information it will be provided to the ACCC on a confidential basis.</p>
New Schedule J	Standing Offer	Defines ARTC's current service offerings, pricing (excluding GST) and Reference Service characteristics.	Forms the basis for pricing commitments.

# ATTACHMENT 3: SPECIFIC CHANGES

## Interstate Access Undertaking

Part	Clause Reference	Amendment
1	Details	Address updated to 11 Sir Donald Bradman Drive, Keswick Terminal, SA 5035 (globally). Trade Practices Act amended to Competition and Consumer Act (globally).
	1.2 (Objectives)	Removed references to “methodologies” and “revenue limits” given the removal of RAB methodology.
	1.3 (Request for information)	<b>New clause:</b> ACCC has the ability to request information with notice to ARTC. If ARTC considers that the ACCC’s request is unreasonable, it may notify the ACCC and advise how the request may be modified to address ARTC’s legitimate concerns, the ACCC will then notify ARTC of its decision after receiving such a notice.
2	2.3 (Term)	Term amended from 30 June 2021 to 30 June 2029.
	2.4 (Review of Undertaking)	Removed Capital Expenditure table in Schedule H. Removed requirement to review IAU on every fifth anniversary.
	2.7 (Contact Details and Website)	References to “Indicative Access Charges for Indicative Services” amended to “Standing Offer for Reference Services” (globally). As requested by the ACCC, obligation for ARTC to publish its Standing Offer for Reference Services and prices for negotiated Services moved from clause 2.7 to clause 4.6. Included the INDS to be published on ARTC’s website. References to “Indicative Access Agreement” amended to “Indicative Track Access Agreement” (globally).
3	3.3 (Provision of Information)	Removed DORC values, and incremental cost and Economic Cost from list of information that ARTC may provide to Applicants.

Part	Clause Reference	Amendment
	3.4 (Parties to Negotiation)	Given the introduction of commercial arbitration, issues which were previously referred straight to the ACCC as the arbitrator (e.g., if ARTC considers an Applicant's request for Access is frivolous in nature) will now proceed through the dispute resolution process as the starting point.
	3.8 (Indicative Access Proposal)	Per clause 3.4 above, specific issues will now proceed through the dispute resolution process.
	3.10 (Negotiation Process)	Clause 3.10(b)(v) is covered by clause 3.10(b)(iv) and has been omitted for redundancy.
	3.12.2 (Negotiation)	By mutual agreement in writing, parties can extend the period between a Dispute Notice being served and the senior representative negotiation taking place.
	3.12.3 (Executive negotiation)	<b>New clause:</b> Executive negotiation step brought forward – previously executive negotiation occurred as the first step in the mediation procedure, whereas now it occurs before commencing mediation.
	3.12.4 (Mediation)	Updated mediation guidelines (previous guidelines no longer in force).
	3.12.5 (Arbitration)	<p>Arbitrator no longer ACCC and arbitration regime revised to commercial arbitration.</p> <p>ACICA Arbitration Rules apply. On this basis, clause generally condensed by omitting matters which are dealt with in the ACICA Arbitration Rules (e.g., joinder).</p> <p>ARTC and Applicant in dispute are to execute an Arbitration Agreement (included in Schedule A) prior to referring the dispute to arbitration.</p> <p>In addition to matters the arbitrator must already take into account, the arbitrator must now take into account the costs of providing the services, the commercial and logistical impacts on ARTC's business compared to the Standing Offer for Reference Services, formal offers tabled and rejected by the parties, the charge differentiation factors listed in clause 4.2, and factors relating to industry.</p> <p>In making an award, the arbitrator may:</p> <ul style="list-style-type: none"> <li>Specify the terms and conditions of the Service.</li> </ul>

