

# ARTC Explanatory Guide 2010 HVAU

## Appendix 1 - Explanation of changes made to the 2010 HVAU, 2010 IAHA and 2010 OSA

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### 1 Explanation of changes made in the 2010 HVAU

This table lists the key changes made to the April 2009 HVAU

	HVAU Section <sup>1</sup>	Amendments	Explanation
1	1.1	<p><b>Introduction</b></p> <p>(d) The predominant usage of the Network is for rail services to the Hunter Valley coal markets. Subject to legislative requirements in relation to other traffic, <a href="#">and in particular ARTC's obligations to provide and maintain priority for passenger services under the Transport Administration Act 1988 (NSW)</a>, <del>such as passenger</del>, ARTC recognises that the operation of, and investment in the development of, the Network is primarily to improve utilisation and performance of such rail services and to optimise coal export throughput in the Hunter Valley. <a href="#">ARTC also recognises that non-coal users of the Network require certainty of access and that the views of non-coal users are to be considered and taken into account in making future decisions to invest in new Capacity on the Network.</a></p> <p>...</p> <p>(g) <a href="#">ARTC recognises that the Network is also used by in relation to non-coal users traffic. In relation to traffic</a> utilising the Network other than for the purpose of hauling coal, ARTC operates in a competitive environment where competition from other modes of transport (particularly road) places constraint on rail transport and Access pricing. Access pricing for this traffic is such that it only meets their Direct Cost of Access to the Constrained Network.</p>	<p>As set out in its response to the Draft Decision, ARTC has made changes to section 1.1 to explicitly refer to ARTC's obligations under the Transport Administration Act 1988 (NSW) and to provide greater acknowledgment of the use of the Network by non-coal users (see section 4.1 of the Explanatory Guide).</p>
2	1.2	<p><b>Objectives</b></p> <p>This Undertaking is a voluntary undertaking submitted by ARTC under Part IIIA of the TPA. The intent of the Undertaking is to:</p> <p>...</p> <p>(d) reach an appropriate balance between:</p>	<p>As set out in its response to the Draft Decision, given the ACCC's concerns to ensure consistency with the pricing principles in section 44ZZCA of the TPA, ARTC has amended this provision to refer to efficient</p>

<sup>1</sup> The section references refer to numbering in the 2010 HVAU except where expressly indicated as a reference to the 2009 HVAU.

	HVAU Section <sup>1</sup>	Amendments	Explanation
		<p>(i) the legitimate business interests of ARTC, including:</p> <p>(A) recovery of <u>at least sufficient revenue to meet the all-reasonable efficient</u> costs associated with <del>the granting of</del> Access to the Network, <u>having regard to the efficient operation of the Hunter Valley Coal Chain</u>;</p>	<p>costs.</p> <p>ARTC has also provided in sec 4.4(b) of the 2010 HVAU its proposed approach regarding the determination of efficient costs (see section 4.7 of the Explanatory Guide).</p>
3	1.3	<p><b><u>Recognition of Coal Chain Principles</u></b></p> <p><u>In preparing the Access Undertaking, ARTC has sought to recognise the importance of the following principles to coal producers seeking to export coal to the Port of Newcastle:</u></p> <p>(a) <u>coal producers require long term certainty of access to a contracted portion of Coal Chain Capacity, of which one component is contracted Capacity with ARTC;</u></p> <p>(b) <u>the availability of a reliable process through which access to Capacity can be negotiated within the broader context of the Hunter Valley Coal Chain;</u></p> <p>(c) <u>the development of a set of System Assumptions to apply across the Coal Chain and for ARTC to participate in the development of these System Assumptions in so far as they relate to the Network and to reflect relevant and agreed track related assumptions in Access Holder Agreements;</u></p> <p>(d) <u>there should be workable alignment between the allocation and utilisation of Capacity and the allocation and utilisation of capacity at the coal terminals at the Port of Newcastle.</u></p>	<p>This change was made in response to producers' request that ARTC include recognition of the principles of the long term solution. ARTC considers that recognition of the above coal chain principles addresses the concerns of coal producers (see section 4.2 of the Explanatory Guide and row 7 below).</p> <p>In the 2010 HVAU, ARTC has also amended section 2.3(b) to provide that when ARTC undertakes its five year review of the 2010 HVAU it will consider whether the undertaking is operating effectively in light of the objectives of the 2010 HVAU and the coal chain principles which ARTC has recognised in section 1.3 (see section 4.2 of the Explanatory Guide and row 7 below).</p>
4	2.1	<p><b>Scope</b></p> <p>(b) <u>The Network means the network of railway lines delineated or defined in Schedule B, excluding Annexure 1 to Schedule B, where Annexure 1 to Schedule B contains a map, being a representation of these railway lines for illustrative purposes only.</u></p>	<p>As contemplated in ARTC's response to the Draft Decision, the 2010 HVAU includes a new definition of the Network, referring parties to a detailed Schedule and illustrative map.</p> <p>Note as neither the 2010 IAHA nor the 2010 OSA contemplate the inclusion of a map, no amendments have been required to the definition of Network in the 2010 IAHA</p>
5	2.2	<p><b>Grant and Duration of Undertaking</b></p> <p>(a) ARTC undertakes to the ACCC that it will comply with the terms and conditions specified in this Undertaking <u>including</u> in relation to the grant of Access Rights to the Network. This Undertaking takes effect twenty one (21) days after it is <del>published</del><u>accepted</u> by the ACCC under <b>section 44ZZA(3)</b> of the TPA ("<b>Commencement Date</b>") and</p>	<p>The word "including" has been added to avoid any doubt that ARTC does not intend to comply with only certain provisions of the</p>

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		<p>will continue until the earlier to occur of:</p> <p>(i) the <u>tenth (10th) anniversary of the Commencement Date</u> <del>—of the Term</del>; or</p> <p>(ii) <u>the withdrawal of this Undertaking in accordance with its terms or the TPA</u> <del>—</del> <u>being, the Term of the Undertaking.</u></p> <p>The previous subsections 2.2(b)-(d) have been deleted.</p>	<p>2010 HVAU</p> <p>Use of the word 'published' aligns with the requirements under the TPA.</p> <p>The additional provisions previously included in section 2.2 of the 2009 HVAU have been deleted as a result of the ACCC's comments in the Draft Decision that they were merely descriptive and therefore unnecessary.</p> <p>Also, the separate section for Term is not necessary given the insertion in section 2.2(a).</p>
6	2.3 of the 2009 HVAU	<p><b>Term</b></p> <p>Deletion</p>	<p>ARTC has deleted the previous section 2.3 'Term' from the 2010 HVAU as this section is not necessary. The Term of the 2010 HVAU is now defined in section 2.2.</p>
7	2.3 of 2010 HVAU	<p><b>2.4 Review of Undertaking</b></p> <p>The previous subsections 2.4(a)&amp;(b) of the 2009 HVAU have been deleted.</p> <p>(b) As soon as practicable after the fifth (5th) anniversary of the Commencement Date, ARTC will undertake a review of the Undertaking, in consultation with Access Holders and other stakeholders. The review will consider <u>whether the Undertaking is operating effectively in light of the objectives of the Undertaking outlined under section 1.2 and the coal chain principles recognised in section 1.3 as well as</u> any material impact that changes to industry circumstances or Government legislation, rules or regulations may have on the extent to which the Undertaking reasonably meets <u>those objectives and principles</u> <del>its intent as prescribed at section 1.2.</del></p>	<p>The previous subsections 2.4(a) and (b) are not necessary.</p> <p>ARTC has made amendments to the new subsection (b) (previously subsection (d)) to clarify that in carrying out the five year review of the Undertaking, ARTC will consider how the Undertaking is operating in light of the coal chain principles set out in the new section 1.3 and also the other objectives of the Undertaking. See row 3 above.</p>
8	2.4	<p><b>Existing Agreements and rights</b></p> <p>(b) ARTC will reserve, at no charge, existing train paths used for non-coal traffic under agreements existing immediately before the Commencement Date. ARTC will reserve the existing train paths for the purpose of making them available to Applicants who submit an Access Application for Non-Coal Access Rights, to be used for substantially the same purpose and in respect of the same end-market as the existing train paths, within 30 Business Days from the Commencement Date. To avoid doubt, <u>an Applicant seeking access to a reserved train path under this section will be offered an Access Agreement in accordance with section 3.14(b) and will be able to negotiate the terms and conditions of that Access Agreement in accordance with section 3 of the Undertaking.</u> <del>the reserved train paths will be contracted on the terms and conditions, applicable at the time of the Access Application.</del></p>	<p>In recognition of concerns regarding the interpretation of this section, ARTC has included amendments in the 2010 HVAU to clarify that the terms and conditions of the access agreement covering a reserved train path will be negotiated in accordance with the 2010 HVAU.</p>
9	3.5	<p><b>Confidentiality</b></p> <p>(a) <u>Each party acknowledges, subject to section 3.5(b) and (c), that all information provided by one party ("Provider")</u></p>	<p>ARTC has amended the confidentiality provisions in the</p>

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		<p><a href="#">to the other ("Receiver") as part of the negotiation process for Access Rights under this Undertaking that is designated or indicated in writing, as being the confidential information of the Provider or any of its Related Bodies Corporates</a> ("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.</p> <p>(b) <a href="#">To avoid doubt, information provided by an Access Holder to ARTC on the forecast and actual volume of coal to be transported on the Network by an Access Holder is Confidential Information.</a></p> <p>(c) For the purposes of this <b>section 3.5</b>, Confidential Information does not include information which is:</p> <p><del>(iii)...</del></p> <p>(iv) <a href="#">derived or produced from Confidential Information but disclosed in an aggregated form, on at least a Pricing Zone basis.</a></p> <p>(d) Either party may disclose Confidential Information:</p> <p><del>(i)...</del></p> <p><del>(ii) to a Related Body Corporate Party (provided they are under a legal obligation not to disclose the Confidential Information to any third party);</del></p> <p><del>(iii)(iii) to the HVCCC or the RCG to the extent reasonably necessary to enable the HVCCC and RCG to co-ordinate the operation and capacity development of the Hunter Valley coal chain; subject to entering into appropriate confidentiality arrangements with the HVCCC and the RCG, to the HVCCC for the purpose of assisting the HVCCC in determining the impact of the Access Rights sought on Coal Chain Capacity and on the operating requirements needed to deliver Coal Chain Capacity under section 3.9, scheduling and planning the Hunter Valley Coal Chain, including as required under section 5.1, and to the RCG, in relation to the consultation process set out under sections 6.2, 6.3 and 6.4; and</del></p> <p><del>(iv)...</del></p> <p>(v) <a href="#">to the ACCC where required under the Access Undertaking; and</a></p> <p>(vi) <a href="#">to the lessor of the Network, if required under the terms of the NSW Lease</a></p>	<p>2009 HVAU to ensure they are consistent with the confidentiality provisions in the 2010 IAHA.</p> <p>The key change to the confidentiality provisions in the 2010 IAHA (from the December 2009 version of the IAHA) is the requirement that the information be designated or indicated in writing as confidential. ARTC considers that this change is necessary to avoid the potential for disputes and allegations regarding the appropriate identification of confidential information.</p>
10	3.6	<p><b>Initial review where Coal Access Rights are sought</b></p> <p>(d) <a href="#">For the purposes of this section 3.6, effective and reasonable participation by ARTC and the other relevant Hunter Valley Coal Chain Service Providers means the provision of information to the Applicant, and where requested, the provision of information to the HVCCC, which it reasonably considers necessary to enable the HVCCC to advise the Applicant of the operating requirements to deliver the throughput sought and to carry out an assessment of the impact of the Access Rights sought on Coal Chain Capacity.</a></p>	<p>As set out in response to the Draft Decision, ARTC has clarified what "reasonable and effective participation" means and who are the other participants in the Hunter Valley Coal Chain are the other service providers in the Hunter Valley Coal Chain.</p>
11	3.7	<p><b>Access Application</b></p> <p>(a) Requests for Access Rights are to be submitted to ARTC prepared in written form and clearly state that the Access Application is made in accordance with this Undertaking and is accompanied by the following information:</p> <p>...</p> <p>(ix) where an Applicant is seeking Coal Access Rights:</p> <p>...</p> <p>(B) any advice provided by the HVCCC on the impact of the Access Rights sought on Coal Chain Capacity, <del>and</del> on the</p>	<p>ARTC has amended section 3.7 to make it clear that the advice provided to the HVCCC may cover whether the Applicant has sufficient terminal capacity (Network Exit Capability) to enable the use of the access rights sought - and where this is the case, this information should</p>

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		operating requirements needed to deliver Coal Chain Capacity, <a href="#">and on whether the Applicant has sufficient Network Exit Capability to enable the utilisation of the Coal Access Rights sought.</a>	be included in the Access Application.
12	3.9	<p><b>Determination of Capacity</b></p> <p><del>(c) Where an Applicant seeks Coal Access Rights, ARTC will have regard to any advice provided by the HVCCC on the impact of the Access Rights sought on Coal Chain Capacity, and on the operating requirements needed to deliver Coal Chain Capacity.</del></p> <p>(c) ARTC will determine... <del>Where ARTC disagrees with the advice provided by the HVCCC to the Applicant, ARTC may request the Applicant to seek a further review from the HVCCC of the impact of the Access Rights sought on Coal Chain Capacity and on the operating requirements needed to deliver Coal Chain Capacity. While ARTC will have regard to the further advice provided by the HVCCC, ARTC will have the sole right to determine whether there is sufficient Available Capacity to grant the Access Rights sought by the Applicant.</del></p>	ARTC considers the deleted sections above are no longer required given the amendments to section 5.2 of 2010 HVAU below.
13	3.13	<p><b>Application for mutually exclusive Access Rights</b></p> <p>(a) Where two or more Applicants have submitted an Access Application for mutually exclusive Access Rights <a href="#">to Available Capacity existing and commissioned at the time each of the Access Applications is received</a>, each Applicant will be notified as soon as practicable after ARTC has identified that the Access Rights sought are mutually exclusive Access Rights.</p> <p>...</p> <p>(e) <a href="#">To avoid doubt, if an Access Holder seeks to renew Coal Access Rights in accordance with a specific right of renewal provided in its Access Holder Agreement, that request for a renewal will not be treated as an Access Application and will have, to the extent provided in the Access Holder Agreement, priority over an Access Application for Access Rights which are mutually exclusive with the Coal Access Rights sought to be renewed.</a></p>	<p>The amendment to subsection (a) clarifies ARTC's intention that this section will only apply where it receives two applications for new or additional path usages and there is only sufficient spare track capacity existing at the time to deliver one set of path usages - and neither applicant wants to wait for the creation of Additional Capacity.</p> <p>The addition of subsection (e) clarifies the impact of the rights to annual renewal in clause 2.4 of the Train Path Schedule.</p>
14	3.14	<p><b>Access Agreement</b></p> <p>(b) Subject to section 3.14(c), ARTC <del>will</del> <a href="#">may</a> offer <del>Applicants any of the</del> <a href="#">choice of the</a> following as an Access Agreement:</p> <p>(i) for Applicants seeking Coal Access Rights-:</p> <p>(A) the Indicative Access Holder Agreement subject to the Applicant satisfying the Network Exit Capability requirement in section 3.7(a)(ix), the prudential requirements in section 3.4(e) and seeking Access Rights intended for the operation of Indicative Services <a href="#">or Interim Indicative Services</a>;</p> <p><del>(B) the current available market terms and conditions in the form of an Access Holder Agreement as published on ARTC's website, as applicable; or</del></p> <p>(B) an updated Access Holder Agreement to reflect agreed amendments to the Indicative Access Holder Agreement. A negotiated Access Holder Agreement will <a href="#">incorporate those clauses from the Indicative Access Holder Agreement identified as Tier 1 (mandatory) provisions in Schedule A:1 and will</a>, (unless otherwise agreed between ARTC and the Applicant) <del>must</del> at least address <a href="#">those provisions identified as Tier 2 (negotiable) provisions certain essential elements set out in Schedule A:1, as applicable to the destination of the Coal Access Rights sought</a>. The details of Schedule A:1 do not provide an exhaustive list of the issues that may be included in an Access Holder Agreement; <a href="#">or</a></p> <p>(C) <a href="#">current available market terms and conditions in the form of an Access Holder Agreement which had</a></p>	See sections 4.4 and 5.13 of the Explanatory Guide.

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		<p><u>been negotiated and agreed by ARTC and an Access Holder in accordance with section 3.14(b)(i)(B), as published on ARTC's website, as applicable.</u></p> <p>(ii) for Applicants seeking Non-Coal Access Rights:</p> <p>(A) <u>subject to the Applicant satisfying those prudential requirements in section 3.4(e)(i), (ii) and (iv), an Access Agreement on the terms and conditions contained in the Indicative Interstate Access Agreement but amended to:</u></p> <p>(i) <u>define the network covered by the Access Agreement as the Network subject to this undertaking; and</u></p> <p>(ii) <u>incorporate those provisions identified as Tier 1 (mandatory) Non Coal Provisions in Schedule A:2, but to avoid doubt the Access Rights sought by the Applicant will not be considered an indicative service for the purposes of the Indicative Interstate Access Agreement and those terms and conditions applicable to an indicative service in the Indicative Interstate Access Agreement will not apply</u></p> <p><del>(B) the current available market terms and conditions in some other form as published on ARTC's website, as applicable; or</del></p> <p>(B) an updated Access Agreement to reflect agreed amendments <u>to the terms and conditions of the Indicative Interstate Access Agreement</u><del>to the applicable Access Agreement</del>. A negotiated Access Agreement will <u>incorporate those provisions identified as Tier 1 (mandatory) Non- Coal provisions in Schedule A:2 and will,</u> unless otherwise agreed between ARTC and the Applicant, at least address <u>those provisions identified certain essential elements set out in Schedule A:2 as Tier 2 (negotiable) Non Coal provisions</u><del>applicable; or, -The details of Schedule A do not provide an exhaustive list of the issues that may be included in an Access Agreement.</del></p> <p>(C) <u>the current available market terms and conditions in the form of an Access Agreement for Non-Coal Access Rights which had been negotiated and agreed by ARTC and an Access Holder in accordance with section 3.14(b)(ii)(B) as published on ARTC's website, as applicable.</u></p> <p>...</p> <p>(c) ARTC must offer the Indicative Access Holder Agreement to an Applicant for Coal Access Rights if the Applicant:</p> <p>(i) seeks Access Rights for the operation of Indicative Services <u>or Interim Indicative Services;</u></p>	
15	4.2	<p><b>Floor and Ceiling Price and Revenue Limits</b></p> <p><u>(d) If the RAB in a Pricing Zone is greater than the applicable RAB Floor Limit in a calendar year, ARTC will not increase the Indicative Access Charge or the Interim Indicative Access Charges, as applicable, in that Pricing Zone for that calendar year by more than 25% from the previous calendar year.</u></p>	See section 4.6.3 of the Explanatory Guide.
16	4.3	<p><b>Regulatory Asset Base</b></p> <p>(a) <b><u>Determination of RAB in relation to assets existing as at the Commencement Date</u></b></p> <p><del>To determine the</del>The Regulatory Asset Base ("RAB") <del>in relation to assets existing as at the Commencement Date (Existing Regulatory Asset Base ("ERAB"))</del> for a Segment or group of Segments, <del>the Network and Associated Facilities ("Initial Existing Regulatory Asset Base (Initial ERAB))</del><u>will be determined in accordance with this</u></p>	<p>The amendments to section 4.3 are intended to clarify the drafting of the subsection and in particular the removal of the ERAB/IRAB distinction.</p> <p>The amendments at subsection 4.3(a)(i) are intended to clarify that the initial RAB value will be determined in a manner</p>

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		<p><u><a href="#">section 4.3(a)</a></u></p> <p><u>The initial value of the RAB (“Initial RAB”) will be:</u></p> <p>(i) in relation to those Segments that have been ascribed a regulatory asset value in accordance with the NSW Rail Access Undertaking in force at the time immediately preceding the Commencement Date <del>will be</del>, set at the value of those Segments determined in accordance with the NSW Rail Access Undertaking as at the Commencement Date. <del>This and if the date those values took effect is earlier than the Commencement Date, that part of the Initial ERAB/RAB will be rolled forward to the Commencement Date in accordance with the formula below</del> <u>asset valuation roll forward principles under the NSW Rail Access Undertaking as at August 2010 or as otherwise agreed between ARTC and the Independent Pricing and Regulatory Tribunal</u> to determine an opening Initial <del>ERAB/RAB</del>;</p> <p>(ii) in relation to other Segments, initially valued using the depreciated optimised replacement cost method of valuing assets, <u>and approved by the ACCC</u>. 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.</p> <p><del>ERAB/RAB</del> will be rolled forward annually according to the following methodology</p> $ERAB_{t, \text{start}} = ERAB_{t-1, \text{end}} \times (1 + WACC_E - WACC) + Net\ Capex_{t-1} + 0.5 \times WACC \times Net\ Capex_{t-1} - Out\ turn\ Revenue_{t-1} - Out\ turn\ Opex_{t-1} - Disposals_{t-1}$ <p>where</p> <p><del>ERAB<sub>t, start</sub> is ERAB at the start of the relevant calendar year (t) (which, for the first year following the Commencement Date, would be the Initial ERAB).</del></p> <p><del>ERAB<sub>t-1, end</sub> is the ERAB at the end of the preceding calendar year (t-1).</del></p> <p><del>ERAB<sub>t-1, start</sub> is the ERAB at the start of the preceding calendar year (t-1).</del></p> <p><del>WACC<sub>E</sub> is the approved nominal Rate of Return for assets existing as at the Commencement Date or as revised from time to time in accordance with section 4.7.</del></p> <p><del>Out turn Revenue<sub>t-1</sub> is the total revenue earned by ARTC in the preceding calendar year (t-1) attributed to assets existing as at the Commencement Date.</del></p> <p><del>Out turn Opex<sub>t-1</sub> is the total operating expenditure incurred by ARTC in the preceding calendar year (t-1), attributed to assets existing as at the Commencement Date, on an industry efficient basis.</del></p> <p><del>Disposals<sub>t-1</sub> is the written down value of any disposals during the preceding calendar year (t-1), in relation to</del></p>	<p>consistent with the roll forward principles in the NSW RAU, and seeks to recognise that some deviation from this approach may be needed to be agreed with IPART and the ACCC in order to effectively transition from the NSW RAU to the 2010 HVAU (see Appendix 5 of the Explanatory Guide).</p> <p>The amendment to the original RAB roll forward formula in subsection 4.3(a)(ii) is intended to clarify that the capitalised economic cost will also include a return with respect to Net Capex incurred in the year. The return is calculated for half of that year to be consistent with the inclusion of IDC in Net Capex and Depreciation. (see section 4.8 of the Explanatory Guide)</p> <p>The addition of the words “pre-tax” in this subsection was made in response to the ACCC’s recommendation that the WACC be nominal pre tax rate of return in section 4.3(a).</p> <p>The changes made to the definition of Out-turn Opex follows a recommendation from the ACCC to clarify the fact that in determining operating expenditure on an industry efficient basis, the approach to efficiency in section 4.4(b) will reflect the cost/approach to efficiency in section 4.4(b).</p> <p>The definition of Net Capex has been changed to make it clear when IDC will be calculated to. Essentially, projects commissioned during a calendar year will be deemed as being commissioned in the middle of the year (1 July) with the effect that any IDC calculated in the year of</p>

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	<p style="text-align: center;"><del>assets existing as at the Commencement Date.</del></p> <p><del>(b) — RAB in relation to assets commissioned during the Term</del></p> <p><del>To determine the RAB in relation to assets commissioned during the Term (Investment Regulatory Asset Base (“IRAB”)) for a Segment or group of Segments, the Network and Associated Facilities will be initially valued at zero (“Initial Investment Regulatory Asset Base (Initial IRAB)”).</del></p> <p><del>IRAB will be rolled forward annually according to the following methodology:</del></p> $\text{IRAB}_{t-1, \text{start}} = \text{IRAB}_{t-1, \text{end}} =$ $(1 + \text{WACC}_t) * \text{IRAB}_{t-1, \text{start}} - \text{Out-turn Revenue}_{t-1} + \text{Out-turn Opex}_{t-1} + \text{Net Capex}_{t-1}$ <p><del>where:</del></p> <p><del>IRAB<sub>t,RAB</sub><sub>start</sub> is the IRAB<sub>RAB</sub> at the start of the relevant calendar year (t) (which, for the first year following the Commencement Date, would be the Initial IRAB<sub>RAB</sub>).</del></p> <p><del>IRAB<sub>t,RAB</sub><sub>t-1 end</sub> is the IRAB<sub>RAB</sub> at the end of the preceding calendar year (t-1).</del></p> <p><del>IRAB<sub>t,RAB</sub><sub>t-1 start</sub> is the IRAB<sub>RAB</sub> at the start of the preceding calendar year (t-1).</del></p> <p><del>WACC<sub>WACC</sub> is the approved nominal pre tax Rate of Return for assets commissioned during the Term or as revised from time to time in accordance with section 4.7.</del></p> <p><del>Out-turn Revenue<sub>t-1</sub> is the total Access revenue earned by ARTC in the preceding calendar year (t-1) attributed to assets commissioned during the Term but will not include a Capital Contribution received from an Applicant or an Access Holder.</del></p> <p><del>Out-turn Opex<sub>t-1</sub> is the total operating expenditure incurred by ARTC in the preceding calendar year (t-1), attributed to assets commissioned during the Term, on an industry efficient basis, determined in accordance with section 4.4(b).</del></p> <p><del>Net Capex<sub>Capex</sub><sub>t-1</sub> is the net additions to the RAB in the preceding calendar year (t-1), (that is out- turn Capital Expenditure by ARTC less the written down value of any disposals during the preceding calendar year (t-1) on a Prudent basis in relation to assets commissioned during the Term.</del></p> <p><del>(e) — RAB for Segments The RAB for all assets in a Segment or group of Segments, at the start of any calendar year (t), will be the sum of ERAB<sub>t,start</sub> and IRAB<sub>t,start</sub>, including interest cost incurred during construction up until 1 July in the calendar year the asset was commissioned, capitalised in the year the asset was commissioned and determined by reference to the relevant form of the Rate of Return (to the extent that Capital Expenditure is incurred on a Prudent basis, including interest cost), but will not include Capital Contributions.</del></p>	<p>commissioning will be calculated up until 1 July irrespective of when the project was actually commissioned. ARTC has also proposed a similar approach to depreciation, which will be calculated from 1 July irrespective of when the project was actually commissioned. This will result in depreciation being calculated on all of the Capex incurred during the year, but only charged for half of the year as per section 4.6(d). The definition of Net Capex in section 4.3(b) has been changed accordingly. See section 4.8 of the Explanatory Guide.</p> <p>The reference to the approved Rate of Return has been changed to clarify that the applicable form of Rate of Return will vary and will depend on the specification of the IDC cash flows.</p> <p>Net Capex and Out-turn Revenue has been clarified to ensure ARTC does not earn a return on Capital Contributions. In addition, the word “Access” has been inserted into the definition of Out-turn Revenue (see section 4.5 of the Explanatory).</p>



	HVAU Section <sup>1</sup>	Amendments	Explanation
		<p><b>(b) <del>(d)</del> RAB Floor Limit</b></p> <p>The RAB Floor Limit for a Segment or group of Segments will be:</p> <p>(i) as at the Commencement Date, the <del>sum of the Initial ERAB and the Initial IRAB</del> <u>RAB</u>;</p> <p>(ii) rolled forward annually according to the following methodology</p> $\text{RAB Floor Limit}_{t \text{ start}} = \text{RAB Floor Limit}_{t-1 \text{ end}} =$ $(1 + \text{CPI}_{t-1}) \times \text{RAB Floor Limit}_{t-1 \text{ start}} + \text{Net Capex}_{t-1} - \text{Depreciation}_{t-1}$ <p>where:</p> <p>RAB Floor Limit<sub>t start</sub> is the RAB Floor Limit at the start of the relevant calendar year (t) (which, for the first year following the Commencement Date, would be the <del>sum of the Initial ERAB and the Initial IRAB</del> <u>RAB</u>).</p> <p>RAB Floor Limit<sub>t-1 end</sub> is the RAB Floor Limit at the end of the preceding calendar year (t-1).</p> <p>RAB Floor Limit<sub>t-1 start</sub> is the RAB Floor Limit at the start of the preceding calendar year (t-1).</p> <p>CPI<sub>t-1</sub> is the inflation rate for the preceding calendar year (t-1), determined by reference to the <del>All Groups Consumer Price Index Statistics published CPI</del> <u>All Groups Consumer Price Index Statistics published CPI</u> for the September quarter of that year.</p> <p>Net Capex<sub>t-1</sub> is the net additions to the RAB Floor Limit in the preceding calendar year (t-1) <del>(that is out-turn Capital Expenditure by ARTC less the written down value of any disposals during the preceding calendar year (t-1) on a Prudent basis, including interest cost incurred during construction up until 1 July in the calendar year the asset was commissioned, capitalised in the year the asset was commissioned and determined by reference to the relevant form of the Rate of Return (to the extent that Capital Expenditure is incurred on a Prudent basis, including interest cost), but will not include Capital Contributions.</del></p>	
17	4.4	<p><b>Economic cost</b></p> <p>(a) For the purposes of this <b>section 4</b>, Economic Cost of a Segment means:</p> <p>...</p> <p>(iii) a return on Segment Specific Assets, being <del>determined by applying a real pre-tax Rate of Return to the value of Segment Specific Assets, where the value of those assets is determined in accordance with section 4.3(b) determined by applying a real Rate of Return to the value of Segment Specific Assets;</del> <u>determined by applying a real pre-tax Rate of Return to the value of Segment Specific Assets, where the value of those assets is determined in accordance with section 4.3(b) determined by applying a real Rate of Return to the value of Segment Specific Assets;</u></p> <p>...</p> <p><del>(vi)</del> (vi) an allocation of return of Non-Segment Specific Assets, being determined by applying a real <del>pre-tax</del> <u>pre-tax</u> Rate of Return to the value of Non-Segment Specific Assets, <del>where the value of those assets will include the capitalisation of interest cost incurred during construction up until commissioning of the asset, capitalised at the time of commissioning and determined by reference to the relevant Rate of Return (to the extent that Capital Expenditure is incurred on a Prudent basis, including interest cost), but will not include any applicable Capital</del> <u>where the value of those assets will include the capitalisation of interest cost incurred during construction up until commissioning of the asset, capitalised at the time of commissioning and determined by reference to the relevant Rate of Return (to the extent that Capital Expenditure is incurred on a Prudent basis, including interest cost), but will not include any applicable Capital</u></p>	<p>ARTC has amended subsection (iii) to clarify that the return is based on the RAB Floor Limit value of Segment Specific Assets. This is the building blocks formulation for roll forward of the regulatory asset base. The inclusion of IDC is carried out via section 4.3.</p> <p>ARTC has made amendments to clarify that the Rate of Return to apply in determining the return on Segment Specific Assets will be the “real pre tax Rate of Return”</p>

