

Hunter Valley Supply Chain Alignment Protocol

Dated

Australian Rail Track Corporation Limited (“**ARTC**”)
Hunter Valley Coal Chain Co-ordinator Limited (“**HVCCC**”)

Hunter Valley Supply Chain Alignment Protocol Contents

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1 Defined Terms

In this Protocol, capitalised terms have the same meaning as those terms are defined in the Access Undertaking, unless otherwise obvious from the context. Words and expressions will have the following meaning:

AHA means the Access Holder Agreement for Indicative Services in the Hunter Valley that forms part of the Access Undertaking

Access Undertaking means the undertaking accepted by the ACCC from time to time under Division 6 of Part IIIA of the *Competition and Consumer Act 2010* (Cth);

Month means a calendar month;

Protocol means this Hunter Valley Supply Chain Alignment Protocol;

Quarter means a calendar quarter commencing on each of 1 January, 1 April, 1 July and 1 October;

System Assumptions means the System Assumptions as defined in the section 14 Definitions of the Access Undertaking;

Corridor Capacity Strategy means the Hunter Valley corridor capacity strategy referred to in section 8.1 of the Access Undertaking;

Relevant Request means a request described in clause 1.3 of Schedule 1;

Workflows means the workflows described in sub-sections 2.2(c) and (d) of this Protocol.

2 Application of Protocol

2.1 Purpose

- (a) This Protocol sets out the governance for the engagement and consultation between ARTC and the HVCCC to ensure compliance with the Access Undertaking and to meet the objective set out in sub-section 2.2 of this Protocol.
- (b) This Protocol does not override or alter any terms or conditions set out in the Access Undertaking. To the extent of any inconsistency between the Access Undertaking and this Protocol, the Access Undertaking will prevail.
- (c) This Protocol is a guide for the process of engagement and consultation between ARTC and the HVCCC and does not constitute an obligation binding on ARTC or the HVCCC and creates no rights in favour of ARTC, the HVCCC or any third party. To avoid doubt, ARTC and the HVCCC shall not have any liability to each other arising from performance, or any failure to perform, any provision of this Protocol, or otherwise in respect of all loss or damage.
- (d) This Protocol ends on the expiry or earlier withdrawal of the Access Undertaking.

2.2 Objective of Protocol

- (a) ARTC and the HVCCC affirm that they have entered into this Protocol in good faith and in order to facilitate effective and efficient management of

Coal Chain Capacity in accordance with the spirit and intent of the Access Undertaking.

- (b) The objective of this Protocol is to ensure that the parties establish, develop, implement and monitor suitable mechanisms that assist them to carry out their respective roles under the Access Undertaking in an effective, timely and consistent manner that meets the requirements of the Access Undertaking.
- (c) To ensure that the parties have detailed plans and processes for how they will work together in carrying out their respective roles under the Access Undertaking, the parties will develop, implement, monitor and improve Workflows as described in this Protocol that address the requirements of the Access Undertaking relating to communication and other interactions between the parties, including the requirements relating to:
 - (i) the System Assumptions and the Corridor Capacity Strategy, including sections 5.1 and 8.1 of the Access Undertaking and section 16.3 of the AHA;
 - (ii) capacity analyses for contracting purposes, including sections 3.6, 3.7, 5.2 of the Access Undertaking, the determination of Network Path Capability in schedule 2, section 2.3 of the AHA and the capacity conditions precedent in the Train Path Schedule 1 section 4.1 of the AHA; and
 - (iii) additional capacity, including sections 8.3 and 9.2 of the Access Undertaking.
- (d) The parties, via the Consultation Working Group and the Liaison Committee, will determine whether Workflows are required to assist the parties to carry out their roles under other requirements of the Access Undertaking that relate to communication and other interactions between the parties and develop and implement those Workflows as described in this Protocol by 31 October 2013.

3 Roles and responsibilities

3.1 General roles and responsibilities

Each Party agrees to:

- (a) act in good faith and use their best endeavours to implement this Protocol;
- (b) subject to any confidentiality restrictions, provide all information that is reasonably required to allow another party to implement any element of this Protocol; and
- (c) ensure that key personnel are aware of their responsibilities under this Protocol.

