

Artwork Agreement (Indigenous Artwork Program)

Details

ARTC	Australian Rail Track Corporation Ltd ABN 75081455754 of [insert address]
Artist	Full name: [insert] Address: [insert] Email: [insert] Phone: [insert]
Artwork	The original artwork created by the Artist described as [insert description of the artwork in its original form (e.g. a painting or drawing)]. The artwork also includes any sample, design, concept or interim drawings or paintings created for the purposes of or in the process of creating the artwork or any photographs or video taken by or on behalf of the Artist of the artwork or those other drawings or paintings.
Artwork Description	A description of the Artwork that is no more than 250 words and outlines the story and cultural relevance of the Artwork.
Delivery Date	The date which is 3 weeks after the Effective Date.
Delivery Point	The location within Australia which the Artist notifies in writing to ARTC at least 7 days before the Delivery Date and which ARTC approves.
Effective Date	The date the last party signs this Agreement.
Artwork Sum	\$5,000 (including GST)
Territory	The world
Credit	© "Original artwork "<insert title of Artwork>" by <name of Artist>. Artwork reproduced under licence from <Artist>."

Background

- B. ARTC issued a Request for Proposal (**RFP**) on [insert] May 2021 for the creation of an original artwork by an indigenous Australian artist. The Artist responded to the RFP on [insert].
- C. ARTC agrees to purchase the Artwork, and the Artist agrees to license the copyright in the Artwork, on the terms and conditions set out in this Agreement.

Agreement

The parties agree as follows:

1. Definitions

In this Agreement, capitalised terms have the meaning given to them in the Details and as follows:

Copyright means copyright (including future copyright) under the *Copyright Act 1968* (Cth) or under the law of another country, and rights in the nature of or analogous to copyright.

Licence has the meaning given to it in clause4(a).

Moral Rights means moral rights under the *Copyright Act 1968* (Cth) or under the law of a country other than Australia and the rights in the nature of or analogous to the foregoing rights under the law of Australia or any other country.

2 Production of Artwork

- (a) The Artist agrees and acknowledges that on or about [insert date] ARTC advised the Artist of ARTC's requirements regarding the Artwork concept and design being [describe requirements] (**Agreed Requirements**). Unless ARTC otherwise agrees, the Artwork must meet the Agreed Requirements.
- (b) At any time before the Delivery Date, ARTC may request, and the Artist must promptly provide to ARTC, any sample, design, concept or interim drawings or paintings regarding the Artwork.

3 Sale of Artwork

- (a) The Artist agrees to create and sell the Artwork to ARTC for the Artwork Sum.
- (b) The Artist agrees to make available to ARTC the Artwork and the Artwork Description at the Delivery Point on or before the Delivery Date.
- (c) The Artist must provide ARTC a tax invoice for the Artwork Sum on the date on which ARTC takes delivery of the Artwork. The tax invoice must include the Artist's address and Australian Business Number (ABN).
- (d) ARTC will pay the Artwork Sum to the Artist within 30 days after receiving the Artwork (meeting the requirements of the RFP and other Agreed Requirements) and receiving a tax invoice which complies with clause 3(c).
- (e) Ownership of the Artwork will pass to ARTC upon payment of the Artwork Sum by ARTC.
- (f) This Agreement does not affect ownership of Copyright in the Artwork.

4 Licence

- (a) On and from the Effective Date, the Artist grants to ARTC an irrevocable, royalty free, exclusive, perpetual, worldwide, assignable licence (including the right to sublicense to others) to exercise Copyright in the Artwork anywhere in the Territory (**Licence**).
- (b) The Licence includes the right for ARTC to (among other things):
 - i. reproduce, publish and display the Artwork (or part of it) in any size and on any medium and in all media, including by photographic, cinematographic or other two-dimensional representations and multi-media and digital forms;
 - ii. adapt or modify any reproduction of the Artwork (or any part of it), including in different colours (or combination of colours) or combining the reproductions of the Artwork (or part of it) with other elements;
 - iii. wrap a copy of the Artwork (or part of it) on vehicles, buildings or other property or things; and
 - iv. reproduce the Artwork (or part of it) in ARTC publications and advertisements (in the form of brochures, catalogues and other print or electronic mediums, including social media platforms) and merchandise; and

v. authorise any other person to do the things permitted under the Licence.

(c) ARTC has no obligation to use or display the Artwork or exercise its rights under the Licence.

5. No other fees or costs

(a) The Artwork Sum is the total amount to be paid by ARTC to purchase the Artwork and is inclusive of any taxes (including GST), administration fees and any other costs associated with the preparation (including any meetings with ARTC) or sale of the Artwork.

(b) No royalty, licence fee or other amount is payable to the Artist in connection with the licence. The Artist irrevocably releases ARTC from any claim the Artist may have now or in the future with respect to any payment or fee for exercise of the Copyright in the Artwork.

6. Moral Rights

The Artist waives Moral Rights in the Artwork to the extent permitted by law and unconditionally consents to any act or omission in relation to the Artwork by ARTC (and any other person authorised by ARTC) that would, but for such waiver or consent, infringe the Artist's Moral Rights in the Artwork. Without limitation, this includes ARTC making any changes to the Artwork, including adding to or removing elements, combining the Artwork with any other material, adapting the Artwork in any manner including by changing the colours, or as otherwise contemplated by this Agreement.