	HVAU Section <sup>1</sup>	Amendments	Explanation
		<p><u>Contributions</u>; and</p> <p>...</p> <p>(b) <u>All costs described in sub-sections (a)(i) and (iv), all applicable costs described in sub-section (a)(vii), and all operating expenditure in section 4.3(a) are to be assessed on an efficient basis, where efficient costs will reflect the costs incurred by a prudent service provider, acting efficiently, in accordance with accepted good rail infrastructure practice, to achieve lowest sustainable cost of delivering rail infrastructure services, in the context of:</u></p> <p>(i) <u>the Hunter Valley Coal Chain where a key objective in maintenance planning is to maximise coal chain throughput and reliability;</u></p> <p>(ii) <u>ARTC's obligations to maintain the Network having regard to the terms of applicable Access Agreements and Access Holder Agreements existing at the time;</u></p> <p>(iii) <u>ARTC's obligations under the law, applicable legislation (including regulations) or the NSW Lease; and</u></p> <p>(iv) <u>broader benefits that may arise from delivery through alliance or internally.</u></p> <p>All costs are to be assessed on a stand alone basis <u>having regard to the factors identified in sub-section (b).</u></p>	<p>in section 4.4(a)(iii)</p> <p>Section 4.4(a)(vi) has been amended to clarify that IDC is included in the asset value of Non-Segment Specific Assets. Non-Segment Specific assets are generally not rolled forward in the same way as the regulatory asset base. Such assets may include those assets required to be used by ARTC across its network to support business units including the Hunter Valley - i.e. not exclusively for the Hunter Valley (e.g. buildings, computers, motor vehicles). These will be valued in accordance with usual accounting practice and allocated to the Hunter Valley Network in accordance with section 4.5. Capital contributions are not included (if relevant).</p> <p>Subsection (b) has been added to clarify that the operating expenditure determined for the purposes of section 4.3(a) will be efficient as contemplated in section 4.4(b). This addresses ACCC concerns in the Draft Decision and concerns of producers. Efficient cost for the purpose of Economic Cost is aligned to that for expenditure included in Direct Cost and Capital Expenditure in the 2010 HVAU. This assessment of efficient cost is consistent with that in other regulatory jurisdictions excepting that ARTC has sought to further clarify the assessment through the inclusion of context specific to the Hunter Valley coal network operating and commercial environment.</p> <p>See section 4.7 of the Explanatory Guide for a discussion of this subsection.</p>

	HVAU Section <sup>1</sup>	Amendments	Explanation
18	4.6	<p><b>Depreciation</b></p> <p>For the purposes of calculating the Depreciation allowance in any calendar year:</p> <p>(a) Depreciation is to be calculated <del>at the beginning of</del> <u>for</u> each calendar year, using a straight line methodology (unless otherwise agreed with an Access Holder <u>and approved</u> <del>or accepted</del> by the ACCC) with respect to specific assets and the estimate of the remaining useful life of the assets.</p> <p>(b) The useful life of a Segment or group of Segments is to be determined having regard to:</p> <p>(i) the average remaining mine life of <del>Hunter Valley</del> coal mines utilising the Pricing Zone of which that Segment or group of Segments forms part;</p> <p>...</p> <p>The average remaining mine life of <del>Hunter Valley</del> coal mines utilising a Pricing Zone may vary between Pricing Zones as approved by the ACCC.</p> <p>(c) The estimate of remaining mine life will be reviewed by ARTC five years from the Commencement Date and <del>if necessary</del> revised estimates will be proposed for ACCC approval.</p> <p>(d) Depreciation is to be charged each year on the opening balance of the Regulatory Asset Base and on <del>100% of</del> the Prudent Capital Expenditure <u>associated with all of the</u> assets commissioned <u>in that year, charged</u> for a period of half <del>of that</del> <u>the</u> year.</p>	<p>ARTC has amended section 4.6(a) to making it clear that the methodology to be applied will be that approved by the ACCC.</p> <p>The words “Hunter Valley” have been removed from subsection 4.6(b) to indicate ARTC’s intention to include all mines that use the Network.</p> <p>The words “if necessary” have been removed from subsection 4.6(c) to make it clear that ARTC will submit revised estimates of mine life to the ACCC for approval.</p>
19	4.7	<p><b>Rate of return</b></p> <p><del>(b) The Rate of Return may vary between assets existing as at the Commencement Date and assets provided by Capital Expenditure during the Term reflecting differences in the elements at sections 4.7(a)(i), (ii) and (iii) arising from consideration of the risks with the commercial environment in which ARTC operates in relation to those respective assets.—</del></p> <p>(b) The Rate of Return will be reviewed by ARTC five years from the Commencement Date and <del>if necessary</del> a revised Rate of Return will be proposed for ACCC approval.</p> <p>[The previous subsections 4.7(d)-(e) have been deleted.]</p> <p><u>(c) If ARTC considers that the methodology for determining the value of either or both the debt risk premium or the imputation credits (gamma) applied by the ACCC in approving this Undertaking is inconsistent with the Australian Competition Tribunal’s decisions or the Federal Court’s decisions in respect of the Appeal Matters, then ARTC has the discretion to review the Rate of Return and propose a revised Rate of Return for ACCC approval based on the new or revised methodology for determining either or both the debt risk premium and gamma arising from those decisions or where the matter is remitted for reconsideration, any subsequent determination by the original decision maker. To avoid doubt, ARTC’s review of the Rate of Return must otherwise adopt all the other WACC parameters previously accepted by the ACCC.</u></p> <p><u>(d) If a revised Rate of Return is approved by the ACCC under section 4.7(c), it will be effective from the Commencement Date and apply retrospectively and any adjustments will be dealt with in a subsequent determination by the ACCC under section 4.9 and reconciled through unders and overs accounting as provided under section 4.8.</u></p> <p><u>(e) Under this section 4.7, Appeal Matters means the following matters before the Australian Competition Tribunal</u></p>	<p>Section 4.7 has been amended to address the ACCC’s views that:</p> <ol style="list-style-type: none"> <li>two different rates of return would apply to existing and new assets (only a single return is now proposed);</li> <li>an annual regulatory reset of the risk free rate and debt margin was inconsistent with the long term nature of the Hunter Valley investments and their funding by investors and basing the risk free rate on a 10 year security (the annual reset of the risk free rate and debt margin have been removed);</li> <li>WACC would be subject to a reset five years after commencement of the 2010 HVAU at ARTC’s discretion (the reset is now compulsory).</li> </ol> <p>In addition, due to uncertainty</p>

	HVAU Section <sup>1</sup>	Amendments	Explanation
		<p><a href="#">pending as at the Commencement Date:</a></p> <p>(i) <a href="#">Application by ActewAGL Distribution Limited (ABN 76 670 568 688), ACT 1 of 2010;</a></p> <p>(ii) <a href="#">Application by Energex Limited (ACN 078 849 055), ACT 2 of 2010;</a></p> <p>(iii) <a href="#">Application by Ergon Energy Corporation Limited (ACN 087 646 062), ACT 3 of 2010;</a></p> <p>(iv) <a href="#">Application by ETSA Utilities (ABN 13 332 330 749), ACT no 4 of 2010;</a></p> <p>(v) <a href="#">Application by Jemena Gas Networks (NSW) Ltd (ABN 87 003 004 322), ACT 5 of 2010;</a></p> <p>(vi) <a href="#">Energex Limited ACN 078 849 055 v The Australian Energy Regulator, Federal Court of Australia File: QUD191/2010;</a> and</p> <p>(vii) <a href="#">Ergon Energy Corporation Limited ACN 087 646 062 v Australian Energy Regulator, Federal Court of Australia File: QUD194/2010.</a></p>	<p>surrounding the regulatory position on gamma and debt risk premium, ARTC has proposed to be able to revisit Rate of Return. See section 4.11 of the Explanatory Guide.</p>
20	4.8	<p><b>Unders and overs accounting</b></p> <p>(b) For each Constrained Coal Customer, ARTC will:</p> <p>...</p> <p>(iii) <del>for the</del> <a href="#">determine an</a> allocation of the total unders or overs amount, <del>have regard to</del> <a href="#">for each Constrained Coal Customer based on</a> the proportion of revenue, paid for Access Rights over the Constrained Network, by each Constrained Coal Customer, <a href="#">net of any rebate of the take or pay component of the Charges paid to that Constrained Coal Customer following the application of the system wide true-up tests and the annual individual reconciliation, and where applicable, in accordance with the equitable allocation to be carried out under section 6.2(f) and (g).</a></p> <p>...</p> <p>(c) <a href="#">For clarity, any refund provided to a Constrained Coal Customer under section 4.8(b)(vi)(A) will not exceed the total payments made by the Constrained Coal Customer in excess of Direct Costs in a calendar year.</a></p>	<p>ARTC has amended section 4.8(b)(iii) to clarify how unders and overs are allocated: (a) the allocation will be based on revenue paid (to address a concern expressed by producers that the term 'have regard to' creates uncertainty), and the "unders and overs" will be net of any TOP rebate received under the true-up test and annual reconciliation; and (b) where a capital contribution has been made under section 6.2, unders and overs should take into account equitable treatment between initial and subsequent users.</p> <p>In response to a recommendation from the ACCC, ARTC has also included a new section 4.8(c) to make it clear that Access Holders will only receive a refund if that does not result in the Access Holder paying below direct costs.</p>
21	4.9	<b>Annual ACCC compliance assessment</b>	ARTC's amendments to section

	HVAU Section <sup>1</sup>	Amendments	Explanation
		<p>(a) ARTC will submit to the ACCC by 30 April each year in respect of the previous calendar year:</p> <p>...</p> <p>(iii) <u>where documentation in (i) above demonstrates that RAB is above RAB Floor Limit in a Pricing Zone, documentation demonstrating that Indicative Access Charges, or Interim Indicative Access Charges, as applicable, satisfies the requirements in section 4.2(d).</u></p> <p>(b) <u>The documentation submitted by ARTC to the ACCC will, unless otherwise agreed with the ACCC and having regard to the relevant circumstances applicable at the time, meet the information provision guidelines and the timeframes set out in Schedule G.</u></p> <p>(c) <u>If the ACCC reasonably considers that it requires additional information, other than that provided by ARTC in accordance with Schedule G, in order to carry out its assessment under section 4.9(d), it may request this information from ARTC in accordance with section 3 of Schedule G and upon receipt of such a request ARTC will use reasonable endeavours to provide the information to the ACCC as soon as reasonably practicable.</u></p> <p>(d) The ACCC will determine whether ARTC has undertaken</p> <p>...</p> <p>(iii) in determining whether ARTC has complied with the provisions of section 4.3 in rolling forward <del>IRAB, ERAB,</del> RAB or the RAB Floor Limit, the ACCC may have regard to the submissions of relevant industry participants <u>but if to the consultation process in section 6.4 in relation to any Capital Expenditure has been not endorsed by the RCG in accordance with section 6.4(g), the ACCC will not consider whether that Capital Expenditure is Prudent but not otherwise have regard to the submissions of relevant industry participants;</u></p>	4.9 are addressed in section 4.12 of the Explanatory Guide.
22	4.10	<p><b>Structure of Charges - Coal Access Rights</b></p> <p>(b) Notwithstanding a commitment by the Access Holder to pay the take or pay component of the Charge for Access Rights contracted for under the Access Holder Agreement, the Access Holder may be entitled to a rebate of the take or pay component of the Charges paid following the application of <del>monthly</del> Pricing Zone-wide true-up tests and an annual individual reconciliation.</p>	As evident from schedule 2 of the 2010 IAHA, the true-up tests are to be carried out both monthly and quarterly.
23	4.11	<p><b>Structure of Charges - Non-Coal Access Rights</b></p> <p>(b) <u>The Charges for Non-Coal Access Rights will be set so that the Access revenue received by ARTC from an Access Holder of Non-Coal Access Rights in respect of a single journey between a Network entry point and a Network exit point, taking into account each component of a Charge outlined above, will be no greater than the average Access revenue received by ARTC for Coal Access Rights to complete the same journey, adjusted to reflect the relative difference in Capacity consumed by the Non-Coal Access Rights when compared to the Coal Access Rights.</u></p> <p><del>(b)</del> (c) Allowances for the reasonable requirements for operational activities whilst the Train occupies the Network for a Pricing Zone are:</p> <ul style="list-style-type: none"> <li>• Pricing Zone 1: 0</li> <li>• Pricing Zone 2: 0</li> <li>• Pricing Zone 3: 0.16</li> </ul>	<p>Subsection 4.11(b) has been introduced into the 2010 HVAU in response to the ACCC's recommendation that ARTC provide a degree of pricing certainty for non-coal customers.</p> <p>In subsection (c), ARTC has included values which had not been developed at the time of the submission of the 2009 HVAU.</p>
24	4.13	<p><b>Indicative Access Charge</b></p> <p>(a) ARTC will determine for each year <u>the</u> Indicative Access Charges for Coal Access Rights with <del>certain</del><u>the</u></p>	Subsection 4.13(a) has been amended to reflect the formulation of the System

	HVAU Section <sup>1</sup>	Amendments	Explanation
		<p>characteristics (“of an Indicative <b>Services</b>”) established in consultation with the HVCCG Service (determined in accordance with <a href="#">section 4.16</a> ), having regard to <del>delivery of optimal Coal Chain Capacity, given certain coal chain assumptions agreed with the HVCCG. Coal chain assumptions</del> <a href="#">the System Assumptions. System Assumptions</a> applicable to the Indicative Service will include the following...</p> <p>...</p> <p>(a) Once Indicative Access Charges for Indicative Services are finalised <a href="#">each calendar year</a> in accordance with <a href="#">section 4.17, 4.18</a>, ARTC will publish Indicative Access Charges on its website in the following format:..</p>	<p>Assumptions which were not contemplated at the time the 2009 HVAU was proposed.</p>
25	4.14(a)	<p><b>Charge differentiation</b></p> <p>(a) In formulating its Charges <a href="#">for Coal Access Rights other than Coal Access Rights for an Indicative Service contracted for under an Indicative Access Holder Agreement</a>, ARTC will have regard to a range of factors which impact on its business and Coal Chain Capacity including:</p> <p>(i) <a href="#">the Indicative Access Charges for Indicative Services;</a></p> <p>(ii) <a href="#">the particular characteristics of the relevant Service intended to utilise the Access Rights sought, which include axle load, speed, wheel diameter, Train length, origin and destination (including number and length of intermediate stops), departure and arrival times and days of the week;</a></p> <p>(iii) <a href="#">the commercial impact on ARTC’s business which includes:</a></p> <p>(A) <a href="#">the term of the Access Holder Agreement;</a></p> <p>(B) <a href="#">the consumption of ARTC’s resources, including Capacity;</a></p> <p>(C) <a href="#">the consumption of Coal Chain Capacity;</a></p> <p>(D) <a href="#">the Segments of the Network relevant to the Access Rights sought;</a></p> <p>(E) <a href="#">previously negotiated Charges agreed under the terms of the Undertaking, where relevant, as published by ARTC under section 2.7(b);</a></p> <p>(iv) <a href="#">logistical impacts on ARTC’s business which includes:</a></p> <p>(A) <a href="#">the impact on other Services and risk of failure of the endorsed Operator to perform its obligations under the Operator Sub-Agreement; and</a></p> <p>(B) <a href="#">reduced Capacity and reduced Coal Chain Capacity and system flexibility;</a></p> <p>(v) <a href="#">Capital Contributions or other contributions by the Applicant to ARTC’s costs; and</a></p> <p>(vi) <a href="#">the cost of any Additional Capacity.</a></p> <p>(b) <a href="#">In formulating its Charges for Non-Coal Access Rights, ARTC will have regard to a range of factors which impact on its business including:</a></p> <p>(i) <a href="#">previously negotiated Charges agreed under the terms of the Access Undertaking, where relevant, as published by ARTC under section 2.7(b);</a></p> <p>(ii) <a href="#">the particular characteristics of the relevant Service intended to utilise the Access Rights sought, which include axle load, speed, wheel diameter, Train length, origin and destination (including number and length of intermediate stops), departure and arrival times and days of the week;</a></p>	<p>As set out in ARTC’s response to the Draft Decision, ARTC has separately identified the differentiation factors for coal access rights and for non-coal access rights.</p> <p>ARTC has also amended section 4.14(a) to provide that the charge differentiation factors only apply to the formulation of charges for Coal Access Rights other than Coal Access Rights for an Indicative Service. This amendment relates to concerns expressed by producers.</p> <p>Importantly, and in relation to coal access rights, ARTC has removed opportunity costs, market value and credit risk as a basis for differentiating pricing for non-indicative coal access rights from indicative coal access rights. The ACCC expressed concern that inclusion of these elements might increase price uncertainty.</p>

	HVAU Section <sup>1</sup>	Amendments	Explanation
		<p>(iii) <a href="#">the commercial impact on ARTC's business which includes:</a></p> <p>(A) <a href="#">the term of the Access Agreement;</a></p> <p>(B) <a href="#">the potential for growth of the business;</a></p> <p>(C) <a href="#">the opportunity costs to ARTC;</a></p> <p>(D) <a href="#">the consumption of ARTC's resources, including Capacity;</a></p> <p>(E) <a href="#">the credit risk associated with the business;</a></p> <p>(F) <a href="#">the market value of the Train Path sought;</a></p> <p>(G) <a href="#">the Segments of the Network relevant to the Access Rights sought;</a></p> <p>(H) <a href="#">logistical impacts on ARTC's business including the impact on other Services and reduced Capacity;</a></p> <p>(I) <a href="#">Capital Contributions or other contributions by the Applicant to ARTC's costs;</a></p> <p>(J) <a href="#">the cost of any Additional Capacity.</a></p> <p>The above additions replace the previous 4.14(a)(i)-(vi) provisions regarding charge differentiation.</p>	
26	4.15	<p><b>Limits on Charge differentiation</b></p> <p>(b) Subject to <b>sections 4.14(a), (b)</b> -and <b>(c<b>b</b>) above (as applicable)</b>, in formulating its Charges, ARTC will not differentiate <u>between:</u></p> <p>(i) Applicants in circumstances where:</p> <p>(A) the characteristics of the Access Rights sought are alike; <del>and</del></p> <p><b>(B)</b> <u>the Applicants are operating within the same end market; and</u></p> <p>(ii) <u>Applicants for Coal Access Rights on the basis of the marginal cost of production of the mines being served by the Coal Access Rights sought, to the extent such information is known to ARTC.</u></p>	Section 4.15(b)(ii) is included in response to a recommendation by the ACCC in the Draft Decision that ARTC make it clear that it will not differentiate between Applicants solely on the basis of their marginal costs of production.
27	4.16	<p><b><del>Interim</del>Determination of the Indicative <del>Access-Charges</del> Service (efficient train configuration)</b></p> <p><del>(a) ARTC recognises that at the Commencement Date it may be unable to determine Indicative Services and Indicative Access Charges, and Charges applicable to other Services associated with Coal Access Rights, in accordance with sections 4.13, 4.14 and 4.15, due to current institutional arrangements, available modelling tools, and timing constraints. must develop, in consultation with the HVCCC, the proposed characteristics of the indicative service which ARTC considers will deliver the optimum utilisation of Coal Chain Capacity, given certain System Assumptions.</del></p> <p><b>(b) Within 12 months of ARTC being reasonably satisfied that the modelling undertaken by the HVCCC under section 4.16(a) is sufficiently robust to enable an efficient train configuration that optimises Coal Chain Capacity to be accurately determined and, in any event within four years of the Commencement Date, ARTC will:</b></p> <p><b>(i) submit to the ACCC proposed characteristics of the indicative service developed in consultation with the HVCCC which ARTC considers will deliver the optimum utilisation of Coal Chain Capacity, given certain System Assumptions; and</b></p>	In order to address the ACCC's concerns and recommendations, ARTC has set out the steps that will be taken, and the applicable timeframes for the adoption of an efficient train configuration as the Indicative Service (see section 4.13 of the Explanatory Guide).

	HVAU Section <sup>1</sup>	Amendments	Explanation
		<p><u>(ii) seek the approval of the ACCC to vary this Undertaking to provide for the adoption of the proposed characteristics as those of the indicative service.</u></p> <p><u>(c) In consulting with the HVCCC, ARTC will:</u></p> <p><u>(i) assist the HVCCC to undertake modelling; and</u></p> <p><u>(ii) will follow the principles of consultation set out in <b>Schedule F</b>,</u></p> <p><u>with the objective of determining the train configuration which will deliver optimum utilisation of Coal Chain Capacity and ARTC and will use its best endeavours to agree with the HVCCC the characteristics to be submitted to the ACCC as the proposed indicative service.</u></p> <p><u>(d) In support of its application to vary the Undertaking and the adoption of the characteristics proposed in <b>section 4.16(b)</b> as the indicative service, ARTC will submit to the ACCC:</u></p> <p><u>(i) proposed characteristics of the Indicative Service which it considers will deliver optimum utilisation of Coal Chain Capacity including:</u></p> <p><u>(A) maximum axle load;</u></p> <p><u>(B) maximum speed;</u></p> <p><u>(C) Train length; and</u></p> <p><u>(D) section run times;</u></p> <p><u>(ii) the proposed indicative access charges for the proposed indicative service; and</u></p> <p><u>(iii) supporting documentation.</u></p> <p><u>(e) If the ACCC accepts the characteristics proposed by ARTC in consultation with the HVCCC as the Indicative Service, and accepts the variation sought by ARTC to this Undertaking, ARTC will:</u></p> <p><u>(i) promptly publish on its website:</u></p> <p><u>(A) the characteristics proposed under section 4.16(b) as the Indicative Service; and</u></p> <p><u>(B) the indicative access charges accepted by the ACCC for the Indicative Service as the Indicative Access Charges, in the format set out in section 4.13(c).</u></p> <p><u>(ii) offer the Indicative Access Charges to Applicants and Access Holders seeking Coal Access Rights for the Indicative Service to apply in the year immediately following the date the variation to the Access Undertaking accepting the Indicative Service and Indicative Access Charge comes into effect; and the annual process for</u></p>	



	HVAU Section <sup>1</sup>	Amendments	Explanation
		<p><u>the finalisation of Indicative Access Charges under section 4.18 will not apply to the determination of Indicative Access Charges for that year; and</u></p> <p><u>(iii) determine Charges for Coal Access Rights other than Access Rights for the Indicative Service to apply in the year immediately following the date the variation to the Access Undertaking accepting the Indicative Service and Indicative Access Charge comes into effect, in accordance with section 4.14 and in doing so will take into account the Indicative Access Charges accepted by the ACCC in determining those Charges.</u></p> <p><u>(f) If the ACCC does not accept the train configuration proposed by ARTC:</u></p> <p><u>(i) the Interim Indicative Services and the Interim Indicative Access Charges will continue to apply; and</u></p> <p><u>(ii) ARTC may submit revised characteristics to the ACCC and seek the approval of the ACCC to vary this Undertaking to provide for the adoption of the revised characteristics as the indicative service.</u></p>	
28	4.17	<p><b><u>Interim Indicative Services and Interim Indicative Access Charges</u></b></p> <p><u>(a) <del>(b)</del>-During the period between the Commencement Date and the time <del>when ARTC is satisfied it is able to determine</del>the Indicative <del>Services, Service and the</del> Indicative Access Charges, <del>and Charges applicable to other Services associated with Coal Access Rights, in accordance with sections 4.13, 4.14 and 4.15 (“the Interim Period”)</del>, accepted by the ACCC come into effect under <b>section 4.16(e) (“the Interim Period”)</b>, the indicative services assumptions in <b>section 4.17(c)</b> will apply as the indicative services (“<b>Interim Indicative Services</b>”) and ARTC will, using reasonable endeavours, and having regard to available information, determine:</u></p> <p>(i) <del>Indicative Services (“Interim Indicative Services”)</del> and Indicative Access Charges (“<b>Interim Indicative Access Charges</b>”) applicable <u>to the Interim Indicative Services</u>, during the Interim Period; and</p> <p>(ii) Charges for other Services associated with Coal Access Rights applicable during the Interim Period.</p> <p><del>(c) In determining Interim Indicative Access Charges and Charges for other Services associated with Coal Access Rights during the Interim Period under <b>section 4.16(b)</b>, ARTC will have regard to the following constraints:</del></p> <p><del>(i) the institutional arrangements in place for the management and development of Coal Chain Capacity;</del></p> <p><del>(ii) the availability of appropriate modelling tools, and necessary input information for such tools, enabling the determination of Coal Chain Capacity and optimum utilisation of Coal Chain Capacity; and</del></p> <p><del>(iii) the availability, cost of obtaining, and quality of information reasonably required by ARTC for the purpose of determining Interim Indicative Services and Interim Indicative Access Charges and Charges for other Services associated with Coal Access Rights applicable during the Interim Period.</del></p> <p><u>(b) <del>(d)</del>-Interim Indicative Access Charges for Coal Access Rights with Interim Indicative Service characteristics as described in <b>section 4.14</b><del>(e)</del><b>4.17(c)</b> will be determined by ARTC each calendar year of the Interim Period</u></p> <p><u>(c) <del>(e)</del>-The following Interim Indicative Access Charges for Interim Indicative Services will apply as at <del>1 July 2009</del>the</u></p>	<p>ARTC has created a new section for those provisions covering the Interim Period (before the efficient train configuration is adopted as the Indicative Service).</p> <p>ARTC has also made amendments to clarify that ARTC can-not change the characteristics of the Interim Indicative Service during the Interim Period without approval of the ACCC - any change to Interim Indicative Services will require a variation to the Access Undertaking.</p> <p>Values have been included in the table in subsection 4.17(c) in response to the ACCC’s recommendation that the 2009 HVAU includes base Interim Indicative Access Charges. ARTC has provided confidential information to the ACCC demonstrating how these were calculated. As set out in its response to the Draft Decision, however, ARTC does not consider it appropriate for the 2010 HVAU itself to include information how the Interim Indicative Access Charges were calculated.</p>

HVAU Section <sup>1</sup>	Amendments				Explanation
	<a href="#">Commencement Date.</a>				
	<b>Segments</b>	<b>Non-TOP \$/kgtkm (ex GST)</b>	<b>TOP \$/kgtkm (ex GST)</b>	<b>Indicative Service Assumptions</b>	ARTC has now reviewed and incorporated revised Interim Indicative Access Charges in section 4.17 of the 2010 HVAU to reflect more recently available cost and volume information. See section 4.14 of the Explanatory Guide.
	<b>In Pricing Zone 1*</b>				
	Indicative Service 1	<del>X.XXX</del> 0.782	<del>X.XXX</del> 6.798	30 tonne maximum axle load 60kph maximum speed (loaded) 80kph maximum speed (empty) 91 wagon train length section run times as per applicable Hunter Valley standard working timetable	
	Indicative Service 2	<del>X.XXX</del> 0.782	<del>X.XXX</del> 6.798	30 tonne maximum axle load 60kph maximum speed (loaded) 80kph maximum speed (empty) <del>72</del> 74 wagon train length section run times as per applicable Hunter Valley standard working timetable	
	Indicative Service 3	<del>X.XXX</del> 0.782	<del>X.XXX</del> 6.798	25 tonne maximum axle load 80kph maximum speed (loaded) 80kph maximum speed (empty) 72 wagon train length section run times as per applicable Hunter Valley standard working timetable	
	<b>In Pricing Zone 2*</b>				
	Indicative Service 1	<del>X.XXX</del> 0.639	<del>X.XXX</del> 6.798	30 tonne maximum axle load 60kph maximum speed (loaded) 80kph maximum speed (empty) 91 wagon train length section run times as per applicable Hunter Valley standard working timetable	
	Indicative Service 2	<del>X.XXX</del> 0.639	<del>X.XXX</del> 6.798	30 tonne maximum axle load 60kph maximum speed (loaded) 80kph maximum speed (empty)	

	HVAU Section <sup>1</sup>	Amendments				Explanation
					7274 wagon train length section run times as per applicable Hunter Valley standard working timetable	
		In Pricing Zone 3*				
		Indicative Service 1	X.XXX1.563	X.XXX4.781	25 tonne maximum axle load 80kph maximum speed (loaded) 80kph maximum speed (empty) 72 wagon train length section run times as per applicable Hunter Valley standard working timetable	
		*Pricing Zones contain Segments as specified at Schedule E				
		<p>(d) <del>(f)</del> ARTC will offer the Interim Indicative Access Charges to Applicants seeking Coal Access Rights with applicable Interim Indicative Services during the Interim Period.</p> <p>(g) <del>At least three (3) months prior to the termination of the Interim Period, ARTC will submit to the ACCC for approval, Indicative Access Charges for Indicative Services to apply in the year following the Interim Period.</del></p> <p>(h) <del>The Indicative Access Charges for Indicative Services will apply in the year following the Interim Period when accepted by the ACCC.</del></p>				
29	4.18	<p><b>Process for finalising Indicative Access Charges</b></p> <p>(a) Before <u>1 July</u>, the start of each calendar year ARTC <del>may</del> will seek <u>from each Access Holder, forecast to the extent necessary, any proposed variations to the Access Holder's contracted coal volumes for the following calendar year, and likely distribution of volumes across its Operators from each Access Holder for Coal Access Rights.</u> <del>ARTC will have regard to this information (to the extent provided) to forecast actual gross tonnes for Coal Trains in the next calendar year for each Pricing Zone; and</del></p> <p>(b) <u>Each calendar year</u>, ARTC will determine its annual forecast of costs for the Network in each Pricing Zone which are to be recovered by ARTC in the next calendar year;</p> <p>(c) The Indicative Access Charges determined by ARTC under <b>section 4.13</b> will be based on <u>the forecasts contracted coal volumes for that calendar year, any additional volumes that ARTC considers likely to be contracted coal volumes for that relevant year under paragraph (a), and ARTC's forecast costs as determined under subsection (b).</u></p> <p>(d) <u>Subject to subsection (e)</u>, ARTC will notify <u>the aggregate forecast coal volumes which will include reasonably expected contracted coal volumes, under paragraph (a) ARTC's annual forecast costs as determined under subsection (b), and the Indicative Access Charges to those Access Holders holding Coal Access Rights for Indicative Services by 1 November of each calendar year, at least twenty (20) Business Days before the Indicative Access Charges are due to take effect.</u></p> <p>(e) <u>ARTC will not be required to provide information on aggregate coal volumes if it reasonably considers that the</u></p>				<p>Subsections 4.18(a)-(d) have been amended to clarify the process that ARTC will follow in order to finalise the Indicative Access Charges each calendar year and the information that will be provided to Access Holders.</p> <p>Subsection 4.18(e) has been included to make it clear that ARTC cannot be required to provide information where such provision would involve the disclosure of confidential information.</p>

	HVAU Section <sup>1</sup>	Amendments	Explanation
30	4.19	<p><u>provision of such information will allow an Access Holder to determine the individual contracted coal volumes or anticipated coal volumes of another Access Holder.</u></p> <p><b>Provision of forecast information and coal volumes</b></p> <p>(a) <u>In addition to the information provided to each Access Holder of Coal Access Rights under section 4.18(d), ARTC will provide to each Access Holder of Coal Access Rights before 1 November of each calendar year:</u></p> <p>(i) <u>ARTC's forecast annual total operating expenditure for each of the next 10 calendar years;</u></p> <p>(ii) <u>ARTC's forecast annual capital expenditure for each of the next 10 calendar years as set out in the most recent version of the Hunter Valley Corridor Capacity Strategy (including all RCG endorsed capital expenditure as provided for in that document); and</u></p> <p>(iii) <u>subject to section 4.18(e):</u></p> <p>(A) <u>the aggregate annual coal volumes contracted by Access Holders for each of the next 10 calendar years; and</u></p> <p>(B) <u>the minimum aggregate annual coal volumes for all Access Holders for each of the next 10 calendar years, which will be determined by identifying the shortest possible term applicable to each Access Holder Agreement, should the Access Holder exercise any rights of early termination under that agreement.</u></p> <p>(b) <u>The 10 year information provided by ARTC under this section will include information for the calendar year for which Indicative Access Charges or the Interim Indicative Access Charges, as applicable, are determined and information provided for under section 4.18(d).</u></p>	<p>The new section 4.19 sets out the detailed information that ARTC will provide to all Access Holders of coal access rights. The provision is addressed in detail in section 4.15 of the Explanatory Guide.</p>
31	5.1	<p><b>System Assumptions</b></p> <p>(a) <u>ARTC will participate in the development of System Assumptions via the HVCCC and will use reasonable endeavours to agree System Assumptions with the HVCCC, the coal terminal operators at the Port of Newcastle and other relevant service providers.</u></p> <p>(b) <u>ARTC will have regard to the System Assumptions in carrying out Capacity Analysis under section 5.2 and ARTC will reflect the track related System Assumptions in the Access Holder Agreements.</u></p>	<p>Section 5.1 has been included in the 2010 HVAU in response to the ACCC's recommendation that ARTC should be involved in the development of System Assumptions. See section 4.16 of the Explanatory Guide.</p>
32	5.2	<p><b>Capacity Analysis</b></p> <p>(d) <u>As part of undertaking its Capacity Analysis, ARTC will consult the HVCCC and will take into account the HVCCC's comments on the availability of Coal Chain Capacity, in accordance with the following steps:</u></p> <p>(i) <u>ARTC will seek the HVCCC's views as to whether the provision of the Access Rights sought will have an impact on Coal Chain Capacity;</u></p> <p>(ii) <u>where the HVCCC provides its view within 20 Business Days, or such other time as agreed with ARTC, ARTC will consider the view expressed by the HVCCC in good faith;</u></p> <p>(iii) <u>where ARTC disagrees with the view expressed by the HVCCC, and ARTC reasonably considers there is sufficient time given the particular circumstances of the Access Application including the timeframe in section 3.9, ARTC will provide the HVCCC with the reasons why it disagrees with its assessment (either orally or in writing) and will ask the HVCCC to consider ARTC's reasons and provide its revised view within a specified timeframe;</u></p> <p>(iv) <u>where the HVCCC provides its view within the specified timeframe, ARTC will consider the revised view of the HVCCC in good faith.</u></p>	<p>In response to the ACCC's concern that the nature of ARTC's obligations "to consult" with the HVCCC and "take into account" the HVCCC's comments on the availability of Coal Chain Capacity were unclear, ARTC has amended subsection 5.2(d) to explicitly outline steps that ARTC proposes to take when it requests the HVCCC's view as to the impact of a proposal (including a request for Access Rights) on Coal Chain Capacity.</p> <p>The section also makes clear that ARTC will follow these steps</p>