Part	Clause Reference	Amendment
		<ul style="list-style-type: none"> <li>• Require ARTC to extend the Network.</li> <li>• Require ARTC to permit Applicant interconnection to the Network.</li> <li>• Specify the extent to which the award overrides an earlier award.</li> </ul> <p>In making an award, the arbitrator must not:</p> <ul style="list-style-type: none"> <li>• Prevent an existing user from obtaining a sufficient amount of the Service to be able to meet the user's requirements.</li> <li>• Deprive any person from an existing contractual right.</li> <li>• Make an award that results in the Applicant becoming the owner of any part of the Network without the consent of ARTC.</li> <li>• Make an award that requires ARTC to bear some or all of the costs associated with extending the Network, maintaining extensions of the Network, interconnections to the Network.</li> </ul> <p>If the Applicant does not enter into a TAA consistent with the award, the Applicant must not give a Dispute Notice about the same or a substantially similar service for one year from the date of the award.</p> <p>Clarifies that neither party will have a right of appeal under section 34A of the Commercial Arbitration Act but parties retain other appeal rights.</p> <p>ARTC will notify ACCC of Disputes referred to arbitration and provide ACCC with a copy of any award made by an arbitrator under clause 3.12.5, given the confidential nature of arbitral awards, general publication is not considered appropriate.</p>
4	4.2 (Charge Differentiation)	<p>Included the “changes requested by the Applicant to the ITAA” and “relative Capacity consumption” to the list of factors ARTC may have regard to.</p> <p>Removed of explanatory comment on Capacity consumption.</p>
	4.3 (Limits on Charge Differentiations)	<p>Included of “applicable non-price terms” as relevant factor for ARTC to consider in relation to whether two Services are alike.</p>

Part	Clause Reference	Amendment
	Previous 4.4 (Revenue Limits)	Clause deleted given removal of previous pricing methodology.
	4.4 (Structure of Charges)	Removed references to “Excess network occupancy component” (globally).
	4.5 (Standing Offer)	Clarified that ARTC may annually vary the Standing Offer specifically on 1 July each year. Reference Service characteristics moved to Schedule J. Pricing tables moved included to Schedule J. CPI formula amended to cap Charge increases at CPI each year (maintaining catch-up mechanism). Removed mechanism to determine TV <sub>i</sub> for sixth Determination Date given the IAU has a five year term.
	4.6 (Publication of Charges)	As noted in relation to clause 2.7 above, ARTC’s obligation to publish Charges moved from clause 2.7 to this clause 4.6 as requested by the ACCC. If ARTC cannot de-identify a Customer, ARTC is required to only publish what it can reasonably do so in the circumstances
6	6.1 (Interstate Network Development Strategy)	<b>New clause:</b> Development, publication and consultation on the indicative Interstate Network Development Strategy.  On completion of a preferred capacity expansion option, ARTC to prepare and publish on its website a “close-out report” for that project.
	6.3 (Additional Capacity sought by Applicants)	Amended to clarify that (1) ARTC must provide Applicant with reasons in writing for refusal of Additional Capacity, and (2) Applicant requests for Additional Capacity need not relate to the INDS.  Removed reference to WACC in clause 6.3(d)(ii).
	6.4 (Additional Capacity sought by ARTC for the benefit of the rail industry)	Replaced reference to “ARTC Corridor Strategy” with INDS.  Removed paragraph which provided that efficient expenditure will be included in Capital Expenditure.

Part	Clause Reference	Amendment
	6.5 ( <i>Transport (Compliance and Miscellaneous) Act 1983 (VIC)</i> )	Legislation and position title updated for Victorian Act.
9	9.1 (Definitions)	<p>Removed of definitions relevant to former pricing methodology: Capital Expenditure, Ceiling Limit, Depreciation, Economic Cost, Floor Limit, Indicative Access Charges, Indicative Services, Non-Segment Specific Assets, Non-Segment Specific Costs, Prudent, Rate of Return, Segment-Specific Assets, Segment-Specific Costs, and Third Party Works.</p> <p>General tidy-up of definitions: CCA, Corporations Act, position titles, and Rail Safety Acts.</p> <p>Definition of “Applicant” updated to expressly include existing Customers seeking new or additional Train Paths.</p> <p>Included definitions of Arbitration Agreement, Commencement Date, Interstate Network Development Strategy, Reference Services, and Standing Offer.</p>
Sch A	Access Application	<p>Given that the IAU is an undertaking by ARTC in favour of the ACCC (as opposed to an agreement between ARTC and the Applicant), Schedule A now requires acknowledgement from the Applicant that when submitting an Access Application it agrees to be bound by the dispute resolution procedures in the IAU.</p> <p>The form of the Arbitration Agreement is attached to Sch A.</p>
Sch C	Essential Elements of Access Agreement	Removed reference to “excess network occupancy component” (globally).
Sch E	Network	<p>Reference to “Victorian Rail Track” amended to “VicTrack” (globally).</p> <p>Reference to “RIC and SRA” amended to “Transport for NSW”.</p> <p>Updated to include MFN and Border Loop to Acacia Ridge.</p> <p>Reference to “RailCorp” amended to “Transport Asset Holding Entity of NSW” (“TAHA”) (globally).</p>
Sch F	Network Management Principles	References to Newcastle Station in definition of “Commuter Peak Services” removed.