7. Artist's warranties

The Artist warrants that:

(a) The Artist is authorised to sell the Artwork to ARTC and to transfer ownership of the Artwork to ARTC;

(b) The Artist is the sole owner of the Copyright in the Artwork;

(c) the Artwork is an original work that has been created solely by the Artist and has not been copied from the work of any other person and does not include the work of any other person;

(d) entry into this Agreement will not put the Artist in breach of any obligation to any person;

(e) the Copyright in the Artwork has not been assigned, licensed or otherwise encumbered in any way which would interfere with, restrict, limit or otherwise prevent ARTC enjoying the benefits of the Licence;

(f) any acts or omissions of ARTC (and persons authorised by it) in relation to the Artwork as contemplated by this Agreement will not infringe the rights (including Copyright or Moral Rights) of any person;

(g) there is no cultural or religious reason or other impediment that may prevent the Artwork (or reproductions of the Artwork) from being used in the manner contemplated by this Agreement; and

(h) to the extent that the Artwork contains or uses traditional cultural expressions (**TCEs**), the Artist has obtained all necessary permissions from the traditional owners of those TCEs for use of those TCEs in the Artwork and any use of the Artwork by ARTC in accordance with the Licence will not infringe the rights (including Copyright) of any traditional owners of those TCEs.

8. Credit

Where it is reasonable to do so, ARTC will use its best endeavours to credit the Artist in any reproduction or

publication of the Artwork using the Credit or a substantially similar form.

9. Image and Privacy

- (a) The Artist irrevocably and unconditionally consents to ARTC using and disclosing the Artist's name, image, likeness, community and biography in connection with the Artwork and any reproduction or other exploitation of the Artwork as contemplated by the Licence.
- (b) ARTC is collecting personal information about the Artist in connection with the RFP and this Agreement. ARTC will collect, use, disclose and otherwise manage such personal information in accordance with its Privacy Policy published at <https://inlandrail.artc.com.au/privacy-policy/>.

10. Indemnity and Release

- (a) The Artist indemnifies ARTC (including its employees, contractors, agents and licensees) against any loss, damage, cost, expense or liability suffered or incurred by any of them arising out of or in any way in connection with any claim that any acts or omissions of ARTC (and persons authorised by it) in relation to the Artwork as contemplated by this Agreement infringe the Copyright or Moral Rights of a third party.
- (b) To the fullest extent permitted by law, the Artist irrevocably releases ARTC, its employees, contractors, agents and licensees from and against any claim, proceeding, action, demand, cost or liability howsoever arising (including in negligence) which the Artist has or may have arising out of or in connection with this Agreement, or the use or exploitation of the Artwork as contemplated by this Agreement.

11. Term and termination

- (a) This Agreement commences on the Effective Date and continues until terminated in accordance with this clause 11.
- (b) The Artist may terminate this Agreement by written notice to ARTC if ARTC fails to pay the Artwork Sum in accordance with clause 2, the Artist provides a written default notice of that fact to ARTC, and ARTC still fails to pay within 30 days of that default notice.
- (c) ARTC may terminate this Agreement immediately by written notice to the Artist if the Artist is in material breach of this Agreement and the breach is not capable of remedy, or the breach is capable of remedy and the Artist fails to remedy the breach within 30 days of receipt of written notice requesting it to do so.
- (d) Neither party may terminate this Agreement (including by exercising rights at law) except in accordance with this clause 11.
- (e) Expiry or termination of this Agreement for whatever reason will not affect or prejudice any rights or liabilities that the parties have accrued prior to such expiry or termination. Clause 5, 6, 7, 8, 9, 10, 12(b) and this clause 11(2)(a) survive expiry or termination of this Agreement. Except where the Artist terminates this Agreement under clause 11(b), the Licence survives any expiry or termination of this Agreement.

12. General

The parties agree that:

- (a) In this Agreement, unless the context otherwise requires, the word "includes" in any form is not a word of

limitation, references to a “person” or “people” includes any type of legal entity (including a company, statutory body and a trust and amounts of money are stated as inclusive of GST.

- (b) This Agreement is confidential to both parties. A party may disclose this Agreement to a person where required by law, on a confidential basis to its personnel and advisors, and to another person with the other party's prior written consent. ARTC may disclose this agreement to (a) any minister, employee or officer of the Commonwealth or a Commonwealth body, (b) a department, agency, employee or officer of any State or Territory of Australia, (c) the Commonwealth Parliament, (d) any person whose functions include reviewing, inquiring into, auditing or investigating ARTC, and (e) any person in accordance with ARTC or Commonwealth policy.
- (c) This Agreement is governed by the laws of Queensland and each party submits to the jurisdiction of the courts of Queensland.
- (d) This Agreement may only be amended by a document signed by both parties.
- (e) The Artist may not assign its rights and obligations under this Agreement.
- (f) This Agreement constitutes the entire agreement between the parties in relation to its subject matter.
- (g) This Agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this agreement and all together constitute one agreement.
- (h) Execution of this Agreement by way of an electronic signature shall be binding on the party whose name is contained therein and constitutes valid execution.