	HVAU Section <sup>1</sup>	Amendments	Explanation
		(e) <a href="#">While ARTC will have regard to the HVCCC's views in accordance with section 5.2(d), ARTC will have the sole right to determine whether there is sufficient Available Capacity to grant the Access Rights sought by the Applicant.</a>	when seeking the HVCCC's view of the impact of Access Rights sought on Coal Chain Capacity.
33	5.3	<p><b><a href="#">Capacity Reservation for Non-Coal Access Rights</a></b></p> <p>(a) Where an Applicant seeks to execute an Access Agreement relating to new or additional <a href="#">Non-Coal</a> Access Rights:</p> <p>...</p> <p>(ii) <a href="#">ARTC proposes to build Additional Capacity to accommodate the Non-Coal Access Rights sought by the Applicant and those rights are not to be utilised until six months after the expected delivery date of those Access Rights,</a> such that ARTC is effectively reserving the Capacity equivalent to the <a href="#">Non-Coal</a> Access Rights sought for the Applicant until those Access Rights are utilised, ARTC will, at its absolute discretion, execute the Access Agreement, or an amendment to the Access Agreement covering the <a href="#">Non-Coal</a> Access Right requested, subject to the Applicant agreeing to pay any Reservation Fee that may be sought by ARTC in relation to the period between execution of the Access Agreement and utilisation of the Access Rights.</p> <p>(b) 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 no greater than 75% of the Indicative Access Charge applicable to the Pricing Zone where the Access Rights are sought, applied to the use of the reserved Access Rights had those Access Rights been <a href="#">Coal Access Rights</a> utilised by the most commonly utilised Indicative Service for the period of reservation. The Reservation Fee will be reduced to the extent of any <a href="#">Access revenue received in relation to utilisation of the reserved Access Rights during the period less the Direct Costs associated with the utilisation of the Access Rights during the period.</a> <a href="#">If the reserved Access Rights are dependent on the creation of Additional Capacity, the Reservation Fee will not be payable until that Additional Capacity is available for use.</a></p> <p>(c) <a href="#">To avoid dispute, ARTC will grant Access Rights to Available Capacity which is not reserved prior to granting Access Rights to Capacity which is reserved under section 5.3(a). Reserved Access Rights will be considered to have been utilised, and ARTC to have received Access Revenue in relation to the utilisation of the reserved Access Rights, under section 5.3(b) once there is no longer sufficient Available Capacity remaining unutilised to enable the use of the reserved Access Rights by the Access Holder reserving the Capacity under section 5.3(a).</a></p>	<p>Section 5.3 has been amended to limit the section's application to non-coal coal access rights. This change has been made in response to coal producers' concerns that the concept of capacity reservation is inconsistent with the approach to coal contracting in the 2010 HVAU/IAHA framework.</p> <p>Subsection 5.3(a) has also been amended so that future Capacity created prior to the usage by the Applicant can be reserved. ARTC has also added a clarification to section 5.2(b) to the effect that the Reservation Fee would only be payable from the date that future Capacity exists for use.</p> <p>Subsection 5.3(b) has been amended to make it clear that the Reservation Fee will be reduced to the extent of any Access revenue received by ARTC for the utilisation of those Access Rights during the period less the associated Direct Costs.</p> <p>Subsection 5.3(c) has been amended to make it clear that Capacity that is not reserved will be contracted before reserved Capacity to avoid disputes in relation to Capacity reservation.</p> <p>These latter amendments align with recommendations made by the ACCC in the Draft Decision.</p>

	HVAU Section <sup>1</sup>	Amendments	Explanation
34	5.4	<p><b><u>Identification of Shortfall in existing Capacity</u></b></p> <p>(a) <u>If, at any time during a month, ARTC identifies that there is likely to be a shortfall in Capacity to meet all remaining unconditional Capacity entitlements held by all Access Holders in that month, after taking into account likely usage of Access Holders with an allocation period of a quarter, and the shortfall arises other than as a result of planned maintenance, ("Capacity Shortfall") then ARTC will:</u></p> <p>(i) <u>as soon as reasonably practicable, inform each Access Holder (if affected), coal terminal operators at the Port of Newcastle and the HVCCC of the expected duration of the Capacity Shortfall but to avoid doubt, ARTC's representation of the expected duration of the shortfall is not binding on ARTC; and</u></p> <p>(ii) <u>subject to ARTC meeting its obligations under <b>section 5.5</b> and <b>section 5.6</b>, consult with the HVCCC in accordance with the principles in <b>Schedule F</b> with the objective of coordinating its response to the Capacity Shortfall with the other Hunter Valley Coal Chain Service Providers.</u></p> <p>(b) <u>For the purposes of this <b>section 5</b>, the Capacity entitlement held by an Access Holder will be considered an unconditional Capacity entitlement if all conditions precedent to the conferral of that Capacity entitlement on the access holder under the terms of the relevant access agreement, including the completion of designated projects, have been satisfied, or waived by ARTC.</u></p>	<p>ARTC has uplifted the Capacity shortfall provisions set out in the December version of the IAHA into the HVAU. It is important for the Capacity shortfall provisions to be included in the 2010 HVAU as they will apply to both coal and non-coal users.</p> <p>ARTC has also amended subsection 5.4(a)(ii) to recognise ARTC's commitment to consult with the HVCCC will be covered by the consultation obligations set out in Schedule F of the 2010 HVAU.</p>
35	5.5	<p><b><u>Event leading to Capacity Shortfall of less than five days.</u></b></p> <p>(a) <u>If ARTC expects that an event resulting in a Capacity Shortfall will be for a duration of five days or less and there will be insufficient Capacity to meet all remaining unconditional Capacity entitlements held by all Access Holders in that Month after taking into account likely usage of Access Holders with an allocation period of a quarter, ARTC will allocate the Capacity available in accordance with the following principles:</u></p> <p>(i) <u>Capacity will be allocated first to passenger services in accordance with ARTC's obligations under section 88L of the <i>Transport Administration Act 1988 (NSW)</i>; and</u></p> <p>(ii) <u>Capacity remaining after the allocation of Capacity under <b>subsection (a)</b> will be allocated to Access Holders at ARTC's discretion. In exercising its discretion, ARTC must take into account its contractual obligations under Access Agreements (for example, minimising the number of Access Holders affected) but may allocate Capacity other than on an equitable basis if it is consistent with the objective of ensuring efficient utilisation of the Network during the Capacity Shortfall and after considering any recommendations provided by the HVCCC under <b>section 5.4(a)(ii)</b>.</u></p> <p>(b) <u>ARTC will promptly inform the HVCCC of the result of the allocation of Capacity under <b>section 5.5(a)</b>.</u></p>	<p>ARTC has clarified the titles of sections 5.5 and 5.6 to make it clear it is the duration of the event leading to the capacity shortfall that is relevant - not the capacity shortfall itself.</p> <p>ARTC has amended this section to reflect the shorter 5 day period in the 2010 IAHA.</p> <p>Subsection 5.5(a)(ii) has been amended to make it clear that ARTC's objective is to ensure the Network is efficiently utilised during the period of the short term temporary shortfall and that with this objective in mind, ARTC has a discretion to allocate the remaining Capacity as it sees fit, but taking into account ARTC's contractual obligations.</p> <p>ARTC has included subsection 5.5(b) to address ACCC's concern that ARTC inform the HVCCC of the result of the capacity shortfall. The same change is made at section 5.6(b) and 5.7(b)</p>

	HVAU Section <sup>1</sup>	Amendments	Explanation
36	5.6	<p><b><u>Event leading to Capacity Shortfall greater than five days</u></b></p> <p>(a) <u>If ARTC expects that an event resulting in a Capacity Shortfall will be for a duration of more than five days or an event resulting in a Capacity Shortfall subsequently has a duration of more than five days, and there will be insufficient Capacity to meet all remaining unconditional Capacity entitlements held by all Access Holders in that month after taking into account likely usage of Access Holders with an allocation period of a quarter, ARTC will allocate the Capacity available in accordance with the following principles:</u></p> <p>(i) <u>Capacity will be allocated first to passenger services in accordance with ARTC's obligations under section 88L of the Transport Administration Act 1988 (NSW);</u></p> <p>(ii) <u>To the extent practicable, contracted access rights from load points not affected by the Capacity Shortfall (for example, load points east of the event causing the Capacity Shortfall), will not be reduced by the Capacity Shortfall and Access Holders should continue to be able to use Capacity entitlements originating from unaffected load points.</u></p> <p>(iii) <u>ARTC will, to the extent practicable, reduce access rights for each affected load point (for example, a load point west of the event causing the Capacity Shortfall where the Access Holder has Capacity entitlements remaining in that month) with the objective that each affected load point will at the end of the month have borne an equitable pro-rata share of the Capacity Shortfall.</u></p> <p>(b) <u>ARTC will promptly inform the HVCCC of the result of the allocation of Capacity under section 5.6(a).</u></p> <p><del>(a) ——— Where there is a shortfall in Capacity to meet all unconditional Capacity Entitlements and ARTC expects that such shortfall will be for a duration of seven (7) days or less, ARTC will allocate the Capacity available in accordance with the following principles:</del></p>	<p>In its Draft Decision, the ACCC recommended that ARTC clarify how it will determine an affected Access Holder in the event of a Capacity shortfall.</p> <p>The amendments to this section clarify that an Access Holder will be an affected Access Holder where the impact of the Incident occurs between the load point and the exit point and the Access Holder has some remaining contractual entitlement to Path Usages in the Period.</p>
37	5.7	<p><b>Shortfall in creation of Additional Capacity</b></p> <p>(a) Where there is a delay in the completion of a project creating Additional Capacity- such that some, but not all, Additional Capacity becomes available, <u>or a project creating Additional Capacity creates less Capacity than expected,</u> that Capacity will be allocated among the Access Holders who have Capacity Entitlements to the Additional Capacity on an equitable pro-rata basis. By way of example, if one Access Holder had 60% of all contracted Capacity Entitlements to the Additional Capacity created by that project, then 60% of the available Additional Capacity will be allocated to that Access Holder.</p> <p>(b) <u>ARTC will promptly inform the HVCCC of the result of the allocation of Capacity under section 5.7(a).</u></p>	<p>ARTC has amended this section in response to producers' concerns that this provision does not address the scenario where a shortfall arises because a project delivers less than expected capacity.</p>
38	5.9	<p><b><u>5.9 Review of mechanism to identify and assign Capacity losses</u></b></p> <p><u>(a) Within 12 months of the Commencement Date, ARTC will, in consultation with the HVCCC, commence a review of the policy and processes for identifying and allocating losses of Capacity caused by Access Holders and their Operators and potential incentive mechanisms to minimise such losses where they have a material impact on Capacity or Coal Chain Capacity or the Capacity entitlements of Access Holders.</u></p> <p><u>(b) As part of that review, ARTC will invite the HVCCC, Access Holders and other Hunter Valley Coal Chain service providers to:</u></p> <p><u>(i) provide their views of whether particular actions or omissions of Access Holders or their Operators (such as cancellation of scheduled Services) have a material impact on Capacity, Coal Chain Capacity or the Capacity entitlement of Access Holders; and</u></p>	<p>See section 4.17 of the Explanatory Guide.</p>

	HVAU Section <sup>1</sup>	Amendments	Explanation
		<p><u>(ii) submit proposals for a suitable framework to address any adverse impact on Capacity caused by such actions or omissions including any rules for the allocation of losses of Capacity to the responsible Access Holder.</u></p> <p><u>(c) ARTC will in good faith consider the submissions and proposals received under section 5.9(b) and if ARTC reasonably determines, following consultation with the HVCCC that:</u></p> <p><u>(i) particular actions or omissions of Access Holders or their Operators have a material impact on Capacity, Coal Chain Capacity or the Capacity entitlement of Access Holders; and</u></p> <p><u>(ii) a proposal received under section 5.9(b), including a proposal which has been amended following consultation with ARTC and the HVCCC, meets the following criteria:</u></p> <p><u>(A) the proposal, if adopted, would be likely to have demonstrably positive benefits in increasing the Available Capacity and allocating the impact of an event causing a Capacity shortfall to the Access Holder causing the incident or event leading to the Capacity shortfall;</u></p> <p><u>(B) the anticipated benefits of the proposal outweigh the potential detriments of the proposal including the costs associated with implementation and monitoring of the proposal and an increase in the likelihood of disputes in assigning Capacity losses among Hunter Valley Coal Chain participants; and</u></p> <p><u>(C) the proposal has the support of the HVCCC and the broad support of Hunter Valley Coal Chain participants including Access Holders and the Hunter Valley Coal Chain service providers.</u></p> <p><u>then ARTC will submit the revised proposal, including supporting documentation to the ACCC and will seek the approval of the ACCC to vary the Undertaking and the Indicative Access Holder Agreement to provide for the adoption of the proposal.</u></p> <p><u>(d) If the ACCC accepts the proposal submitted by ARTC under section 5.9(c) and approves the variation sought by ARTC to the Undertaking and the Indicative Access Holder Agreement, then the amendments to the Indicative Access Holder Agreement approved by the ACCC as part of the variation will be identified as a Tier 1 (Mandatory) Coal Provision in Schedule A:1 to the Undertaking, and those amendments will be automatically incorporated into all Access Holder Agreements for Coal Access Rights, on the date the new or varied Access Undertaking comes into effect.</u></p>	
39	6.1	<p><b>Network connections</b></p> <p>(a) In the event that other owners of track not part of the Network wish to connect such track to the Network, ARTC will consent to such a connection provided:</p> <p>(i) all relevant approvals from all relevant Government Authorities have been obtained;</p> <p>(ii) the configuration of the connection to the Network is such that the connection will not, by virtue of its existence, reduce Capacity or Coal Chain Capacity (in assessing Coal Chain Capacity, ARTC will consult the HVCCC, and take into account HVCCC's comments on</p>	See section 4.18 of the Explanatory Guide.



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		<p>any reduction of Coal Chain Capacity <a href="#">in accordance with the steps set out in section 5.2(d), as applicable</a>;</p> <p>(iii) procedural and physical interface arrangements comply with ARTC's existing interface arrangements and there is no impact on safety;</p> <p>(iv) the owners of track not part of the Network ensure that all users of such track comply with the directions of ARTC's Network controllers regarding entry to and exit from the Network;</p> <p>(v) the connection meets ARTC's engineering and operational standards; <del>and</del></p> <p>(vi) the owners of track not part of the Network meet the initial and continued costs associated with constructing and maintaining the connection- <a href="#">and agree to reasonable terms associated with the construction, maintenance and operation of the connection as determined by ARTC</a>; and</p> <p>(vii) <a href="#">the connection is not inconsistent with the terms of any lease, licence or other arrangement to which ARTC is a party in respect of the land on which the connection is to be built. Subject to any confidentiality restrictions or obligations, ARTC will make available extracts of the relevant terms on request.</a></p> <p>(b) <a href="#">For the purposes of section 6.1(a), connection includes the Turnout and, if the construction of railway track on land owned or controlled by ARTC forming part of the Hunter Valley Network corridor is necessary to connect the Turnout to the owner's track, the portion of railway track on ARTC owned or controlled land forming part of the Hunter Valley Network corridor necessary to connect the Turnout to the other owner's track.</a></p> <p>(c) <del>(b)</del>-If ARTC has refused consent under <b>section 6.1(a)(ii)</b>, ARTC will, if requested to do so by the <del>Applicant</del>applicant, notify the <del>Applicant</del>applicant in writing of the reasons why the connection would, in its view or the view of the HVCCC, reduce Capacity or Coal Chain Capacity.</p>	
40	6.2	<p><b>Additional Capacity sought by Applicants</b></p> <p>(a) As provided in <b>sections 3.9</b> and <del>5-1-5.2</del>, ARTC will consider, as part of the negotiation process with an Applicant, any requests for Additional Capacity. ARTC will consent to the provision of Additional Capacity if:</p> <p>(i) either:</p> <p>(A) <del>(i)</del>-in ARTC's opinion, such provision is commercially viable to ARTC having regard to the <del>relevant Access Agreement and ARTC's total business activity</del>; or;</p> <p>(aa) <a href="#">terms and conditions of the relevant Access Agreement</a>;</p> <p>(ab) <a href="#">circumstances for ARTC to service and raise financing through debt and equity for Additional</a></p>	<p>The clarification as to the commercial viability test in section 6.2(a)(i) and also in section 6.3(b)(iii) are addressed in section 4.19 of the Explanatory Guide.</p> <p>ARTC has also amended section 6.2(a)(iii) to clarify the meaning of 'economically feasible' (as sought by the ACCC in the Draft Decision) The wording set out in (iii) is consistent with the wording proposed by ARTC in its response to the Draft Decision which is consistent with the</p>

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		<p style="text-align: center;"><u>Capacity:</u></p> <p><u>(ac) opportunity cost to ARTC given the relative risk and returns associated with the Additional Capacity financing relative to other investment opportunities; and</u></p> <p><u>(ad) net effect on ARTC's balance sheet, gearing ratios and any other debt covenants in existence at the time; or</u></p> <p><u>(B) <del>(iii)</del> the Applicant agrees to meet the cost of the Additional Capacity; and</u></p> <p><u>(ii) the Additional Capacity of the Network is, in the opinion of ARTC:</u></p> <p><u>(A) technically feasible and consistent with the economically efficient operation of the Network and meets ARTC's engineering and operational standards;</u></p> <p><u>(B) consistent with the safe and reliable operation of the Network and will not impact on the safety of any user of the Network;</u></p> <p><u>(C) <del>(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 or Coal Chain Capacity (in assessing Coal Chain Capacity, ARTC will consult the HVCCC, and take into account HVCCC's comments on any reduction of Coal Chain Capacity), meets ARTC's engineering and operational standards and does not in accordance with the steps set out in section 5.2(d), as applicable); and</del></u></p> <p><u>(D) does not otherwise compromise ARTC's legitimate business interests—except that if the Applicant agrees to meet the cost of the Additional Capacity as contemplated in section 6.2(b)(i), this does not include consideration of the commercial viability factors referred to in section 6.2(a)(i)(A).</u></p> <p>(b) In the event ARTC agrees to the creation of Additional Capacity, ARTC's costs of <del>providing that</del> Additional Capacity will be met:....</p>	<p>wording used in the objects clause (section 44AA) of Part IIIA of the TPA. Amendments also prescribe the HVCCC consultation involved.</p> <p>ARTC's deletion of what was subsection (f) of section 6.2 in the 2009 HVAU is explained in section 4.9.1 of the Explanatory Guide.</p> <p>ARTC has amended what was subsection (g) of section 6.2 in the 2009 HVAU to address producers' concerns regarding the treatment of Capital Contributions and also make clear the link with section 4.8(b)(iii). See section 4.9 of the Explanatory Guide.</p> <p>See section 4.19 of the Explanatory Guide for a discussion of the changes made to clause 6.2(a)(i) and (a)(ii).</p>
41	6.2	<p>[Original 6.2(f) was deleted]</p> <p><u>(f) <del>(g)</del> Where the Additional Capacity is initially funded by a capital contributionCapital Contribution as contemplated in subsection (b)(i), an equitable form of reconciliation between a subsequent user and the Applicant or Access Holder may apply, where total Access revenue exceeds the Ceiling Limit for the relevant Pricing Zone ("Contributor"), ARTC and another user sharing the Additional Capacity will apply, consistent with the principles in subsection (g).</u></p> <p><u>(g) The following principles will apply to the equitable form of reconciliation under subsection (f):</u></p> <p><u>(i) ARTC will be economically no worse off.</u></p> <p><u>(ii) In determining Charges for the relevant Pricing Zone, ARTC will have regard to:</u></p>	<p>See section 4.9 of the Explanatory Guide for a discussion of the changes made to clause 6.2(f) and the new section 6.2(g).</p>

	HVAU Section <sup>1</sup>	Amendments	Explanation
		<p>(A) <a href="#">achieving full recovery of VCC from all Access Holders on the basis of actual usage;</a></p> <p>(B) <a href="#">the Charges applicable to the Contributor and other Access Holders will be equitable subject to the relevant provisions of <b>section 4.14</b> and <b>section 4.15</b> of this Undertaking; and</a></p> <p>(C) <a href="#">the Contributor will not achieve recovery of capital cost associated with assets funded by a Capital Contribution (“Contributed Assets”) that exceeds the Rate of Return.</a></p> <p>(iii) <a href="#">Where a Capital Contribution is made by the Contributor, to the extent that the related Capital Expenditure is Prudent in accordance with <b>section 6.4</b> of this Undertaking, or determined as Prudent by the ACCC:</a></p> <p>(A) <a href="#">ARTC will have regard to the following objectives in determining Charges for the relevant Pricing Zone:</a></p> <p>(aa) <a href="#">Maximising recovery of (or contribution to) applicable FCC and NCC, in proportion to relative consumption of assets funded by ARTC or a Capital Contribution (“Combined Assets”).</a></p> <p>(ab) <a href="#">Maximising recovery of (or contribution to) the capital cost associated with Contributed Assets, determined with reference to the useful life of the Contributed Assets and Rate of Return approved under this Undertaking, in proportion to relative consumption of the Combined Assets.</a></p> <p>(B) <a href="#">Subject to <b>section 6.2(g)(i)</b> and <b>section 6.2(g)(ii)(C)</b>, recovery of capital cost associated with Contributed Assets by the Contributor will be based on an allocation of revenue obtained through the Charges between ARTC and the Contributor such that ARTC and the Contributor achieve an equitable rate of capital cost recovery from assets funded by ARTC (“ARTC Assets”) and Contributed Assets respectively.</a></p> <p>(C) <a href="#">The Contributor will not receive any priority in the allocation of Additional Capacity made available through Contributed Assets.</a></p> <p>(iv) <a href="#">Where a Capital Contribution is made by the Contributor, to the extent that the related Capital Expenditure is not Prudent in accordance with <b>section 6.4</b> of this Undertaking, or is not determined to be Prudent by the ACCC:</a></p> <p>(A) <a href="#">ARTC will have regard to the following objectives in determining Charges for relevant Pricing Zone:</a></p> <p>(aa) <a href="#">Maximising recovery of (or contribution to) the non-capital</a></p>	

	HVAU Section <sup>1</sup>	Amendments	Explanation
		<p><u>component (operating expenditure) of applicable FCC and NCC, in proportion to relative consumption of Combined Assets.</u></p> <p>(ab) <u>Maximising recovery of (or contribution to) the capital component (depreciation and return) of applicable FCC and NCC, in proportion to relative consumption of ARTC Assets.</u></p> <p>(ac) <u>Subject to subsection 6.2(iv)(ad), no there will be no recovery of (or contribution to) the capital cost associated with Contributed Assets.</u></p> <p>(ad) <u>Where another Access Holder elects to utilise the Additional Capacity made available through Contributed Assets, maximising recovery from that access holder of (or contribution to) the capital cost associated with Contributed Assets, determined with reference to the useful life of the contributed assets and Rate of Return approved under the Undertaking, in proportion to relative consumption of Contributed Assets.</u></p> <p>(B) <u>The Contributor will not recover the capital cost associated with Contributed Assets except where another access holder elects to utilise the capacity made available through the Contributed Assets, in which case the recovery of capital cost associated with Contributed Assets will be based on an allocation of revenue obtained through the Charges between ARTC and the Contributor such that ARTC and the Contributor achieve an equitable rate of capital cost recovery from ARTC Assets and Contributed Assets respectively.</u></p> <p>(C) <u>The Contributor will receive priority in the allocation of Additional Capacity made available through Contributed Assets.</u></p> <p>(h) <del>Additional Capacity sought by Applicants may be governed by separate agreements outside of the Indicative Access Holder Agreement forming part of the Undertaking. Other than the principles at sections 6.2(g)(i)–(ii) and section 6.2(g)(iv)(A)(ac), ARTC and the Contributor may agree to depart from the principles set out in section 6.2(g) to apply to the equitable form of reconciliation.</del></p>	
42	6.3	<p><b>Additional Capacity recommended by the HVCC</b></p> <p>(b) Where the HVCC recommends an investment to provide Additional Capacity to the Network, ARTC will consent to the provision of Additional Capacity if:</p> <p>(i) <u>the investment to provide the Additional Capacity is endorsed by the Rail Capacity Group (“the RCG”) as contemplated in section 6.4;</u></p> <p>(ii) <del>(i) in ARTC’s opinion, such provision is commercially viable to ARTC having regard to the relevant Access Agreements and ARTC’s total business activity (commercial viability would normally be based upon endorsement by the HVCC’s Rail Capacity Group (“the RCG”) as contemplated in section 6.4, and sufficient take or pay commitments are contracted by applicable Access Holders to recover NCC associated with the</del></p>	See section 4.19 of the Explanatory Guide.

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		<p>Additional Capacity over the economic life of the Additional Capacity); and</p> <p><u>(iii) in ARTC's opinion, the provision of the Additional Capacity is commercially viable having regard to:</u></p> <p><u>(A) terms and conditions of the relevant Access Agreement;</u></p> <p><u>(B) circumstances for ARTC to service and raise financing through debt and equity for Additional Capacity;</u></p> <p><u>(C) opportunity cost to ARTC given the relative risk and returns associated with the Additional Capacity financing relative to other investment opportunities; and</u></p> <p><u>(D) net effect on ARTC's balance sheet, gearing ratios and any other debt covenants in existence at the time; and</u></p> <p><u>(iv) the Additional Capacity of the Network is, in the opinion of ARTC:</u></p> <p><u>(A) technically feasible and consistent with the economically efficient operation of the Network and meets ARTC's engineering and operational standards;</u></p> <p><u>(B) <del>(ii) 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, and will not impact on the safety of any user of the Network, does not reduce Capacity or Coal Chain Capacity, meets ARTC's engineering and operational standards and does not compromise ARTC's legitimate business interests;</del></u></p> <p><u>(C) does not reduce Capacity or Coal Chain Capacity; and</u></p> <p><u>(D) does not otherwise compromise ARTC's legitimate business interests.</u></p>	
43	6.4(a)	<p><b>Industry consultation</b></p> <p>(ii) The objectives of the consultation process are to:</p> <p>(B) provide a process for Hunter Valley Coal Chain participant input; <u>aimed at, among other things the alignment of projects to provide Additional Capacity with projects to expand capacity at the coal terminals at the Port of Newcastle;</u> and</p> <p>(C) provide a process for the applicable industry participants <u>to participate in the development and management of projects delivering Additional Capacity and</u> to endorse Capital Expenditure incurred by ARTC in providing Additional Capacity as Prudent.</p> <p>...</p> <p>(iv) <u>The stages of consultation set out below will be followed in accordance with section 6.4(a)(i) except where:</u></p> <p>(A) <del>Where</del> ARTC considers that the process <del>set out below</del> would unjustifiably compromise timely delivery of the project, <u>and the RCG consents to</u> <del>ARTC may adopt</del> a modified consultation process for that project;</p> <p>(B) <del>and advise the RCG accordingly. In particular, where</del> ARTC considers that a project is minor in its scope or</p>	<p>The Consultation objectives in 6.4(a)(ii) have been amended to strengthen links with port capacity expansion.</p> <p>ARTC has amended this provision to clarify that RCG controls both the timeframes for the consultation approval of projects; and the delivery of projects. See section 4.22.2 of the Explanatory Guide.</p> <p>ARTC has also, at section 6.4(a)(iv)(A), made it clear that ARTC will only be able to follow a modified consultation process with the consent of the RCG.</p> <p>ARTC has also provided further</p>

	HVAU Section <sup>1</sup>	Amendments	Explanation
		<p>cost <del>in which case that project may be considered with other minor projects and</del> ARTC will consult on the group of minor projects rather than each minor project individually. <u>A project would typically be considered minor in scope or cost if it relates to ongoing annual programmes for asset replacement rather than a project to deliver Additional Capacity and if a project does not relate to an ongoing annual programme for asset replacement, then ARTC may only consult on it as part of a group of minor projects with the consent of the RCG.</u></p>	<p>clarification in section 6.4(a)(iv)(A) of what projects would be considered minor in scope and if a project does not relate to an ongoing annual programme for asset replacement, then ARTC may only consult on it as part of a group of minor projects if the RCG agrees that ARTC is able to adopt this approach.</p>
44	6.4(b)	<p><b>Industry consultation</b></p> <p>(b) <b>The RCG</b></p> <p>...</p> <p>(ii) At the commencement of this Undertaking, the RCG will comprise the following membership (as selected by the <u>relevant industry participants</u>). One representative of:</p> <p>(A) <u>each Access Holder who holds the largest volume of contracted coal GTK in each Pricing Zone;</u></p> <p><del>(A)</del>(B) <u>any other</u><del>each</del> Access Holder with more than <del>7</del><u>40</u>% of contracted coal GTK on the Network <u>who is not already eligible to appoint a representative under sub-section (A);</u></p> <p><del>(B)</del>(C) all Access Holders with less <del>than</del> <u>40</u><del>7</del>% of contracted coal GTK on the Network;</p> <p><del>(C)</del>(D) each Operator, in its capacity as an Operator, with more than 10% of contracted coal GTK on the Network who is not an Access Holder with more than 10% of contracted coal GTK on the Network (in a non-voting capacity);.</p> <p>(E) <u>the HVCCC (in a non-voting capacity).</u></p> <p>...</p> <p>(v) <u>Subject to section 6.4(b)(vi),</u> RCG member voting will be weighted on the basis of contracted coal GTK <u>for the current calendar year and the next nine calendar years</u>, in the Pricing Zone in which a project is proposed to occur, <del>and coal GTK expected to be generated in the Pricing Zone following completion of the proposed project.</del></p> <p>(vi) <u>In determining voting entitlement, ARTC may, at its discretion, include any coal GTK in the Pricing Zone which ARTC reasonably expects will become contracted coal GTK, for the current calendar year or for any of the following nine calendar years, immediately following the completion of the proposed project. To avoid doubt ARTC may, in exercising this discretion, determine that a prospective access holder which is not a current member of RCG has a voting entitlement.</u></p>	<p>ARTC's amendments to section 6.4(b) are discussed in section 4.21.2 of the Explanatory Guide.</p>
45	6.4(c)	<p><b>Industry consultation</b></p> <p>(c) <b>Hunter Valley corridor capacity strategy</b></p> <p>(ii) In developing the Hunter Valley corridor capacity strategy, ARTC will base the strategy on the rolling annual capacity forecast developed by the RCG, which will:</p> <p>(A) be based on <u>contracted volumes sought</u> <del>demand forecasts</del> by existing and prospective <u>access holders</u> <del>coal producers</del>;</p> <p>...<u>(iii)</u></p>	<p>ARTC has also clarified the steps it will go through in preparing the HV corridor capacity strategy in response to concerns expressed by the ACCC in its Draft Decision.</p> <ul style="list-style-type: none"> <li>ARTC has amended section 6.4(c)(ii)(A) to make it clear that in developing the Hunter Valley corridor capacity strategy, ARTC will</li> </ul>