Part	Clause Reference	Amendment
Previous Sch H	Capital Expenditure	Schedule removed entirely.
New Sch H	Segments	Segments updated for accuracy.
Sch I	Annual Reporting – information provision and timing	<p><b>New Schedule:</b> ARTC is required to publish a report on its website each year detailing Performance Indicators, Access revenue, volumes, maintenance costs, rail infrastructure capital, and non-maintenance operating costs (including Network control and overheads) for each Segment of the Network. Additionally, ARTC is to publish financial reports for the purpose of outlining the accounting depreciation of ARTC’s asset base.</p> <p>ARTC must include in the annual report, information regarding the completion of major projects during the IAU period, this includes a description of the relevant major projects, any published business case or project assessment which has been shared with stakeholders, and the final capital cost and associated data.</p> <p>If the data contains Confidential Information it will be provided to the ACCC on a confidential basis.</p>
Sch J	Standing Offer	<b>New Schedule:</b> Included pricing tables (ex GST)
Signing Block		ACCC has requested that both parties execute the IAU

## Indicative Track Access Agreement

Part	Clause Reference	Amendment
N/A	Details	Address updated to 11 Sir Donald Bradman Drive, Keswick Terminal SA 5035 (globally).
1	1.1 (Definitions)	<p>General tidy-up amendments: TPA changed to CCA, Corporations Act, Rail Safety Acts, and removal of RIC and SRA (globally).</p> <p>Amended terminology in relation to Charges: “Indicative Access Charges” amended to “Standing Offer”, and “Indicative Services” amended to “Reference Services” (globally).</p> <p>Omission of Excess Network Occupancy Charge (globally).</p> <p>Definition of “Accrediting Authority” added, definition of “Standards updated”.</p>
2	2.7 (Manner of Control of the Network by ARTC)	ARTC’s control of Network qualified by the words “so far as is reasonably practicable”.
	2.9 (Renegotiation of Scheduled Train Paths)	Updated to provide that the renewal of Scheduled Train Paths and new track access agreements, are to be determined in accordance with the Access Undertaking that will be in force at the time the Scheduled Train Paths expire.
4	4.3 (Excess Network Occupancy Charges)	Removed clause.
	4.4 (Variation of Charges)	<p>Amended to clarify that Standing Offer for Reference Services may be amended by CPI once each year (rate card to be published in Schedule 3).</p> <p>Amended to clarify that negotiated Charges are set out and amended in accordance with Schedule 3 (i.e., not subject to the CPI cap on price increases but subject to alternative charge mechanism agreed with Operator).</p> <p>As per the IAU, CPI reset at sixth Determination Date deleted on the basis that the IAU has a five year term.</p>
	4.5 ( <i>Transport (Compliance and Miscellaneous Act) 1983 (VIC)</i> )	Legislation and position title updated for Victorian Act.



