

## PART 1

ACCESS UNDERTAKING dated

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BY

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

IN FAVOUR OF

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

### 1. PREAMBLE

#### 1.1 Introduction

- (a) ARTC was established on 24 February 1998 as a company under the Corporations Law. ARTC's shares are fully owned by the Australian Government. ARTC was established as the entity to manage the granting of access to rail operators to the Interstate Rail Network. ARTC was created with an objective to create a single process of access to the Interstate Rail Network consistent with the Competition Principles Agreement and the National Rail Summit Heads of Agreement.
- (b) ARTC currently owns or leases and is responsible for the granting of access to that part of the Interstate Rail Network comprising the Network.
- (c) As a vertically separated provider of access, ARTC operates in a competitive environment where competitive pressure from other modes of transport (particularly road) place constraints on rail transport and access pricing. Accordingly, in ARTC's view, it is unlikely to be able to price in any of its markets at levels which will fully recover the full economic costs of its assets.
- (d) As the manager of a significant part of the Interstate Rail Network, ARTC has adopted the concepts of equity and transparency as key elements of its pricing policies. ARTC will not discriminate price on the basis of the identity of the customer. By so doing, ARTC seeks to stimulate customer confidence, competition and market growth in the rail industry in an evolving environment in which government owned vertically integrated railways have largely been replaced by privately owned operators with access to shared track infrastructure.
- (e) As an access provider, maintenance of the Network and Associated Facilities is a large component of ARTC's current cost structure. These services are either outsourced and managed under maintenance contracts entered into on commercial terms as a result of a competitive tender process, or otherwise managed on an efficient basis. ARTC has adopted this practice with a view to ensuring that ARTC's cost structure will reflect efficient infrastructure practice.
- (f) ARTC has prepared this Undertaking voluntarily in pursuance of its charter objectives, , and to provide a framework to manage negotiations with Applicants for Access to the Network for the purpose of operating Services.
- (g) This Undertaking will be applied consistently to Access Applications where such applications are within the scope of this Undertaking as set out in Part 2.

## 1.2 Objectives

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

- (a) establish a workable, open, non-discriminatory, efficient and inclusive process for lodging and processing Access Applications;
- (b) use transparent and detailed methodologies, principles and processes for determining access revenue limits, terms and conditions;
- (c) reach an appropriate balance between:
  - (i) the legitimate business interest of ARTC:
    - (A) the recovery of all reasonable costs associated with the granting of Access to the Network;
    - (B) a fair and reasonable return on ARTC's investment in the Network and Associated Facilities commensurate with its commercial risk; and
    - (C) stimulate customer confidence, competition, and market growth in the rail industry;
  - (ii) the interest of the public:
    - (A) increase competition ensuring efficient use of resources;
    - (B) the promotion of economically efficient investment, use and operation of, the Network; and
    - (C) promoting other relevant social objectives, such as an increase of traffic from road to rail;
  - (iii) the interests of Applicant's wanting Access to the Network, including:
    - (A) providing Access to the Network on fair and reasonable terms; and
    - (B) providing Access in a open, efficient and non-discriminatory manner;
- (d) provide an efficient, effective and binding resolution process in the event that ARTC and the Applicant are unable to negotiate a mutually acceptable Access Agreement; and
- (e) operate consistently with the objectives and principles in Part IIIA of the TPA and the Competition Principles Agreement.

## PART 2

### 2. SCOPE AND ADMINISTRATION OF UNDERTAKING

#### 2.1 Scope

- (a) This Undertaking provides for the negotiations of Access required for the operation of Train Services by Operators on the Network, with details of the specified services and sections of the Network defined during Access negotiations. Access will include, in addition to the track, the benefit of Associated Facilities required to facilitate such Access.
- (b) Except as provided for by clause 2.1(c), this Undertaking does not extend to any Extension to the Network nor to the track and infrastructure of other track owners that may connect to the Network.
- (c) This Undertaking will extend to include the Southern Sydney Freight Line when completed and commissioned for rail operations.

#### 2.2 Grant and Duration of Undertaking

ARTC undertakes to the ACCC that it will comply with the terms and conditions specified in this Undertaking in relation to the grant of Access to Operators to the Network for Services. This Undertaking takes effect one (1) month after it is accepted by the ACCC under section 44ZZA(3) of the TPA and will continue until the earlier to occur of:

- (a) the expiry of the Term; or
- (b) withdrawal of this Undertaking in accordance with its terms or the TPA.

#### 2.3 Term

This Undertaking will continue to be binding upon ARTC until:

- (a) the fifth (5<sup>th</sup>) anniversary of the Commencement Date; or
  - (b) the date upon which the ACCC consents to the withdrawal of the Undertaking by ARTC,
- whichever is the earlier.

#### 2.4 Review of Undertaking

- (a) If, during the Term, ARTC is of the opinion that circumstances have changed such that this Undertaking is no longer commercially viable for ARTC or becomes inconsistent with the objectives prescribed at Clause 1.2, ARTC may seek the approval of the ACCC to vary this Undertaking.
- (b) Prior to seeking the approval of the ACCC under clause 2.4(a), ARTC shall first consult with Operators regarding the proposed variation.
- (c) ARTC may only vary the Undertaking with the consent of the ACCC under section 44ZZA(7) of the TPA.

#### 2.5 Existing Contractual Agreements

- (a) This Undertaking applies only to the negotiations of new Access Agreements or the negotiation of Access Rights in addition to those already the subject of an Access Agreement. Nothing in this Undertaking can require a party to an existing Access Agreement to vary a term or provision of that agreement.
- (b) With the consent of both parties, expiring agreements may be extended in place of re-negotiation of a new agreement.

## 2.6 Insurance

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

- (a) loss of, loss of use of, and destruction or damage to, real or personal property; and
- (b) injury to, or disease or death of, persons;
- (c) ARTC's liability to the Operator under clause 15 of Schedule D to the extent coverable by insurance.

## 2.7 Contact Details

- (a) Persons wishing to contact ARTC for further information or to apply for Access to the Network should contact ARTC at any of the following addresses:
  - (i) Australian Rail Track Corporation Limited  
Ground Floor  
Off Sir Donald Bradman Drive  
Passenger Rail Terminal Road  
MILE END SA 5031  
  
Attention: Chief Executive Officer  
Telephone: (08) 8217 4366  
Facsimile: (08) 217 4578
  - (ii) Australian Rail Track Corporation Limited  
PO Box 10343  
Gouger Street  
ADELAIDE SA 5000
  - (iii) [secretary@artc.com.au](mailto:secretary@artc.com.au)
- (b) Applicants are also encouraged to search ARTC's internet web site at [www.artc.com.au](http://www.artc.com.au) on which will be published various information regarding ARTC and this Undertaking including:
  - (i) a map containing a geographical description of the Network;
  - (ii) a narrative description of the Network;
  - (iii) Indicative Access Charges for Indicative Services;
  - (iv) prices for which Access has been granted together with general description of the Services to which such prices relate;
  - (v) the Network Management Principles;
  - (vi) the Indicative Access Agreement;
  - (vii) a copy of ARTC's annual report;
  - (viii) a graphical representation of Committed Capacity on the Network (excluding track possessions for Network maintenance);
  - (ix) indicative section running times for Indicative Services by corridor;
  - (x) route standards by corridor; and
  - (xi) the Performance Indicators.

## **PART 3**

### **3. NEGOTIATING FOR ACCESS**

#### **3.1 Introduction**

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

#### **3.2 Framework**

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

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

#### **3.3 Provision of Information**

- (a) Subject to clause 3.3(b), ARTC will, if requested by an Applicant, provide the following information to Applicants to assist with negotiations:
  - (i) path length availability;
  - (ii) Available Capacity;
  - (iii) axle load limitations;
  - (iv) maximum allowable speeds;
  - (v) infrastructure characteristics;
  - (vi) applicable safeworking requirements;
  - (vii) Segment run times;
  - (viii) DORC values in relation to the Segment to which Access is being sought;
  - (ix) the incremental cost in accordance with clause 4.4(b) and the Economic Cost for the Segment to which Access is being sought; and
  - (x) any other information relating to Capacity or Train operations reasonably required by the Applicant in relation to the Access Application, provided ARTC is given an opportunity to provide to the Applicant an estimate of the reasonable cost of preparing such other information, and the Applicant agrees to pay such costs.
- (b) ARTC's obligation under clause 3.3(a) is subject to:

- (i) ARTC not disclosing any information which would breach a confidentiality obligation binding on it;
- (ii) the Applicant agreeing to pay the reasonable costs incurred by ARTC in obtaining information that is not ordinarily and freely available to ARTC.