	HVAU Section <sup>1</sup>	Amendments	Explanation
		<p><u>(iv) Before finalising the Hunter Valley corridor capacity strategy, ARTC will:</u></p> <p><u>(A) convene and conduct an annual meeting with the HVCCC and relevant coal terminal operators at the Port of Newcastle. The objective of the consultation is to provide that any planned expansions to the Network in the Hunter Valley corridor capacity are aligned with expansions at the coal terminals at the Port of Newcastle;</u></p> <p><u>(B) publish a draft Hunter Valley corridor capacity strategy on the ARTC website and will invite comments on the options set out in draft strategy from all users of the Network including Access Holders with Coal Access Rights, Access Holders with Non-Coal Access Rights, and above rail operators; and</u></p> <p><u>(C) consider the views submitted by those stakeholders in good faith and take those views into account in finalising the Hunter Valley corridor capacity strategy.</u></p> <p><u>(v) <del>(iv)</del> ARTC may seek formal endorsement from the RCG of identified preferred options in the Hunter Valley corridor capacity strategy to proceed to Concept Assessment and for the <del>reasonable</del> <u>estimated</u> costs of undertaking the Concept Assessment to be included in the RAB or expensed in the year incurred.</u></p>	<p>base the strategy on the rolling annual Capacity forecast developed by the RCG which will be based on contracted volumes sought (not demand forecasts). This reflects the greater commitment made by coal producers to volumes when TOP contracts are entered into.</p> <ul style="list-style-type: none"> <li>Subsection 6.4(c)(ii)(iv) explicitly states that ARTC will conduct an annual meeting each year before publishing a draft. ARTC will seek comments from all stakeholders <b>including non-coal users</b> and will consider those views in good faith and take those views into account in finalising the strategy. This amendments follow recommendations made by the ACCC in the Draft Decision that the views of non-coal users of the Network be taken into account.</li> </ul>
46	6.4(d)	<p><b>Industry consultation</b></p> <p>(d) <b>Concept Assessment</b></p> <p>(i) For each option endorsed above at <b>section 6.4(c)(<del>iv</del>)</b> <del>and</del>, each project creating Additional Capacity accepted by ARTC under <b>section 6.2(a)</b>, <u>each project creating Additional Capacity identified by ARTC and each investment to provide Additional Capacity recommended by HVCCC</u>, ARTC will provide a concept assessment report to the RCG.</p> <p>(ii) The objective of the concept assessment report will be to enable a preliminary assessment of the potential costs, benefits and risk involved and <del>may</del> <u>unless ARTC and the RCG agrees otherwise, will</u> include an indicative assessment of:</p> <p>...</p> <p><u>(E) indicative timeframes for the development, through consultation and the delivery of the project.</u></p> <p>(iii) ARTC may seek endorsement from the RCG to proceed to project feasibility. Endorsement to proceed to</p>	<p>Section 6.4(d)(i) has been amended to clarify that ARTC <u>will</u> provide a Concept Assessment Report to the RCG for each project identified by ARTC which ARTC seeks to be included in the RAB (unless ARTC and the RCG agree otherwise). This clarification was sought by the ACCC in its Draft Decision.</p> <p>ARTC has amended section 6.4(d)(ii) in response to a recommendation by the ACCC that in order for the reports and plans to be provided to the RCG under section 6.4 to be of real value, a mechanism should be included in the 2010 HVAU such that the RCG should have the</p>

	HVAU Section <sup>1</sup>	Amendments	Explanation
		<p>project feasibility would include:</p> <p>(A) endorsement of <del>ARTC's actual</del><u>any variation to the estimated</u> costs <u>endorsed under section 6.4(c)(v)</u> incurred in undertaking concept assessment;</p>	<p>discretion to waive the provision of the report as a whole or a particular element. Accordingly, ARTC is obliged to include the listed information in the report unless the RCG agrees otherwise.</p> <p>The same amendment is made in section 6.4(e), (f) and (g).</p> <p>Also, section 6.4(d)(ii)(E) has been inserted, to state that the concept report to be provided to the RCG will include an assessment of the indicative timeframes for the development, to clarify that it is industry (via the RCG) that controls a project's timetable.</p>
47	6.4(e)	<p><b>Industry consultation</b></p> <p><b>(e) Project Feasibility</b></p> <p>(ii) <u>Unless ARTC and the RCG agrees otherwise,</u> <del>the</del> project feasibility report <u>will</u> <del>may</del> include:</p> <p>...</p> <p>(iii) ARTC may seek formal endorsement from the RCG to proceed to project assessment. Endorsement to proceed to project assessment would include:</p> <p>(A) endorsement of <del>ARTC's actual costs</del><u>any variation to the estimated costs endorsed under section 6.4(d)(iii)(B)</u> incurred in undertaking project feasibility;</p>	<p>See the discussion immediately above in relation to section 6.4(d)(ii).</p>



	HVAU Section <sup>1</sup>	Amendments	Explanation
48	6.4(f)	<p><b>Industry consultation</b></p> <p><b>(f) Project Assessment</b></p> <p>(ii) <u>Unless ARTC and the RCG agrees otherwise,</u> the project assessment report will include:</p> <p>...</p> <p>(C) <u>project schedule including time tolerances and</u> project budget with a+/-10% margin or a larger margin where appropriate for larger projects, an estimate of contingency supported by risk assessment, cost analysis, and basis for contingency;</p> <p>(E) developed project management plan which may include:</p> <p>...</p> <p><u>(xi) project phases, milestones, deliverables and time tolerances;</u></p> <p>...</p> <p><del>(iii) ARTC may seek formal endorsement from the RCG to proceed to project implementation. Endorsement to proceed to project implementation would include:</del></p> <p><del>(A) endorsement of ARTC's actual costs incurred in undertaking project assessment;</del></p> <p><u>(iii) <del>(B) endorsement of</del>ARTC may seek formal endorsement from the RCG to proceed to project implementation. Endorsement to proceed to project implementation would include</u> any variation between the endorsed estimated cost range identified during project assessment and the project budget identified during project feasibility, <u>and:</u></p> <p><u>(A) endorsement of any variation to the estimated costs endorsed under section 6.4(e)(iii)(B) incurred in undertaking project assessment;</u> and</p> <p><u>(B) <del>(C)</del> endorsement of ARTC estimated costs to comply with the provisions of project implementation, including costs incurred in obtaining independent expert determination as applicable,</u></p> <p>to be included in the RAB or expensed in the year incurred. ..</p>	<p>See the discussion in relation to section 6.4(d)(ii) above.</p> <p>The changes to subsection 6.4(f)(ii)(C) and the inclusion of new subsection (xi) were made in response to the ACCC's recommendation that section 6.4 include specific timeframes that clearly set out the time within which ARTC and any relevant parties are required to satisfy their obligations. This further strengthens RCG control over project delivery timing.</p>
49	6.4(g)(i)	<p><b>Industry consultation</b></p> <p><b>(g) Project Implementation</b></p> <p><b>(i) Procurement</b></p> <p>...</p> <p>(C) Where a cost outside of the range, or contingency endorsed in the project assessment stage is confirmed <u>and/or there is a material variation from the project schedule under section 6.4(f)(ii)(C),</u> ARTC will seek the endorsement of the RCG for that variation.</p>	<p>Section 6.4(g)(i)(E) has been amended in response to the ACCC's recommendation that the 2010 HVAU should contain a clear and certain process for appointing a default independent expert when the parties cannot agree.</p> <p>The additional amendments to the section address the ACCC's</p>

	HVAU Section <sup>1</sup>	Amendments	Explanation
		<p>(D) Where ARTC undertakes confirmation of scope, <a href="#">project timing</a> and cost through an alliance or internal evaluation, the RCG may, at its cost, seek to review the scope, <a href="#">project timing</a> and cost, having regard to all elements of the selected method of project delivery.</p> <p>(E) Where the RCG endorses less than the cost confirmed at <a href="#">or does not endorse the change to the project schedule notified under</a> section 6.4(g)(i)(C), ARTC may refer the matter to an agreed independent expert for a determination as to whether the variation is Prudent <a href="#">or whether the change to the project schedule is reasonable (having regard to whether it arose from a matter outside of ARTC's reasonable control or which could not have been reasonably anticipated by ARTC)</a>, in accordance with section 6.4(g)(iv) <a href="#">and failing such agreement within 10 Business Days of the matter being referred to expert determination, such person as appointed by the President of the Institute of Arbitrators and Mediators Australia ("IAMA") will act as an expert.</a></p> <p>(F) Upon the independent expert <del>deciding</del><a href="#">determining</a> on <a href="#">the</a> cost to be taken as Prudent in accordance with section 6.4(g)(i)(E) <a href="#">(which, to avoid doubt, must take into account any change in project schedule which the independent expert considers reasonable)</a>, ARTC will proceed with project implementation <a href="#">regardless of whether the independent expert determines the full cost confirmed by ARTC at section 6.4(g)(i)(C) as Prudent. If the cost determined by the independent expert to be taken as Prudent differs to the cost confirmed at section 6.4(g)(i)(C), then ARTC will proceed with the project implementation by way of alliance or internal evaluation, at the cost determined by the independent expert as Prudent and in accordance with the project schedule determined by the independent expert except that where the cost determined by the independent expert is less than the cost confirmed under section 6.4(g)(i)(C) or the project schedule confirmed under section 6.4(g)(i)(C) is unreasonable, ARTC may, as an alternative to proceeding by way of alliance or internal evaluation at the cost and in accordance with the project schedule determined by the independent expert as respectively Prudent and reasonable, proceed by way of an open competitive tender, at the cost of the project and in accordance with the project schedule determined as a result of the independent tender process.</a></p> <p>(G) Any cost of delay resulting from following this process will be deemed <del>a</del>-Prudent <del>direct cost</del><a href="#">with respect</a> to the project.</p>	<p>concerns, and those expressed by the producers', about the degree of pricing uncertainty facing access seekers, by clarifying that ARTC will proceed regardless of the cost and project schedule determined by the independent expert. ARTC has made amendments to permit it to proceed by way of a competitive tender in certain circumstances.</p> <p>The amendments to subsection (F) is discussed in section 4.21.4 of the Explanatory Guide.</p> <p>ARTC has also recognised the need to seek RCG endorsement or Independent Expert determination in relation to a variation to the project schedule (and delivery).</p>
50	6.4(g)(iii)	<p><b>Industry consultation</b></p> <p>(iii) <b>Project delivery</b></p> <p>...</p> <p>(B) ARTC will provide progress reports to the RCG at RCG meetings, the nature and frequency of which will be agreed with the RCG. <del>A</del><a href="#">Unless ARTC and the RCG agrees otherwise, a</a> progress report <del>may</del><a href="#">will</a> include</p> <p>...</p> <p>(v) exceptions, where ARTC would advise the RCG that the project will deviate outside of its planned cost <del>or</del><a href="#">margins, as set out in the project budget, or outside of the planned</a> timing tolerance margins, <a href="#">as set out in the project schedule, both included with the project assessment report to be provided under section 6.4(f)(ii).</a></p> <p>(C) Where a variation to the endorsed project budget <a href="#">or project schedule</a> identified at <b>section 6.4(f)(ii)(C)</b> including</p>	<p>Re the amendment to section 6.4(g)(iii)(B), see the discussion in relation to section 6.4(d)(ii).</p> <p>ARTC has amended section 6.4(g)(iii)(B)(v) to clarify the meaning of planned 'timing tolerance margins'.</p> <p>The other amendments to subsection (C) are covered in section 4.21.5 of the Explanatory Guide.</p> <p>ARTC has also recognised the need to seek RCG endorsement or Independent Expert determination in relation to a</p>

	HVAU Section <sup>1</sup>	Amendments	Explanation
		<p>contingency, or an endorsed variation at <b>section 6.4(g)(i)(C)</b> or arising from a review by an independent expert at <b>section 6.4(g)(i)(E)</b>, arises:</p> <p>(i) ARTC <del>may cease construction (where applicable) to</del> will submit a revised <u>project schedule and/or costing</u> to the RCG for endorsement having regard to the prudence of the <del>variation</del> <u>revised costing and the reasonableness of the revised project schedule but will continue with project implementation while a decision in respect of the endorsement is pending.</u></p> <p>(ii) <del>the</del> <u>The</u> RCG may endorse all or part of the variation <u>and where the RCG endorses all of the variation, ARTC will continue with project implementation.</u></p> <p>(iii) Where the RCG endorses less than the full variation <u>and/or endorses a different project schedule</u>, ARTC may refer the matter to an agreed independent expert for review in accordance with <b>section 6.4(g)(iv)</b>, <u>and failing such agreement within 10 Business Days of the matter being referred to expert determination, such person as appointed by the President of the IAMA will act as an expert. ARTC will continue with project implementation while that expert determination is pending.</u></p> <p>(iv) The review of the independent expert will have regard to whether the variation is Prudent <u>and/or whether the variation to the project schedule is necessary and arose from a matter outside of ARTC's reasonable control or which could not have been reasonably anticipated by ARTC.</u></p> <p>(v) <del>Upon</del> <u>If</u> the independent expert <del>deciding on</del> <u>decides</u> the <u>full</u> extent of the variation to be taken <del>as</del> <u>is</u> Prudent <u>and/or the variation to the project schedule is reasonable</u>, ARTC will <del>proceed with Project Implementation.</del> <u>continue with project implementation.</u></p> <p><u>(vi) If the independent expert decides the full extent of the variation to be taken is not Prudent or the variation to the project schedule is not reasonable, ARTC may cease project implementation, or, having regard to the findings of the independent expert, propose a variation to the RCG in accordance with section 6.4(g)(iii)(C)(i).</u></p> <p>(vii) <del>(vi)</del> <u>Any cost of delays</u> incurred by ARTC in complying with this <b>subsection 6.4 (g)(iii)(C)</b>, including any <u>cost of delay</u> resulting from following this process will be deemed <del>a Prudent direct cost</del> <u>Prudent with respect to the project. To avoid doubt, any expenditure incurred by ARTC in continuing a project pending endorsement by the RCG or an independent expert, will be deemed Prudent with respect</u> to the project.</p>	<p>variation to the project schedule (and delivery timing).</p>
51	6.4(g)(v)	<p><b>Industry consultation</b></p> <p>(v) Commissioning</p> <p>....</p> <p><u>(B) where</u> if the project <del>is large and an extended</del> <u>has a</u> delivery time frame <del>is considered necessary, ARTC may propose of more than 12 months, and the RCG consents</del> to a staged delivery of the project, <del>where, upon commissioning of any stage, ARTC may expense financing costs in the year of that commissioning, upon completion of any stage, any capital expenditure and interest cost incurred during construction associated with that stage will be deemed Prudent at the date of completion of that stage.</del></p>	<p>Section 6.4(g)(v) has been amended in response to the ACCC's recommendation that the criteria and processes ARTC will apply in determining whether or not to implement staged delivery should be set out with greater clarity, including any thresholds as to the types of projects that come within the definition of 'large' under section 6.4(g)(v)(B). The decision as to whether a</p>

	HVAU Section <sup>1</sup>	Amendments	Explanation
		<p><u>(C) If a project is commissioned after the latest of:</u></p> <p><u>(i) the project delivery date set out in the project schedule at section 6.4(f)(ii)(C) finalised and provided as part of project initiation under section 6.4(g)(ii);</u></p> <p><u>(ii) if a new project schedule has been endorsed by the RCG under section 6.4(g)(iii)(C)(ii), the project delivery date set out in that endorsed project schedule; and</u></p> <p><u>(iii) if a new project schedule has been determined by an independent expert under section 6.4(g)(iii)(C)(iii), the project delivery date set out in that project schedule.</u></p> <p><u>then, any interest incurred in respect of construction during the period between the (new) project delivery date and the project actual commissioning date will not be deemed Prudent.</u></p>	<p>project is staged lies with the industry (through the RCG).</p> <p>ARTC has also made it clear in section 6.4(g)(v) that any interest incurred during a delay in the completion of a project beyond the latest completion date endorsed by the RCG or an independent expert will not be deemed Prudent. This creates a further incentive for ARTC to deliver projects on time (see section 4.21.5 of the Explanatory Guide).</p>
52	6.4(h)-(i)	<p><b>Industry consultation</b></p> <p><b>(h) Project close-out</b></p> <p>(i) Upon completion of project implementation, ARTC will provide a project close-out report for the RCG. <del>A</del><u>Unless ARTC and the RCG agrees otherwise, a</u> project close-out report <del>may</del><u>will</u> include:</p> <p>...</p> <p>(i) <b>Endorsement of project development stages</b></p> <p><del>(i) (iii)</del> Where Additional Capacity is provided in relation to a particular Pricing Zone, the endorsement of coal producers that hold Coal Access Rights under an Access Holder Agreement, either directly or through RCG representatives, with over 50% of contracted coal gtkm in that Pricing Zone will constitute endorsement by the RCG <u>of that stage of project development</u>.</p> <p><del>(ii) (iv)</del> Where Additional Capacity (delivered by way of a single project or series of projects) is provided in relation to a particular Pricing Zone, and that Additional Capacity results in an increase in the Indicative Access Charge for that Pricing Zone by more than 10%, the endorsement of Coal Customers that hold Coal Access Rights under an Access Holder Agreement, either directly or through RCG representatives, with over 70% of contracted coal gtkm in that Pricing Zone will constitute endorsement by the RCG <u>of that stage of project development</u>.</p>	<p>Regarding the amendment to section 6.4(h)(i) see the discussion in relation to section 6.4(d)(ii).</p> <p>ARTC also intended that voting rules set out in (i)(i) and (ii) of the 2010 HVAU would apply to all stages of project development and has made this clear in the 2010 HVAU. This has now been clarified.</p>
53	7.1	<p><b>Medium Term Capacity Management</b></p> <p>(a) ARTC will undertake medium term capacity planning and will develop the Master Train Plan (“MTP”) having regard to:</p> <p>(i) Capacity Entitlements under existing Access Holder Agreements <u>for Coal Access Rights</u>;</p> <p>(ii) Capacity Entitlements under <u>existing other</u>-Access Agreements <u>for Non-Coal Access Rights</u>, <del>and</del> <del>(iii)the Hunter Valley corridor capacity strategy.</del></p> <p>(b) ARTC will provide the MTP to the HVCCC to assist <del>it</del> <u>the HVCCC in advising ARTC in relation to the</u> <del>in</del>-day-to-day scheduling of Trains.</p>	<p>ARTC has amended section 7.1 to clarify that, in developing the MTP, ARTC will have regard to:</p> <ul style="list-style-type: none"> <li>Capacity entitlements under existing Access Holder Agreements (that is, agreements for Coal Access Rights); and</li> <li>Capacity entitlements under existing Access Agreements (that is, agreements for Non-Coal</li> </ul>

	HVAU Section <sup>1</sup>	Amendments	Explanation
			<p>Access Rights).</p> <p>ARTC will not have regard to the Hunter Valley corridor capacity strategy as that concerns future volumes that may be contracted by Access Holders.</p>
54	7.2	<p><b>Short Term Capacity Management</b></p> <p>ARTC will undertake short term capacity planning, including the development of the Daily Train Plan (“DTP”), having regard to:</p> <p>(a) the MTP <a href="#">and the remaining Capacity Entitlements of Access Holders under Access Holder Agreements and other Access Agreements</a>;</p>	<p>Following detailed explanation to the ACCC around the processes involved, this change was made in response to the following views of the ACCC regarding Short Term Capacity Management:</p> <ul style="list-style-type: none"> <li>• It is unclear under the current wording of the 2009 HVAU what specific processes ARTC is obliged to complete in developing the Daily Train Plan, including the relevant indicative timeframes ARTC must comply with (including the intended frequency within which such planning will take place).</li> <li>• While the ACCC notes that there is relevant information in ARTC’s Explanatory Guide of 13 May 2009 regarding the intended purpose and processes associated with section 7.2 of the 2009 HVAU, the ACCC recommends that this information, where relevant, including any amendments required to clearly set out the processes and indicative timeframes that ARTC will be obliged to follow when conducting ‘short term capacity planning’, be set out clearly in the 2009 HVAU itself (Chapter 10, p. 411, DD).</li> </ul>
55	8	<p><b>PERFORMANCE <del>INDICATORS</del> MEASUREMENT AND INCENTIVES</b></p> <p><b>8.1 <a href="#">Network Key Performance Indicators</a></b></p>	<p>See section 4.22 of the Explanatory Guide.</p>

	HVAU Section <sup>1</sup>	Amendments	Explanation
		<p>(a) <a href="#">ARTC will report on its website performance against the Network Key Performance Indicators set out in <b>Schedule D</b>, at the frequency referred to in <b>Schedule D</b>. To avoid doubt, in reporting on the performance against the Network Key Performance Indicators, ARTC will not report on the performance of individual Access Holders or Operators.</a></p> <p>(b) <a href="#">ARTC's obligation to report performance under this <b>section 8</b> will not arise until the completion of the first full period in respect of which performance is measured, this means that:</a></p> <p>(i) <a href="#">ARTC will not report quarterly performance until the completion of the first full quarter after the Commencement Date; and</a></p> <p>(ii) <a href="#">ARTC will not report annual performance until the completion of the first full calendar year after the Commencement Date.</a></p> <p><b>8.2 Negotiation of key performance indicators for each Access Agreement</b></p> <p>(a) <a href="#">ARTC will negotiate with an Applicant in good faith the key performance indicators to be included in an Access Agreement, and any changes to the key performance indicators in the Access Agreement during the term of the Access Agreement.</a></p> <p>(b) <a href="#">In negotiating the key performance indicators for an Access Agreement ARTC's objectives include to have a consistent set of key performance indicators for all Access Holders which are also consistent with:</a></p> <p>(i) <a href="#">the applicable track related System Assumptions;</a></p> <p>(ii) <a href="#">other incentives and measures of ARTC's performance including the performance indicators contained in the NSW Lease; and</a></p> <p>(iii) <a href="#">in the case of an Access Holder Agreement for Coal Access Rights:</a></p> <p>(A) <a href="#">coal chain performance indicators;</a></p> <p>(B) <a href="#">the Network Key Performance Indicators reported by ARTC under section 8.1 of the Access Undertaking, where applicable;</a></p> <p>(C) <a href="#">any particular incentives and measures of ARTC's performance contained in the Indicative Access Holder Agreement including the application of the system wide true-up tests, and -</a>  <a href="#">unless otherwise agreed by ARTC and the Applicant, the key performance indicators to be included in an Access Holder Agreement for Coal Access Rights will be a subset of the Network Key Performance Indicators, as contemplated by the reporting scope for each indicator identified in the second column of the Network Key Performance Indicators table in section 1 of <b>Schedule D</b>, except that the reporting detail for each indicator identified in the fourth column of that table will be specific to the Applicant.</a></p> <p>(c) <a href="#">If requested by the Applicant or, if ARTC reasonably considers necessary, ARTC will include one or more Operators nominated by an Applicant in the negotiation of the key performance indicators to be included in the Access Agreement and in any review of those indicators.</a></p> <p><b>8.3 ARTC performance incentives</b></p> <p><a href="#">ARTC will comply with the performance incentive schemes included in section 2 of <b>Schedule D</b>.</a></p> <p><a href="#">[Note to ACCC - before acceptance of the Undertaking, ARTC will propose one or more incentives mechanisms].</a></p>	<p>See sections 4.22.2 and 5.3 of the Explanatory Guide for a discussion of new section 8.2 of the 2010 HVAU which sets out how key performance indicators for each Access Agreement will be negotiated and agreed.</p> <p>Section 8.3 of the 2010 HVAU was inserted to provide for the development of incentives schemes to be included in the 2010 HVAU. See section 4.22.3 of the Explanatory Guide.</p>

	HVAU Section <sup>1</sup>	Amendments	Explanation
56	Definitions	<p><b>"Additional Capacity"</b> means, in relation to the Network, the capability of the Network to carry additional task by an enhancement or improvement of the infrastructure <del>forming part of associated with</del> the Network <u>or Associated Facilities</u>;</p>	This definition was included in the December 2009 version of the IAHA and was included to address the ambiguity associated with the previous wording.
57	Definitions	<p><b>"Capacity"</b> means the capability of the Network for Services, including Additional Capacity, <del>based on</del><u>after taking into account</u>:</p> <p>(a) <u>track related System Assumptions, including:</u></p> <p>(i) <u>possessions of the Network reasonably required by ARTC for maintenance, repair or enhancements; and</u></p> <p>(ii) <u>the operation of work Trains;</u></p> <p>(iii) <u>requirement for surge capacity reasonably required to deliver reliable operations where demand varies, in an efficient manner; and</u></p> <p>(iv) <u>forecast members' losses;</u></p> <p>(b) <u>other assumptions related to operating the Network for non-coal Services as reasonably determined by ARTC.</u></p>	ARTC has amended the definition of Capacity to (a) remove some uncertainty and (b) ensure it reflects the track related System Assumptions. This ensures ARTC's commitment to use System Assumptions in Capacity assessments.
58	Definitions	<p><b>"Capital Contribution"</b> <u>means a direct payment other than by way of a Charge by an Applicant or Access Holder in connection with Capital Expenditure undertaken by ARTC, paid up-front or over a period of time. Where a Capital Contribution is to be paid over a period of more than one year, the value of the Capital Contribution may be represented as a single amount determined on a net present value basis by application of the relevant form of the Rate of Return;</u></p>	<p>The 2010 HVAU includes a definition of Capital Contribution which is used in section 4 and section 6. A Capital Contribution:</p> <ul style="list-style-type: none"> <li>• may be made by an Applicant or an Access Holder. A contribution by an Applicant (ahead of contract execution) would be unusual.</li> <li>• May be paid as a single amount or as several amounts over time (where it may be capitalised to a single figure by application of the rate of return.</li> </ul>
59	Definitions	<p><b>"Coal Chain Capacity"</b> means the system wide capacity of the Hunter Valley Coal Chain, including below rail, above rail and port services as agreed with the HVCCC from time to time based on <del>the System Assumptions</del> <u>a transparent and published set of assumptions</u>;</p>	ARTC has amended this definition to state its commitment to using System Assumptions in Capacity assessments.
60	<u>Definitions</u>	<p><b>"CPI"</b> means the <del>CPI</del><u>Sydney All Groups, Weighted Average of Eight Capital Cities index Consumer Price Index</u> number published by the Australian Bureau of Statistics;</p>	This amendment is the clarify the definition of CPI and ensure consistency of references.
61	Definitions	<p><b>"Direct Cost"</b> means maintenance expenditure, including major periodic maintenance that varies with usage of the Network, <u>and may include other costs that vary with the usage of the Network</u> but excluding Depreciation,</p>	ARTC has amended the definition of Direct Costs to provide for

	HVAU Section <sup>1</sup>	Amendments	Explanation
		<p><a href="#">assessed on an efficient basis where efficient costs will reflect the costs incurred by a prudent service provider, acting efficiently, in accordance with accepted good rail infrastructure practice, to achieve lowest sustainable cost of delivering rail infrastructure services, in the context of:</a></p> <p><a href="#">(a) the Hunter Valley Coal Chain where a key objective in maintenance planning is to maximise coal chain throughput and reliability;</a></p> <p><a href="#">(b) ARTC's obligations to maintain the Network having regard to the terms of applicable Access Agreements and Access Holder Agreements existing at the time;</a></p> <p><a href="#">(c) ARTC's obligations arising under the law, applicable legislation (including regulations) or the NSW Lease; and</a></p> <p><a href="#">(d) broader benefits that may arise from delivery through alliance or internally;</a></p>	<p>inclusion of costs other than maintenance that vary with the usage of the Network in response to the ACCC's views that the definition of Direct Cost should be an inclusive definition, which allows the inclusion of costs other than maintenance that are relevant over longer periods.</p> <p>In addition, ARTC has included amendments to clarify that direct costs are to be assessed on an efficient basis to address ACCC concerns in the Draft Decision and concerns of producers. Efficient cost for the purpose of Direct Cost is aligned to that for expenditure included in Economic Cost and Capital Expenditure in the 2010 HVAU. This assessment of efficient cost is consistent with that in other regulatory jurisdictions excepting that ARTC has sought to further clarify the assessment through the inclusion of context specific to the Hunter Valley coal network operating and commercial environment.</p>
62	Definitions	<p><b>"HVCCC"</b> means Hunter Valley Coal Chain Coordinator, <a href="#">or where that body no longer exists, or has been reconstituted, renamed, replaced or whose functions have been removed or transferred to another body or agency, is a reference to the body which has the responsibility to most closely perform the functions of the first mentioned body</a><del>any body having responsibility from time to time for co-ordinating the operation and capacity development of the Hunter Valley Coal Chain,</del> as <a href="#">reasonably</a> determined by ARTC;</p>	<p>This definition of the HVCCC was included in the December 2009 version of the IAHA.</p> <p>As set out in its response to submissions on the ACCC's Issues Paper, as ARTC is required under the 2010 HVAU to rely on advice from the HVCCC, it is considered reasonable that ARTC has the right to recognise the body providing that advice.</p>
63	Definitions	<p><b>"Indicative Interstate Access Agreement"</b> <a href="#">means the indicative track access agreement included with an access undertaking accepted by the ACCC from time to time under Division 6 of Part IIIA of the TPA that covers the Interstate Network and, at the Commencement Date, means the indicative agreement included in Schedule D of the interstate access undertaking, accepted by the ACCC on 30 July 2008;</a></p>	<p>This definition is necessary given the amendments to section 3.14(b)(ii) of the 2010 HVAU.</p>
64	Definitions	<p>"Interim Indicative Access Charges" has the meaning given to it in section 4.17(a)(i) <del>4.16(b)(i)</del> <a href="#">and for the calendar year</a></p>	<p>This amendment to the definition</p>



	HVAU Section <sup>1</sup>	Amendments	Explanation
		<a href="#">containing the Commencement Date will be as set out in section 4.17(c);</a>	clarifies that for the calendar year in which the 2010 HVAU commences, the Interim Indicative Access Charges will be those set out in the 2010 HVAU, as approved by the ACCC.
65	Definitions	<a href="#">"Interstate Network" means the network of railways lines delineated or defined in Schedule E of the interstate access undertaking accepted by the ACCC on 30 July 2008;</a>	This definition is necessary given the amendments to section 3.14(b)(ii) of the 2010 HVAU.
66	Definitions	"Network Exit Capability" means: <a href="#">(a)</a> in the case of Coal Access Rights sought or obtained for the purpose of transporting <a href="#">each cargo of</a> coal to the Port of Newcastle, sufficient capacity allocated to that Access Holder at <a href="#">a coal terminal at</a> the Port of Newcastle to offload the coal transported, or if the Access Holder is an Operator, the Coal Customer on whose behalf the Coal Access Rights are to be used has sufficient capacity at <a href="#">a coal terminal at</a> the Port of Newcastle to enable the Operator to offload the coal transported; and <a href="#">(b)</a> in the case of Coal Access Rights sought or obtained for the purpose of transporting <a href="#">each cargo of</a> coal to a destination other than the Port of Newcastle, an ability to off load the coal transported from the Network <a href="#">at that particular destination</a> ;	This definition has been amended to reflect concerns raised by coal producers.
67	Definitions	<b>"Network Management Principles"</b> means the principles <a href="#">regulating Train movements on the Network</a> , set out in <b>Schedule C</b> ;	This is a minor change to the definition of NMP - it still refers to the principles set out in Schedule C.
68	Definitions	<a href="#">"NSW Lease" means the Deed of Lease over the interstate and Hunter Valley rail lines and infrastructure between the State Rail Authority of New South Wales, Rail Infrastructure Corporation and ARTC dated 31 May 2004, as amended from time to time;</a>	This definition is necessary given the reference to NSW Lease in the 2010 HVAU.