Part	Clause Reference	Amendment
	4.7 (Interest)	Alternative default interest rate simplified to the corporate overdraft interest rate published on the CBA website. This is to avoid the administrative burden of getting the interest rate in writing from NAB.
	4.10 (Goods and Services Tax)	Definition of "Input Tax Credit" amended
5	5.4 (Rolling Stock)	Adjustments to Operator's requirements for rolling stock (e.g., must be fit and proper for use and operated by properly trained and qualified personnel who exercise due diligence and care).
	5.6 (Conduct of ARTC)	With respect to ARTC's obligation not to differentiate between Operators, "Indicative Access Charges" amended to "proposed Charges".  Consistent with the IAU, ARTC is permitted to have regard to applicable non-price terms when determining whether characteristics of two Services are alike.
	5.7 (Removal of Rolling Stock from Network)	Adjusted to allow ARTC to remove Train from Network where required.
6	6.1 (ARTC to Repair and Maintain the Network)	Updated to refer to restrictions or Instructions issued from time to time by ARTC.
	6.2 (Operating Restrictions)	Updated to allow ARTC to issue Instructions to Operator including in relation to speed and weight.
9	New 9.9 (Cancellation of Services)	Separated from 'Cancellation of Scheduled Train Paths' clause for clarity.
11	11.4 (Investigation of Incidents)	Amended to clarify that on request, each party will co-operate reasonably with an investigation.
13	13.8 (Environmental Manual)	Removed clause requiring the Operator to comply with Environmental Manuals.

Part	Clause Reference	Amendment
15	15.2 (Definitions)	<p>Included definition for “Third party liability”.</p> <p>“Loss or Damage” capitalised and defined.</p> <p>“Loss or Damage” distinguished from ‘loss and damage’ for clarity. “Loss or Damage” refers to property damage and the related legal costs, whereas ‘loss and damage’ is used in the generic sense.</p>
	15.6 (Third Party Liabilities)	<p><b>New clause:</b> inserted on Third Party Liability. Clarifies the parties are potentially liable to each other for third party liability arising out of negligence or breach of statutory duty of the other party (but not where the liability arises out of breach of the agreement).</p> <p>More specifically, the changes provide that when a third party seeks to recover from ARTC or the Operator:</p> <ul style="list-style-type: none"> <li>• both ARTC and the Operator must take the benefit of any law or contractual provision that limits the liability of ARTC or the Operator;</li> <li>• ARTC and the Operator are only permitted to seek contribution from the other on the basis of negligence or breach of statutory duty but not because of any breach of the agreement; and</li> <li>• ARTC and the Operator release each other from all claims (excluding the legal costs associated with defending a claim by a third party caused by a breach of the agreement) for contribution, except to the extent that the third party liability has been caused by negligence or breach of statutory duty.</li> </ul> <p>Changes are consistent with the Hunter Valley Access Undertaking Operator Sub-Agreement which has been in operation since 2011).</p>
	15.8 (Obligation to Mitigate/Betterment)	<p>Amended to include the replacement of damaged assets.</p> <p>Restoration, repair or replacement of damaged assets now qualified by the words “to prevailing standards in the most cost efficient way available”.</p>

Part	Clause Reference	Amendment
		Clarifies that “new for old” is acceptable if it is the most cost efficient way to restore, repair or replace the damaged assets.
16	16.2 (ARTC’s Insurance Policies)	Removed requirement for ARTC to publish its insurance premiums. Removed requirement for ARTC to apply savings in premiums towards repairs, maintenance or Network upgrades.
17	17.3 (Mediation)	Mediation guidelines updated (same as IAU).
20	20.3 (Force Majeure)	Removed definitional requirement for Force Majeure event to exclude negligence.
24	24.1 (Notice)	Notice requirements generally updated, for example, to remove facsimile and include email.
	24.2 (Deemed Notice)	Same as above.
28	Counterparts	Facsimile replaced with email.
Sch 1	Network	Generally updated for accuracy. MFN included. References to “Victorian Rail Track” replaced with “VicTrack” (globally). References to “RIC and SRA” replaced with “Transport for NSW” (globally). References to “RailCorp” replaced with “Transport Asset Holding Entity of NSW” (“TAHE”).
Sch 3	Charges	Updated to include placeholder for Standing Offer rate card. Updated to include placeholder for negotiated Charges, including a placeholder for ARTC to insert an agreed process to vary any negotiated Charges (i.e., because they are not subject to the annual CPI cap).

### **Minor amendments**

Minor amendments (i.e., formatting, cross references, etc) have been omitted from the tables above.