### **3.4 Parties to Negotiation**

- (a) ARTC reserves the right to negotiate only with Applicants who comply with the requirements and processes set out in this Undertaking. If an Applicant does not comply with the relevant obligations and processes, and ARTC considers that such non-compliance is material, ARTC will not be obliged to continue negotiations regarding the provision of Access for that Applicant.
- (b) ARTC will negotiate Access with an Applicant which is not an Accredited Operator where the Applicant will procure the services of an Accredited Operator to operate the proposed Services provided that all of the terms and conditions of the Access Agreement are met by the Applicant or the Operator.
- (c) At any time, before or during the negotiation process, ARTC may require the Applicant to demonstrate to ARTC's reasonable satisfaction that it is able to meet the prudential requirements set out in clause 3.4(d). In the event the Applicant cannot meet these prudential requirements, ARTC may refuse to commence negotiations or may cease negotiations with that Applicant.
- (d) For the purposes of clause 3.4(c), the Applicant will be required to meet the following prudential requirements:
  - (i) the Applicant must be Solvent; and
  - (ii) the Applicant, or a Related Party of the Applicant, must not be currently, or have been in the previous (2) years, in Material Default of any agreement with ARTC, or any agreement in accordance with which access to rail infrastructure not managed by ARTC, has been provided to the Applicant or a Related Party of the Applicant; and
  - (iii) the Applicant must be able to demonstrate to the reasonable satisfaction of ARTC that it has or has access to sufficient resources, (including without limitation assets and insurance) to meet the actual or potential liabilities under an Access Agreement, including without limitation timely payment of access charges and payment of insurance premiums and deductibles under the required policies of insurance.
- (e) If ARTC refuses to negotiate for any reasons as described in clauses 3.4(a) or 3.4(c), it must, within ten (10) Business Days of the decision to refuse to negotiate, explain in writing to the Applicant the reasons for such refusal.
- (f) If the Applicant considers that ARTC has unreasonably refused to commence or subsequently unreasonably ceased negotiations in accordance with clause 3.4, then the Applicant may refer the matter to the arbitrator in accordance with clause 3.12. If the arbitrator determines that ARTC has unreasonably refused to commence or subsequently unreasonably ceased negotiations, ARTC will recommence negotiations immediately.
- (g) If at any time, ARTC is of the view that an Applicant's request for Access is frivolous in nature, ARTC may refer the request to the arbitrator in accordance with clause 3.12.4 for determination. If the arbitrator determines that the request is in fact frivolous, then ARTC will be entitled to cease negotiations and will not be obliged to comply with this Undertaking in respect of the request.

### **3.5 Confidentiality**

- (a) Each party acknowledges, subject to clause 3.5(b), that all information provided by one party ("Provider") to the other ("Receiver") as part of the negotiation process for Access under this Undertaking that relates directly to:

- (i) the Applicant's future markets;
- (ii) the Applicant's future market and business strategies; and
- (iii) the strategies of ARTC's or the Applicant's customers;

("Confidential Information") is secret and confidential and that the Receiver of Confidential Information will treat that Confidential Information as secret and confidential and the property solely of the Provider and not use that Confidential Information for any purpose other than the provisions of this Undertaking allow.

- (b) For the purposes of this clause 3.5 Confidential Information does not include information which is:

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

### **3.6 Access Application**

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

### **3.7 Acknowledgment**

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

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

### **3.8 Indicative Access Proposal**

- (a) Subject to clause 3.8(b), ARTC will use reasonable efforts to provide the Indicative Access Proposal to the Applicant within thirty (30) Business Days of the acknowledgment given under clause 3.7.
- (b) In assessing an Access Application, ARTC may consider that, due to the complexity of the Access Application or due to other extenuating circumstances, it is not reasonable for it to provide an Indicative Access Proposal within the thirty (30) Business Days referred to in clause 3.8(a). In these circumstances, ARTC will advise of such in its acknowledgment and within a further five (5) Business Days will advise the Applicant of its estimate of the time required to deliver the Indicative Access Proposal. Where the Applicant is of the view that the time estimated for preparation of the Indicative Access Proposal under this clause 3.8(b) is excessive, then the Applicant may refer the matter to the arbitrator for a determination in accordance with clause 3.12.4. ARTC will use reasonable efforts to provide the Indicative Access Proposal within the estimated time period provided by ARTC or as otherwise determined by the arbitrator pursuant to that clause.
- (c) The Indicative Access Proposal will set out, amongst other things:
  - (i) the results of a Capacity Analysis determining whether there is sufficient Available Capacity to accommodate the requested Access Rights;
  - (ii) in the event the Access Application requires the Applicant to have recourse to Additional Capacity, an outline of the works and an indicative estimate of the cost of such works required to provide the Additional Capacity or an outline of the requirements for an investigation into the provision of Additional Capacity for the requested Access Rights;
  - (iii) advice in respect of the existence of other Applicants who have submitted an Access Application (where negotiations are continuing in accordance with this Undertaking) in respect of Access which, if it were to be provided, would limit the ability of ARTC to provide Access in accordance with the Indicative Access Proposal;
  - (iv) a copy of ARTC's standard terms and conditions of Access as published on ARTC's website and revised from time to time;
  - (v) an initial estimate of the Charges for the Access Rights, based on the pricing principles set out in Part 4;
  - (vi) details of the additional information required for ARTC to progress the proposal and further develop the Charges and terms and conditions for acceptance; and
  - (vii) the indicative Train Path availability.
- (d) The Indicative Access Proposal will, unless it contains specific provisions to the contrary, contain indicative arrangements only and does not oblige ARTC to provide Access in accordance with specific terms and conditions, including Charges, contained within it.
- (e) If, after thirty (30) Business Days following ARTC's acknowledgment of the Access Application, or if applicable, after expiration of the time estimated by ARTC or determined by the arbitrator in accordance with clause 3.8(b), the Applicant believes that ARTC is not making reasonable progress in the preparation of the proposal, then the Applicant may refer the matter to the arbitrator for a determination in relation to the progress of the Indicative Access Proposal in accordance with clause 3.12.
- (f) In the event that ARTC is unable to provide an Indicative Access Proposal based on the Access Application, ARTC will, if possible, submit to the Applicant an Indicative Access

Proposal offering alternative Access which it reasonably believes may meet the Applicant's Access requirements.

- (g) Disputes arising from the process described in clause 3.8 shall be resolved in accordance with clause 3.12.

### **3.9 Negotiation**

- (a) If the Applicant intends to progress its Access Application under the negotiation process set out in this Undertaking on the basis of the arrangements outlined in the Indicative Access Proposal, the Applicant must notify ARTC of its intention to do so within thirty (30) Business Days of the date it receives the Indicative Access Proposal (or such other period of time that the parties agree). In the event that a notification is given after this period of time, ARTC will review the Indicative Access Proposal and, if considered necessary by ARTC, prepare a revised Indicative Access Proposal in accordance with clause 3.8 and the negotiation process outlined in this Part 3 will recommence from that point.
- (b) If the Applicant is of the view that the Indicative Access Proposal has not been prepared in accordance with this Undertaking and would therefore not be an appropriate basis for continuing with the negotiation process under this Undertaking, then the Applicant shall notify ARTC of its concerns within thirty (30) Business Days of the date of receipt of the Indicative Access Proposal.
- (c) ARTC will take all reasonable steps to respond to the concerns raised by the Applicant in relation to the Indicative Access Proposal under clause 3.9(b) within thirty (30) Business Days of receipt of notification of the concerns. If ARTC is unable to address the concerns of the Applicant within such time frame, ARTC will notify the Applicant in writing as to the reasons why and advise an intended course of action, with indicative time frames, of how the concern is being addressed. If the Applicant is satisfied with the response received from ARTC, including any revision to the Indicative Access Proposal, it must notify ARTC of its intention to proceed with negotiations within thirty (30) Business Days of receiving ARTC's response.
- (d) If the Applicant is not satisfied with the response from ARTC, including any revision to the Indicative Access Proposal, the Applicant may seek to resolve the dispute in accordance with the dispute resolution process outlined in clause 3.12. The Applicant must commence this dispute resolution process within thirty (30) Business Days of receiving ARTC's response.