4 Management of Access Rights

4.1 Train Path Schedules

ARTC will provide to the HVCCC a copy of variations to any Train Path Schedules agreed with the relevant Access Holder.

4.2 TPS Register

ARTC will maintain a register containing:

- (a) details of key contacts; and
- (b) details of all Train Path Schedules and variations to Train Path Schedules a copy of each Access Holder's train path schedules, as amended from time to time;

which, on request by the HVCCC, will be accessible by the HVCCC for the purpose of Workflows and implementing this Protocol.

5 Liaison Committee

5.1 Purpose of Liaison Committee

- (a) The Liaison Committee will provide a forum for regular liaison between ARTC and the HVCCC and for the ongoing management of this Protocol, including for:
 - (i) ensuring that the Workflows are developed and implemented by the Consultation Working Group by no later than 31 October 2013 and that any additional Workflows are developed as and when required, including endorsing the implementation of Workflows developed by the Consultation Working Group;
 - (ii) monitoring the effectiveness of the Workflows in meeting the objective of this Protocol and the requirements of the Access Undertaking;
 - (iii) ensuring that a review of the operation of the Protocol and the Workflows occurs when required and no less frequently than once every two years, the purpose of such review being to consider whether the Protocol and Workflows:
 - A. are meeting their objectives and the requirements of the Access Undertaking; and
 - B. are operating effectively and efficiently;
 - (iv) ensuring that appropriate improvements or other changes to the Protocol and Workflows are implemented in a timely fashion where the need for the improvement or change is identified by a review or is otherwise identified by the Liaison Committee, the Consultation Working Group or one of the parties;
 - (v) referring matters relating to the Access Undertaking, the Protocol or the Workflows to the Consultation Working Group for consideration or action;
 - (vi) addressing any matter referred to the Liaison Committee by the Consultation Working Group; and
 - (vii) other coordination and consultation as required for the purposes of this Protocol and the Access Undertaking.

5.2 Membership of Liaison Committee

- (a) ARTC and the HVCCC must each appoint two representatives to form the Liaison Committee.

- (b) The initial representatives of ARTC on the Liaison Committee shall be:
 - (i) Executive General Manager, Strategy and Growth; and
 - (ii) Executive General Manager, Hunter Valley.
- (c) The initial representative of the HVCCC on the Liaison Committee shall be:
 - (i) Chief Executive Officer; and
 - (ii) Capacity Planning Manager.
- (d) ARTC and the HVCCC may nominate replacement representatives who have role accountabilities that are appropriate to carrying out the work of the Liaison Committee at any time by providing written notice of such nomination to the other.

5.3 Meetings of Liaison Committee

- (a) ARTC and the HVCCC must procure that the Liaison Committee meets at least once every Quarter.
- (b) Prior to each meeting ARTC will prepare and provide an agenda for the next meeting.
- (c) ARTC will provide a secretary to take minutes of the meetings of the Liaison Committee and that such minutes are circulated following each meeting for approval of members of the Liaison Committee.
- (d) ARTC and the HVCCC must, and must procure that their representatives on the Liaison Committee must, at all times act in good faith in respect of all discussions, decisions and proposals of the Liaison Committee.

6 Consultation Working Group

6.1 Purpose of Consultation Working Group

The Consultation Working Group will provide a forum for regular and informal liaison between ARTC and the HVCCC, including for:

- (a) developing the Workflows referred to in sub-sections 2.2(c), (d) and (e) for the endorsement of the Liaison Committee and implementation by 31 October 2013;
- (b) implementing the Workflows and any amendments to the Workflows, including by ensuring that the actions required by each party under the Workflows are carried out in a timely and effective manner;
- (c) monitoring the effectiveness of the Protocol and the Workflows and providing the Liaison Committee with advice and recommendations for improvements or other changes as required by that Committee or as the Consultation Working Group otherwise considers necessary;
- (d) undertaking reviews of the operation of the Protocol and the Workflows as described in section 4.1(a)(iii) of this Protocol and providing the Liaison Committee with advice and recommendations on the review outcome;
- (e) seeking direction from the Liaison Committee on matters relating to the Access Undertaking, Protocol or Workflows as the Consultation Working Group considers necessary from time to time;

- (f) considering matters referred by the Liaison Committee relating to the Access Undertaking, Protocol or Workflows;
- (g) other coordination and consultation as required for the purposes of this Protocol and the Access Undertaking.