# ATTACHMENT 4: FLOOR CALCULATIONS

2019	IAU Segment Description	Fixed Maintenance	Variable Maintenance	Total Maintenance	Revenue	Var Maint/Rev	GTK's	TKM's	Business Unit Overheads	Shared Mntce	Network Control	Corporate OH	Total Costs
	Dry Creek – Parkeston	5,964,297	3,863,965	9,828,262	94,399,303	4%	20,887,813	5,835,124					
	Dry Creek – Pelican Point	489,602	75,375	564,977	294,290	26%	44,571	26,540					
	Dry Creek – Spencer St (Melbourne)	9,007,078	4,724,069	13,731,147	32,102,455	15%	6,845,972	2,814,952					
	Crystal Brook – Parkes	4,708,240	3,122,044	7,830,284	31,467,476	10%	6,641,150	2,397,805					
	Cootamundra - Parkes	1,193,159	744,787	1,937,946	4,277,085	17%	907,907	378,499					
	Melbourne (Tottenham) – Macarthur	14,630,469	9,251,390	23,881,859	56,277,136	16%	12,166,709	8,242,088					
	Moss Vale – Unanderra	1,133,376	264,157	1,397,533	2,530,591	10%	153,344	83,855					
	Newcastle –Acacia Ridge	10,194,113	7,307,229	17,501,343	43,658,662	17%	6,373,481	4,503,501					
	Port Augusta – Whyalla	63,126	110,482	173,607	919,813	12%	129,647	70,566					
	Southern Sydney Freight Line incl Sefton Park Junction – Flemington South	1,063,593	732,737	1,796,330	5,432,062	13%	631,626	258,272					
	Metropolitan Freight Network Chullora Junction – Port Botany	1,975,966	342,016	2,317,983	5,743,072	6%	509,619	317,672					
		<b>50,423,019</b>	<b>30,538,251</b>	<b>80,961,270</b>	<b>277,101,945</b>	<b>11%</b>	<b>55,291,838</b>	<b>24,928,875</b>	<b>33,252,663</b>	<b>19,722,507</b>	<b>29,708,650</b>	<b>32,358,386</b>	<b>196,003,476</b>
2020	IAU Segment Description	Fixed Maintenance	Variable Maintenance	Total Maintenance	Revenue	Var Maint/Rev	GTK's	TKM's	Business Unit Overheads	Shared Mntce	Network Control	Corporate OH	Total Costs
	Dry Creek – Parkeston	6,663,472	4,709,898	11,373,369	98,059,735	5%	21,678,107	5,842,834					
	Dry Creek – Pelican Point	355,490	40,303	395,793	368,573	11%	53,874	30,018					
	Dry Creek – Spencer St (Melbourne)	9,311,512	4,933,435	14,244,947	36,053,017	14%	7,679,312	3,117,287					
	Crystal Brook – Parkes	4,872,972	4,533,808	9,406,780	34,744,894	13%	7,294,338	2,535,985					
	Cootamundra - Parkes	1,287,931	734,903	2,022,835	4,338,406	17%	912,047	404,764					
	Melbourne (Tottenham) – Macarthur	17,898,465	11,001,700	28,900,164	54,302,103	20%	11,482,279	7,868,681					
	Moss Vale – Unanderra	1,113,563	713,164	1,826,727	1,816,703	39%	125,028	56,512					
	Newcastle –Acacia Ridge	11,136,757	9,358,760	20,495,517	39,727,838	24%	5,430,498	3,906,049					
	Port Augusta – Whyalla	209,721	60,905	270,626	986,919	6%	139,337	71,052					
	Southern Sydney Freight Line incl Sefton Park Junction – Flemington South	803,623	121,843	925,466	5,333,876	2%	587,008	246,384					
	Metropolitan Freight Network Chullora Junction – Port Botany	2,051,617	539,201	2,590,818	5,507,559	10%	476,579	305,537					
		<b>55,705,122</b>	<b>36,747,920</b>	<b>92,453,042</b>	<b>281,239,623</b>	<b>13%</b>	<b>55,858,407</b>	<b>24,385,102</b>	<b>39,501,509</b>	<b>19,250,448</b>	<b>30,180,548</b>	<b>32,696,964</b>	<b>214,082,511</b>
2021	IAU Segment Description	Fixed Maintenance	Variable Maintenance	Total Maintenance	Revenue	Var Maint/Rev	GTK's	TKM's	Business Unit Overheads	Shared Mntce	Network Control	Corporate OH	Total Costs
	Dry Creek – Parkeston	6,501,828	5,227,256	11,729,084	104,569,203	5%	23,271,863	6,030,290					
	Dry Creek – Pelican Point	359,770	117,887	477,657	566,431	21%	85,785	40,247					
	Dry Creek – Spencer St (Melbourne)	9,700,200	5,496,650	15,196,850	35,189,440	16%	7,626,034	2,850,405					
	Crystal Brook – Parkes	5,460,714	3,191,793	8,652,507	28,607,198	11%	5,967,357	2,058,087					
	Cootamundra - Parkes	1,701,355	892,203	2,593,558	4,853,245	18%	1,024,689	440,321					
	Melbourne (Tottenham) – Macarthur	22,296,204	13,844,737	36,140,941	58,579,947	24%	12,700,205	7,876,891					
	Moss Vale – Unanderra	1,160,106	416,671	1,576,777	3,243,354	13%	316,020	144,853					
	Newcastle –Acacia Ridge	11,233,634	9,210,590	20,444,223	40,249,201	23%	5,547,060	3,750,614					
	Port Augusta – Whyalla	147,698	168,035	315,733	1,340,249	13%	188,866	78,621					
	Southern Sydney Freight Line incl Sefton Park Junction – Flemington South	1,021,998	288,150	1,310,149	5,495,442	5%	618,560	249,381					
	Metropolitan Freight Network Chullora Junction – Port Botany	2,336,663	248,082	2,584,746	6,036,520	4%	534,458	315,323					
		<b>61,920,171</b>	<b>39,102,053</b>	<b>101,022,224</b>	<b>288,730,231</b>	<b>14%</b>	<b>57,880,889</b>	<b>23,835,032</b>	<b>37,103,523</b>	<b>18,562,328</b>	<b>32,410,269</b>	<b>33,950,739</b>	<b>223,049,083</b>