### **3.10 Negotiation Process**

- (a) If the Applicant indicates it's willingness to progress negotiations under clause 3.9, then both parties shall commence negotiations as soon as reasonably possible to progress towards an Access Agreement.
- (b) The negotiation period shall commence upon the Applicant providing a notification pursuant to clause 3.9 and shall cease upon any of the following events:
  - (i) execution of an Access Agreement in respect of Access sought by the Applicant;
  - (ii) written notification by the Applicant that it no longer wishes to proceed with its Access Application;
  - (iii) the expiration of three (3) months from the commencement of the negotiation period, or if both parties agree to extend the negotiation period, the expiration of the agreed extended period;
  - (iv) if ARTC is of the view that the negotiations are not progressing in good faith towards the development of an Access Agreement within a reasonable time period;

- (v) sub-clause (iv) applies and ARTC refers the matter to the arbitrator under clause 3.12.4 for a determination on this issue and such determination is found in ARTC's favour; or
  - (vi) if ARTC receives evidence confirming that the Applicant no longer satisfies the prudential requirements of clause 3.4(d), on receiving such evidence ARTC shall advise the Applicant of such evidence and issue a notice of intent to end the negotiation period, to become effective ten (10) Business Days after the issue of the notice.
- (c) Upon cessation of the negotiation period, ARTC will be entitled to cease negotiations with the Applicant.
- (d) In circumstances where two or more Applicants are seeking mutually exclusive Access Rights:
- (i) each Applicant will be so notified as soon as practicable after the relevant conflict arises;
  - (ii) Access will be granted to the Applicant who accepts an Access Agreement with ARTC which, in the opinion of ARTC, is most favourable to it. Ordinarily, but without limiting ARTC's discretion in this regard, ARTC would make such a decision based on the Access Agreement that represented the highest present value of future returns to ARTC after considering all risks associated with the Access Agreement.
- (e) If, at any time during the negotiation period, a dispute arises between the parties which, after reasonable negotiation, the parties are unable to resolve to their mutual satisfaction, then either party may seek to resolve the dispute in accordance with the dispute resolution process outlined in clause 3.12.

### **3.11 Access Agreement**

- (a) The granting of Access will be finalised by the execution of an Access Agreement. The parties to the Access Agreement will be ARTC and:
- (i) If the Applicant is an Accredited Operator, that Applicant; or
  - (ii) If the Applicant is not an Accredited Operator, that Applicant or the Accredited Operator or both (as the case may be).
- (b) The Access Agreement must, unless otherwise agreed between ARTC and the Applicant, be consistent with the principles outlined in the Indicative Access Agreement and must address at least the matters set out in Schedule C. The details of Schedule C do not provide an exhaustive list of the issues that may be included in an Access Agreement.
- (c) Once the Applicant has notified ARTC that it is satisfied with the terms and conditions of the Access Agreement as drafted, ARTC will, as soon as reasonably practicable, provide a final Access Agreement (or, if applicable, an amendment to an existing Access Agreement) to the Applicant for execution.
- (d) The parties will use reasonable endeavours to duly execute the final Access Agreement as soon as practicable after its completion by ARTC.

### **3.12 Dispute Resolution**

#### *3.12.1 Disputes*

- (a) If any dispute arises under this Undertaking or in relation to the negotiation of Access between an Applicant and ARTC ("**Dispute**") then, unless otherwise expressly agreed to the contrary by both parties, such Dispute shall be resolved in accordance with this clause 3.12 and either party may give to the other party to the

Dispute notice in writing (“**Dispute Notice**”) specifying the Dispute and requiring it to be dealt with in the manner set out in this clause 3.12. The parties must use reasonable endeavours acting in good faith to settle the Dispute as soon as is practicable.

- (b) Disputes in relation to an Access Agreement once executed shall be dealt with in accordance with the provisions of that Access Agreement and are not dealt with under this Undertaking.

### *3.12.2 Negotiation*

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

### *3.12.3 Mediation*

- (a) If the Dispute is not resolved under clause 3.12.2 within ten (10) Business Days after the date of the Dispute Notice then:
  - (i) if the parties agree, they shall attempt to resolve the Dispute by mediation pursuant to this clauses 3.12.3(b), (c) and (d); or
  - (ii) if the parties do not wish to resolve the Dispute by mediation under clauses 3.12.3(b), (c) and (d), either party may by notice in writing to the other and the ACCC, refer the Dispute to be determined by arbitration under clause 3.12.4(b).
- (b) If this clause applies to the Dispute, the Dispute will be referred to the chief executive officers of both parties who will attempt to resolve the Dispute, including by informal mediation.
- (c) If the Dispute is not resolved within ten (10) Business Days after being referred to the chief executive officers under clause 3.12.3(b), the Dispute will be referred to formal mediation in South Australia to be mediated by a single mediator appointed by agreement of the parties or if they fail to agree within ten (10) Business Days, a mediator appointed by the President of the Law Society of South Australia acting on the request of either party.
- (d) Unless the parties agree otherwise:
  - (i) the mediation shall be conducted by a mediator under the “Guidelines for Legal Practitioners Acting as Mediators” of the Law Society of South Australia (whether or not the mediator is a legal practitioner);
  - (ii) the parties may appoint a person, including a legally qualified person to represent it or assist it in the mediation;
  - (iii) each party will bear their own costs relating to the preparation for and attendance at the mediation; and
  - (iv) the costs of the mediator will be borne equally by the parties.

### *3.12.4 Arbitration*

- (a) At any time after the appointment of the mediator (if any) under clause 3.12.3(c), either party may by notice in writing to the other and the ACCC terminate the mediation proceedings and notify the ACCC of a Dispute to be determined by arbitration under this clause 3.12.4(b). If the Applicant serves notice on the ACCC under this clause 3.12.4(a), that notice shall also include an acceptance by that Applicant of:

- (i) the obligation to pay the costs (if any) described in clause 3.12.4(b)(xiii) and 3.12.4(b)(xiv) as determined by the ACCC under those clauses; and
  - (ii) the obligation to indemnify the ACCC from any claims made against the ACCC arising in connection with the performance by the ACCC of its duties under clause 3.12.4, such indemnity excluding circumstances where the conduct of the ACCC constitutes wilful negligence, dishonest or unlawful conduct.
- (b) Where a Dispute is referred to arbitration under this clause 3.12.4(b) (whether under clauses 3.12.3(a)(ii) or 3.12.4(a)), the following shall apply:
- (i) The arbitrator shall be the ACCC. For the purposes of a particular arbitration, the ACCC is to be constituted by 2 or more members of the ACCC nominated in writing by the chairperson of the ACCC.
  - (ii) The ACCC shall not proceed with the arbitration unless and until the Applicant has accepted the obligation to pay the costs (if any) described in clause 3.12.4(b)(xiii) and 3.12.4(b)(xiv) as determined by the ACCC under those clauses.
  - (iii) The procedures of the arbitration will be determined by Division 3 Subdivision D of Part IIIA of the TPA, except that:
    - (A) the arbitrator must observe the rules of natural justice but is not required to observe the rules of evidence;
    - (B) the parties may appoint a person, including a legally qualified person, to represent it or assist it in the arbitration; and
    - (C) the arbitrator must include in the determination findings on material questions of law and fact, including references to evidence on which the findings of fact were based.
  - (iv) The arbitrator will when conducting the arbitration:
    - (A) proceed as quickly as is possible and consistent with a fair and proper assessment of the matter;
    - (B) while having the right to decide on the form of presentations, encourage a written presentation by each party with exchange and with rebuttal opportunities and questioning by the arbitrator;
    - (C) call on any party the arbitrator believes necessary to give evidence;
    - (D) decide how to receive evidence and consider the need to keep evidence confidential and the need to protect the confidentiality of the arbitration process;
    - (E) present their determination in a draft form to the parties and hear argument from the parties before making a final determination; and
    - (F) hand down a final determination in writing which includes all their reasons for making the determination.
  - (v) The arbitrator may at any time terminate an arbitration (without making an award) if it thinks that:
    - (A) the notification of the Dispute is vexatious;