	HVAU Section <sup>1</sup>	Amendments	Explanation
69	Definitions	<p><b>"Prudent"</b> means in relation to Capital Expenditure, capital and renewals projects identified, and expenditure incurred, that is:</p> <p>(a) taken as prudent in accordance with <b>section 6.4(h)(ii)</b>; and</p> <p>...</p> <p>(v) expenditure incurred efficiently in implementing the project, <del>in the context of prevailing access and operating requirements, and input costs recognising where efficient costs will reflect the costs incurred by a prudent service provider, acting efficiently, in accordance with accepted good rail infrastructure practice, to achieve lowest sustainable cost of delivering rail infrastructure services, in the context of:</del></p> <p><u>(A) the Hunter Valley Coal Chain where a key objective in maintenance planning is to maximise coal chain throughput and reliability;</u></p> <p><u>(B) ARTC's obligations to maintain the Network having regard to the terms of applicable Access Agreements and Access Holder Agreements existing at the time;</u></p> <p><u>(C) ARTC's obligations arising under the law, applicable legislation (including regulations) or the NSW Lease; and</u></p> <p><u>(D) broader benefits that may arise from delivery through alliance or internally;</u></p> <p>...</p> <p><del>(viii)</del> where applicable, support by the relevant industry participants;</p>	<p>This definition has been amended in response to the ACCC's view that the capital expenditure framework in the 2010 HVAU was not appropriate, in particular because it allowed ARTC to include capital expenditure in the RAB which is not efficient.</p> <p>Efficient cost for the purpose of Capital Expenditure is aligned to that for operating expenditure included in Direct Cost and Economic Cost in the 2010 HVAU. This assessment of efficient cost is consistent with that in other regulatory jurisdictions excepting that ARTC has sought to further clarify the assessment through the inclusion of context specific to the Hunter Valley coal network operating and commercial environment.</p>
70	Definitions	<p><b>"System Assumptions"</b> means the assumptions for the Hunter Valley Coal Chain including:</p> <p>(a) <u>interface and live run losses between each element in the Hunter Valley Coal Chain;</u></p> <p>(b) <u>agreed operating mode of the Hunter Valley Coal Chain;</u></p> <p>(c) <u>surge and tolerance requirements;</u></p> <p>(d) <u>capacities of fixed infrastructure;</u></p> <p>(e) <u>rolling stock requirements; and</u></p> <p>(f) <u>vessel requirements.</u></p> <p><u>as detailed in the System Assumption Document as varied from time to time and as agreed to by ARTC and, to the extent not otherwise dealt with in the System Assumptions Document, track related assumptions as reasonably determined by ARTC including:</u></p> <p><u>(g) train lengths;</u></p> <p><u>(h) train speeds;</u></p> <p><u>(i) train axle loads;</u></p>	<p>This definition of System Assumptions was included in the December 2009 version of the IAHA.</p> <p>Section 5.1 of the 2010 HVAU contains ARTC's commitment to participate in the development of System Assumptions and to have regard to the System Assumptions in carrying out Capacity Analysis and to reflect System Assumptions in Access Holder Agreements.</p> <p>As set out in its response to the Draft Decision, it is critical that ARTC is not forced into accepting and applying track related System Assumptions. This is discussed</p>

	HVAU Section <sup>1</sup>	Amendments	Explanation
		(i) <a href="#">section run times</a> ;	in more detail in section 4.16 of the Explanatory Guide.
71	Definitions	<a href="#">“System Assumptions Document” means the document prepared by the HVCCC in consultation with ARTC and operators of coal terminals at the Port of Newcastle that details System Assumptions and simulation model outputs for the relevant Coal Chain Capacity scenarios;</a>	This definition is necessary given the reference to System Assumptions Document in the definition of System Assumptions.
72	Definitions	<a href="#">“Turnout” means the points, signal and de-rail device connecting, or for operating the connection of, a connecting track with the Network;</a>	This definition has been added to compliment its use in section 6.1 where ARTC has clarified the extent of a right to a connection.
73	Schedule A:1	<p><a href="#">Tier 1 (mandatory) provisions for all Essential elements of an Access Holder Agreements</a> for Coal Access Rights:</p> <ol style="list-style-type: none"> <li>1 <a href="#">IAHA Clause 1.5: Tier 1 Mandatory Provisions</a></li> <li>2 <a href="#">IAHA Clause 3.1: Grant of Train Paths for transport of coal IAHA</a></li> <li>3 <a href="#">IAHA Clause 3.2: Annual Determination of BPU, MTC and NPC</a></li> <li>4 <a href="#">IAHA Clause 3.3: Tolerance</a></li> <li>5 <a href="#">IAHA Clause 3.4: Identification of Path Usages</a></li> <li>6 <a href="#">IAHA Clause 3.6: Availability Exceptions</a></li> <li>7 <a href="#">IAHA Clause 3.14: Network Exit Capability requirement</a></li> <li>8 <a href="#">IAHA: Clause 5.4: Calculation of TOP Rebate and Ad-Hoc Charge Rebate</a></li> <li>9 <a href="#">IAHA Clause 6: Capacity shortfall</a></li> <li>10 <a href="#">IAHA Clause 11.1(b)(iii) Variation of a Train Path for the purposes of maximising the use and reliability of the Network</a></li> <li>11 <a href="#">IAHA Clause 11.4: Removal of Path Usages for under-utilisation</a></li> <li>12 <a href="#">IAHA Clause 11.5: Use of Non-Compliant Services</a></li> <li>13 <a href="#">IAHA Clause 11.6: Cancellations of services</a></li> <li>14 <a href="#">IAHA Clause 15: Confidentiality</a></li> <li>15 <a href="#">IAHA Clause 16.4: Temporary Trade of Path Usages</a></li> </ol>	ARTC has identified the listed provisions as Tier 1 (mandatory) provisions for coal access rights. This is discussed in sections 4.4 and 5.13 of the Explanatory Guide.

	HVAU Section <sup>1</sup>	Amendments	Explanation
		<p><a href="#">16 IAHA Clause 16.5: Treatment of Traded Path Usages</a></p> <p><a href="#">17 IAHA Clause 19.1 New or varied Access Undertaking</a></p> <p><a href="#">18 IAHA Train Path Schedule: Clause 4.1 Network Exit Capability Condition Precedent; Clause 4.2 Removal of path usages for failure to satisfy Network Exit Capability Condition Precedent</a></p> <p><a href="#">19 IAHA Schedule 2: System true-up test</a></p> <p><a href="#">20 IAHA Schedule 3: Clause 4.1(c) Determination of TOP Price<sub>PZ</sub> and Non-TOP Price<sub>PZ</sub> - dispute resolution provisions.</a></p> <p>* <a href="#">Except if the Access Holder Agreement is for Access Rights to transport coal to a destination other than the Port of Newcastle, in which case:</a></p> <ul style="list-style-type: none"> <li>• <a href="#">the Tier 1 (mandatory) provisions are items 1, 3, 5, 6, 8, 9, 10, 12, 13, 17, 19, 20</a></li> <li>• <a href="#">items 2, 4, 7, 11,14, 15, 16 and 18 will be treated as Tier 2 (negotiable) provisions.</a></li> </ul>	
74	Schedule A:2	<p><b><a href="#">Tier 1 (mandatory) provisions for an Access Agreement for Non-Coal Access Rights</a></b></p> <p><a href="#">1 IAHA Clause 6: Capacity shortfall provisions which are aligned and consistent with those set out in section 5.4, 5.5 and 5.6 of this Undertaking; and</a></p> <p><a href="#">2 A provision equivalent to clause 19.1(b) of the IAHA setting out that any changes to a Tier 1 (mandatory) Non-Coal Provision identified in an Access Undertaking accepted by the ACCC, will be automatically incorporated into the Access Agreement.</a></p>	<p>ARTC considers that given the Capacity shortfall provisions apply system wide, it is appropriate for them (and consequently the uplift clause 19.1) to be Tier 1 (mandatory) provisions that are applicable to non-coal access rights, as well as coal access rights.</p> <p>These would represent substantive changes to the Interstate Track access Agreement offered to non-coal users in the Hunter Valley.</p>
75	Schedule B	<p><b>Network</b></p> <p>Mainline, crossing loops, dual gauge and turnouts as summarised below:</p> <ol style="list-style-type: none"> <li>1. <del>Newcastle (Islington Junction) 164.400 km</del> <a href="#">turnouts (116A points (164.690 km)/115A points (164.633 km))</a> to Port Waratah</li> <li>2. Scholey Street Junction <a href="#">turnouts (95 points (164.806 km)/98 points (164.804 km))</a>(Via Coal) <del>164.900 to</del></li> </ol>	<p>The Network description has been changed to provide greater clarity around the extremities of the Network (particularly in the Newcastle area). See row 4 of this table.</p> <p>The amendment to footnote 2 reflects the amendment to the <i>Transport Administration Act 1988</i></p>

	HVAU Section <sup>1</sup>	Amendments	Explanation
		<p>Muswellbrook <del>288.900</del><a href="#">288.800</a> km<sup>1</sup></p> <p>3. Hanbury Junction <del>468.800</del><a href="#">turnouts (137A points (168.955 km)/136A points (168.986 km))</a> to Kooragang Island</p> <p>4. Kooragang East Junction <del>469.3 km</del><a href="#">turnouts (142E points (168.968)/143E points (168.997 km) to Sandgate</a> <del>170.500 km<sup>4</sup></del><a href="#">turnouts (181B points (171.334 km)/183D points (171.502))</a></p> <p>5. Muswellbrook <del>288.900</del><a href="#">288.800</a> km to Ulan 435.300 km</p> <p>6. Muswellbrook <del>288.900</del><a href="#">288.800</a> km to Gap<sup>2</sup> 416.000 km</p> <p><sup>1</sup> Includes Sandgate Flyover (for the purposes of <b>section 4</b> Pricing Principles only) which forms part of ARTC Sector 938 Sandgate – Maitland (via Main)</p> <p><sup>4</sup> To the extent where the railway line joins the rail network owned by <a href="#">the Country Rail Infrastructure Corporation</a><del>Authority</del>.</p> <p><b>ANNEXURE 1 TO SCHEDULE B</b></p> <p>See <del>Maps ARTC HV, ARTC3060217 two (2) pages</del><a href="#">Map ARTCSHV (one (1) page)</a> which <del>have</del><a href="#">has</a> been provided as a separate <del>maps</del><a href="#">map</a> for illustrative purposes only, and <del>form</del><a href="#">forms</a> part of <del>the</del><a href="#">this</a> annexure.</p> <p><del>This annexure illustrates the Network forming part of the New South Wales Lease as it was on 14 April 2009. The precise details of the Network forming part of the New South Wales Lease will change over the duration of the Undertaking, but not in such a way as to be inconsistent with the textual descriptions in Schedule B. The map represents the railway lines described at Schedule B as at the Commencement Date. This map may change over the Term.</del></p> <p>Applicants should refer to ARTC's website for an up to date map of the <del>Network forming part of the New South Wales Lease</del><a href="#">railway lines described at Schedule B</a>.</p>	(NSW) which changed the name of the Rail Infrastructure Corporation to the Country Rail Infrastructure Authority. The Country Rail Infrastructure Authority is a NSW Government agency (see section 19A of that Act).
76	Schedule C	<a href="#">The Train Priority Matrix (Table D1), the Decision Matrix (Table D2) and the set of Rules proposed below are contained in the NSW Lease. In recognition of the particular objectives of Coal Trains but within the constraints of the NSW Lease, ARTC has supplemented these rules with an additional set of guidelines to be applied when Coal Trains run out of course.</a>	
77	Schedule D	<p><b>Performance <a href="#">Measurement and Incentives</a></b></p> <p><b>1. <a href="#">Network Performance</a></b> Indicators</p> <p><b>Amended table of Key Performance Indicators</b></p> <p>...</p> <p><b>2. <a href="#">ARTC performance incentive schemes</a></b></p>	See the discussion in section 4.22 of the Explanatory Guide

	HVAU Section <sup>1</sup>	Amendments	Explanation
		<a href="#">[To be inserted.]</a>	
78	Schedule E	<b>SCHEDULE E - Segments</b> [Changes to table text - refer to the 2010 HVAU]	Amendments have been made to the prescribed Segments and Segment lengths in Schedule E following an internal review to better align with ARTC's operational and billing systems.
79	Schedule F	<p>SCHEDULE F - <a href="#">Principles to guide ARTC/ HVCCC Consultation</a></p> <ul style="list-style-type: none"> <li>• <a href="#">Where ARTC is required to consult with the HVCCC under this Undertaking or IAHA and a specific process is not set out in that provision, ARTC will use reasonable endeavours to follow the following steps to the extent practical and in light of the specific circumstances:</a></li> <li>• <a href="#">ARTC will request the HVCCC to provide ARTC with its view by a specified date, as reasonably determined by ARTC;</a></li> <li>• <a href="#">Where the HVCCC provides its view by the notified date, ARTC will consider that view in good faith;</a></li> <li>• <a href="#">Where ARTC disagrees with the view and there is sufficient time for the HVCCC to reconsider its view, as reasonably determined by ARTC, ARTC will provide its reasons to the HVCCC and will ask the HVCCC to reconsider in light of the ARTC's reasons by a specified date, as reasonably determined by ARTC;</a></li> <li>• <a href="#">Where the HVCCC provides its revised view by the notified date, ARTC will consider the revised view expressed by the HVCCC in good faith.</a></li> <li>• <a href="#">Ultimately, ARTC is not obliged to follow the HVCCC's recommendation.</a></li> </ul>	See the discussion at section 4.3 of the Explanatory Guide.
80	Schedule G	<b><a href="#">SCHEDULE G - Annual Compliance Assessment - information provision and timing</a></b> [Insertion on entirely new Schedule G - refer to the 2010 HVAU]	See the discussion at sections 4.12 and 5.13 of the Explanatory Guide.

## 2 Explanation of changes made in the 2010 IAHA

This table lists the key changes made to the December 2009 IAHA.

	IAHA Clause	Amendments	Explanation
1	1.1	<p><b>Definitions</b></p> <p><b>Access Undertaking</b> means:</p> <p>(a) the undertaking accepted by the ACCC from time to time under Division 6 of Part IIIA of the TPA that covers the Network, or</p> <p>(b) if the ACCC has accepted an undertaking under Division 6 of Part IIIA of the TPA that covers the Network which has expired and there is no access undertaking currently in force, the access protocols published by the ARTC after consultation with access holders, under which ARTC agrees to offer access to the Network from time to time,</p> <p><del>but to avoid doubt, until an access undertaking is accepted by ACCC under paragraph (a) and comes into effect, access to the Network will be granted in accordance with the terms of the NSW RAU as provided for in Schedule 4 of this agreement;</del></p>	The deleted proviso in the definition of Access Undertaking is not necessary given that the 2010 IAHA will not be entered into prior to the commencement of the 2010 HVAU.
2	1.1	<u><a href="#">Ad Hoc Charge Rebate is the rebate determined in accordance with clause 5.4;</a></u>	The definition of Ad Hoc Charge Rebate is necessary given the introduction of a new Ad Hoc Charge Rebate in clause 5.4 of the 2010 IAHA (see section 5.4 of the Explanatory Guide).
3	1.1	<b>Additional Capacity</b> means, in relation to the Network, the capability of the Network to carry additional task by an enhancement or improvement of the infrastructure forming part of the Network <u><a href="#">or Associated Facilities;</a></u>	This amendment reflects the change to the definition of Additional Capacity in the 2010 HVAU.
4	1.1	<b>Charges</b> means the TOP Charge <del>and</del> Non-TOP Charges <u><a href="#">and Ad Hoc Charges</a></u> calculated in accordance with <b>Schedule 3</b>	Ad Hoc Charges need to be identified as a Charge
5	1.1	<b>Commencement Date</b> means <del>the later of</del> the date that this agreement is signed by both parties <del>and 1 January 2010;</del>	The 2010 IAHA will not come into effect pre 1 January 2010.
6	1.1	<u><a href="#">Consumer Price Index or CPI means the Sydney All Groups Consumer Price Index number published by the Australian Bureau of Statistics.</a></u>	This amendment clarifies the definition of CPI and ensures consistency with the HVAU.
7	1.1	<u><a href="#">CTS Clearing House is the online interface on the website of the CTS Administrator where access holders can publish offers and requests for capacity at Terminal Operators and path usages and receive the contact details of other access holders who indicate their interest in participating in a Trade;</a></u>	ARTC has introduced this definition which, in conjunction with clause 16.6, clarifies ARTC's intention to use the HVCC to administer trades and that

	IAHA Clause	Amendments	Explanation
			ARTC will consider in good faith the HVCCC's recommendations.
8	1.1	<u>CTS Administrator is the body, appointed from time to time, responsible for the establishment, administration, operation and maintenance of the Terminal Operators' capacity trading system and, as at the Commencement Date of this Agreement is the HVCCC;</u>	ARTC has introduced this definition which, in conjunction with clause 16.6, clarifies ARTC's intention to use the HVCCC to administer trades.
9	1.1	<del>Extension has the meaning given in clause 5.7;</del>	Consequential to the deletion of clause 5.7.
10	1.1	<u>Functional Coal Path is a theoretical path meeting the requirements of clause 2.3(b) of Schedule 2;</u>	This concept is used in the definitions of Network Path Capability in clause 2.3 of Schedule 2.
11	1.1	<u>Key Performance Indicators means those performance measures identified in Schedule 4.</u>	See sections 4.22 and 5.3 of the Explanatory Guide
12	1.1	<u>Material Default means any breach of a fundamental or essential term or repeated breaches of any of the terms of the agreements;</u>	Reference to material default in clause 4.2(b)(i) and 12.1(a)(iii) are now defined terms. The definition is the same as in the 2010 HVAU.
13	1.1	<b>Monthly Tolerance Cap</b> means the limit for each Pricing Zone on the tolerance available to be used by access holders in that Pricing Zone in that Month as determined from time to time by ARTC <u>in accordance with clause 3.3(a) having regard to Available Capacity;</u>	ARTC has amended this definition in response to the ACCC's request for clarification as to how the Monthly Tolerance Cap is determined. ARTC's approach is set out in clause 3.3(a).
14	1.1	<b>Network Key Performance Indicators</b> means the performance indicators <u>included in Schedule D of the Access Undertaking; to be developed by ARTC for its Network pursuant to the Access Undertaking and reported on its website. These will include performance indicators developed by Access Holders and Operators through the HVCCC that are specific to the operation of Coal Trains and focus on management of the Hunter Valley Coal Chain</u>	This amendment was made to refer to the table of Network Key Performance Indicators that ARTC has included in Schedule D to the 2010 HVAU which are relevant to the negotiation of Key Performance Indicators for an agreement.
15	1.1	<b>Network Management Principles</b> means <del>the principles regulating Train movements on the Network which must be consistent with the Train Decision Factors contained in the NSW Lease, as published on ARTC's website;</del> <u>the Network Management Principles contained in the Access Undertaking;</u>	This amendment has been made to ensure consistency with the NMPs set out in the 2010 HVAU.
16	1.1	<del><b>NSW RAU or New South Wales Rail Access Undertaking</b> means the access undertaking given by Rail Infrastructure Corporation and Rail Corporation New South Wales pursuant to Schedule 6AA of the <i>Transport Administration Act 1988</i> (NSW) as amended from time to time;</del>	This definition has been removed because Schedule 4 of the 2010 HVAU (NSW RAU), which covers contracting pre-commencement of the 2010 HVAU, no longer needs to be included in the



	IAHA Clause	Amendments	Explanation
			2010 IAHA.
17	1.1	<del>Rebate is the rebate determined in accordance with clause 5.4(c)</del>	ARTC has replaced this definition with the definition of TOP Rebate
18	1.1	<b>Parent Guarantee</b> means a guarantee given by a Related Body Corporate of the Access Holder who has an Acceptable Credit Rating <del>which is in a form acceptable to ARTC (acting reasonably)</del> <u>in substantially the same form set out in the Access Undertaking;</u>	The 2009 IAHA and 2009 OSA required the applicant to agree to the Parent Guarantee included in Schedule H of the 2009 HVAU. This reference was removed from the December 2009 IAHA when ARTC contemplated signing agreements pre acceptance of the 2010 HVAU. The original wording now been re-inserted.
19	1.1	<u>Start Date</u> has the meaning given in the relevant Train Path Schedule;	Included at the request of producers.
20	1.1	<u>Tier 1 (Mandatory) Provision</u> means: (a) <u>a clause in the indicative access holder agreement included in the Access Undertaking first accepted by the ACCC which is identified as a Tier 1 (mandatory) provision in Schedule A:1 of that Access Undertaking; or</u> (b) <u>if the ACCC has accepted a new or varied Access Undertaking, a clause in the indicative access holder agreement included in the new or varied Access Undertaking which has been identified in that Access Undertaking as a clause which is mandatory to be included in all access holder agreements granting access rights to the Network to transport coal in the form set out in the indicative access holder agreement accepted as part of the new or varied Access Undertaking;</u>	ARTC has identified Tier 1 (Mandatory) Provisions. Subsection (b) of this definition, in combination with clause 1.5, makes it clear that Tier 1 (mandatory) provisions will include those provisions identified as Tier 1 (mandatory) provisions in any other variations to the 2010 HVAU accepted by the ACCC.
21		<u>TMTC</u> means the Target Monthly Tolerance Cap for each Pricing Zone, being the lesser of: (a) <u>the percentage of overall Capacity commissioned and available for use in the Pricing Zone, reasonably determined by ARTC as the target monthly tolerance cap following consultation with the RCG, as specified in the Hunter Valley Corridor Capacity Strategy for that Contract Year; and</u> (b) <u>ten per cent of the overall Capacity commissioned and available for use in the Pricing Zone;</u>	This definition has been included in conjunction with the amendments made to clause 3.3. Given the amount of tolerance available to be used by each Access Holder is limited to ten per cent (or 13 paths), ARTC considers it appropriate to limit the TMTC to ten per cent. The level of TMTC would normally be aligned to the extent of capacity provided by the industry (through the RCG) for system flexibility.
22	1.1	<u>TOP Rebate</u> is the rebate determined in accordance with clause 5.4(c)	This definition is required given the introduction of an Ad Hoc Rebate
23	1.4	<b>Schedule priority</b> <u>Subject to clause 1.5,</u> if a Train Path Schedule imposes additional terms in relation to a Train Path, then those terms will take priority over the body of this agreement to the extent any inconsistency arises between them.	The Train Path Schedule is expected to contain the specific provisions negotiated between the applicant and ARTC and accordingly would generally be given primacy over the standard terms. However, there needs to be an exception

	IAHA Clause	Amendments	Explanation
			to this principle for Tier 1 (mandatory) provisions which are to be interpreted consistently across all access agreements.
24	1.5	<p><b><u>Tier 1 Mandatory Provisions</u></b></p> <p>(a) <u>To the extent that any part of this agreement, including any term of the Train Path Schedule, is inconsistent with a Tier 1 (Mandatory) Provision, the Tier 1 (Mandatory) Provision will prevail.</u></p> <p>(b) <u>Any clause of this agreement which is a Tier 1 (Mandatory) Provision will be interpreted by reference to the objectives of the Access Undertaking, and the coal chain principles recognised by ARTC in the Access Undertaking.</u></p>	<p>ARTC has included clause 1.5(b) which provides that Tier 1 (mandatory) provisions are to be interpreted in line with the objectives of the 2010 HVAU and the coal chain principles set out in section 1.3 of the 2010 HVAU. This will constrain an expert or court from making a determination that is inconsistent with the coal chain principles.</p> <p>This provision has been included instead of the provision proposed in the response to the Draft Decision which would have obliged ARTC to inform the ACCC if a dispute arose in relation to a Tier 1 provision and to facilitate the ACCC making submissions before an expert or court.</p>
25	1.6	<p><b><u>1.6 Amendment to Consumer Price Index</u></b></p> <p><u>If either:</u></p> <p><u>(a) the Consumer Price Index ceases to be published quarterly; or</u></p> <p><u>(b) the method of calculation of the Consumer Price Index substantially alters,</u></p> <p><u>then the Consumer Price Index is to be replaced by the nearest equivalent index and any necessary consequential amendments are to be made. That index and those amendments are to be determined by agreement between the parties or, if the parties do not agree, by the Australian Bureau of Statistics or a nominee of the Australian Bureau of Statistics (acting as an expert and not as an arbitrator), whose decision is binding and conclusive.</u></p>	ARTC has included this provision in order to provide greater certainty in the event that the relevant CPI index is no longer published or the method used to determine the index is substantially altered.
26	3.1	<p><b>Grant of <del>Train Paths</del>Path Usages for transport of coal</b></p> <p><del>(a) ARTC grants to the Access Holder, for the purpose of transporting coal, the availability of, and the right to use, through an Operator, the following Path Usages in each Allocation Period:</del></p> <p><del>(i) (Base entitlement) the Base Path Usages for each Train Path for each Period determined in accordance with clause 3.2;</del></p> <p><del>(ii) (Tolerance) additional Path Usages in each Period in each Pricing Zone which, in aggregate over all</del></p>	See section 5.1 of the Explanatory Guide.

	IAHA Clause	Amendments	Explanation
		<p><del>Train Paths contracted by the Access Holder in the Pricing Zone, do not exceed the Tolerance determined in accordance with <b>clause 3.3</b> (for example, if the Tolerance is 13 Path Usages each Month, the Access Holder can elect to use an additional 13 Path Usages in the Month above the Base Path Usages on a particular Train Path or distribute those 13 additional Path Usages across all its Train Paths in the same Pricing Zone); and</del></p> <p><del>the use of the Network for this purpose, in accordance with the terms and conditions set out in this agreement and subject to ARTC's Passenger Priority obligations and the Availability Exceptions.</del></p> <p><u>(d)</u> <del>(b) (Annual cap)</del> <b>(Base entitlement)</b> ARTC grants to the Access Holder, for the purpose of transporting coal, the availability of, and the right to use the Base Path Usages for each Train Path in each Allocation Period determined in accordance with <b>clause 3.2</b>. The Access Holder's entitlement to its Base Path Usages for a Train Path in a Contract Year ends when it has utilised its Annual Contracted Path Usages for that Train Path. <del>Ad Hoc Path Usages are not counted in determining the utilisation of Annual Contracted Path Usages.</del></p> <p><del>(e) — (Tolerance caps) The Access Holder's entitlement to use the Tolerance in relation to a Train Path in a Period is subject to the following conditions:</del></p> <p><u>(e)</u> <b>(Tolerance)</b> ARTC will make additional Capacity available in each Month in each Pricing Zone (up to the Monthly Tolerance Cap determined in accordance with <b>clause 3.3</b>) for the purpose of providing access holders with coal access rights, including the Access Holder, a degree of flexibility as to the period in which they may use their annual contracted path usages. If available, the Access Holder may use Path Usages in addition to the Base Path Usages for a Train Path provided:</p> <p><u>(i)</u> <u>the aggregate number of Path Usages used by the Access Holder in a Period under this <b>clause 3.1(b)</b>, over all Train Paths contracted by the Access Holder in the Pricing Zone, does not exceed the Tolerance determined in accordance with <b>clause 3.3</b>;</u></p> <p><u>(ii)</u> <del>(i) the number of Path Usages (excluding Ad Hoc Path Usages) used by the Access Holder not having exceeded its</del> <u>on the Train Path do not exceed the Access Holder's Annual Contracted Path Usage in that Contract Year for that Train Path;</u> <del>and,</del></p> <p><del>(ii) — the Monthly Tolerance Cap for the relevant Pricing Zone not being exceeded.</del></p> <p><u>(f)</u> <del>(d) (Ad Hoc Path Usages)</del> This <b>clause 3.1</b> does not prevent ARTC providing Ad Hoc Path Usages to an Access Holder on request where such Path Usages are available.</p> <p><u>(g)</u> <b>(Limitations)</b> The Access Holder's rights under this <b>clause 3.1</b> to use a Path Usage must be exercised through an Operator and is subject to the terms and conditions set out in this agreement, including ARTC's Passenger Priority obligations and the Availability Exceptions.</p>	

	IAHA Clause	Amendments	Explanation
27	3.2	<p><b><u>Annual Determination of BPUase-Path Usages, MTC and NPC</u></b></p> <p>(a) <u>For the first Contract Year:</u></p> <p>(i) <u>the Access Holder's Base Path Usages for each Period will be agreed between ARTC and the Access Holder, as set out in the Train Path Schedule;</u></p> <p>(ii) <u>the Monthly Tolerance Cap for each Pricing Zone for each Month will be notified by ARTC to the Access Holder prior to the commencement of this agreement; and</u></p> <p>(iii) <u>the Network Path Capability for each Pricing Zone for each Period will be notified by ARTC to the Access Holder prior to the commencement of this agreement.</u></p> <p>(b) <del>For each subsequent Contract Year, ARTC will, before the commencement of that each Contract Year, ARTC will</del> determine the Access Holder's Base Path Usages for <del>that e-following</del> Contract Year in accordance with the following steps.</p> <p>(i) Following consultation with the HVCCC and the relevant Terminal Operators on the impact of Network Exit Capability and System Assumptions on Coal Chain Capacity, ARTC will <u>use reasonable endeavours to</u> publish by 1 July of each Contract Year, <u>but in any event before 30 September of each Contract Year</u> ARTC will determine, for each Period of the following Contract Year, the Access Holder's Base Path Usages for each Train Path in accordance with the following principles:</p> <p>(ii) ...</p> <p>(A) <del>(A) ARTC will reduce the Access Holder's entitlement to Path Usages below the Average Path Usages in each Period in which a Maintenance Month occurs on the basis of all access holders with train paths for Coal Trains in that Pricing Zone bearing an equitable share of the Maintenance Losses and any known Availability Exceptions for that Month; and in doing so, will take into account the number of days in a Month.</del></p> <p>(D) If the Path Usages are for the purpose of transporting coal to the Port of Newcastle, ARTC will consult with the HVCCC <u>with the objective of aligning and will use its reasonable endeavours to ensure that</u> the Access Holder's Base Path Usages <del>align</del> with the Access Holder's allocation of capacity at the relevant Terminal Operators <u>and will use reasonable endeavours to achieve such alignment</u> to the extent practicable.</p> <p>(c) <del>By 30 September of each Contract Year, For each Contract Year subsequent to the first Contract Year,</del> ARTC will <u>use reasonable endeavours to</u> notify the Access Holder <u>by 30 September of the previous Contract Year but in any event before the commencement of the Contract Year,</u> of the:</p> <p>(i) <u>Network Path Capability in each Pricing Zone for each Period of the Contract Year, determined in accordance with clause 2.3 of Schedule 2;</u></p> <p>(ii) <u>the Monthly Tolerance Cap in each Pricing Zone for each Month of the Contract Year, determined in accordance with clause 3.3; and</u></p> <p>(iii) Base Path Usages for the <del>next</del> Contract Year.</p>	<p>See section 5.2 of the Explanatory Guide</p> <p>Subsection 3.2(a) has been added because ARTC is unable to commit to follow the annual process to sculpt the Access Holder's BPU in advance of the first Contract Year as such steps would need to have taken place pre the commencement of the AHA. There is the same issue in respect of the MTC and the NPC.</p> <p>ARTC has amended the deadline for the determination of BPU to provide that ARTC will exercise "reasonable endeavours" to determine BPU by 1 July but with the inclusion of a back stop date (the same change is made at 3.3(c)). ARTC considers that this change is necessary because ARTC is dealing with a new system and processes and there may be many valid reasons why the deadlines are not achievable.</p> <p>ARTC has also provided in section 3.2(a) that it will provide the information on NPC and MTC at the same time as it provides BPU information to the access holder.</p> <p>Clause 3.2(b)(ii)(A) has been amended to clarify that the number of days in the month are taken into account in any reduction of Path Usages in certain months.</p>
28	3.3	<p><b><u>Determination of Monthly Tolerance Cap and Tolerance</u></b></p> <p>(a) <u>For each Contract Year subsequent to the first Contract Year ARTC will determine the Monthly Tolerance Cap for each</u></p>	<p>ARTC has set out section 3.3 in response to the ACCC's recommendation that ARTC define how it determines MTC.</p>

