

29 June 2018

Mr Ravi Prasad
Project Manager — Declaration Reviews
Queensland Competition Authority

Dear Ravi

DBCT Declaration Review – Access Framework

Pricing amendments

With reference to paragraph 304 and Appendix 7 of DBCTM's submission of 30 May 2018, which advised that drafting to give effect to the pricing framework set out in Appendix 7 of DBCTM's submission was being developed and that a revised version of the Access Framework and Standard Access Agreement that incorporates that drafting would be provided to the QCA shortly.

DBCTM now attaches:

- A revised (clean) version of the Access Framework and Standard Access Agreement.
- A comparison version of each of the Access Framework and Standard Access Agreement, which shows changes that have been made to the version of the Access Framework and Standard Access Agreement submitted on 30 May 2018.
- A table setting out the rationale for the changes made in the revised version of the Access Framework and Standard Access Agreement, to assist stakeholders to understand the basis for the changes.

The changes that have been made to the Access Framework and Standard Access Agreement implement, and are consistent with, the pricing framework set out in Appendix 7 of DBCTM's initial submission. Although DBCTM considers that the pricing framework submitted on 30 May 2018 provided sufficient detail for the purposes of assessing criterion (a), DBCTM is providing the attached documents to illustrate how the pricing framework can be given effect to in the Access Framework and Standard Access Agreement.

Operation of Deed Poll and Framework

In the course of preparing the pricing amendments, DBCTM has given further consideration to the application of the Framework to DBCTM and access holders who are party to existing user agreements. In addition to changes in the Framework and Standard Access Agreement to reflect this, DBCTM has also revised the Deed Poll to include an explicit requirement for DBCTM to comply with the Framework. We attach a revised version of the Deed Poll reflecting that clarification.

DBCTM also proposes a grandfathering provision for the purposes of the queueing provisions under the Framework to provide for the tonnage and term under existing user agreements to be transferred to the new Standard Access Agreement. DBCTM is giving further consideration to whether any amendments to the Framework are required to provide for this.

Please contact me if you have any related queries.

Yours sincerely



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Chief Executive Officer
DBCT Management

Dalrymple Bay Coal Terminal Access Framework

[9 September 2020]

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1 Introduction

1.1 Purpose of this document

(The Terminal) The Terminal is a common user coal port. The Terminal includes in-loading, stockpiling, reclaiming, out-loading, and associated facilities for the handling of coal. The Terminal is located at the Port of Hay Point, south of Mackay in Queensland.

(Agreements with the State) On 14 September 2001 the DBCT Trustee as trustee of the DBCT Trust, and DBCT Management entered into a number of agreements with DBCT Holdings and PCQ (both wholly owned by the State) under which DBCT Trustee and DBCT Management were granted a 50 year lease (with an option for a further 49 years) of the Terminal.

(Operator) An Operator is contracted to operate the Terminal on behalf of DBCT Management pursuant to an operations and maintenance contract. The Operator of the Terminal has historically been user-owned and independent of the lessee.

(Establishment of Framework) On the Expiry Date, the declaration of coal handling services at the Terminal under the *Queensland Competition Authority Act 1997* (Qld) expired. This Framework has been developed in response and provides a balanced approach to the provision of Access and a framework (based on a negotiate/arbitrate model) to manage negotiations in an efficient and transparent manner for Access Seekers seeking Access to the Services at the Terminal.

1.2 Scope of Framework

This Framework provides for:

- (a) the negotiation and provision of Access to the Services at the Terminal; and
- (b) measures to mitigate potential adverse effects on competition which could arise out of the ownership of a related Supply Chain Business.

1.3 Object of this Framework

- (a) The objective of the Framework is to promote the economically efficient operation of, use of and investment in, the Terminal, with the effect of promoting effective competition in upstream and downstream markets.
- (b) This Framework has been prepared in accordance with, and gives effect to, the Framework Objective.

1.4 Duration of Framework

This Framework will apply on and from the Commencement Date. It will apply until the Terminating Date.

1.5 Access Agreements and effect on Existing User Agreements

This Framework applies to the negotiation of Access Agreements or the negotiation of additional Access rights in addition to those already the subject of an Access Agreement or Existing User Agreement. Nothing in this Framework requires an Existing User to vary a term or provision of that Existing User Agreement.