- (B) the subject matter of the Dispute is trivial, misconceived or lacking in substance; or
  - (C) the party who notified the Dispute has not engaged in negotiations in good faith.
- (vi) In deciding a Dispute the arbitrator must take into account:
- (A) the principles, methodologies and provisions set out in this Undertaking;
  - (B) the objectives and principles enunciated in Part IIIA of the TPA and the Competition Principles Agreement;
  - (C) ARTC's legitimate business interests and investment in the Network;
  - (D) all costs that ARTC incurs in providing Access, including any costs of extending the Network, but not costs associated with losses arising from increased competition in upstream or downstream markets;
  - (E) the economic value to ARTC of any additional investment that the Applicant or ARTC has agreed to undertake;
  - (F) the interests of all persons who have rights to use the Network;
  - (G) the operational and technical requirements necessary for the safe and reliable operation of the Network;
  - (H) the economically efficient operation of the Network;
  - (I) the benefit to the public from having competitive markets;
  - (J) any other matters that the arbitrator thinks are appropriate to have regard to.
- (vii) In making its determination, the ACCC:
- (A) may deal with any matters referred to in section 44V of the TPA;
  - (B) must not make a determination that would have any of the effects described in section 44W of the TPA;
  - (C) must take into account the matters referred to in section 44X of the TPA;
  - (D) otherwise comply with the sub-clause 3.12.4(b)(iii)
- (viii) The arbitrator may publish its determination at its discretion subject to consideration of submissions by either party to the arbitration that information supplied by them contains commercially sensitive or confidential information. At any time prior to the making of the determination, either party may give notice to the arbitrator of the information supplied by it which is either commercially sensitive to it or subject to confidentiality obligations, including the reasons why such information is commercially sensitive or confidential. After considering such submissions, the arbitrator may decide not to publish as part of its determination the information that is commercially sensitive or confidential to either party to the arbitration.

- (ix) The arbitrator may join the conduct of separate arbitrations if the arbitrator considers that:
  - (A) there are one or more issues common to the arbitrations; and
  - (B) the joining of the arbitrations will not unreasonably delay the process, or unreasonably increase the costs, of the arbitrations.
- (x) The arbitrator may join one or more additional persons as a party to an arbitration if:
  - (A) the person applies in writing to be made a party and can demonstrate to the arbitrator an interest which is significant enough to reasonably warrant being made a party; and
  - (B) the arbitrator considers that making the additional person a party to the arbitration will not unreasonably delay the process, or unreasonably increase the costs, of the arbitration.
- (xi) If the arbitrator joins the conduct of separate arbitrations or joins an additional person as a party to the arbitration, the arbitrator must have regard to the wishes of the parties and the need for commercial confidentiality in determining how it will conduct the arbitration.
- (xii) The determination of the arbitrator shall be final and binding on the parties subject to any rights of appeal.
- (xiii) The ACCC may charge for its costs in conducting an arbitration of a Dispute in the manner and up to the maximum amount prescribed by the regulations of the TPA.
- (xiv) The costs of the parties to the arbitration shall be borne by the parties in such proportions as the arbitrator determines. Each party may make submissions to the arbitrator on the issue of costs at any time prior to that determination.
- (xv) Except where the determination or direction has been appealed by the Applicant, if an Applicant does not comply with a determination or direction of the arbitrator, then ARTC will no longer be obliged to continue negotiations regarding the provision of Access for that Applicant.
- (xvi) Except where the determination or direction by the arbitrator has been appealed by ARTC, ARTC will comply with the lawful directions or determinations of the arbitrator.
- (xvii) ARTC will indemnify the ACCC from any claims made against it arising in connection with the performance by the ACCC of its duties under clause 3.12.4, such indemnity excluding circumstances where the conduct of the ACCC constitutes wilful negligence, dishonest or unlawful conduct.

## PART 4

### 4. PRICING PRINCIPLES

#### 4.1 Objectives

ARTC will develop its Charges with a view to achieving the objective set out in clause 1.2(c). As part of achieving that objective, ARTC has a legitimate business interest in recovering all of its reasonable costs associated with granting Access to the Network and obtaining a fair and reasonable return on ARTC's investment in the Network (including maintenance costs) commensurate with its risk and its competitive environment. The Charges are also developed with a view to stimulating customer confidence and market growth in the rail industry and also promote competition and efficient use and investment in the Network. The pricing principles recognise that, in ARTC's view, it is unlikely to be able to price in any of its markets at levels that will fully recover the full economic costs of its assets.

#### 4.2 Charge Differentiation

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

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

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

with characteristics other than that of Indicative Services will be determined having regard to the Capacity consumption of Indicative Services on a Network utilised by Indicative Services.

#### 4.3 Limits on Charge Differentiations

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

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

#### 4.4 Revenue Limits

- (a) Notwithstanding any other clause within this Part 4, the Charges formulated by ARTC for the Services will be such that the revenue generated by ARTC for a Segment or group of Segments (applicable to the Service as the case may be) will:
  - (i) not be lower than the Floor Limit (unless otherwise agreed by ARTC) for that Segment or group of Segments; and,
  - (ii) where RAB for that Segment or group of Segments is less than RAB Floor Limit for that Segment or group of Segments at the commencement of any year, not be higher than the Ceiling Limit for that Segment or group of Segments (unless otherwise agreed by the Applicant) in that year.
- (b) The Floor Limit means the Charges which, if applied to all Operators on a Segment or a group of Segments, would generate revenue for ARTC sufficient to cover the incremental cost of that Segment or group of Segments. For the purpose of this clause, incremental costs means the costs that could have been avoided if a Segment was removed from the Network including Segment Specific Costs and Non-Segment Specific Costs relating to the following activities:
  - (i) track and signalling and communication maintenance;
  - (ii) maintenance contract support, administration and management and project management;
  - (iii) train control and communication;
  - (iv) train planning and operations administration;
  - (v) system management and administration;

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

- (c) Where applicable, the Ceiling Limit means the Charges which, if applied to all operators of a Segment or a group of Segments would generate revenue for ARTC sufficient to cover the Economic Cost of that Segment or group of Segments.
- (d) To determine the Regulatory Asset Base (“RAB”) for a Segment or group of Segments, the Network and Associated Facilities will be initially valued using the depreciated optimised replacement cost method of valuing assets (“Initial Regulatory Asset Base (RAB)”);

The RAB will be rolled forward annually according to the following methodology

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

$$(1 + WACC) * RAB_{t-1 \text{ start}} - \text{Out-turn Revenue}_{t-1} + \text{Out-turn Opex}_{t-1} + \text{Net Capex}_{t-1}$$

where

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

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

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

WACC is the approved nominal Rate of Return.

$\text{Out-turn\_Revenue}_{t-1}$  is the total revenue earned by ARTC in year t-1.

$\text{Out-turn\_Opex}_{t-1}$  is the total operating expenditure incurred by ARTC in year t-1, on an industry efficient basis.

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

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

- (e) The RAB Floor Limit for a Segment or group of Segments will be:

(i) as at the Commencement Date, the Initial RAB;

(ii) rolled forward annually according to the following methodology

$$RAB \text{ Floor Limit}_{t \text{ start}} = RAB \text{ Floor Limit}_{t-1 \text{ end}} =$$

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

where

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

$RAB \text{ Floor Limit}_{t-1 \text{ end}}$  is the RAB Floor Limit at the end of the preceding year (t-1).

$RAB \text{ Floor Limit}_{t-1 \text{ start}}$  is the RAB Floor Limit at the start of the preceding year (t-1).  $CPI_{t-1}$  is the inflation rate for the preceding year (t-1), determined by reference to the All Groups Consumer Price Index Statistics published for the March quarter of that year.