	IAHA Clause	Amendments	Explanation
		<p><u>Pricing Zone for each Month of that Contract Year in accordance with the following steps:</u></p> <ul style="list-style-type: none"> <li>(i) <u>subject to clause 3.3(a)(ii), having regard to the TMTC as an objective.</u> <ul style="list-style-type: none"> <li>(A) <u>ARTC will reduce the Monthly Tolerance Cap for each Pricing Zone below the TMTC for that Contract Year for each Maintenance Month to take into account the reduction in Capacity for Maintenance Losses and any known Availability Exceptions in that Month which will impact on Capacity in the Pricing Zone and</u></li> <li>(B) <u>ARTC will increase the Monthly Tolerance Cap for each Pricing Zone above the TMTC to make up for the reduction for Maintenance Losses and any known Availability Exceptions in the Maintenance Month, and in doing so, will take into account the number of days in a Month.</u></li> </ul> </li> <li>(ii) <u>if the delivery of the TMTC is identified in the Hunter Valley corridor capacity strategy as conditional upon the commissioning of Additional Capacity and the completion date for the project creating the Additional Capacity is after the commencement of the Contract Year, ARTC will, for those Months prior to the completion date of that project, have regard to a target monthly tolerance cap which ARTC reasonably considers reflects the Capacity available for tolerance prior to the completion of that project (rather than TMTC) when carrying out the steps in clause 3.3(a)(i)(A) and 3.3(a)(i)(B).</u></li> </ul> <p>(b) <u>If the project to deliver Additional Capacity is delayed beyond the expected completion date, or the project delivers less Capacity than anticipated, then ARTC will, prior to the commencement of the Month when the Additional Capacity was due to be commissioned, advise the Access Holder by notice of any reduction in the Monthly Tolerance Cap in those subsequent Months.</u></p> <p>(c) <u>The Access Holder's Tolerance in each Pricing Zone for each Period will be determined in accordance with the following:</u></p> <ul style="list-style-type: none"> <li>(i) If the Access Holder has an Allocation Period of a Month, the Access Holder's Tolerance in each Pricing Zone for each Month will be <del>determined in accordance with the following formula:</del> <p><del>Tolerance =</del> the higher of:</p> <ul style="list-style-type: none"> <li>(A) <math>10\% \times \sum (AVPU_{TP1} \dots AVPU_{TPN})</math>; or</li> <li>(B) 13 Path Usages;</li> </ul> </li> <li>(ii) If the Access Holder has an Allocation Period of a Quarter, the Access Holder's Tolerance in each Pricing Zone for each Quarter will be <del>determined in accordance with the following formula:</del> <p><del>Tolerance =</del> the higher of:</p> <ul style="list-style-type: none"> <li>(A) <math>10\% \times 0.33 \sum (AVPU_{TP1} \dots AVPU_{TPN})</math>; or</li> <li>(B) 13 Path Usages;</li> <li>...</li> </ul> </li> </ul> <p>(e) <u>Within</u> <del>By the earlier of:</del></p>	<p>See section 5.2 of the Explanatory Guide.</p> <p>Subsection 3.3(e) has been amended to update the timetable for the review of tolerance given the delay in the commencement of the 2010 HVAU and signing of the AHAs. The timing of the tolerance review will coincide with the proposed review of cancellations in the 2010 HVAU.</p>

	IAHA Clause	Amendments	Explanation
		<p><del>30 September 2010; and</del></p> <p><del>twelve</del>six months from the date an Access Undertaking is accepted by the ACCC covering the Network first comes into effect, ARTC will commence a consultation with access holders on the level of Tolerance available and will provide a report to the RCG summarising the results of this review. The purpose of this review is to consider the impact of the level of tolerance on Coal Chain Capacity.</p>	
29	3.5	<p><b>Identification of Allocation Period</b></p> <p>(a) <u>For the first Contract Year, the Access Holder's Allocation Period for a Train Path is set out in the Train Path Schedule.</u></p> <p>(b) <u>For each subsequent Contract Year, if</u> the Access Holder and its Associates:</p> <p>(i) have aggregate load point allocations less than or equal to five Mtpa at the terminals operated by PWCS for any Contract Year <del>between 1 January 2010 and</del> <u>before</u> 31 December 2011; or</p>	This amendment has been made for the same reasons set out above under clause 3.2(a).
30	3.8	<p><b>Passenger Priority in New South Wales</b></p> <p>The Access Holder acknowledges, and will not do anything to interfere with or breach, ARTC's obligations at all times, in relation to the Network to:</p> <p>...</p> <p>(b) preserve existing <del>or future</del> passenger train paths; and</p>	ARTC has made this amendment after reviewing the terms of the NSW Lease. ARTC is of the view that it is not required to preserve future passenger train paths.
31	3.13	<p><b>Key performance indicators</b></p> <p>(a) <u>If requested by the Access Holder, ARTC will report actual performance against each of the Key Performance Indicators, within a reasonable period following the completion of the reporting period specified in Schedule 4, as determined by ARTC having regard to the specific characteristics of each indicator.</u></p> <p>(b) <u>The parties will meet regularly, and in any case at least once each Contract Year, for the purpose of discussing actual performance against the Key Performance Indicators in Schedule 4.</u></p> <p>(c) <u>If requested by a party, the other party agrees to include one or more Operators in a review of performance against the Key Performance Indicators, as contemplated at clause 3.13(a).</u></p> <p>(d) <u>The Key Performance Indicators will be reviewed in good faith by ARTC and the Access Holder at least once every two Contract Years and, in any case, promptly following a review of the Network Key Performance Indicators.</u></p> <p>The provisions above have replaced the previous 3.13(a)-(b).</p>	<p>ARTC will negotiate and agree KPIs with an applicant for inclusion in an AHA within the framework set out in section 8 of the 2010 HVAU.</p> <p>See section 5.3 of the Explanatory Guide.</p>
32	3.14	<p><b>Network Exit Capability requirement</b></p> <p>(a) If the Access Holder is seeking to transport a <u>particular</u> cargo of coal to the Port of Newcastle and the HVCCC or a Terminal Operator advises ARTC that the Access Holder does not have sufficient Network Exit Capability to offload the anticipated coal at a coal terminal at the Port of Newcastle, then ARTC is not obliged to make available a Path Usage to the Access Holder for the period where it does not have sufficient Network Exit Capability.</p>	This change was made in response to a request from producers.

	IAHA Clause	Amendments	Explanation
33	4.6	<p><b>Limited agency</b></p> <p>(a) If the Access Holder is not also the Operator for a Path Usage, the Access Holder appoints each nominated Operator, as its agent for the following purposes:</p> <p>...</p> <p>but the actual operation of Services on any Path Usage remains the responsibility of the Operator, <del>and, to avoid doubt, the Access Holder does not incur liability for Incidents as a result of this clause 4.6(a).</del></p> <p>...</p> <p>(c) <u>To avoid doubt, the Access Holder does not incur liability for Incidents caused by the acts or omissions of the Operator as a result of the operation of this Agreement.</u></p>	<p>ARTC has deleted part of clause 4.6(a) because it was unnecessary given the new broader provision in clause 4.6(c).</p>
34	5.4	<p><b>Calculation of TOP Rebate <u>and Ad-Hoc Charge Rebate</u></b></p> <p>(a) Within <del>20-30</del> Business Days of the end of each <u>calendar year in which the Access Holder has an entitlement to Path Usages in a Train Path Schedule</u><del>Contract Year</del>, ARTC will:</p> <p>(i) <u>determine if there is a Ad Hoc Charge Rebate owing to the Access Holder for Ad Hoc Charges paid for each Train Path in each Pricing Zone determined in accordance with the formulae in clause 5.4(b); and</u></p> <p>(ii) undertake an annual reconciliation of the <u>TOP</u> Rebate owing to the Access Holder for each Train Path in each Pricing Zone determined in accordance with <u>the formulae in clause 5.4(c) ("Annual Reconciliation")</u>.</p> <p>(b) <u>If APU - Ad Hoc Path Usages &lt; ACP, then the Access Holder is entitled to a rebate of Ad Hoc Charges paid to ARTC for Ad Hoc Path Usages on the Train Path in the Pricing Zone calculated in accordance with the following formula:</u></p> <p><u>[ACP - (APU - Ad Hoc Path Usages)] x Ad Hoc Charge</u></p> <p><u>Where:</u></p> <p><u>APU means the Actual Path Usages being, subject to clause 16.5, the total number of Path Usages in the Pricing Zone in respect of which the Operator actually operated a Service for the Access Holder on that Train Path in the previous Contract Year;</u></p> <p><u>ACP is the unconditional Annual Contracted Path Usages for that Train Path in the Pricing Zone specified in the Train Path Schedules less any Path Usages not made available under clause 3.14, or clause 4.5 of this agreement; the following formula ("Annual Reconciliation"):</u></p> <p>(c) If APU &lt; ACP</p> <p><del>(c) Where:</del></p> <p><del>APU is the Actual Path Usages being, subject to clause 16.5, the total number of Path Usages in the Pricing Zone in respect of which the Operator actually operated a Service for the Access Holder on that Train Path in the previous Contract Year;</del></p>	<p>In clause 5.4, ARTC has included a mechanism to provide for the rebate of TOP and Ad Hoc Charges. See section 5.4 of the Explanatory Guide.</p> <p>The amendments to clause 5.4(c) have been made to reflect the terms used in Schedule 3 and the way in which TOP Charges are calculated in that Schedule.</p>

	IAHA Clause	Amendments	Explanation
		<p><del>ACP is the unconditional Annual Contracted Path Usages for that Train Path in the Pricing Zone specified in the Train Path Schedules;</del></p> <p>then the Access Holder is entitled to a <u>TOP</u> Rebate equal to the lesser of the rebate applicable for the annual deficiency in contracted Path Usages for that Train Path in the Pricing Zone and the sum of the accrued system rebates under <b>Schedule 2</b> in respect of that Train Path in the Pricing Zone, as determined in accordance with the following formulae:</p> <p>...</p> <p>TOP<sub>PU</sub> is the Train Path TOP Charge associated with a Path Usage for that Train Path in that Pricing Zone which will be calculated by dividing the <del>sum of the monthly</del> Train Path TOP Charge for that Pricing Zone in that Contract Year (the Train Path TOP Charge for each Month for the initial year are set out in column 10 of the tables in clause 3.2 and 3.3 of the <b>Train Path Schedule</b>) by the <del>Average annual Contracted</del> Path Usages (which for the initial year are set out in column <del>42</del> of the tables in clause 3.2 and 3.3 of the <b>Train Path Schedule</b>);</p> <p>...</p> <p>(d) Within 20 Business Days of performing the Annual Reconciliation ARTC will make a payment to the Access Holder of the <u>TOP</u> Rebate determined under <del>clause 5.4(c) and the Ad Hoc Charge Rebate determined under clause 5.4(b)</del>.</p> <p>(e) Except as required under <b>clause 5.8</b>, ARTC is not required to pay any interest in relation to the <u>TOP</u> Rebate <del>or the Ad Hoc Charge Rebate</del>.</p> <p>(f) If the Access Holder disputes the amount of the <u>TOP</u> Rebate <del>or the amount of the Ad Hoc Charge Rebate</del>, it must notify ARTC of that dispute under <b>clause 14</b> within one month of the date of the issue of the Annual Reconciliation and the dispute will be determined by expert determination in accordance with <b>clause 14.4</b>. If the Access Holder does not notify <u>ARTC</u> of a dispute within this time, it is deemed to have accepted the <u>TOP</u> Rebate <del>and the Ad Hoc Charge Rebate</del> as accurate and waives any right to make a Claim in respect of the <del>at TOP Rebate or the Ad Hoc Charge Rebate</del>, <u>TOP Charges or the Ad Hoc Charges</u> payable in the previous Contract Year.</p>	
35	5.7	<p><del><b>5.7 – Extensions</b></del></p> <p><del>(a) In the event that ARTC, at its cost, adds infrastructure not forming part of the Network (“Extensions”) and the parties agree to the Access Holder being granted access to the Extensions as part of the extended Network, ARTC may charge the Access Holder for access to the Extensions as a term of it agreeing to the additional infrastructure. ARTC may charge the Access Holder such amount it determines as being reasonable after taking into account:</del></p> <p><del>(i) the costs incurred by it in constructing the Extensions and the recovery of such costs over the time such Extensions can be utilised by all access holders;</del></p> <p><del>(ii) the location of the Extensions;</del></p> <p><del>(iii) the number of access holders that ARTC estimates will use the Extensions; and</del></p> <p><del>(iv) any other legitimate commercial factors which ARTC might reasonably consider.</del></p> <p><del>(b) Clause 14 does not apply to ARTC’s determination under this clause.</del></p>	This section was deleted at the ACCC’s request (see section 5.5 of the Explanatory Guide).
36	6.1	<b>Identification of Shortfall in existing Capacity</b>	ARTC has clarified that the consultation principles set out in the 2010 HVAU will



	IAHA Clause	Amendments	Explanation
		<p>(a) If, at any time during a Month, ARTC identifies that there is likely to be a shortfall in Capacity to meet all remaining unconditional Capacity entitlements held by all access holders in that Month, after taking into account likely usage of access holders with an allocation period of a Quarter, and the shortfall arises other than as a result of planned maintenance provided for in <b>clause 3.2</b>, ("<b>Capacity Shortfall</b>") then ARTC will:</p> <p>...</p> <p>(ii) subject to meeting its obligations under <b>clause 6.2</b> and <b>clause 6.3</b>, consult with the HVCCC <u>in accordance with the principles set out in Schedule F of the Access Undertaking</u> with the objective of coordinating its response to the Capacity Shortfall with the Terminal Operators and above rail-<del>operators</del><u>providers</u>.</p>	apply.
37	6.2	<p><b><u>Event leading to Capacity Shortfall of less than five days</u></b></p> <p>(a) If ARTC expects that <u>the impact of</u> an event resulting in a Capacity Shortfall will be for a duration of five days or less, and there will be insufficient Capacity to meet all remaining unconditional Capacity entitlements held by all access holders in that Month after taking into account likely usage of access holders with an allocation period of a Quarter, ARTC will allocate the Capacity available in accordance with the following principles:</p> <p>(i) <del>(a)</del> Capacity will be allocated first to passenger services in accordance with ARTC's obligations under section 88L of the <i>Transport Administration Act 1988 (NSW)</i>;</p> <p>(ii) <del>(b)</del> Capacity remaining after the allocation of Capacity under <b>subsection</b><del>sub-section (a)</del> will be allocated to access holders at ARTC's discretion <del>taking</del> <u>In exercising its discretion ARTC must take</u> into account <u>ARTC's</u> contractual obligations under <del>the</del> access agreements <del>and any impact on the</del> <u>but may allocate Capacity other than on an equitable basis if it is consistent with the objective of ensuring</u> efficient utilisation of <u>the Network during the Capacity and Coal Chain Capacity Shortfall and after considering any recommendations provided by the HVCCC under clause 6.1(a)(ii)</u>.</p> <p>(b) <u>ARTC will promptly inform the HVCCC of the result of the allocation of Capacity under clause 6.2(a)</u>.</p>	<p>ARTC has amended the titles of clauses 6.2 and 6.3 to reflect the wording in the actual provisions which more accurately describes the measurement (as capacity is contracted over a minimum period of at least a month, any shortfall in capacity would be more than five days).</p> <p>Subclause (a)(ii) has been amended to make it clear that ARTC's objective is to ensure the Network is efficiently utilised during the period of the short term temporary shortfall and that with this objective in mind, ARTC has a discretion to allocate the remaining Capacity as it sees fit, but taking into account ARTC's contractual obligations.</p> <p>ARTC has introduced clause 6.2(b) in response to a recommendation by the ACCC that ARTC should inform the HVCCC of the allocation of capacity following a capacity shortfall. This change is also made at clauses 6.3(b) and 6.4(b).</p>
38	6.3	<p><b><u>Event leading to Capacity Shortfall of greater than five days</u></b></p> <p>(a) If ARTC expects that <u>the impact of</u> an event resulting in a Capacity Shortfall will be for a duration of more than five days or an event resulting in a Capacity Shortfall subsequently has a duration of more than five days, and there will be insufficient Capacity to meet all remaining unconditional Capacity entitlements held by all access holders in that Month after taking into account likely usage of access holders with an allocation period of a Quarter, ARTC will allocate the Capacity available in accordance with the following principles:</p> <p>...</p> <p>(ii) To the extent practicable, contracted path usages from load points not affected by the Capacity Shortfall (for example, load points east of <u>the event causing the Capacity Shortfall</u><del>a constraint in the Network</del>), will not be reduced by the Capacity Shortfall and access holders should continue to be able to use contracted path usages</p>	The amendments to clause 6.2(a)(iii) clarify that an Access Holder will be an affected Access Holder where the impact of the Incident occurs between the load point and the exit point and the Access Holder has some remaining contractual entitlement to Path Usages in the Period.

	IAHA Clause	Amendments	Explanation
		<p>originating from unaffected load points.</p> <p>(iii) ARTC will, to the extent practicable, reduce the number of path usages for each affected load point <a href="#">(for example, a load point west of the event causing the Capacity Shortfall where the Access Holder has Capacity Entitlements remaining in that month)</a> with the objective that each affected load point will at the end of the Month have borne an equitable pro-rata share of the Capacity Shortfall.</p> <p>(b) <a href="#">ARTC will promptly inform the HVCCC of the result of the allocation of Capacity under clause 6.3(a).</a></p>	
39	6.4	<p><b>Shortfall in creation of Additional Capacity</b></p> <p>(a) Where there is a delay in the completion of a project creating Additional Capacity such that some, but not all, Additional Capacity becomes available, <a href="#">or a project creating Additional Capacity creates less Capacity than expected</a>, that capacity will be allocated among the access holders who have entitlements to the Additional Capacity on an equitable pro-rata basis. By way of example, if one access holder had 60% of all contracted entitlements to the Additional Capacity created by that project, then 60% of the available Additional Capacity will be allocated to that access holder.</p> <p>(b) <a href="#">ARTC will promptly inform the HVCCC of the result of the allocation of Capacity under clause 6.4(a).</a></p>	ARTC has amended clause 6.4(a) in response to producers' concerns that the original provision did not address the scenario where a shortfall arises because a project delivers less than expected capacity.
40	7.1-7.2	<p><b>7.1 Obligation to grant Credit Support - credit rating test</b></p> <p>....</p> <p>(b) The amount of the Security <a href="#">referred to in clause 7.1(a)</a> will be reviewed every 12 months from the Effective Date to reflect any increase in TOP Charges. The results of the review are not subject to <b>clause 14</b></p> <p>(f) Upon termination <a href="#">or expiry</a> of the agreement, ARTC will release the Security to the Access Holder provided that at such time the Access Holder does not owe any further monies to ARTC under this agreement, in which case, the Security will:</p> <p><b>7.2 Obligation to grant Security - payment default</b></p> <p>(e) The amount of the Security referred to <a href="#">in clause 7.2(a)</a> will be reviewed every 12 months from the Effective Date to reflect any increase in TOP Charges. The results of the review are not subject to clause 14</p> <p>(g) <b>Clauses 7.2(f) and (g)</b> survive termination <a href="#">or expiry</a> of this agreement.</p> <p>(h) Upon termination <a href="#">or expiry</a> of the agreement, ARTC will release the Security to the Access Holder provided that at such time the Access Holder does not owe any monies to ARTC under this agreement, in which case, the Security will:</p>	ARTC has amended these provisions to clarify that it will release security on either termination or expiry of the agreement.
41	8.5	<p><del>Provision of information to the</del> <a href="#">Working with the HVCCC</a></p> <p>(b) <a href="#">If ARTC is required to consult with the HVCCC under this agreement and a specific process is not set out in that provision, ARTC will use reasonable endeavours to follow the steps set out in Schedule F to the Access Undertaking to the extent practical.</a></p>	This provision is included as a 'catch all' to ensure that all consultation between ARTC and the HVCCC (which is not subject to a specific process) is covered by the principles set out in Schedule F.

	IAHA Clause	Amendments	Explanation
42	11.1	<p><b>Permanent variation to Train Paths</b></p> <p>(b) A Train Path may be varied for the remainder of the Term (or for such other duration as may be agreed) if:</p> <p style="padding-left: 40px;">(i) one party to this agreement (“<b>Requesting Party</b>”) sends a notice to the other party (“<b>Notified Party</b>”) stating:</p> <p style="padding-left: 80px;">...</p> <p style="padding-left: 40px;">(C) <a href="#">if the Requesting Party is ARTC, whether ARTC will relieve the Access Holder of its obligation to pay TOP Charges;</a></p>	<p>ARTC has introduced clause 11.1(b)(i)(C) in response to producers' requests that ARTC inform the Access Holder of its intended approach up-front.</p>
43	11.2	<p><b>Repairs, maintenance and upgrading of the Network</b></p> <p>(c) Possession of the Network means closure of the relevant part of the Network to all traffic for the purpose of effecting repairs, maintenance or upgrading. ARTC will consult with the Access Holder and the relevant Operator a reasonable time before taking possession of the Network (except in the case of an emergency) with a view to efficient possession planning and with a view to minimising disruption to Services, <del>and ARTC may at its discretion waive the TOP Charges applicable to any Services affected by this clause 11.2.</del></p>	<p>This clause has been amended because ARTC is of the view that the discretion to waive TOP for Coal Access Rights is inconsistent with the nature of those rights and the purpose of the application of the True Up Test and Annual Reconciliation (TOP Rebate). See section 5.6 of the Explanatory Guide for a detailed explanation.</p>
44	11.3	<p><b>Third Party Works</b></p> <p>(a) The Access Holder acknowledges that:</p> <p style="padding-left: 40px;">...</p> <p style="padding-left: 40px;">(ii) notwithstanding any other provision of this agreement, ARTC reserves the right to permit third parties to carry out Third Party Works <a href="#">if that party has a legal right to undertake those Third Party Works, including as arising from legislation or the NSW Lease.</a></p>	<p>ARTC has amended clause 11.3(a) to clarify that this section only applies to Third Party Works. Works carried out by ARTC or its contractors are not Third Party Works (see the definitions clause).</p>
45	11.4	<p><b>Removal of Path Usages for Under-utilisation</b></p> <p>(a) Subject to <b>clause 11.4(b)</b>, if, following the end of a Period for a Train Path the:</p> <p style="padding-left: 40px;">Actual Path Usages<sub>M...M-5</sub> / Base Path Usages<sub>M...M-5</sub> &lt; 80%</p> <p>then, <del>ARTC will request the Access Holder to provide reasons provided the Access Holder cannot demonstrate to ARTC's reasonable satisfaction to ARTC demonstrating that it has</del> a sustained requirement for the Path Usages that were not utilised in the previous six months, <del>and if the Access Holder fails to establish that it has a sustained requirement for those Path Usages to ARTC's reasonable satisfaction, then</del> ARTC has the right to elect, by notice in writing to the Access Holder (of not less than 30 days), to delete Path Usages from the relevant Train Path Schedule</p>	<p>ARTC has amended clause 11.4(a) in response to the ACCC's concern that it may not be sufficiently strong to prevent hoarding. See section 5.7 of the Explanatory Guide.</p>

	IAHA Clause	Amendments	Explanation
		in accordance with <b>clause 11.4(b)</b> .	
46	11.5	<p><b><u>Use of Non-Compliant Services</u></b> <del>compliance with Service Assumptions and cancellation of Services</del></p> <p>(a) <u>(Request to temporarily use a Non-Compliant Service)</u> ARTC will not unreasonably withhold its consent to a request from the Access Holder to operate a Non-Compliant Service for a Period (including a request from the Access Holder for an Operator to operate more than the number of Services specified to be operated by that Operator in a Period in the Train Path Schedule) if:</p> <ul style="list-style-type: none"> <li>(i) <u>the Access Holder provides ARTC with [three days] notice of its intention to use or operate a Non-Compliant Service; and</u></li> <li>(ii) <u>ARTC is satisfied that the use or operation of the Non-Compliant Service in that Period will not have a material adverse impact on Capacity, Coal Chain Capacity or the Capacity entitlement of another access holder.</u></li> </ul> <p>(b) <u>If ARTC consents to the use or operation of a Non-Compliant Service, ARTC may (but is not required to) update the TOP Charges to be payable by the Access Holder to reflect the characteristics of the Non-Compliant Service used or operated by the Access Holder.</u></p> <p>(c) <u>(Permanent change to Service Assumptions)</u> ARTC will not unreasonably withhold its consent to a variation of the Service Assumptions for a Train Path (including a variation of the number of Services specified to be operated by an Operator each Period in the Train Path Schedule) if:</p> <ul style="list-style-type: none"> <li>(i) <u>the Access Holder provides ARTC with [30 days] notice of the new service assumptions proposed by the Access Holder for the Train Path; and</u></li> <li>(ii) <u>ARTC is satisfied that the use or operation of the path usages in accordance with the new service assumptions proposed by the Access Holder will not have a material adverse impact on Capacity, Coal Chain Capacity or the Capacity entitlement of another access holder.</u></li> <li>(iii) <u>the variation of the Service Assumptions does not lead to a reduction in TOP Charges that would otherwise be payable.</u></li> </ul> <p>(d) <u>If the Service Assumptions applicable to a Train Path have been permanently amended under clause 11.5(c), the Access Holder agrees that the applicable Train Path Schedule will be amended to reflect the new Service Assumptions and the TOP Charges payable by the Access Holder under clause 5.2 will be updated to reflect the new Service Assumptions.</u></p> <p><del>(e) (a) (Consistent use of a Non-Compliant Service without consent)</del> If the Access Holder consistently uses Non-Compliant Services and,</p> <ul style="list-style-type: none"> <li>(i) <u>the Access Holder has not sought and obtained consent from ARTC to use a Non-Compliant Service under this clause 11.5.</u></li> <li>(ii) <del>(i)</del> ARTC reasonably considers that the use or operation of the Non-Compliant Services has a material adverse impact on Capacity, Coal Chain Capacity or the Capacity entitlement of another access holder; <u>or</u></li> <li>(iii) <del>(ii)</del> ARTC reasonably considers that there is a material difference in the TOP Charges paid by the Access Holder for those Path Usages and the TOP Charges that would otherwise be payable for those Path Usages had the Service Assumptions reflected the characteristics of the Non-Compliant Service; <u>or the Services used are Non-</u></li> </ul>	<p>See section 5.8 of the Explanatory Guide.</p> <p>The amendments in clause 11.5(k) ensure that, in exercising its rights under clause 11.5, ARTC is entitled to rely on the information and opinions of the HVCCC, as well as the recommendations it provides about the impact of Non-Compliant Services and any permanent changes to system assumptions.</p> <p>The new subclause 11.5(a)(iii) ensures that ARTC will not be financially worse off in committing to a permanent change to Service Assumptions.</p>

	IAHA Clause	Amendments	Explanation
		<p><u>Compliant Services due to the train type used to operate the Services.</u></p> <p><del>(iii) the Services used are Non-Compliant Services due to the train type used to operate the Services;</del></p> <p>ARTC may issue a warning notice requiring the Access Holder to use a Service which complies with the Service Assumptions in the applicable Train Path Schedule.</p> <p><i>[Previous subsections 11.5(b) and (f) have been deleted.]</i></p> <p><u>(k) <del>(j)</del> In exercising its rights under this clause 11.5, ARTC may have regard to, and is entitled to rely on, information provided by and recommendations by or opinions of the HVCCC on the impact of Non-Compliant Services, or the operation of Services complying with the New Service Assumptions (as applicable), on Coal Chain Capacity and on the HVCCC's attribution of fault for the cancellation of a Service Capacity.</u></p> <p><u>(l) <del>(j)</del> Nothing in this clause 11.5(e)-(k) affects ARTC's entitlement to suspend or terminate a Train Path Schedule in accordance with clause 12 of this agreement.</u></p>	
47	11.6	<p><u>Cancellation of services</u></p> <p>(a) <u>ARTC will request the HVCCC to inform ARTC on a weekly basis of the total number of cancelled services assigned to the Access Holder in the previous week by the Live Run Superintendent Group, as collated and reported by the HVCCC, and whether the total number of cancellations assigned to the Access Holder in that week has had, in the reasonable opinion of the HVCCC, an impact on Capacity, Coal Chain Capacity or the Capacity entitlement of another access holder in that week.</u></p> <p>(b) <u>To avoid doubt, the number of cancelled services assigned to the Access Holder, as collated and reported by the HVCCC, may include cancellations of services scheduled to be used or operated by or on behalf of another access holder where the cancellation was assigned to the Access Holder by the Live Run Superintendent Group.</u></p> <p>(c) <u>If ARTC is informed by the HVCCC that the cancellations in clause 11.6(a) have had, in the reasonable opinion of the HVCCC, an impact on Capacity, Coal Chain Capacity or the Capacity entitlement of another access holder, then ARTC may remove Path Usages from the Access Holder's Base Path Usages in the Period immediately following the Period in which the cancellations had an impact on Capacity, Coal Chain Capacity, or the contractual entitlement of another access holder. If Base Path Usages are removed in accordance with this clause 11.6(c), ARTC will delete the number of removed Path Usages from the Access Holder's Annual Contracted Path Usages in the relevant Train Path Schedule.</u></p> <p>(d) <u>The number of Path Usages to be removed from the Access Holder under clause 11.6(c) will:</u></p> <p>(i) <u>in respect of the number of cancellations assigned to the Access Holder due to a single event be no more than [two]; and</u></p> <p>(ii) <u>in total will be no more than the number of cancellations reported in clause 11.6.</u></p> <p>(e) <u>If ARTC is informed by the HVCCC that the cancellations reported in this clause 11.6 have had, in the reasonable opinion of the HVCCC, an impact on Capacity, Coal Chain Capacity or the Capacity entitlement of</u></p>	<p>See section 5.9 of the Explanatory Guide.</p> <p>The amendments in 11.6 also ensure that, in exercising its rights under that clause, ARTC is entitled to rely on the information and opinions of the HVCCC, as well as the recommendations it provides.</p>

	IAHA Clause	Amendments	Explanation
		<p><a href="#">another access holder, but ARTC has not removed Base Path Usages from the Access Holder, then ARTC will provide the HVCCC with written reasons for its decision not to remove Base Path Usages from the Access Holder, as soon as reasonably practical.</a></p> <p>(f) <a href="#">To avoid doubt, the Access Holder's obligation to pay TOP Charges will be unaffected by the removal of Base Path Usages under this clause 11.6.</a></p> <p>(g) <a href="#">Clause 14 does not apply to any determination by ARTC under this clause 11.6.</a></p> <p>(h) <a href="#">In exercising its rights under clause 11.6, ARTC is entitled to rely on information provided by, and the recommendations and opinions of, the HVCCC.</a></p>	
48	12.1	<p><b>Termination for breach</b></p> <p>(d) Notwithstanding that ARTC may be the defaulting party, nothing in <b>clause 12.1(b)</b> derogates from or affects ARTC's rights and powers to manage the Network <del>and any of its other rights or powers</del> under this agreement or any other agreement with any other person, including any access holder agreement with any other access holder.</p>	This deletion was made at the request of the ACCC.
49	13.4	<p><b>Mutual Liability cap</b></p> <p>(a) If a Claim or Liability arises that is not covered by <b>clause 13.1</b> or <b>13.2</b>, and other than the liability to pay Charges (including under <b>clauses 12.8</b> and <b>16.3</b>), a party's maximum aggregate Liability to the other party for all Claims arising in or made during a Contract Year relating to this agreement however arising (including under this agreement, in tort (including negligence), or for breach of any statutory duty) but excluding Liability caused by fraudulent or Wilful Misconduct is limited to the lesser of <del>the annual cap, as determined under clause 13.4(b), \$2 million per Contract Year</del> and the amount of the TOP Charges payable for that Contract Year.</p> <p><a href="#">(b) The annual cap will be [\$2 million in 2010 \$] for the first Contract Year and will be escalated at the commencement of each subsequent Contract Year in accordance with the following formula:</a></p> <p><a href="#">Cap<sub>t</sub> = Cap<sub>t-1</sub> x (CPI<sub>t</sub> / CPI<sub>t-1</sub>)</a></p> <p><a href="#">Where:</a></p> <p><a href="#">Cap<sub>t</sub> is the annual cap for that Contract Year;</a></p> <p><a href="#">Cap<sub>1</sub> is the annual cap for the previous Contract Year;</a></p> <p><a href="#">CPI<sub>t</sub> = the CPI last published before the commencement of that Contract Year; and</a></p> <p><a href="#">CPI<sub>t-1</sub> = the CPI last published before the commencement of the previous Contract Year.</a></p>	ARTC has included this CPI escalation clause to ensure that the annual liability cap is escalated in line with CPI increases.
50	13.6	<p><b><a href="#">Proportionate liability</a></b></p> <p><a href="#">To avoid doubt, the parties agree that section 35 of the Civil Liability Act 2002 (NSW) applies to any apportionable claim relating to this agreement.</a></p>	ARTC has introduced this section to remove any uncertainty that the above provisions will be interpreted as an attempt to exclude the application of proportionate liability legislation.