1.6 Implementation of Differentiation in Access Agreements

Following a Price Ruling that a Terminal Capacity Expansion will be a Differentiated Expansion Component, DBCT Management will:

- (a) calculate Access Charges under each Access Agreement in accordance with the provisions of this Framework; and
 - (b) in good faith, take all reasonable steps to negotiate any necessary amendments to any Access Agreement executed prior to the Price Ruling, to ensure that they are consistent with the Access Charges being calculated in accordance with the provisions of this Framework in relation to the application of Differentiation to a Terminal Capacity Expansion.
-

2 Definitions and Interpretation

2.1 Definitions

Unless the subject or context is inconsistent, each of the capitalised terms used in the Framework has the meaning assigned to it in Schedule G.

2.2 Interpretation

The rules set out in Schedule G apply to and govern the interpretation of this Framework.

3 Role of DBCT Management and the Operator

3.1 Role of DBCT Management

- (a) The owner of the Terminal is DBCT Holdings.
- (b) DBCT Trustee and DBCT Management, under the Leases, are the lessee and sublessee of the Terminal. Under the terms of the Leases and the Port Services Agreement, DBCT Management is solely responsible for providing Access to Access Holders and Access Seekers during the Lease Term.
- (c) DBCT Management will comply with and give effect to this Framework, except as otherwise provided for under an Access Agreement or required by law.
- (d) DBCT Management will ensure that employees, subcontractors and agents of subcontractors comply with the requirements of this Framework, except as otherwise provided for under an Access Agreement or required by law.
- (e) Where the performance of an obligation under this Framework requires a Related Body Corporate of DBCT Management to take or refrain from taking some action, DBCT Management must procure that the Related Body Corporate takes or refrains from taking that action.
- (f) DBCT Management must procure that any Related Body Corporate provides all necessary assistance and information where this is required for the performance by DBCT Management of an obligation under this Framework.

3.2 Role of the Operator

During the term of the Framework, DBCT Management acknowledges and agrees that:

- (a) the Operator is and will remain Dalrymple Bay Coal Terminal Pty Limited ACN 010 268 167 (**DBCT PL**) and that DBCT PL is majority owned or wholly owned by Access Holders and Existing Users;
- (b) each Access Holder and Existing User has a right under the constitution of DBCT PL to become a shareholder of DBCT PL;

- (c) if an Access Holder or Existing User is not a shareholder of DBCT PL but wishes to become a shareholder of DBCT PL then that Access Holder or Existing User may, in accordance with the constitution of DBCT PL, apply to become a shareholder of DBCT PL by making an application to DBCT PL at the following address:

Dalrymple Bay Coal Terminal Pty Limited
M.S. F283
Mackay, Queensland, 4740
Attention: Chief Executive and General Manager;

- (d) the Operator carries out its obligations under the Operation & Maintenance Contract and Terminal Regulations independently of DBCT Management.

3.3 Operation and Maintenance Contract

During the term of the Framework, DBCT Management undertakes to:

- (a) maintain the Operation & Maintenance Contract; and
- (b) ensure that the terms of the Operation and Maintenance Contract, if amended at any time, remain substantially consistent with the terms set out in Schedule H.

4 Services to be provided

DBCT Management must provide the Services at the Terminal to Access Holders in accordance with this Framework and each Access Agreement, including in compliance with the Terminal Regulations (and, without limitation, in accordance with the level of service set out in Schedule E of this Framework).

5 Negotiation arrangements

5.1 Framework for negotiation

- (a) **(Outline)** This Section 5 of this Framework outlines the process which will be followed to enable Access Seekers to obtain Access. It deals with:
 - (1) an Access Application by an Access Seeker and a Renewal Application by an Access Applicant;
 - (2) provision of an Indicative Access Proposal by DBCT Management;
 - (3) negotiations to develop an Access Agreement;
 - (4) principles for the entering into of an Access Agreement where it is conditional upon a Terminal Capacity Expansion; and
 - (5) various other provisions relating to when and the basis on which Access Agreements may be entered into pursuant to Access Applications.
- (b) **(Progressing Access Applications)** DBCT Management will take all reasonable steps to progress each Access Application and any negotiations to develop an Access Agreement with an Access Seeker in a timely manner and will complete each relevant step as soon as is practicable.
- (c) **(Negotiations to be in good faith)** DBCT Management and an Access Seeker must negotiate in good faith for reaching an Access Agreement.
- (d) **(No unfair differentiation between Access Seekers)** DBCT Management must not unfairly differentiate between Access Seekers in a way that has a material adverse

effect on the ability of one or more Access Seekers to compete with other Access Seekers.