Net\_Capex<sub>t-1</sub> is the net additions to the RAB Floor Limit in year t-1 (that is out-turn Capital Expenditure by ARTC less any disposals during period t-1) on a Prudent basis.

Depreciation<sub>t-1</sub> is Depreciation applicable to the RAB Floor Limit in year t-1.

- (f) For the purposes of this Part 4, Economic Cost of a Segment means:
- (i) Segment Specific Costs;
  - (ii) Depreciation of Segment Specific Assets;
  - (iii) a return on Segment Specific Assets, being determined by applying Rate of Return to the value of Segment Specific Assets;
  - (iv) an allocation of Non-Segment Specific Costs;
  - (v) an allocation of Depreciation of Non-Segment Specific Assets;
  - (vi) an allocation of return of Non-Segment Specific Assets, being determined by applying Rate of Return to the value of Non-Segment Specific Assets; and
  - (vii) the costs described in clause 4.4(f)(i) to (vi) as applicable to Additional Capacity.
- (g) For the purposes of clause 4.4(f), Non-Segment Specific Costs and Depreciation of, and return on, Non-Segment Specific Assets will be allocated to Segments in accordance with the following principles:
- (i) where possible, costs will be directly attributed to a Segment;
  - (ii) where possible, Non-Segment Specific Costs and Non-Segment Specific Assets will be identified with a corridor, corridors or identified as system-wide;
  - (iii) Non-Segment Specific Costs and Depreciation of, and return on, Non-Segment Specific Assets identified with a corridor or corridors, or identified as system-wide, will be allocated to those parts of Segments in that corridor or corridors, or, where identified as system wide, to Segments owned, leased or licenced by ARTC respectively, in proportion to:
    - a) gtkm with respect to Non-Segment Specific Costs and Depreciation of, and return on, Non-Segment Specific Assets associated with track maintenance; and,
    - b) Train kilometres with respect to Non-Segment Specific Costs and Depreciation of, and return on, Non-Segment Specific Assets not associated with track maintenance.
- All costs shall comprise ARTC's reasonably anticipated costs over a reasonable future timeframe.
- (h) The Rate of Return for the purposes of this Part shall be equivalent to ARTC's weighted average cost of capital ("WACC") after consideration of all risks with the commercial environment in which ARTC operates on the Network, the elements of which shall comprise:
- (i) a capital asset pricing model ("CAPM") method of determining the cost of equity;
  - (ii) a debt to equity ratio which would be considered prudent for ARTC's business in relation to the Network by reputable lenders; and

- (iii) an appropriate adjustment (beta) factor to the equity risk margin appropriate for investment in railway infrastructure forming part of the Network.

#### 4.5 **Structure of Charges**

- (a) Access charges will comprise:
  - (i) a variable component, which is a function of distance and gross mass (\$/gtkm); and
  - (ii) a flagfall component, which is fixed and specific to each Train service type and Segment (\$/km);
  - (iii) an excess network occupancy component, which is a function of time (\$/hr or part thereof) sought by an Applicant for a Train Path on the Network, which is in excess of a reasonable allowance for Section run times for the applicable Train service type, dwells for crossing and passing other Trains, and a specified allowance for the reasonable requirements for operational activities whilst the Train occupies the Network;
- (b) Except as otherwise provided in the Access Agreement, the flagfall component, excess network occupancy component, as applicable, of the Charges is levied from the date the Train Path vests in the Operator until the expiry of that Train Path irrespective of whether such Train Path is utilised.
- (c) Notwithstanding the structure described above, all elements of the Charge are open to negotiation. Any variation to the structure described above must be agreed between ARTC and the Applicant.

#### 4.6 **Indicative Access Charge**

- (a) As part of this Undertaking, ARTC will offer the Indicative Access Charges described in clause 4.6(b) below for Applicants seeking Access for a Service with the following characteristics (Indicative Services):
  - (i) maximum axle load of 21 tonnes;
  - (ii) maximum speed of 110 km/h; and
  - (iii) length not exceeding
    - a) 1800 metres west of Adelaide and Parkes;
    - b) 1500 metres east of Adelaide and Parkes (until Capital Expenditure is commissioned on the Segment Melbourne – Macarthur);
    - c) 1800 metres on the Segment Melbourne – Macarthur and on that part of the Segment Crystal Brook – Cootamundra that is east of Parkes (following commissioning of Capital Expenditure on the Segment Melbourne – Macarthur).

- (b) The Indicative Access Charge will include the sum of the flagfall and variable components as follows:

Note: Effective as at 1 July 2007

Note: These Charges are exclusive of GST.

Segment	Variable \$/kgtkm (exclusive of GST)	Flagfall \$/km (exclusive of GST)
Adelaide – Parkeston	2.531	3.263
Adelaide – Melbourne	2.831	1.702
Melbourne – Macarthur	2.320	0.888
Newcastle – Queensland Border	2.950	0.809
Crystal Brook – Parkes	3.300	0.911
Cootamundra - Parkes	3.248	0.880
Adelaide – Pelican Point	3.727	2.270
Tarcoola – Asia Pacific Interface	4.741	3.954
Port Augusta - Whyalla	4.269	2.202
Moss Vale – Unanderra	3.730	0.949

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

Note: Effective as at 1 July 2007

Note: These Charges are exclusive of GST.

Segment	Excess network occupancy charge \$/hr or part thereof (exclusive of GST)	Allowance for reasonable requirements for operational activities (hr)
Adelaide – Parkeston	255	1.2
Adelaide – Melbourne	135	0.7
Melbourne – Macarthur	69	0.2
Newcastle – Queensland Border	55	0.2
Crystal Brook – Parkes	80	0.6
Cootamundra – Parkes	54	0.1
Tarcoola – Asia Pacific Interface	150	0.1

- (d) ARTC may at any time between 1 July 2007 and the expiry of the Term vary the Indicative Access Charges for Indicative Services (“Review Date”) by up to an amount determined in accordance with the following formula:

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

Where

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

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

$TV_i$  is the greater of

- a)  $((CPI\ Index_i / CPI\ Index_0) / CV_{i-1}) - 1) * 100$
- b) Zero

Where

$TV_i$  is the maximum variation (%) to Indicative Access Charges that may be applied from 1 July 2007 and thereafter from each 1 July until expiry of the Term (“Determination Date”);

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

$CPI\ Index_0$  is the All groups Consumer Price Index, Weighted Average of Eight Capital Cities, Index Number for the March quarter of the year 2006, being 151.9.

$CV_{i-1}$  is the cumulative impact of the application of variations actually applied by ARTC to the Indicative Access Charges for Indicative Services between the first Determination Date (1 July 2007) and the relevant Determination Date. The cumulative impact would be determined in accordance with the following formula:

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

Where

$V_1, V_2 \dots V_{i-1}$  are the actual % variations which have been applied from the first Determination Date (1 July 2007) to the relevant Determination Date.

ARTC may vary some or all of the Indicative Access Charges for Indicative Services more than once in any period between consecutive Determination Dates provided that the total of the variations do not exceed  $TV_i$  for earlier of the two relevant Determination Dates.

## PART 5

### 5. MANAGEMENT OF CAPACITY

#### 5.1 Capacity Analysis

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

#### 5.2 Capacity Reservation

- (a) Where an Applicant seeks to execute an Access Agreement relating to new or additional Access Rights more than 6 months prior to the commencement of operating Services in respect of those Access Rights, ARTC will, at its absolute discretion, execute the Access Agreement subject to:
  - (i) there being sufficient Available Capacity to accommodate the Services until the commencement of operating the Services; and
  - (ii) the Applicant agrees to pay any Reservation Fee that may be sought by ARTC in relation to the period between execution of the Access agreement and commencement of operating the Services. In determining the Reservation Fee, ARTC will have regard to the opportunity cost foregone in relation to the reserved Access Rights (which would normally consider the extent of potential revenue lost by ARTC through average utilisation of the Access Rights not available to another user), the period of the reservation, and other demand for the Access Rights. The Reservation Fee will be reduced to the extent of any utilisation of the Access Rights during the period of reservation by another Access Seeker.
- (b) Limits on charge differentiation in relation the clause 4.3 do not apply to Access Rights made available under this clause.