2022	IAU Segment Description	Fixed Maintenance	Variable Maintenance	Total Maintenance	Revenue	Var Maint/Rev	GTK's	TKM's	Business Unit Overheads	Shared Mntce	Network Control	Corporate OH	
	Dry Creek – Parkeston	7,475,050	2,232,181	9,707,231	106,043,238	2%	23,193,695	6,174,626					
	Dry Creek – Pelican Point	415,929	13,398	429,327	537,783	2%	85,054	39,464					
	Dry Creek – Spencer St (Melbourne)	11,655,344	4,620,903	16,276,247	34,837,520	13%	7,426,430	2,888,947					
	Crystal Brook – Parkes	6,309,298	2,935,991	9,245,289	25,202,321	12%	5,206,198	1,943,501					
	Cootamundra - Parkes	2,410,712	904,307	3,315,019	5,773,308	16%	1,203,072	524,298					
	Melbourne (Tottenham) – Macarthur	26,848,120	15,503,288	42,351,408	59,346,657	26%	12,847,441	7,862,658					
	Moss Vale – Unanderra	1,045,786	394,341	1,440,126	2,776,490	14%	400,219	142,434					
	Newcastle –Acacia Ridge	12,462,836	9,092,488	21,555,324	40,560,898	22%	5,615,869	3,707,338					
	Port Augusta – Whyalla	97,642	20,543	118,185	1,928,019	1%	267,744	88,962					
	Southern Sydney Freight Line incl Sefton Park Junction – Flemington South	1,160,801	138,045	1,298,846	5,933,628	2%	632,080	265,516					
	Metropolitan Freight Network Chullora Junction – Port Botany	2,583,983	115,125	2,699,108	6,061,564	2%	559,584	320,886					
		<b>72,465,501</b>	<b>35,970,610</b>	<b>108,436,111</b>	<b>289,001,425</b>	<b>12%</b>	<b>57,437,386</b>	<b>23,958,629</b>	<b>38,444,360</b>	<b>21,207,345</b>	<b>33,976,097</b>	<b>36,197,102</b>	<b>238,261,014</b>