	IAHA Clause	Amendments	Explanation
51	15.1	<p><b>Acknowledgment of confidentiality</b></p> <p>(a) Each party acknowledges, subject to <b>clause 15.2 and 15.3</b>, that all information provided by one party (“<b>Provider</b>”) to the other (“<b>Receiver</b>”) under this agreement that is designated or indicated, <del>either orally or</del> in writing, as being the confidential information of the Provider or any of its <del>R</del>related <del>b</del>Bodies <del>e</del>Corporates (“<b>Confidential Information</b>”) 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 purposes that the provisions of this agreement allow.</p>	<p>ARTC has amended this provision to make it clear that only that information that is designated or indicated in writing as confidential, will be classified as Confidential Information. This is consistent with confidentiality provisions under the 2010 HVAU. ARTC considers that this change is necessary to avoid the potential for disputes and allegations regarding the appropriate identification of confidential information.</p>
52	16.1	<p><b>By ARTC</b></p> <p><u>(a) The Access Holder agrees that ARTC may, by prior written notice to the Access Holder, assign or novate this agreement, its interest in the subject matter of this agreement or any right under this agreement:</u></p> <p><u>(i)</u> to a successor of ARTC or to any body established by any person in relation to the management of the Network or any relevant or material part of it; <u>or</u></p> <p><u>(ii)</u> on the expiration or earlier termination of the NSW Lease, to the lessor of the Network or a nominee of the lessor of the Network,</p> <p><u>and the Access Holder is deemed to have given its consent to an assignment and novation of this agreement and will cooperate with ARTC and execute any instrument reasonably required by ARTC to give effect to the novation or assignment.</u></p> <p><del>(b) Other than to a successor of ARTC or to any body established by any person in relation to the management of the Network or any relevant or material part of it, or on the expiration or earlier termination of the NSW Lease, to the lessor of the Network or a nominee of the lessor of the Network. In all circumstances other than those referred to in clause 16.1(a), ARTC may not assign or novate this agreement, its interest in the subject matter of this agreement or any right under this agreement without the prior written consent of the Access Holder, which will not be unreasonably withheld.</del></p> <p><del>(b) Nothing in clause 16.1(a) prevents ARTC from entering into any sub-contracting or agency agreements or arrangements in relation to any of its functions.</del></p>	<p>This clause was amended to ensure that ARTC complies with its obligations under the NSW Lease. See section 5.10 of the Explanatory Guide.</p>
53	16.3	<p><b>Permanent assignment and trades</b></p> <p>(b) Where a path usage has been permanently assigned by or to the Access Holder to another access holder under this <b>clause 16.3(a)(ii)(A)</b>, <del>then ARTC and</del> the Access Holder agrees that the applicable Train Path Schedule will be amended to reflect that assignment.</p>	<p>This change is included to make it clear that ARTC will be required to agree to the permanent assignment</p>

	IAHA Clause	Amendments	Explanation
54	16.4	<p><b>Temporary trade of Path Usages</b></p> <p><del>(a) The parties acknowledge that at the date of execution of this Agreement, ARTC is developing a system for the temporary trade of capacity on the Network between access holders. In developing a temporary trading system, ARTC will consult with the HVCCC and the Terminal Operators with the objective of aligning the temporary trade of Path Usages on the Network with the trading of capacity at the coal terminals at the Port of Newcastle. The parties agree that the system developed for the temporary trade of capacity on the Network, and any accompanying rules regarding the treatment of traded Path Usages for the purpose of the true-up test to be carried out in accordance with Schedule 2 will be binding on the parties.</del></p> <p><del>(b) ARTC will notify the Access Holder in writing when the system for the temporary trade of capacity on the Network is finalised and available for use by the Access Holder. Until the Access Holder is so notified, a temporary trade must take place in accordance with clause 16.4(c) to clause 16.4(i).</del></p> <p>(a) An access holder (“<b>Former Access Holder</b>”) may trade (“<b>Trade</b>”) a Path Usage (for a period of less than 12 months) to a person who has an access holder agreement with ARTC (“<b>New Access Holder</b>”) without ARTC’s consent subject to the following conditions:</p> <p>...</p> <p>(ii) the New Access Holder’s load point for the traded Path Usage must be:</p> <p>(A) closer to the Port of Newcastle <u>than the Former Access Holder’s load point</u>; and</p> <p>(B) within the same or a closer Pricing Zone <u>as the Former Access Holder’s load point</u>; <del>;</del></p> <p><b>than the Former Access Holder’s load point;</b></p> <p>(iii) the Former Access Holder and the New Access Holder have the same Allocation Period in the Contract Year the Trade takes place <u>and the Trade is for an unconditional Base Path Usage of the Former Access Holder in that Contract Year</u>; and</p> <p>...</p> <p>(vii) the Former Access Holder and the New Access Holder have the same Allocation Period in the Contract Year the Trade takes place <u>and the Trade is for an unconditional Base Path Usage of the Former Access Holder in that Contract Year</u>; and</p> <p>...</p> <p><u>(d) If an Access Holder requests to Trade a Path Usage which does not meet the conditions in clause 16.4(a), subject to satisfying clause 16.4(a)(viii), ARTC:</u></p> <p><del>(i) (f) Subject to being given at least two weeks’ notice (or such lesser period as notified by ARTC from time to time) and satisfying clause 16.4(c)(viii) ARTC will not unreasonably refuse its consent to a request by the Access Holder to Trade a Path Usage which does not otherwise meet the conditions in clause 16.4(c) provided ARTC is able to ascertain the impact of that the Trade will not have an impact on Coal Chain Capacity and the Capacity</del></p>	See section 5.11 of the Explanatory Guide.



	IAHA Clause	Amendments	Explanation
		<p>entitlements of other access holders, <del>and subject to any conditions that ARTC may require as to the Period in which the Path Usage may be used.</del> ;</p> <p>(ii) <u>will use reasonable endeavours to inform the HVCCC of its decision whether or not it approves a trade as soon as practicable;</u></p> <p>(iii) <u>in any case, must inform the HVCCC of its decision within two weeks of ARTC being notified of the Trade, or in such other period (which may not be more than two weeks) as notified by ARTC to all access holders and the HVCCC as a result of clause 16.8 or from time to time following consultation with the HVCCC by ARTC; and</u></p> <p>(iv) <u>may impose reasonable conditions on an approval of a Trade, including the period in which the Path Usage may be used.</u></p> <p>...</p> <p>(h) <u>If there is more than one Train Path Schedule or the Access Holder has more than one access agreement for the Network with ARTC, this clause 16.4 also applies to a Trade by the Access Holder of a Path Usage for one train path for use in relation to another train path of the Access Holder.</u></p>	
55	16.5	<p><b>Treatment of traded Path Usages</b></p> <p>(a) For the purposes of this agreement where a path usage has been the subject of a Trade under <b>clause 16.4</b> of this agreement, the Former Access Holder will be deemed to have utilised the path usage traded to the New Access Holder in the Period in which it was available for use by the Former Access Holder, and the path usage the subject of the Trade <del>will</del>;</p> <p>(i) <u>will not be counted towards the number of path usages actually used by the New Access Holder for the purposes of clause 5.4 of this agreement and clauses 2.3 and 2.4 of Schedule 2 of this agreement; and</u></p>	See section 5.11 of the Explanatory Guide
56	16.6	<p><b><u>CTS Administrator and HVCCC</u></b></p> <p>(a) <u>The Access Holder may use the CTS Clearing House, in accordance with the procedures and functionality of the CTS Clearing House, to identify an access holder willing to participate in a Trade.</u></p> <p>(b) <u>In accordance with the timeframes in clause 16.4, ARTC will consider all Trades notified to ARTC by the CTS Administrator and will inform the CTS Administrator whether a Trade meets the requirements in clause 16.4(c) (and that explicit ARTC consent is therefore not required) and if ARTC consent is required under clause 16.4, whether ARTC consents to that Trade.</u></p> <p>(c) In deciding whether consent should be given under <b>clauses 16.3</b> or <b>clause 16.4</b>, ARTC <del>will</del> <u>may consider in good faith have regard to</u>, and is entitled to rely on, recommendations by the HVCCC <u>as to the impact of the Trade on Coal Chain Capacity and the Capacity entitlements of other access holders</u> and <del>ARTC#</del> will not be taken to be unreasonably withholding its consent or terminating a Trade where the HVCCC raises material objections to the assignment, novation or trade.</p>	See section 5.11 of the Explanatory Guide
57	16.8	<p><b>Reduction in <del>notice periods</del> <u>time period for ARTC approval of trades</u></b></p>	See section 5.11 of the Explanatory Guide

	IAHA Clause	Amendments	Explanation
		<p><del>ARTC will use reasonable endeavours to develop processes and mechanisms in conjunction with the HVCCC which will enable it to specify shorter notice periods for trading under <b>clause 16.4(f)</b>.</del></p> <p>(a) <u>By 31 December 2011, ARTC will conduct a review of the appropriate time period for ARTC to inform the HVCCC of its decision to approve or reject trades including a decision to approve a trade subject to conditions, which do not meet the conditions set out in <b>clause 16.4(a)</b>.</u></p> <p>(b) <u>In conducting that review, ARTC will seek the views of the HVCCC on the appropriate time period for ARTC to inform the HVCCC of its decision to approve or reject trades including a decision to approve a trade subject to conditions, which do not meet the conditions set out in <b>clause 16.4(a)</b>, taking into account the appropriate time necessary to determine the impact of the trade on Coal Chain Capacity and the Capacity entitlements of other access holders, and ARTC will consider the views expressed by the HVCCC in good faith.</u></p> <p>(c) <u>If ARTC considers that it is able to reduce the maximum period to consent to a trade under <b>clause 16.4(d)</b>, ARTC will inform the HVCCC and access holders in writing of the new maximum period within which it will notify the HVCCC of its decision to approve or reject a trade.</u></p>	<p>The heading of clause 16.8 has been changed to reflect the content of the operative clauses which refer to time periods for ARTC to approve trades.</p>
58	Previous 19.1	<p><del><b>ACCC acceptance of Access Undertaking</b></del></p> <p>This provision has been deleted.</p>	<p>This provision is not necessary. The 2010 IAHA will not come into effect until the 2010 HVAU is accepted by the ACCC</p>
59	19.1	<p><b>New or varied Access Undertaking</b></p> <p>(a) The Access Holder acknowledges that the Term may encompass new or varied Access Undertakings being accepted by the ACCC, <del>subsequent to the Access Undertaking contemplated under <b>clause 19.1</b> of this agreement being accepted by the ACCC.</del></p> <p>(b) <u>The parties agree that:</u></p> <p>(i) <u>any changes to a Tier 1 (Mandatory) Provision or the addition of a new Tier 1 (Mandatory) Provision in the indicative access agreement included in an Access Undertaking accepted by the ACCC as contemplated under <b>clause 19.1(a)</b>, will be automatically incorporated into this agreement, on the date the new or varied Access Undertaking comes into effect; and</u></p> <p>(ii) <u>to the extent there are changes to any other provisions of the indicative access agreement included in an Access Undertaking accepted by the ACCC under <b>clause 19.1(a)</b> which are inconsistent with this agreement, the parties will negotiate in good faith to modify this agreement to reflect the amendments to the indicative access holder agreement included in the Access Undertaking which are necessary or desirable for ARTC to safely and efficiently manage the Network and recover its costs while retaining, to the extent possible, the commercial and economic position of both parties arising from the agreement, and if the parties cannot agree, then the dispute will be a Dispute to be resolved in accordance with <b>clause 14</b>; and</u></p> <p><del>(d) Any changes to the indicative access agreement included in an Access Undertaking accepted by the ACCC as contemplated by <b>paragraph (a)</b> will automatically be incorporated into this agreement on the date the new or varied Access Undertaking comes into effect as follows:</del></p> <p><del>(e) if there is any inconsistency between this agreement and the indicative access agreement, this agreement will be</del></p>	<p>ARTC has amended this provision to ensure that if a new or varied access undertaking covering the Network is accepted by the ACCC during the term of an Access Agreement, any change accepted to a Tier 1 (mandatory) provision in the 2010 IAHA will automatically be incorporated into the Access Agreement. This was necessary in order to address the alignment concerns identified by the ACCC.</p> <p>In respect of all other terms in the AHA, the parties will negotiate in good faith to modify the agreements to reflect the requirements of the new or varied access undertaking.</p>

	IAHA Clause	Amendments	Explanation
		<p><del>automatically varied to the extent of the inconsistency in order to reflect the equivalent provisions in the indicative access agreement;</del></p> <p>...</p> <p>(e) <del>if the indicative access agreement contains a provision which is not contained in this agreement, that provision will be automatically incorporated into this agreement to the extent it is not inconsistent with a provision covered by paragraph (b)(ii).</del></p>	
60	Previous 21.11	<p><del>Schedule 4 (NSW RAU)</del></p> <p><del>The parties agree to comply with Schedule 4.</del></p>	ARTC has removed this provision because Schedule 4 of the 2009 IAHA (which provided for necessary amendments to the 2009 IAHA to cover the period until the 2009 HVAU comes into effect) is not necessary.
61	Schedule 1	<p><b>Network</b></p> <p>Mainline, crossing loops, dual gauge and turnouts as summarised below:</p> <ol style="list-style-type: none"> <li><del>Newcastle (Islington Junction) 164.400 km</del> <u>turnouts (116A points (164.690 km)/115A points (164.633 km))</u> to Port Waratah</li> <li>Scholey Street Junction <u>turnouts (95 points (164.806 km)/98 points (164.804 km))</u>(Via Coal) <del>164.900</del> to Muswellbrook <del>288.900</del><u>288.800</u> km<sup>1</sup></li> <li>Hanbury Junction <del>168.800</del><u>turnouts (137A points (168.955 km)/136A points (168.986 km))</u> to Kooragang Island</li> <li>Kooragang East Junction <del>169.3 km</del><u>turnouts (142E points (168.968)/143E points (168.997 km))</u> to Sandgate <del>170.500 km</del><u>turnouts (181B points (171.334 km)/183D points (171.502))</u></li> <li>Muswellbrook <del>288.900</del><u>288.800</u> km to Ulan 435.300 km</li> <li>Muswellbrook <del>288.900</del><u>288.800</u> km to Gap<sup>**2</sup> 416.000 km</li> </ol> <p><sup>1</sup> Includes Sandgate Flyover (for the purposes of <del>Section</del><u>section</u> 4 Pricing Principles only) which forms part of ARTC Sector 938 Sandgate – Maitland (via Main)</p> <p><sup>**2</sup> To the extent where the railway line joins the rail network owned by <u>the Country Rail Infrastructure Corporation</u><del>Authority</del>.</p>	See explanation in 2010 HVAU table above.
62	Schedule 2, 2.2	<p><b>Schedule 2 - System True-Up <u>Test</u></b></p> <p><b>2 System True-Up</b></p> <p><b>2.1 <u>Depiction Description</u></b></p> <p>...</p>	<p>This amendment has been made in response to the ACCC's recommendation that the true-up test is more likely to be appropriate if it is revised to include the specification and methodology of the term Network Path Capability.</p> <p>See section 5.13 of the Explanatory</p>

	IAHA Clause	Amendments	Explanation
		<p><b>2.2 Application</b></p> <p><b>Network Path Capability</b> or NPC (in the diagram “<i>Network Path Capability</i>”) means the capability of the Network, specified <del>in terms of path usages in the Period to provide services in a Pricing Zone</del> as the number of Functional Coal Paths capable of being made available in a Period, including Functional Coal Paths made available as a result of any Additional Capacity <del>made commissioned and available, at the date the commencement of the Period in which the system true-up test is to be carried out, as determined in accordance with clause 2.3 of this Schedule;</del></p> <p><del><b>Total Path Usages Required or TPR</b> means, for a Pricing Zone, the sum of:</del></p> <p style="padding-left: 40px;">(a) <del><b>Total Path Usages Required or TPR</b> means, for a Pricing Zone, the sum of:</del> in all agreements between ARTC and an access holder granting access rights to the Network to transport coal in the Period:</p> <p>less the path usages not available due to an Availability Exception identified in <b>clause 3.6</b> for all users of the Network <del>not already included but not to the extent those past usages may have been excluded from the determination of the elements</del> in (a) to (f) above (in the diagram “<i>Path usages not made available due to Availability Exceptions</i>”).</p>	<p>Guide.</p> <p>The amendment at the end of clause 2.2(a) of Schedule 2 ensures that the effect of an Availability Exception is not double counted.</p>
63	Schedule 2, 2.3	<p><b><u>Determination of Network Path Capability</u></b></p> <p>(a) <u>For each Contract Year subsequent to the first Contract Year, ARTC will determine the NPC for each Period in that Contract Year in accordance with the following steps:</u></p> <p>(i) <u>Following consultation with the HVCCC on the expected Capacity of the Network, ARTC will use its best endeavours to publish by 30 September of the previous Contract Year, and in any event before the commencement of the Contract Year, the number of Functional Coal Paths that the Network would be capable of providing in the Contract Year in each Pricing Zone in each Period on the theoretical assumption that the Network was only used by Coal Trains (NPC).</u></p> <p>(ii) <u>The number of Functional Coal Paths available in each Pricing Zone in each Period (NPC) will be the number of Functional Coal Paths available as measured at the following points of the Network which are considered by ARTC to broadly represent the Capacity of each Pricing Zone:</u></p> <p style="padding-left: 40px;">(A) <u>For Pricing Zone 1, Whittingham Junction;</u></p> <p style="padding-left: 40px;">(B) <u>For Pricing Zone 2, Ulan Junction; and</u></p> <p style="padding-left: 40px;">(C) <u>For Pricing Zone 3, Werris Creek</u></p> <p>(iii) <u>If a project creating Additional Capacity is identified in the Hunter Valley corridor capacity strategy as having the purpose of increasing the number of path usages for coal trains in a Pricing Zone, the number of Functional Coal Paths determined under <b>subclause (b)(i)</b> (the NPC), will reflect the Additional Capacity that is due to be commissioned prior to the commencement of that Period.</u></p> <p>(iv) <u>If the project to deliver Additional Capacity is delayed beyond the expected completion date, or the project delivers less Capacity than anticipated, then ARTC will, prior to the commencement of the Month when the Additional Capacity was due to be commissioned, advise the Access Holder by notice of any reduction in the NPC in those subsequent Months.</u></p> <p>(v) <u>If amendments are agreed to the track related System Assumptions by ARTC and the HVCCC, in which case ARTC</u></p>	<p>See section 5.13.4 of the Explanatory Guide.</p>

	IAHA Clause	Amendments	Explanation
		<p><a href="#">will vary the NPC as appropriate to reflect the number of Functional Coal Paths that would be available on the application of the new track related System Assumptions.</a></p> <p>(b) <a href="#">For the purposes of this Schedule, a Functional Coal Path is one which is capable of being used by a Coal Train which complies with the track-related System Assumptions, which are elements (g) to (j) of the definition of System Assumptions and any other measure of performance that ARTC reasonably considers has an impact on the Capacity of the Network, following consultation with the HVCCC.</a></p> <p>(c) <a href="#">To avoid doubt the Network Path Capability of a Quarter will be equal to the sum of the Network Path Capability of each Month making up that Quarter.</a></p>	
64	Schedule 2, cl 2.4	<p><b>Entitlement to TOP rebate accrual in a Period</b></p> <p><b>APUBP</b> means, <a href="#">subject to clause 16.5 of this agreement, the</a> actual path usages used by the Access Holder in the Period counted towards Base Path Usages in accordance with <b>clause 3.4</b> of this agreement; <del>provided that any path usages utilised by the Access Holder which were temporarily traded to the Access Holder from another access holder under a provision consistent with clause 16.4 of this agreement will not be counted towards the number of path usages actually used by the Access Holder;</del></p>	<p>This amendment to APUBP (actual paths used by the Access Holder in the period) clarifies that paths traded to the Access Holder and used by that Access Holder will not count as actual paths used by that Access Holder. Similarly, paths traded away by the Access Holder to another access holder will count toward the actual paths used by the (former) Access Holder.</p>
65	Schedule 2, cl 2.5	<p><b>Exceptions and limitations</b></p> <p>(a) To avoid doubt, the Access Holder will not accrue a rebate in respect of a Train Path if in that Period, <a href="#">subject to clause 16.5 of this agreement,</a> the number of Path Usages for which an Operator actually operated a Service for the Access Holder on that Train Path to transport coal, is equal to or exceeds the Access Holder's Base Path Usages for that Period less any Path Usages not made available under <b>clause 3.14</b>, or <b>clause 4.5</b> of this agreement; <del>provided that any Path Usages utilised by the Access Holder which were temporarily traded to the Access Holder from another access holder under a provision consistent with clause 16.4 of this agreement will not be counted towards the number of path usages actually used by the Access Holder.</del></p> <p>...</p> <p>(c) If in a Period all access holders with train paths within a Pricing Zone <del>receive</del><a href="#">use</a> their full base path usages for that Pricing Zone in that Period, then ARTC will not be required to carry out the system true-up test set out in this <b>Schedule 2</b> for that Period.</p>	<p>This amendment to subclause (a) has the same effect as the amendment to APUBP. In determining whether an Access Holder is entitled to accrue a rebate, the number of paths used by the Access Holder will not take into account paths traded paths received by that Access Holder but will take into account paths that were traded 'away' by that Access Holder.</p> <p>ARTC has replaced the word "receive" with "use" in 2.5(c) because the ACCC was concerned there could be confusion as to what 'receive' means.</p>
66	Schedule 2, cl 2.6	<p><b><a href="#">Provision of system true-up test information</a></b></p> <p><a href="#">Within two weeks of the end of each Period, ARTC will:</a></p> <p><a href="#">(a) publish on its website the system true-up test results for each Pricing Zone in respect of any System Availability Shortfall, except where ARTC reasonably considers such information would despite aggregation disclose confidential information about an individual access holder; and</a></p>	<p>See section 5.13.2 of the Explanatory Guide.</p>

	IAHA Clause	Amendments	Explanation
		<a href="#">(b) notify the Access Holder of any rebate accruing to the Access Holder in a Period under clause 2.4 of this Schedule 2.</a>	
67	Schedule 4	Schedule 4 has been deleted.	ARTC has removed Schedule 4 as it is not necessary to cover the position pre-commencement of the 2010 HVAU in the 2010 IAHA..
68	Train Path Schedule 1, cl 4.3	<p><b>Project Completion Condition Precedent [where applicable]</b></p> <p>(a).....</p> <p>(iii) In ARTC's reasonable opinion, the listed and new projects being commercially viable <del>to ARTC including</del> having regard to:</p> <p>(A) <del>ARTC's total investment program; and</del> <a href="#">terms and conditions of all the access agreements relevant to the listed and new projects; and</a></p> <p>(B) <del>the availability and cost of capital to ARTC when compared to the rate of return approved under the Access Undertaking; circumstances for ARTC to service and raise financing through debt and equity for the listed and new projects;</del></p> <p><a href="#">(C) Opportunity cost to ARTC given the relative risk and returns associated with the financing of the listed and new projects relative to other investment opportunities; and</a></p> <p><a href="#">(D) net effect on ARTC's balance sheet, gearing ratios and any other debt covenants in existence at the time.</a></p> <p>(b) ARTC must promptly notify the Access Holder if it considers that a listed and new project is, or is likely to be, not commercially viable and <a href="#">if this is the case, ARTC will:</a></p> <p>(i) <a href="#">offer the Access Holder the opportunity to make a capital contribution (as defined in the Access Undertaking) to the project, in which case the principles applicable to capital contributions as set out in the Access Undertaking will apply to that capital contribution; or</a></p> <p>(ii) <a href="#">if requested by the Access Holder,</a> enter into good faith negotiations with the Access Holder with the aim of securing alternative funding arrangements to deliver that project.</p>	<p>Regarding the amendment in clause 4.3 of the Train Path Schedule, see section 5.14 of the Explanatory Guide.</p> <p>The amendment in clause 4.3(b) of the Train Path Schedule was made to reference the ability to make capital contributions for a project under the 2010 HVAU.</p>

### 3 Explanation of changes contained in the 2010 OSA

This table lists the keys changes made to the April 2009 OSA.

	OSA Clause	Amendments	Explanation
1	1.1	<p><b>Access Undertaking</b> means:</p> <p>(a) the <del>access</del>-undertaking accepted by the ACCC <u>from time to time</u> under Division 6 of Part IIIA of the <i>Trade Practices Act 1974 (Cth)</i> TPA, that covers the Network; <del>or, if there is no such undertaking, the access protocols published by ARTC, from time to time under which it agrees to offer access to the Network;</del></p> <p>(b) <u>if the ACCC has accepted an undertaking under Division 6 of Part IIIA of the TPA that covers the Network which has expired and there is no access undertaking currently in force, the access protocols published by the ARTC after consultation with access holders, under which ARTC agrees to offer access to the Network from time to time;</u></p>	<p>ARTC has amended this definition to ensure that it covers subsequent access undertakings submitted by ARTC to the ACCC and accepted by the ACCC.</p> <p>This is consistent with the definition included in the December 2009 version of the IAHA provided to the ACCC.</p>
2	1.1	<p><b>Consequential Loss</b> includes:</p> <p>(a) any <del>Liability</del><u>liability</u> which does not flow naturally from the relevant breach of this agreement, even if that <del>Liability</del><u>liability</u> may reasonably be supposed to have been in the contemplation of both parties as a probable result of the breach at the time they entered into this agreement;</p> <p>(b) loss of profits, loss of business opportunity, loss of production, loss of revenue, loss of use, loss of contract, loss of goodwill, damage to goods being transported on the Services, <del>any port or shipping/demurrage costs or fees, damages or payment of liquidated sums, penalties or damages payable under the Access Holder's customer contracts (whether direct or indirect)</del><u>any agreement (other than this agreement)</u>; and</p> <p>(c) any other economic, special or consequential <del>Liabilities</del><u>liabilities</u>;</p> <p>but does not include <del>any property damage or losses arising from</del> third party <del>liability</del><u>claims in respect of property damage, personal injury, nervous shock or death.</u></p>	<p>ARTC has amended the definition of Consequential Loss to reflect the changes negotiated with the key operators to their Interstate track access agreements. Refer to the explanation for clause 15 for more detail.</p>
3	1.1	<p><b>Consumer Price Index or CPI</b> means the <u>Sydney All Groups Consumer Price Index number published by the Australian Bureau of Statistics.</u></p>	<p>This amendment clarifies the definition of CPI and ensures consistency with the HVAU.</p>
4	1.1	<p><b>Government Authority</b> means the Commonwealth or relevant State or Territory Government or any Commonwealth or State or Territory governmental, semi-governmental, judicial, municipal, statutory or public entity or authority but excludes <u>ARTC and</u> such entity or authority in its capacity as an Operator;</p>	<p>ARTC has amended this definition to ensure there is no doubt that ARTC or an Operator will be covered by this definition.</p>
5	1.1	<p><b>HVCCC</b> means the Hunter Valley Coal Chain Co-ordinator <u>Limited or any, where that</u> body <del>having no longer exists or has been reconstituted, renamed, replaced or whose functions have been removed or transferred to another body or agency, is the body which has the</del> responsibility <del>from time to time for co-ordinating the operation and capacity development</del><u>to most closely perform the functions</u> of the <del>Hunter Valley coal chain</del><u>first mentioned</u> body, as <u>reasonably</u> determined by ARTC;</p>	<p>ARTC has amended this definition to make it consistent with the corresponding definitions of HVCCC in the 2010 HVAU and 2010 IAHA.</p>

	OSA Clause	Amendments	Explanation
6	1.1	<u>Material Default means any breach of a fundamental or essential term, including a breach of any term that may have an impact on the safe operation of the Network, or repeated breaches of any of the terms of this agreement;</u>	In response to a recommendation from the ACCC that including a definition of "material default" in the 2009 OSA would add certainty, ARTC has included the definition contained in the 2010 HVAU, which is also consistent with the Interstate Access Undertaking.
7	1.1	<b>Network Control Directions</b> means all Instructions issued by ARTC or its agents relating to management, continuity and safe operation of Train movements on the Network, including Instructions concerning the actual movement, deployment or placement of Trains, but only to the extent such Instructions:  (a) are honestly believed by ARTC to be consistent with the Network Management Principles; and  (b) are made with a view to reasonably minimising the disruption to the Operator taking into account the valid objectives of ARTC in issuing the Instruction;  <del>which will be complied with by the Operator immediately;</del>	In response to a recommendation by the ACCC that the definition of a term should be limited to a description and not itself be operative, ARTC has amended this definition to remove the operative element requiring the Operator to comply with the Network Control Directions immediately.
8	1.1	<b>Network Management Principles</b> means the principles regulating Train movements on the Network, <del>as set out which must be consistent with the Train Decision Factors contained</del> in the <del>Access Undertaking from time to time</del> NSW Lease, as published on ARTC's website;	This definition has been amended to render it consistent with the definition in the 2010 HVAU.
9	1.1	<u>NSW Lease means the Deed of Lease over the interstate and Hunter Valley rail lines and infrastructure between the State Rail Authority of New South Wales, Rail Infrastructure Corporation and ARTC dated 31 May 2004, as amended from time to time;</u>	This definition is required given the references to this Lease in the 2010 OSA (clauses 3.4, 8.4, 9.3 and 19.1).
10	1.1	<b>Parent Guarantee</b> means a guarantee given by a <del>person</del> <u>Related Body Corporate of the Operator</u> who has an Acceptable Credit Rating) in substantially the <u>same</u> form set out in the Access Undertaking;	This definition has been amended to render it consistent with the definition in the 2010 HVAU.
11	1.1	<del>RIC means the Rail Infrastructure Corporation ABN 21 298 300 693 of Level 3, 237 Wharf Road Newcastle NSW 2300 as renamed, reconstituted, dissolved, replaced or restructured from time to time;</del>	The definition is no longer necessary.
12	1.1	<b>Service</b> means a Train run by the Operator using the Network pursuant to this agreement; [Drafting note: <u>Ancillary movements which are not associated with an Access Holder will be covered by another agreement</u> <del>ARTC will enter into a separate agreement with the Operator for ancillary movements which are not associated with an Access Holder.</del> ]	ARTC has made a minor amendment to the drafting note to reflect the fact that ancillary movements may be covered by the non-coal access agreements agreed with each Operator.
13	1.1	<del>SRA means the State Rail Authority of New South Wales ABN 73 997 983 198 of Level 6/18 Lee Street, Chippendale, NSW as renamed, reconstituted, dissolved, replaced or restructured from time to time;</del>	This definition is no longer necessary
14	1.1	<b>Third Party Works</b> means any works, Remediation or the provision or maintenance of services undertaken or required to be undertaken on, over or under the Network or any Associated Facilities (including design, construction, testing and commissioning) by or on behalf of:  ...	This definition has been amended to ensure it is consistent with the corresponding definition in the 2010 IAHA.