#### 5.3 Capacity Allocation

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

represented the highest present value of future returns to ARTC after considering all risks associated with the Access Agreement.

**5.4 Capacity Transfer**

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

## PART 6

### 6. NETWORK CONNECTIONS AND ADDITIONS

#### 6.1 Network Connections

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

#### 6.2 Additional Capacity

- (a) As indicated in clauses 3.7 and 5.1, ARTC will consider as part of the negotiation process, any requests by Applicants for Additional Capacity. ARTC will consent to the provision of Additional Capacity if:
  - (i) in ARTC's opinion, such provision is commercially viable to ARTC having regard to the relevant Access Agreement and ARTC's total business activity; or
  - (ii) the Applicant agrees to meet the cost of the Additional Capacity; and
  - (iii) the Additional Capacity of the Network is, in the opinion of ARTC, technically and economically feasible, consistent with the safe and reliable operation of the Network, will not impact on the safety of any user of the Network, does not reduce Capacity, meets ARTC's engineering and operational standards and does not compromise ARTC's legitimate business interests.
- (b) In the event ARTC agrees to the creation of Additional Capacity, ARTC's costs of providing that Additional Capacity may be met by the Applicant;
  - (i) reimbursing the relevant costs as and when they are incurred by ARTC; or
  - (ii) through increased Charges, or making other periodic payments, reimbursing ARTC for recurring costs, plus an annuity in advance calculated by application of WACC to ARTC's capital outlay.
- (c) The option of increasing Charges or making periodic payments including an annuity as set out in clause 6.2(b)(ii) is only available to an Applicant if arrangements are made which

satisfy ARTC that the risk of the Applicant failing to make such payments is commercially acceptable and is at ARTC's discretion.

- (d) Any Additional Capacity, once created, shall be owned and managed by ARTC.
- (e) Where requested to do so by an Applicant, ARTC will provide the Applicant written reasons for the basis of decisions made by it in relation to Additional Capacity.

### 6.3 **Transport Act 1983 (Vic)**

If:

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

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

## **PART 7**

### **7. NETWORK TRANSIT MANAGEMENT**

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

## **PART 8**

### **8. PERFORMANCE INDICATORS**

#### **8.1 Commitment by ARTC**

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

#### **8.2 Reporting**

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

## PART 9

### 9. DEFINITIONS AND INTERPRETATION

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

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

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

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

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

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

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

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

“**ARTC Owned Network**” means the network of railway lines delineated or defined as the ARTC Owned Network in Schedule E;

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

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

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

“**Associated Facilities**” means all associated track structures, over and under track structures, supports (including support for equipment or items associated with the use of the Network), tunnels, bridges, train control systems, signalling systems, communication systems and associated plant, machinery and equipment related to or connected with use of the Network;

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

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

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

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

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

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

**“Capital Expenditure”** means annual expenditure as incurred by ARTC incorporated in annual re-valuation of the Network and Associated Facilities as contemplated in clause 4.4(d) and (e) as estimated in Schedule H. Any variation to Capital Expenditure would be limited to that which may result from:

- (a) the removal or addition of a capital or renewals project by ARTC needed to meet market demand for capacity and performance of the Network, or need to extend the economic life of Network;
- (b) the removal or addition of a capital or renewals project by ARTC resulting from what is considered to represent an efficient means to achieve that demand or extend that economic life;
- (c) whether expenditure is incurred efficiently in implementing the capital or renewals project, in the context of prevailing access and operating requirements, and input costs.
- (d) adjustments in relation to the timing of commencement and/or commissioning of projects.
- (e) the removal or addition of a capital or renewals project by ARTC that is supported by the industry.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**“Material Default”** any breach of a fundamental or essential term or repeated breaches of any of the terms of the agreements referred to in clause 3.4(d)(ii); **“Network”** means the network of railway lines delineated or defined in Schedule E;

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

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

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

**“NSW Leased Network”** means the network of railway lines delineated or defined as the NSW Leased Network in Schedule E;

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

**“Other Track”** means rail track and infrastructure not part of the Network but owned by any State or Territory government or Government Authority;

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

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

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

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

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

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

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

**“Reservation Fee”** means the fee referred to in Clause 5.2.

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

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

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

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

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

“**Solvent**” means none of the following events have happened to the Applicant:

- (a) the Applicant is unable to pay all its debts as and when they become due or it has failed to comply with a statutory demand under section 459F(1) of the Corporations Law;
- (b) a meeting is convened to place it in voluntary liquidation or to appoint an administrator;
- (c) an application is made to a court for it to be wound up and that application is not dismissed within one month;
- (d) the appointment of a controller (as defined in the Corporations Law) of any of its assets; or
- (e) the Applicant proposes to enter into or enters into any form of arrangement with its creditors or any of them, including a deed of company arrangement.

“**Southern Sydney Freight Line**” means rail infrastructure to be constructed by ARTC along the existing rail corridor adjacent to the existing rail track between Macarthur and Sefton in Sydney. The new line will connect the Network at Macarthur with the metropolitan freight only network at Sefton and provide direct independent access to Enfield, Chullora and Port Botany.

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

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

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

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

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

“**Victorian Leased Network**” means the network of railway lines delineated or defined as the Victorian Leased Network in Schedule E;

9.2 In this Undertaking unless the context otherwise requires:

- (a) singular words will also have their plural meaning and vice versa;
- (b) a reference to one gender includes all genders;
- (c) a reference to a person includes companies and associations;
- (d) a reference to a consent of a party means the prior written consent of that party;
- (e) headings are for convenient reference only and do not affect the interpretation of this Undertaking;
- (f) a reference to a clause, Part or a Schedule is a reference to a clause, Part or Schedule of this Undertaking;

- (g) a reference to a party includes its successors and permitted assigns;
- (h) notices that are required to be given in writing to ARTC may, if so agreed by ARTC, be provided in electronic form.

**DATED** the \_\_\_\_\_ day of \_\_\_\_\_ 2002.

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

.....  
(Signature)

.....  
(Name)

.....  
(Position)

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

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

## **SCHEDULE A**

(Access Application)

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

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

## **SCHEDULE B**

(Information to Accompany Access Application)

The Applicant shall furnish ARTC with the following information:

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

## **SCHEDULE C**

### **(Essential Elements of Access Agreement)**

- non-exclusive access to Network;
- contracted Train Paths subject to the matters outside ARTC's control, safety and Network Management Principles;
- each party warranting the accuracy of information provided;
- Customers paying an access charge based on flagfall, gtkm and, where applicable, the excess network occupancy component of Charges;
- charges varying in accordance with clause 4.6 of Schedule D;
- payment by the Customer of charges and premiums to the Transport Accident Commission in respect of the Network in Victoria;
- the right of ARTC to seek security from the customer;
- ARTC to conduct Train Control, issue Instructions, maintain and operate the Network in a non-discriminatory manner;
- the Customer providing warranties regarding Rolling Stock;
- the Customer complying with the Codes of Practice as published by ARTC from time to time and Instructions issued by ARTC;
- the party operating the Trains relating to the contracted Train Paths having appropriate Accreditation and insurance;
- ARTC having the ability to vary (temporarily or permanently), remove and review contracted Train Paths in appropriate circumstances and to take possession of the Network for repairs, maintenance, new works and upgrades;
- the ability of ARTC to conduct audits on the Operator;
- compliance by the Operator with plans dealing with Incidents, preservation of evidence and environmental requirements;
- compliance by the Operator with applicable and appropriate safety standards;
- contracted capacity not utilised seven out of twelve times may be withdrawn by ARTC;
- appropriate termination and suspension provisions;
- indemnities by the Operator and ARTC;
- dispute resolution procedures.
- provisions which allow ARTC to meet its obligations under its NSW lease, including without limitation:
  - the provision of all train paths will be subject to ARTC's obligations regarding passenger priority;
  - the train decision factors which detail the allocation of train priority in real time train control; and
- implementation and compliance with ARTC's Environmental Licence and environmental management system manual;

- provisions which allow ARTC to meet its obligations in relation to third parties' rights to conduct works on the Network;
- payment of, if payable, legal costs of execution (including without limitation any associated stamp duty, fees, fines and penalties thereon) in all relevant jurisdictions on the access agreement and any document contemplated or allowed by the access agreement.
- termination of access agreements on termination or cessation of ARTC's leasehold rights;
- warranties or guarantees from Operators sufficient to meet obligations or potential obligations under the Access Agreement;

**SCHEDULE D**

(Indicative Access Agreement as at Commencement Date)

(see attached fifty six (56) pages )

## **SCHEDULE E**

(ARTC Owned Network)

1. **Tarcoola – Asia Pacific Interface Point**

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

2. **Kalgoorlie to Crystal Brook**

Mainline from the eastern end of Kalgoorlie at 1781.500 kms to Crystal Brook including all tracks, turnouts and signals forming the Crystal Brook and Coonamia triangle.