6.2 Membership of Consultation Working Group

- (a) ARTC and the HVCCC must each appoint representatives to form the Consultation Working Group.
- (b) The initial representatives of ARTC on the Consultation Working Group shall be:
 - (i) General Manager Commercial; and
 - (ii) General Manager – Operations & Logistics, Hunter Valley.
- (c) The initial representative of the HVCCC on the Consultation Working Group shall be:
 - (i) Capacity Planning Manager; and
 - (ii) Commercial Manager;
- (d) ARTC and the HVCCC may nominate replacement representatives who have role accountabilities that are appropriate to carrying out the work of the Consultation Working Group at any time by providing written notice of such nomination to the other.
- (e) ARTC and HVCCC will appoint additional representatives to the Consultation Working Group to attend such meetings of the Consultation Working Group as may be required to ensure that:
 - (i) the meetings support the effective implementation of the Workflows and the Protocol; and
 - (ii) the Consultation Working Group can carry out its role as described in this Protocol.

6.3 Meetings of Consultation Working Group

- (a) ARTC and the HVCCC must procure that the Consultation Working Group meets at least once every Month, or at such other frequency as may be approved by the Liaison Committee from time to time.
- (b) Prior to each meeting ARTC will prepare and provide an agenda for the next meeting.
- (c) ARTC will provide a secretary to take minutes of the meetings of the Consultation Working Group and that such minutes are circulated following each meeting for approval of members of the Consultation Working Group.
- (d) ARTC and the HVCCC must, and must procure that their representatives on the Consultation Working Group must, at all times act in good faith in respect of all discussions, decisions and proposals of the Consultation Working Group.

Schedule 1 – Workflows

1 Principles pertaining to defining of Coal Chain capacities.

1.1 Future Coal Chain Capacity Planning and development of the Coal Chain Capacity Systems Assumptions

- (a) It is the responsibility of ARTC and HVCCC to consolidate the relevant scenarios allowing sufficient time for assessment of Coal Chain capacity in the development of the HVCCC Capacity Master Plan and the ARTC Hunter Valley Corridor Capacity Strategy.
- (b) HVCCC will seek inputs from ARTC for the preparation of the future year 10 years capacity assessments by the fourth quarter of each year for the ensuing 12months capacity analysis and development of the rolling Capacity Master Plan. These capacity inputs for Coal Chain modelling will include:
 - I. The confirmation of the ensuing 10 years of contracted volume by Load Point and where attainable, by specific terminal exit point. Noting this may be subject to periodic change, although for modelling inputs, HVCCC will seek a firm case by the November of each year.
 - II. Early indications of inclusions or likely enablers to capacity that are to feature in the following years ARTC Hunter Valley Corridor Capacity Strategy. This can be utilised as test cases for modelling with the intent of providing ARTC advice prior to the Strategy release in year +1 period release.
 - III. Path timetable, path planning or path operational techniques that can influence capacity in coming years.
 - IV. Prospective and any likely additional tranches of Path usages due to materialise in the coming years with supporting summary of the relevant conditions precedent.

HVCCC will in the course of developing Capacity Master Plans consult with ARTC and other Members of the HVCCC throughout the course of the coming 12months to consolidate the release of the rolling Master Plan by commencement of November in each calendar year.

1.2 Defining and communicating capacity determinations for annual purposes

- (a) It is the responsibility of ARTC and HVCCC to consolidate the relevant scenarios allowing sufficient time for assessment of Coal Chain capacity as required for HVAU Access Holders and the Members of HVCCC.
- (b) The contents of a capacity assessment scope should generally include:
 - I. the actions required to prepare a modelling development and assumptions collation phase, model input requirements and indicative time estimate for the modelling milestones or requirements for an investigation into the capacity related focus and

- II. The output requirements of capacity assessments undertaken
 - III. A consultation period and feedback loop included with total project timeframe.
- (c) HVCCC will seek as inputs for the preparation of the Annual Declared Capacity for the following year by July of each year. These capacity inputs can include:
- I. The indicative annual track maintenance schedule for the coming year
 - II. The latest Hunter Valley Corridor Capacity Strategy
 - III. The indicative demand from access holders by Load Point to specific terminal exit point for modelling purposes.
 - IV. Any new or additional tranches of Path usages due to materialise in the coming year with supporting summary of the relevant conditions precedent
- (d) HVCCC will consult with ARTC and other Members of the HVCCC throughout the course of the third quarter of the year in preparation of Annual Declared Capacity by commencement of quarter four as agreed with industry participants.
- (e) ARTC will advise the finalisation of Train Path Schedules with Access Holders and in turn HVCCC will prepare the declaration of capacity for the coming annual period.