	OSA Clause	Amendments	Explanation
		(c) a corporation, <u>other than ARTC</u> , with statutory powers to enter land or acquire an interest in or right over land (other than a Government Authority) wanting to install services across the Network to that adjoining land;  but does not include works by or on behalf of ARTC or its contractors;	
15	1.4	<u>Amendment to Consumer Price Index</u>  <u>If either:</u>  (a) <u>the Sydney All Groups Consumer Price Index All ceases to be published quarterly; or</u>  (b) <u>the method of calculation of the Sydney All Groups Consumer Price Index substantially alters,</u>  <u>then the Sydney All Groups Consumer Price Index is to be replaced by the nearest equivalent index and any necessary consequential amendments are to be made. That index and those amendments are to be determined by agreement between the parties or, if the parties do not agree, by the Australian Bureau of Statistics or a nominee of the Australian Bureau of Statistics (acting as an expert and not as an arbitrator), whose decision is binding and conclusive.</u>	ARTC has amended this provision to provide greater certainty in the event the relevant index is no longer published or the method used to determine the index is substantially altered.
16	2.1	<b>Term</b>  Subject to <b>clause 2.2</b> , this agreement commences on the Commencement Date and, unless terminated earlier under <b>clause 14</b> , will continue until the earlier of:  (a) the <del>expiry or</del> termination of the Access Holder Agreement; and  (b) <del>10</del> <u>1</u> years from the Commencement Date,	In response to an ACCC recommendation that the term of the 2009 OSA should be a matter for negotiation, ARTC has removed the specification of a term length from this provision
17	2.2	Conditions <b>precedent</b>  If, at the Commencement Date:  the Operator is unable to demonstrate to ARTC that it meets the following prudential requirements:  ...  (B) <del>ARTC has not given a rectification or similar notice to</del> the Operator (or a Related <del>Bodies</del> <u>Body</u> Corporate) <del>is not currently, or have been</del> in the previous two years, <del>in material default for a Material Default</del> of any agreement with ARTC <u>and the event giving rise to that rectification notice or similar notice has not been rectified;</u> and  (C) the Operator has a legal ownership structure with a sufficient capital base and assets of value to meet the actual or potential liabilities under this agreement, including without limitation timely payment of insurance premiums and deductibles under the required policies of insurance,  then ARTC may request the Operator to provide Credit Support on seven days' notice. If the Operator elects to provide Security, then that Security <u>requested by ARTC</u> must be for an amount <u>not greater than the maximum security determined under clause 4.1(b) of at least <del>inserted</del>; and this agreement, which for the 2010 calendar year will be \$2 million;</u>  (ii) the Access Holder has not endorsed this agreement; <del>;</del>	ARTC has included subclause 2.2(a)(iii) to make it clear that the rights to access the Network under a 2010 OSA do not apply until the linked 2010 AHA has commenced.          These amendments to the Security to be requested are necessary given the changes to the Security provision in clause 4.1(b).

	OSA Clause	Amendments	Explanation
		(iii) <a href="#">the Access Holder Agreement has not commenced.</a>	
18	3.1	<p>Derivative right to use Train Paths for the transport of coal</p> <p>(a) ARTC agrees that the Operator may, during the Term, for the purpose of transporting coal, operate a Service on a Train Path <del>or a Path Usage</del>, upon the terms and conditions set out in this agreement, subject to:</p> <p>(i) the Operator being nominated <a href="#">by the Access Holder</a> to provide a Service <del>for using a Path Usage on</del> a Train Path <del>or a Path Usage to an Access Holder</del> for the purposes of the Daily Train Plan; and</p> <p>(ii) the terms of access granted to the Access Holder under the Access Holder Agreement.</p> <p>...</p> <p><b>("Availability Exceptions", <a href="#">provided that the Availability Exceptions apply only to the extent that the occurrence of the Availability Exception prevents ARTC (acting reasonably) from making that particular Train Path or Path Usage available to the Access Holder</a>).</b></p> <p>(c) The Operator agrees at all times during the Term not to access or attempt to access the Network on behalf of the Access Holder in any way other than is authorised by this agreement and the Access Holder Agreement, <del>or as authorised under a separate valid and binding agreement.</del></p>	<p>ARTC has amended clause 3.1(a) to clarify the drafting.</p> <p>ARTC has amended the definition of "availability exceptions" to be consistent with the definition in the 2010 IAHA.</p>
19	3.2	<p>Limited agency</p> <p>(a) The Operator agrees that, <a href="#">unless otherwise notified by ARTC in accordance with a request received by ARTC from the Access Holder</a>, it is the agent of the Access Holder for the following purposes:</p> <p>...</p> <p>(iv) the day to day operation of the Network <a href="#">for the Path Usages for which it has been nominated by the Access Holder as the Operator</a>, including communications with the Network Control Centre, providing Train Manifests to ARTC and informing ARTC of any changes to the Services (including under <b>clauses 5.4(k), (l) and (m)</b>);</p>	<p>In its response to the Draft Decision, ARTC proposed to insert the phrase "unless otherwise notified by ARTC" to allow the Access Holder to amend the scope of the Operator's agency. Following discussions with the ACCC, ARTC has clarified this amendment to make it clear that ARTC will only make such a notification to the Operator if it receives a request to this effect from the Access Holder.</p> <p>ARTC has clarified subclause 3.2(a)(iv) to clarify the drafting.</p>
20	3.4	<p><b>Passenger Priority in New South Wales</b></p> <p>The Operator acknowledges, and will not do anything to interfere with or breach, ARTC's obligations to at all times, in relation to the Network <del>situated in New South Wales</del>:</p> <p>(b) preserve existing <del>or future</del> passenger train paths; and</p> <p>(c) apply Passenger Priority in undertaking any maintenance to the Network <del>situated in New South Wales</del>.</p>	<p>As explained with regard to the equivalent provision in the 2010 IAHA, after reviewing the NSW Lease, ARTC is of the view that it is not required to preserve future passenger train paths.</p> <p>The references to NSW in the clause have been removed as they are unnecessary given the definition of the Network.</p>
21	3.6	Both parties will, subject to this agreement, use their best endeavours to:	Following industry consultation, clause 3.5 was amended to ensure that:

	OSA Clause	Amendments	Explanation
		<p>ensure that such Services which are running or presented late recover the lost time; <del>and</del></p> <p>ensure that such Services which are presented more than 15 minutes early depart the Network no later than the scheduled time; <u>and</u></p> <p><u>in the case where the Service is a loaded or empty coal train, seek to implement the course of action determined by ARTC through liaison with the HVCCC and live run operations group as contemplated in the Network Management Principles, including, where appropriate, actions other than provided for in paragraphs (i) and (ii) above.</u></p>	<p>the Network Management Principles (which includes sequencing) are adhered to for the re-scheduling of late and early trains as appropriate; and a balance between the objective of on time running and sequencing can be more effectively managed.</p>
22	3.9	<p><b>Light engine movements</b></p> <p>The Operator's right to use <del>a-Train Paths or Path or a Path Usage Usages</del> under <b>clause 3.1</b> exclude any rights to access the Network for the purpose of the Operator's light engine movements other than through ad hoc entitlements as referred to in subsection (b) of the definition of "Train Paths".</p>	<p>ARTC has amended this clause to clarify the drafting.</p>
23	4.1	<p>Obligation to <b>grant</b> Credit Support</p> <p>(a) If, at any time after the Commencement Date, the Operator is unable to demonstrate to ARTC (on request) that it has a legal ownership structure with a sufficient capital base and assets of value to meet the actual or potential liabilities under this agreement, including timely payment of insurance premiums and deductibles under the required policies of insurance, then ARTC may request the Operator to provide Credit Support on seven days' notice. If the Operator elects to provide Security, then <del>that the</del> Security <u>requested by ARTC</u> must be for an amount <del>of at least [insert]—not greater than the maximum security, as determined under clause 4.1(b).</del></p> <p><del>(b) The amount of the Security will be reviewed every 12 months from the Effective Date. The results of the review are</del><u>The maximum security that can be requested by ARTC (including Security given under clause 2.2) will be \$2 million for the 2010 calendar year and will be reviewed and escalated at the commencement of each subsequent calendar year in accordance with the following formula.</u></p> $S_t = S_{t-1} \times (CPI_t / CPI_{t-1})$ <p><u>Where:</u></p> <p><u>S<sub>t</sub> is the maximum security that can be requested by ARTC for the calendar year which has commenced;</u></p> <p><u>S<sub>t-1</sub> is the maximum security which could be requested by ARTC in the previous calendar year;</u></p> <p><u>CPI<sub>t</sub> = the CPI for the September quarter immediately preceding the commencement of that calendar year; and</u></p> <p><u>CPI<sub>t-1</sub> = the CPI for the September quarter immediately preceding the commencement of the previous calendar year.</u></p> <p><del>(c) The amount of the Security requested under clause 4.1(a) (provided it is below the maximum security determined under clause 4.1(b)) is</del> <u>not subject to clause 17.</u></p> <p>...</p> <p>(e) If the Operator has provided Security <u>under this agreement</u>, then, ARTC may draw on the Security on the last</p>	<p>The amendments made to clause 4.1 are to clarify how the maximum amount of security that can be requested by ARTC will be escalated in accordance with CPI increases</p>

	OSA Clause	Amendments	Explanation
		Business Day prior to the expiry of the Security unless, at least three Business Days before the expiry date of the Security, replacement Security to the required amount has been provided by or on behalf of the Operator.	
24	5.5	<p><b>Removal of Rolling Stock from Network</b></p> <p>(c) Notwithstanding any other provision of this agreement, the Operator will release and indemnify ARTC or its servant, agent, employee, contractor or volunteer for all and any injury, loss and damage arising from or related to the removal or movement arranged by ARTC under <b>clause 5.5(b)</b>, including <del>without limitation</del> where such injury, loss and damage is caused by the negligence of ARTC or its servant, agent, employee, contractor or volunteer.</p>	ARTC has removed the words “without limitation” from this clause as they are unnecessary given the Interpretation clause 1.2.
25	6.2	<p><b>Operating restrictions</b></p> <p>When required by the condition of the Network or any part of the Network, ARTC may (to the extent of such requirement only) give notice of speed and weight restrictions and the Operator will comply with such a notice. <a href="#">ARTC will remove the restriction and inform the Operator of the removal of the restriction once ARTC determines the restriction is no longer necessary.</a></p>	In response to recommendation from the ACCC, ARTC has amended this provision to make it clear that ARTC will remove operating restrictions when they are no longer necessary.
26	7.1	<p><b>Accreditation warranty</b></p> <p>(b) The parties will notify each other of any <a href="#">material</a> notice received from any Government Authority affecting Accreditation.</p>	This provision has been amended to clarify that the obligation to notify the other party will only apply where a party receives notice affecting Accreditation that is material.
27	9.2	<p><b>Permanent variations to Train Paths</b></p> <p>ARTC can:</p> <p>(b) refuse the Operator the right to utilise a Train Path or a Path Usage (either permanently or temporarily) where the Access Holder has, under the Access Holder Agreement:</p> <p>(i) <a href="#">notified ARTC that the Operator is no longer nominated, or</a> nominated a new operator, <a href="#">to utilise those Train Paths or Path Usages which were to be utilised by the Operator</a>; or</p> <p>(ii) assigned, novated or traded to another access holder, all or some of the Access Holder's Train Paths or Path Usages which were to be utilised by the Operator. .</p>	ARTC has amended this provision to clarify that ARTC is able to refuse the Operator the right to operate a Service on a path when it is informed by the Access Holder that the Operator is no longer nominated to use that path.
28	9.4	<p><b>Third Party Works</b></p> <p>(a) The Operator acknowledges that:</p> <p>...</p> <p>(ii) notwithstanding any other provision of this agreement, ARTC reserves the right to permit third parties to carry out Third Party Works-<a href="#">if that party has a legal right to undertake those Third Party Works, including as arising from legislation or the NSW Lease.</a></p>	<p>ARTC has amended this provision to make it clear that third party works are only able to be carried out automatically where the third party is under a legislative (or similar) obligation to carry out the works. That legal obligation may arise from legislation (including regulations), the NSW Lease or contractual commitments entered into by ARTC.</p> <p>It is important to note that works carried out by ARTC or its contractors would</p>

	OSA Clause	Amendments	Explanation
			not be considered 'Third Party Works'.
29	10.1	<p><b>Audit obligation</b></p> <p>(b) <u>To avoid doubt, any audit conducted by ARTC under this clause 10.1 is conducted at ARTC's cost.</u></p>	<p>As stated in its Draft Decision, the ACCC considers that clause 10.1 of the 2009 OSA should clarify where ARTC conducts an audit, it is at ARTC's risk.</p> <p>In its Response to the Draft Decision, ARTC noted that clause 8.4 of the 2010 OSA already makes it clear that ARTC and the Operator are responsible for their own costs in relation to compliance with ARTC Instructions and each releases the other from any claim arising from compliance. Nevertheless, ARTC was willing to clarify this.</p> <p>ARTC has introduced clause 10.1(b) to clarify that when ARTC conducts an audit it is at ARTC's cost.</p>
30	11.3	<p><b>Notification of Incidents</b></p> <p>The Operator and ARTC each agree to notify the other party to this agreement of any Incident as soon as possible after it comes to their attention- <u>and ARTC will promptly provide the Operator with a train control report describing the Incident and any associated train delays (a "Train Control Report").</u></p>	<p>To address a concern expressed by the ACCC, ARTC has amended this provision to clarify its commitment to provide a copy of the Train Control Report to the Operator on the occurrence of an Incident.</p>
31	14.1	<p><b>Termination for breach</b></p> <p>(a) ...:</p> <p>(i) for any other default, rectify the default within a reasonable time, and respond in writing to the aggrieved party, within 48 hours of the receipt of the Rectification Notice:</p> <p>(b) If the defaulting party:</p> <p>(iii) does not provide a <u>reasonably</u> satisfactory Rectification Response meeting the requirements of <b>clause 14.1(a)(ii)(A) and (B)</b>; or</p> <p>...</p> <p>the aggrieved party may at any time thereafter suspend such rights of the defaulting party under this agreement as are necessary to prevent a continuation of the default by giving not less than:</p>	<p>ARTC has amended this provision to make it clear that the obligation on the defaulting party is to provide a Rectification Response that is "reasonably" satisfactory. This is consistent with the approach in the 2010 IAHA.</p>
32	14.2	<p><b>Immediate termination</b></p> <p>A party has the right to immediately terminate this agreement by notice in writing to the other party upon the occurrence of any of the following events:</p>	<p>ARTC has deleted 14.2(d) as the request of Operators and the ACCC.</p>

	OSA Clause	Amendments	Explanation
		...  <del>(d) if the Operator has had any of its other operator sub-agreements (where it is nominated by other access holders) terminated by ARTC pursuant to the equivalent of clause 14.1.</del>	
33	14.5	<b>Effect of termination or suspension</b>  (b) Termination or suspension of this agreement under any circumstances will not abrogate, impair, release or extinguish any debt, obligation or liability of one party to the other which may have accrued under this agreement including <del>without limitation</del> any such debt, obligation or liability which was the cause of termination or suspension or arose out of such cause.	The words "without limitation" have been removed from this clause as they are unnecessary given the Interpretation clause 1.2.
34	15.1	<b>General</b>  (c) The provisions of this clause should be interpreted to give effect to the intention that where ARTC and/or the Operator are in breach of this <del>Agreement</del> <u>agreement</u> , and any such breach is the cause or <u>a</u> contributing factor to loss or damage to property of ARTC or the Operator arising from an Incident: ...  (ii) where the acts or omissions of a <u>third party (as defined in this clause 15.2) other than ARTC or the Operator</u> has caused or contributed to such loss or damage, neither ARTC or the Operator will be responsible to the other for loss or damage to the extent that the loss or damage <del>to the other's property</del> is caused by or contributed to by the acts or omissions of that <del>other</del> <u>third</u> party.	These are minor amendments made to clarify the drafting.
35	15.2	<b>Definitions for (clause 15)</b>  (e) A reference to a <del>"breach" by a party</del> includes a breach arising from the acts or omissions of a servant, agent, employee, contractor, supplier, <del>to or</del> <u>to or</u> volunteer, <del>of or</del> <u>of or</u> associated <del>(as defined in the Corporations Act 2001)</del> <u>with or</u> a related entity (as defined in the <i>Corporations Act 2001</i> ) of, <del>that party</del> <u>ARTC or the Operator</u> .  (f) <del>"third party liability"</del> means the <u>Liability</u> <del>liability</del> of ARTC and/or the Operator to any third party <del>(not being a related entity as defined in the Corporations Act 2001)</del> who suffers any personal injury, <del>nervous shock, death or</del> property or economic loss or damage as a consequence of an Incident.  <del>"third party" means a person other than ARTC or the Operator.</del>	The changes to clause 15 have been made to reflect changes negotiated with key operators to the Interstate track access agreements. The substantive changes are in clause 15.6 and 15.9.
36	15.4	<b>No Claim for Consequential Loss</b>  ...  <u>For the avoidance of doubt, it is agreed that Consequential Loss does not include any liability of ARTC or the Operator to a third party.</u>	This amendment recognises the agreement that any liabilities the Operator and ARTC may have to have to a third party will be carved out of the liability regime established to apply under the agreement.  (This clause has been amended to reflect changes negotiated with operators to their Interstate Track Access Agreements.)
37	15.6	<b>Third party liabilities</b>  (d) <u>To the extent that ARTC or the Operator shall have incurred legal costs in defending a claim by a third party</u>	This amendment makes it clear that to the extent ARTC or the Operator incur legal costs in successfully defending a

	OSA Clause	Amendments	Explanation
		<u>arising out of an Incident which is caused by a breach of this agreement by ARTC or the Operator, those legal costs (to the extent that they are not recovered by the party who defends the claim, after taking all reasonable steps to recover the same) shall be indemnified by the party in breach of this agreement to the extent that that breach contributed to the Incident.</u>	claim by a third party caused by a breach of the agreement, those legal costs should be indemnified by the party which is in breach of the agreement, to the extent that the breach caused the Incident.  (This clause has been amended to reflect changes negotiated with operators to their Interstate Track Access Agreements.)
38	15.8	<b>Obligation to mitigate/betterment</b>  (b) Where a party restores <del>or</del> repairs <u>or replaces</u> a damaged asset <u>to prevailing standards in the most cost efficient way available</u> and that repair <del>or</del> restoration <u>or replacement</u> results in improved functionality of an asset, such improved functionality will not be regarded as a betterment and no reduction or adjustment of the costs of repair <del>or</del> restoration <u>or replacement</u> will be made on that account.	ARTC has amended this provision to clarify that the obligation to mitigate or better includes restoring, repairing or replacing the damaged asset.
39	15.9	<b>Obligation to pay</b>  (h) <u>The liability of a party to this Agreement to make payment in accordance with this clause 15.9 will not apply where:</u>  (i) <u>the parties have in place an established protocol for the assessment and settlement of claims for their own property damage arising out of Incidents; and</u>  (ii) <u>any claim or claims arising out of an Incident are settled, by agreement, or any claims that are being dealt with pursuant to the terms of such protocol.</u>	This amendment to clause 15.9, which also reflects amendments negotiated to operators' interstate access agreements, provides that the rules regarding payment in clause 15.9 only apply if there is not an established protocol in place. The provision is included to protect those who have entered into a settlement protocol with ARTC.
40	15.10	<b>Defence of Claims</b>  The parties will render to each other all reasonable assistance in the defence of any Claim made against the other party by a third party <del>where that Claim relates to an</del> <u>arising out of any</u> Incident.	ARTC has amended this provision to clarify the drafting.
41	15.12	<b><u>Interest</u></b>  <u>If a party defaults in the payment of any amount due to the other party (including all amounts in an invoice issued under this agreement), the defaulting party will pay interest on that amount, or the outstanding balance, until it is paid in full. The interest rate will be 2 percentage points above the:</u>  (a) <u>bench mark lending rate charged by the National Australia Bank or its successors ("NAB"), as published at the time of such default; or</u>  (b) <u>if the lending rate specified in clause 15.12 (a) does not exist at the time of such default, then the base business overdraft lending rate at that time on overdrafts of \$100,000.00 or more as determined in writing by or on behalf of the senior manager of the New South Wales head office of the NAB, currently known as the General Manager Business and Premium, at their discretion.</u>  <u>That interest will accrue and be recoverable from day to day.</u>	ARTC has included this provision to provide for the principles as to how interest will be calculated in the 2010 OSA. It is based on clause 5.8 of the 2010 IAHA.

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42	17.1	<p><b>Procedure to settle Disputes</b></p> <p>(b) If <del>ARTC</del><u>either party</u> reasonably considers that a dispute also involves the Access Holder, then:</p> <p>...</p> <p>(d) Upon the provision of a Dispute Notice under <b>clause 17.1(c)</b>, the procedure that is to be followed to settle a Dispute arising under this agreement is as follows:</p> <p>(ii) second, <del>mediation of</del><u>if the Dispute is not resolved by negotiation, then mediation</u> under <b>clause 17.3</b>; and</p>	<p>ARTC has amended subclause 17.1(b) to make it clear that it may be ARTC or the Operator who reasonably considers that a dispute involves the Access Holder.</p> <p>ARTC has amended subclause 17.1(d)(ii) to clarify the drafting.</p>
43	18.1	<p><b>Acknowledgment of confidentiality</b></p> <p>Each party acknowledges, subject to <del>clause</del><u>clauses 18.2 and 18.3</u>, that all information provided by one party ("Provider") to the other ("Receiver") under this agreement that <del>relates directly to:</del></p> <p><u>is designated or indicated in writing, as being</u> the <del>Operator's future markets;</del></p> <p><del>the Operator's future market and business strategies; and</del></p> <p><u>confidential information of the Provider or a Related Body Corporate of</u> the <del>strategies of ARTC's or the Operator's customers;</del></p> <p><u>Provider</u> ("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 (<u>except that Confidential Information may be provided to the Access Holder</u>) and not use that Confidential Information for any purpose other than the provisions of this agreement allow.</p>	<p>ARTC has amended this clause to make it consistent with the confidentiality clauses in the 2010 HVAU and 2010 IAHA.</p>
44	18.2	<p><b>Exclusions from Confidential Information</b></p> <p>For the purposes of this <b>clause 18</b> Confidential Information does not include information which is:</p> <p>(d) <u>derived or produced from Confidential Information but disclosed in an aggregated form, on at least a Pricing Zone basis.</u></p>	<p>ARTC has amended this clause to make it consistent with the confidentiality clauses in the 2010 HVAU and 2010 IAHA.</p>
45	18.3	<p><b>Permitted disclosure</b></p> <p>Either party may disclose Confidential Information:</p> <p>(c) <del>required by</del><u>to</u> the HVCCC or the Rail Capacity Group (as defined in the Access Undertaking) for the purposes of <del>co-ordinating</del><u>enabling the HVCCC or the Rail Capacity Group to co-ordinate</u> the operation and capacity development of the Hunter Valley coal chain;<del>or</del></p> <p>(d) to an Access Holder <del>to the extent that it is necessary or desirable for the parties to do so for the purpose of complying with this agreement;</del></p> <p>(e) <u>to the ACCC where required under the Access Undertaking; or</u></p> <p>(f) <u>to the lessor of the Network, if required under the terms of the NSW Lease.</u></p>	<p>ARTC has amended this clause to make it consistent with the confidentiality clauses in the 2010 HVAU and 2010 IAHA.</p>



	OSA Clause	Amendments	Explanation
46	19.1	<p><b>Assignment or novation</b></p> <p><b>By ARTC</b></p> <p><u>The Operator agrees that ARTC may, by prior written notice to the Operator, assign or novate this agreement, its interest in the subject matter of this agreement or any right under this agreement:</u></p> <p><u>to a successor of ARTC or to any body established by any person in relation to the management of the Network or any relevant or material part of it; or</u></p> <p><u>on the expiration or earlier termination of the NSW Lease, to the lessor of the Network or a nominee of the lessor of the Network,</u></p> <p><u>and the Operator is deemed to have given its consent to an assignment and novation of this agreement and will cooperate with ARTC and execute any instrument reasonably required by ARTC to give effect to the novation or assignment.</u></p> <p><del>(a) Other than to a successor of ARTC or to any body established by any person in relation to the management of the Network or any relevant or material part of it, in all circumstances other than those referred to in clause 19.1(a), ARTC may not assign or novate this agreement, its interest in the subject matter of this agreement or any right under this agreement without the prior written consent of the Operator, which will not be unreasonably withheld.</del></p> <p><del>(b) ——— Nothing in clause 19.1(a) prevents ARTC from entering into any sub-contracting or agency agreements or arrangements in relation to any of its functions.</del></p>	<p>This clause was amended to ensure that ARTC complies with its obligations under the NSW Lease. See section 5.10 of the Explanatory Guide.</p>
47	19.2	<p><b>Assignment or novation</b></p> <p><b>By the Operator</b></p> <p>The Operator may not license, assign or novate this agreement, its interest in the subject matter of this agreement or any right under this agreement without <del>ARTC's</del><u>the</u> prior written consent <u>of</u>:</p> <p>(a) <u>the Access Holder; and</u></p> <p>(b) <u>ARTC</u>, such consent not to be unreasonably withheld.</p>	<p>ARTC has amended this provision to clarify that the Access Holder will need to consent to the assignment, license or novation of the 2010 OSA.</p>
48	22.1	<p><del>Undertaking</del><u>New and varied Access Undertaking</u></p> <p><del>(d) The Operator acknowledges that the Term may encompass new or varied Access Undertakings being approved by the ACCC</del></p> <p>(b) To the extent a new or varied Access Undertaking (including approved changes to the <del>Standard Operator Sub-Agreement</del><u>standard operator sub-agreement</u>) are inconsistent with changes negotiated and agreed <del>by the parties to the Standard Operator Sub-Agreement</del><u>standard operator sub-agreement</u> applying at the Commencement Date, the parties must negotiate in good faith to modify this agreement to reflect the requirements of a new or varied Access Undertaking which are necessary or desirable for ARTC to safely and efficiently manage the Network and recover its costs while retaining, to the extent reasonably possible, the</p>	<p>ARTC has amended this provision to clarify that changes to the standard 2010 OSA accepted by the ACCC (as part of a 2010 HVAU) will be automatically incorporated into the 2010 OSA unless the specific provisions have been negotiated.</p>

	OSA Clause	Amendments	Explanation
		commercial and economic position of both parties arising from the previously agreed changes.  (c) If the parties cannot agree, then the dispute will be a Dispute to be <a href="#">resolved</a> in accordance with clause 17.	
49	24.2	<b>Costs</b>  The Operator agrees as between the parties, to pay, if payable, any legal costs of execution (including <del>without limitation</del> any associated stamp duty, fees, fines and penalties thereon) in all relevant jurisdictions on this agreement and any document contemplated or allowed by this agreement, excluding any of ARTC's internal costs relating to the execution of this agreement.	ARTC has removed the words "without limitation" from clause 24.2 as they are unnecessary given the presence of the Interpretation clause 1.2.
50	24.3	Goods and services tax  (a) Definitions  In this clause:  <a href="#">Adjustment Note has the meaning given in the GST Legislation:</a>  (b) <a href="#">GST exclusive prices</a>  <a href="#">Unless specifically stated otherwise, all charges and prices (including amounts and variables in formulas) set out in this agreement are exclusive of GST.</a>  (c) GST Payable  ARTC and the Operator acknowledge and agree and/or warrant (as the case may be) that if GST has application to any Taxable Supply made under this agreement by either ARTC or the Operator ("supplier") to either ARTC or the Operator ("recipient") as the case may be that the supplier may, in addition to the Consideration but subject to providing a Tax Invoice <a href="#">or Adjustment Note, as applicable</a> , to the recipient, recover from the recipient (and the recipient will pay or reimburse the supplier) an additional amount on account of GST, such additional amount to be calculated <a href="#">by multiplying the Consideration by the applicable GST rate in accordance with GST Legislation</a> and will be paid by the recipient on the same terms and conditions as stated in this agreement.  (d) <a href="#">GST Groups</a>  <a href="#">If a party is a member of a GST group, references to GST which the party must pay, and to input tax credits to which the party is entitled, include GST which the representative member of the GST group must pay and input tax credits to which the representative member is entitled.</a>  (e) <a href="#">Payment under indemnity</a>  <a href="#">If a payment under an indemnity in this agreement gives rise to a liability to pay GST, the payer must pay and indemnify the payee against the amount of that GST.</a>	ARTC has amended clause 24.3 to reflect amendments made to the equivalent GST provision in the 2010 IAHA.
51	24.7	<b>Other agreements</b>  This document <a href="#">and any agreement between the parties covering ancillary train movements by the Operator on the Network</a> comprises the whole agreement between the parties relating to use of the Network, and to the extent to which it is inconsistent with any existing agreement between the parties, will prevail over those existing agreements.	ARTC has amended this provision to cover the possibility that there may not be a separate ancillary movements agreement in place (for example, if ARTC seeks to use the Interstate TAA as a base).

	OSA Clause	Amendments	Explanation
52	Schedule 1	<p><b>Schedule 1 - Network</b></p> <p><b>New South Wales (Hunter Valley)</b></p> <p>Mainline, crossing loops, dual gauge and turnouts as summarised below:</p> <ol style="list-style-type: none"> <li>1. <del>Newcastle (Islington Junction) 164.400 km</del> <a href="#">turnouts (116A points (164.690 km)/115A points (164.633 km))</a> to Port Waratah</li> <li>2. Scholey Street Junction <a href="#">turnouts (95 points (164.806 km)/98 points (164.804 km))</a>(Via Coal) <del>164.900</del> to Muswellbrook <del>288.900</del><a href="#">288.800</a> km<sup>1</sup></li> <li>3. Hanbury Junction <del>168.800</del><a href="#">turnouts (137A points (168.955 km)/136A points (168.986 km))</a> to Kooragang Island</li> <li>4. Kooragang East Junction <del>169.3 km</del><a href="#">turnouts (142E points (168.968)/143E points (168.997 km))</a> to Sandgate <del>170.500 km</del><a href="#">turnouts (181B points (171.334 km)/183D points (171.502))</a></li> <li>5. Muswellbrook <del>288.900</del><a href="#">288.800</a> km to Ulan 435.300 km</li> <li>6. Muswellbrook <del>288.900</del><a href="#">288.800</a> km to Gap<sup>**2</sup> 416.000 km</li> </ol> <p><sup>*1</sup> Includes Sandgate Flyover (for the purposes of <del>Section</del><a href="#">section 4</a> Pricing Principles only) which forms part of ARTC Sector 938 Sandgate – Maitland (via Main)</p> <p><sup>**2</sup> To the extent where the railway line joins the rail network owned by <a href="#">the Country Rail Infrastructure Corporation</a>.<del>Authority</del>.</p>	See 2010 HVUAU table above for explanation for these changes.