2023	IAU Segment Description	Fixed Maintenance	Variable Maintenance	Total Maintenance	Revenue	Var Maint/Rev	GTK's	TKM's	Business Unit Overheads	Shared Mntce	Network Control	Corporate OH	
	Dry Creek – Parkeston	8,552,819	5,123,798	13,676,617	115,644,285	4%	23,535,495	6,417,983					
	Dry Creek – Pelican Point	384,526	8,954	393,481	538,193	2%	78,102	41,785					
	Dry Creek – Spencer St (Melbourne)	14,059,044	5,508,403	19,567,447	40,286,598	14%	8,167,869	3,158,396					
	Crystal Brook – Parkes	5,868,011	2,223,612	8,091,623	21,617,857	10%	4,179,977	1,626,031					
	Cootamundra - Parkes	2,249,804	854,986	3,104,790	4,647,918	18%	921,068	393,258					
	Melbourne (Tottenham) – Macarthur	29,548,210	15,736,670	45,284,880	64,394,829	24%	12,953,437	8,282,404					
	Moss Vale – Unanderra	1,664,302	601,049	2,265,351	2,663,969	23%	368,022	202,234					
	Newcastle –Acacia Ridge	14,444,046	8,549,160	22,993,206	42,370,682	20%	5,326,547	4,156,232					
	Port Augusta – Whyalla	53,999	2,046	56,046	2,334,146	0%	312,217	90,933					
	Southern Sydney Freight Line incl Sefton Park Junction – Flemington South	1,299,245	120,455	1,419,700	6,587,371	2%	642,970	275,259					
	Metropolitan Freight Network Chullora Junction – Port Botany	3,326,473	57,229	3,383,702	6,243,349	1%	556,302	321,271					
		<b>81,450,479</b>	<b>38,786,363</b>	<b>120,236,842</b>	<b>307,329,197</b>	<b>13%</b>	<b>57,042,005</b>	<b>24,965,784</b>	<b>31,538,395</b>	<b>29,269,358</b>	<b>36,568,711</b>	<b>37,785,213</b>	<b>255,398,520</b>

# ATTACHMENT 5: ARBITRATION AGREEMENT TEMPLATE

## Arbitration Agreement

Date [Insert]

### Parties

Australian Rail Track Corporation Limited (ABN 75 081 455 754) (**ARTC**)

and

[Insert party's name] (ABN [Insert]) (the **Applicant**)

(collectively, the **Parties**)

### Agreement to Arbitrate

- 1 In this agreement terms have the meaning given to them in the 2024 Access Undertaking (the **Undertaking**) unless otherwise stated in this agreement.
- 2 The Parties agree that any Dispute between the Parties that is not resolved through the processes contained in clauses 3.12.2, 3.12.3 or 3.12.4 of the Undertaking shall be finally determined by arbitration.
- 3 Any arbitration between the Parties shall be governed by clause 3.12.5 of the Undertaking.
- 4 This agreement is a deed and is executed as a deed.
- 5 This Arbitration Agreement is governed by the laws of South Australia.
- 6 This Arbitration Agreement may only be amended by written agreement, signed by the Parties.
- 7 This Arbitration Agreement may be signed in counterparts and all counterparts taken together comprise the one document.

**EXECUTED as a deed**

**Signing Page**

SIGNED for and on behalf of Australian Rail Track )  
Corporation Limited ABN 75 081 455 754 by its )  
duly authorised officer and in the presence of: )

.....  
Signature of Authorised Officer

.....  
Signature of Witness

.....  
Name of Authorised Officer  
(BLOCK LETTERS)

.....  
Name of Witness  
(BLOCK LETTERS)

.....  
Position of Authorised Officer  
(BLOCK LETTERS)

SIGNED for and on behalf of [Insert applicant's )  
name] ABN [Insert] by its duly authorised officer )  
and in the presence of: )

.....  
Signature of Authorised Officer

.....  
Signature of Witness

.....  
Name of Authorised Officer  
(BLOCK LETTERS)

.....  
Name of Witness  
(BLOCK LETTERS)

.....  
Position of Authorised Officer  
(BLOCK LETTERS)