3. **Port Augusta to Whyalla**

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

4. **Crystal Brook to Broken Hill**

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

5. **Crystal Brook to Dry Creek**

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

6. **Adelaide Metropolitan Area**

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

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

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

7. **Dry Creek to the South Australian/Victorian border**

Mainline from the southern apex of Dry Creek Triangle to the Victorian border at 313.210 kms.

8. **Crossing Loops**

All crossing loops within each corridor described above as at Commencement of undertaking

9. **Authority Points**

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

(Victorian Leased Network)

**Part 1 – Mainline South Australia to Melbourne\***

<b>Location</b>	<b>Boundary</b>
SA/VIC Border	Marked distance 463.687 km
Mainline including crossing loops, dual gauge, turnouts, and diamond	Last long timber at turnouts to sidings and diamond crossings
Dimboola	Last long timber to Yaapect branch line
Murtoa	Last long timber to Hopetoun branch line
Maroona	Last long timber to Portland branch line
Gheringhap	Last long timber at Divergence of dual gauge at Butcher Road 81.600 km
North Geelong “C”	Last long timber at divergence of dual gauge
Newport	Last long timber at divergence of dual gauge
Brooklyn	Last long timber at divergence of dual gauge
Sims Street Junction	Ref “Part 3 – Melbourne Boundaries”

**Part 2 – Mainline New South Wales to Melbourne\***

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

(Victorian Leased Network)

**Part 3 – Melbourne\* Boundaries**

South Dynon Junction to Spencer Street	
<b>Location</b>	<b>Boundary</b>
Spencer Street signal	SST184
Reversing Loop Junction	Last long timber in the mixed gauge
Contrans Siding	Dwarf Signal 204
South Dynon Terminal (east end)	Dwarf Signals 210 & 214
South Dynon Terminal (west end)	Dwarf Signals 126, 228, 230 & 232
Sims Street Junction to North Dynon	
<b>Location</b>	<b>Boundary</b>
North Dynon Intermodal Terminal	Dwarf Signals 92 & 94
North Dynon Agents Area	Dwarf Signal 90
South Dynon Junction to Appleton Dock	
<b>Location</b>	<b>Boundary</b>
Operations Terminal (west end)	Dwarf Signal 142
Operations Terminal (east end)	Dwarf Signal 236 Note: track on crossover between MOT No. 3 track and MOT no. 2 track, beyond the last long timber and turnout No. 235, does not form part of the ARTC Network, Dwarf Signal 238, although beyond the ARTC boundary forms part of the ARTC Network
Appleton Dock	Footscray Road Level Crossing
Other Areas	
<b>Location</b>	<b>Boundary</b>
Track to NRC Wagon maintenance Centre	Dwarf Signal 154
Locomotive Provisioning Centre (west end)	Dwarf Signal 130Dwarf Signal 128 Note: Track between the last long timber turnout No. 127D and the last long timber on turnout No. 127D and the last long
Sims Street Triangle	Sims Street Junction Weighbridge Junction South Dynon Junction

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

**(NSW Leased Network)**

**Part 1**

- 1. Albury to Macarthur**
- 2. Newcastle (Islington Junction) to Queensland Border (Border Loop Tunnel)\***
- 3. Cootamundra to Broken Hill**
- 4. Moss Vale to Unanderra**

\* Excludes Sandgate Flyover (for the purposes of Clause 4 only) and Newcastle Coal Lines as follows:

**ARTC Sector**

<b>915</b>	<b>Islington Junction – Scholey Street Junction</b>
<b>917</b>	<b>Scholey Street Junction – Waratah (via Coal)</b>
<b>925</b>	<b>Waratah – Hanbury Junction (via Coal)</b>
<b>926</b>	<b>Hanbury Junction – Sandgate (via Coal)</b>
<b>927</b>	<b>Hanbury Junction – Kooragang East Junction</b>
<b>931</b>	<b>Kooragang East Junction – Sandgate</b>
<b>936</b>	<b>Sandgate – Thornton (via Coal)</b>
<b>937</b>	<b>Thornton – Maitland (via Coal)</b>
<b>944</b>	<b>Telarah – Farley</b>

For clarity, Part 2 contains network maps describing the network configuration forming the Network.

**NSW Leased Network**

**Part 2**

**Network Maps describing the network configuration forming the Network**

**Separate A3 Maps attached.**

## **SCHEDULE F**

(Network Management Principles)

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

## NETWORK MANAGEMENT PRINCIPLES

### Train Decision Factors

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

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

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

**"Frequent-Stopping Services"** means those rail passenger services on the NSW Leased Network that stop at most or all stations along their Train Path.

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

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

**"Limited-Stop Services"** means those rail passenger services on the NSW Leased Network that stop at a few selected stations along their Train Path.

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

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

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

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

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

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

**"Train Movement"** means a particular trip by a Train on a Train Path.


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

### TRAIN DECISION FACTORS:

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

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

**Table 1 – Train Priority Matrix**

Decreasing order of priority	Type of train service in ARTC Network
From Highest	Long-distance Passenger Services
	Commuter Peak Services and rail passenger services likely to affect Commuter Peak Services or Special Event services on the NSW Leased Network.
	Limited-stop non-Commuter Peak Services on the NSW Leased Network.
	Freight services likely to affect Commuter Peak Services or Special Event services on the NSW Leased Network.
	Express Freight Services
	Frequent-Stopping Services (non-Commuter Peak Services) on the NSW Leased Network.
	Non-express Freight Services
To Lowest	Non-Revenue Positioning Movements

**Table 2 – Decision Matrix**

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

Trains of Unequal Health	Rule 7 + 2
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**Rule 1:**

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

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

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

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

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

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

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

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

## SCHEDULE G

(Performance Indicators)

–Table 1 - Service Quality Performance Reporting

Performance Measure	Responsibility	Reporting Frequency
<b>Reliability<sup>1</sup></b>		
Number and percentages of healthy <sup>2</sup> Services <sup>3</sup> that exit the Network within tolerance <sup>4</sup> .	ARTC	Quarterly
Number and percentage of unhealthy Services that do not deteriorate further, within tolerance.	ARTC	Quarterly
Number and percentage of Services which are operated in a healthy manner.	Operator	Quarterly
Number and percentage of Services which exit the Network no later than schedule, within tolerance.	Both	Quarterly
Number and percentage of Services which enter the Network no later than schedule, within tolerance.	Operator	Quarterly
Number and percentage of Services which exit the Network no later than one hour <sup>5</sup> after schedule.	Both	Quarterly
<b>Network Availability<sup>6</sup></b>		
Transit Time – Infrastructure Configuration Capability <sup>7</sup>	ARTC	Quarterly
Transit Time - Infrastructure Practical Capability <sup>8</sup>	ARTC	Quarterly
Transit Time – Availability to Market <sup>9</sup>	ARTC	Quarterly
<b>Transit Time<sup>1</sup></b>		
Number and percentage of Services which transit <sup>10</sup> the Network no later than schedule transit, within tolerance.	Both	Quarterly
Sum of minutes delay (and minutes per hour transit) attributed to below rail cause by type of delay eg track, signals/communications, train management/control.	ARTC	Quarterly
Sum of minutes delay (and minutes per hour transit) attributed to above rail cause by type of delay eg late entry, yard/terminal, crew, locomotive, rollingstock, running.	Operator	Quarterly
Sum of minutes delay (and minutes per hour transit) unable to be attributed to a cause or beyond either party reasonable control.	Neither	Quarterly
<b>Temporary Speed Restrictions<sup>11</sup></b>		
Number of kilometres and percentage of track under temporary speed restriction on the Network at the end of a reporting period.	ARTC	Quarterly
<b>Track Condition<sup>11</sup></b>		
Track quality measured by index. <sup>12</sup>	ARTC	Quarterly