1.3 Defining and communicating capacity determinations as required of the HVAU

ARTC will advise the HVCCC within agreed target times:

- (a) of receipt of an Access Application setting out the Access Rights sought by an Applicant;
- (b) of a new tranche of Path Usages for the purpose of transporting coal being scheduled to commence
- (c) of receipt of a request to permanently vary a Service Assumption for a Train Path by an Access Holder; and
- (d) of ARTC forming the decision that the use of a Non-Compliant Service of an Access Holder may have a material adverse impact on Capacity, Coal Chain Capacity or the Capacity entitlement of another access holder,

(Relevant Request), and provide the HVCCC with a copy of the details of the Relevant Request and seek the HVCCC' s views on:

- (e) the timeframe appropriate to deliver a capacity determination upon such request
- (f) the impact of the Relevant Request on Capacity, Coal Chain Capacity or the Capacity entitlements of Access Holders; or
- (g) whether there is sufficient Coal Chain Capacity to offload the anticipated coal associated with the Relevant Request (and any other unconditional Path Usages),

in accordance with the Access Undertaking (as applicable).ARTC will endeavour to ensure the Relevant Requests are submitted via the workflows described in Schedule 1.1 and 1.2 to agreed timeframes.

Where the Relevant Request is submitted outside of the described workflows in Section 1.1 and 1.2, HVCCC will work to meet ARTC's needs and timeframes on a best endeavours basis to:

- (h) provide advice to ARTC, on the HVCCC's view, as to whether the Relevant Request has an impact on Capacity, Coal Chain Capacity or the Capacity entitlements of Access Holders in accordance with the Access Undertaking.
- (i) ARTC will consider the views expressed by the HVCCC in good faith.

1.4 Further consultation

If it is determined by the HVCCC that the Relevant Request has an impact on Capacity, Coal Chain Capacity or the Capacity entitlements of Access Holders and if ARTC does not, after considering in good faith agree with such determination, then the matter will be referred to the Consultation Working Group.

2 Principles for Project Plans pertaining to Additional Coal Chain (Track System) Capacity

- (a) The Parties must develop agreed target times:
 - (i) after the HVCCC recommends a Project to ARTC (other than a Project identified in the Hunter Valley corridor capacity strategy) under section 8.3 of the Access Undertaking; or
 - (ii) if ARTC considers it to be appropriate, when an Applicant decides to proceed with Additional Capacity which requires a new Project under section 8.4(a) of the Access Undertaking,to discuss and agree a project plan to apply to the proposed Project.
- (b) The contents of a project plan should generally include:
 - (i) the actions required to prepare a Concept Assessment Report, indicative cost estimate for the Concept Assessment Report, or requirements for an investigation into the Concept Assessment Report; and
 - (ii) who pays the agreed costs of the Concept Assessment Report.

3 Principles for Workflow for Project Plans for Additional Capacity

- (a) The Parties must meet within agreed target times:
 - (i) after the HVCCC recommends a Project to ARTC (other than a Project identified in the Hunter Valley corridor capacity strategy) under section 8.3 of the Access Undertaking; or

- (ii) if ARTC considers it to be appropriate, when an Applicant decides to proceed with Additional Capacity which requires a new Project under section 8.4(a) of the Access Undertaking,

to discuss and agree a project plan to apply to the proposed Project.

- (b) The Workflow will include the contents of a project plan, which should generally include:

- (i) the actions required to prepare a Concept Assessment Report, indicative cost estimate for the Connect Assessment Report, or requirements for an investigation into the Concept Assessment Report; and

- (ii) who pays the agreed costs of the Concept Assessment Report.