1. Separate reporting will be undertaken in relation to Services segregated by ARTC (and averaged or aggregated as applicable) as East-West, Melbourne – Sydney, Sydney – Brisbane and Melbourne – Brisbane. Reported performance will only relate to that on the ARTC Owned Network, Victorian Leased Network and NSW Leased Network. All measures would not reflect Services materially affected by a Force Majeure event (as defined in the Indicative Access Agreement).
2. For this purpose, a healthy service is one which:
  - a. presents to the Network within tolerance<sup>4</sup>, is configured to operate to its schedule and operates in a way that it remains able to maintain its schedule; or
  - b. is running late only due to causes within the Network, but only where the root cause is outside the rail operator's control; or
  - c. is running within tolerance<sup>4</sup>, regardless of previous delays.
3. Services include all Committed and scheduled Capacity (excludes adhoc Services).
4. For this purpose tolerance is to be 15 minutes (unless otherwise agreed).
5. It may be appropriate to employ shorter or longer timeframes as appropriate depending on corridor transit times.
6. Separate reporting will be undertaken in relation to an Indicative Service (and averaged as applicable) movement on Melbourne – Parkeston, Melbourne – Macarthur, Newcastle – Queensland Border, and Cootamundra – Crystal Brook. Reported performance will only relate to that on the ARTC Owned Network, Victorian Leased Network and NSW Leased Network.
7. A measure of transit time over the Network, delivered by the infrastructure given its configuration (alignment, grades, curves and associated permanent speed restrictions). Measured by simulated operation of a reference Indicative Service over the Network (excluding prevailing temporary speed restrictions). Reported on the basis of average speed.
8. A measure of transit time over the Network, delivered by the infrastructure given its configuration (as measured by Transit Time – Infrastructure Configuration Capability) and maintenance requirements (including the transit time impact of temporary speed restrictions). The transit time impact of temporary speed restrictions is determined by applying the temporary speeds restrictions in place on the

- Network to a simulation model designed to determine the total of time lost by reference Indicative Service subject to each temporary speed restriction. Reported on the basis of average speed.
9. A measure of transit time offered to the market, delivered by the infrastructure given its configuration, maintenance requirements and network usage (scheduled delays for path interactions). Measured by average scheduled transit time for Indicative Services adjusted for any Operator requirements (dwells, deviation from offered section run times). Reported on the basis of average speed.
  10. Transit time is the difference between entry and exit times and so includes all time for all enroute activities (scheduled and actual).
  11. Separate reporting will be undertaken in relation to Segments segregated by ARTC (and averaged or aggregated as applicable) as East-West, Melbourne – Sydney, Sydney – Brisbane. Reported performance will only relate to that on the ARTC Owned Network, Victorian Leased Network and NSW Leased Network.
  12. To be measured by Track Quality Index (TQI) and averaged over each Segment. The TQI is calculated over 100m sections, using 0.5m raw data from the AK car. TQI is the sum of the standard deviations (x3) in each rail for a 20m inertial top (average over left and right rail), horizontal alignment (versine over a 10m chord (average over left and right rail)), twist over 2.0m and gauge.

**–Table 2 - Periodic Reporting of ARTC Unit Costs**

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

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

## SCHEDULE H

(Capital Expenditure)

Segment/Activity	Estimated Expenditure					
	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
<b>1. Adelaide (Dry Creek) – Parkeston</b>						
Improvement Project Works	597	1,629	1,913	1,913	1,913	-
Corridor Infrastructure Investment	9,476	10,151	10,313	10,243	10,363	10,563
<b>Total Capital Expenditure</b>	<b>10,073</b>	<b>11,779</b>	<b>12,226</b>	<b>12,156</b>	<b>12,276</b>	<b>10,563</b>
<b>2. Adelaide (Dry Creek) – Melbourne (Spencer Street)</b>						
Improvement Project Works	7,756	42,966	7,049	1,913	1,913	-
Corridor Infrastructure Investment	7,270	7,222	4,205	4,205	3,364	4,310
<b>Total Capital Expenditure</b>	<b>15,026</b>	<b>50,189</b>	<b>11,254</b>	<b>6,118</b>	<b>5,277</b>	<b>4,310</b>
<b>3. Melbourne (Tottenham) – Macarthur</b>						
Main South Track Improvement Works	118,322	300,807	194,873	-	-	-
Train Control Consolidation - South	48,852	5,691	-	-	-	-
Corridor Infrastructure Investment	6,783	11,586	2,330	2,082	2,405	2,170
<b>Total Capital Expenditure</b>	<b>173,957</b>	<b>318,084</b>	<b>197,203</b>	<b>2,082</b>	<b>2,405</b>	<b>2,170</b>
<b>4. Newcastle (Islington Junction via mains) – Queensland Border (Border Tunnel)</b>						
North Coast Track Improvement Works	80,266	125,752	27,799	728	-	-
North Coast Signals/Train Control Improvement Works	2,447	-	-	-	-	-
Northern Train Control Consolidation (allocation)	8,754	2,834	4,279	-	-	-
Corridor Infrastructure Investment	12,914	13,271	5,796	7,880	6,461	5,987
<b>Total Capital Expenditure</b>	<b>104,381</b>	<b>141,857</b>	<b>37,874</b>	<b>8,608</b>	<b>6,461</b>	<b>5,987</b>
<b>5. Crystal Brook – Parkes</b>						
Western NSW Improvement Works	8,834	9,986	417	-	-	-
Corridor Infrastructure Investment	3,569	3,775	2,166	4,256	3,723	1,616
<b>Total Capital Expenditure</b>	<b>12,403</b>	<b>13,760</b>	<b>1,749</b>	<b>4,256</b>	<b>3,723</b>	<b>1,616</b>
<b>6. Cootamundra - Parkes</b>						
Corridor Infrastructure Investment	1,771	783	3,660	2,807	1,399	970
<b>Total Capital Expenditure</b>	<b>1,771</b>	<b>783</b>	<b>3,660</b>	<b>2,807</b>	<b>1,399</b>	<b>970</b>
<b>7. Adelaide (Dry Creek) – Pelican Point</b>						
Corridor Infrastructure Investment	23	-	-	-	-	-
<b>Total Capital Expenditure</b>	<b>23</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>8. Port Augusta – Whyalla</b>						
Corridor Infrastructure Investment	-	50	50	-	-	-
<b>Total Capital Expenditure</b>	<b>-</b>	<b>50</b>	<b>50</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>9. Moss Vale - Unanderra</b>						
Corridor Infrastructure Investment	337	494	117	876	766	738
<b>Total Capital Expenditure</b>	<b>337</b>	<b>494</b>	<b>117</b>	<b>876</b>	<b>766</b>	<b>738</b>
<b>Network (allocation)</b>						
Track Investment (eg Wayside Detection, Wagons, Plant & Equipment)	2,520	2,558	-	5,677	5,722	-
Signals & Train Control Investment (ATMS)	552	13,940	20,351	32,053	-	-
Communications Investment (eg 3G 850, NTCS, ICE)	3,670	28,330	17,920	-	-	-
<b>Total Capital Expenditure</b>	<b>6,742</b>	<b>44,828</b>	<b>38,271</b>	<b>37,729</b>	<b>5,722</b>	<b>-</b>
<b>Other</b>						
Southern Sydney Freight Line	3,464	94,518	143,651	-	-	-
<b>Total Capital Expenditure</b>	<b>3,464</b>	<b>94,518</b>	<b>143,651</b>	<b>-</b>	<b>-</b>	<b>-</b>

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

**SCHEDULE I**

(Segments)

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

**AUSTRALIAN RAIL TRACK CORPORATION LIMITED  
("ARTC")**

in favour of

**AUSTRALIAN COMPETITION AND CONSUMER COMMISSION  
("ACCC")**

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**ACCESS UNDERTAKING**

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