- (e) **(DBCT Management to satisfy Access Seeker's requirements)** In negotiations for an Access Agreement, DBCT Management must make all reasonable efforts to try to satisfy the reasonable requirements of the Access Seeker.

5.2 Application for Access and information to be provided

- (a) **(Form of Access Application)** Any application for Access must be in the form specified in Schedule A and include:
 - (1) a warranty in the form specified in; and
 - (2) such other information that may be required by, Schedule A.
- (b) **(Access Seeker to agree to comply with Framework and Deed Poll)** An Access Seeker must, when submitting an Access Application, unconditionally and irrevocably agree to comply with the requirements, obligations and processes in:
 - (1) this Framework relating to it or its Access Application; and
 - (2) the Deed Poll, including the conditions set out in clauses 8.4, 9, 10 and 11 of the Deed Poll,
 and if the Access Seeker does not do so then:
 - (3) DBCT Management will have no obligations, and the Access Seeker no rights, under this Framework in respect of the Access Application or the Access sought in that Access Application; and
 - (4) DBCT Management may refuse to accept the Access Application.
- (c) **(Forecasts in Access Application)** DBCT Management acknowledges that, at the time an Access Application is made, some information provided in the Access Application may be a forecast only. The Access Seeker must use its best endeavours to ensure that any such information contained in an Access Application is as accurate as possible and must immediately notify DBCT Management as soon as it becomes aware that the information is, or is likely to be, inaccurate.
- (d) **(Information sought by Access Seeker prior to Access Application)** Prior to submitting an Access Application, an Access Seeker may request from DBCT Management:
 - (1) reasonably available preliminary information relating to the Access Application (including copies of the then current Standard Access Agreement and Terminal Regulations) – which DBCT Management must provide within 10 Business Days of DBCT Management receiving the request;
 - (2) initial meetings to discuss the proposed Access Application and the requirements of the Access Application Form set out in Schedule A – which DBCT Management must facilitate within a reasonable time after being requested to do so.

(Revisions to Access Application)

- (e) At any time after an Access Seeker submits an Access Application to DBCT Management but prior to the commencement of the negotiation period referred to in Section 5.7 in respect of the Access Application, an Access Seeker may notify DBCT Management that it wishes to revise certain information specified in its Access Application.

- (f) In considering whether to allow an Access Seeker to revise certain information specified in its Access Application, DBCT Management will have regard to the impact of the proposed revision, if allowed by DBCT Management, on other Access Seekers and Access Holders.
- (g) Without otherwise limiting DBCT Management's discretion to allow an Access Seeker to revise information specified in its Access Application, DBCT Management will allow an Access Seeker to revise information specified in its Access Application in accordance with Section 5.4(c) or if DBCT Management is reasonably of the opinion that the proposed revision:
 - (1) if allowed by DBCT Management, would not substantially alter the nature of the Access rights sought by the Access Seeker in its Access Application prior to the revision;
 - (2) if allowed by DBCT Management, would not adversely impact on other Access Seekers or Access Holders; and
 - (3) is not otherwise prohibited under Section 5.4(i)(3), 5.4(j)(7) or 5.10(h).
- (h) For the avoidance of doubt, any revision of information specified in an Access Application which would, if allowed by DBCT Management, increase the annual Tonnage specified in the Access Application or extend the term specified in the Access Application will be taken to be a substantial alteration of the Access rights sought by the Access Seeker in its Access Application.

5.3 What happens after lodgement of Access Application

- (a) **(Acknowledgement by DBCT Management)** Upon receiving a purported Access Application under Section 5.2, DBCT Management must, within 10 Business Days of its receipt, acknowledge in writing to the Access Seeker receipt of the application and confirm whether the application is an Access Application complying with Section 5.2.
- (b) **(Request by DBCT Management for further information)** DBCT Management may request from the Access Seeker additional information where DBCT Management can reasonably demonstrate the need for such information for the purpose of preparing an Indicative Access Proposal, or clarification of information provided, including (but not limited to) obtaining further information to establish the solvency and creditworthiness of the Access Seeker and, where DBCT Management requires, a Security provider. Upon receiving the required information or clarification from the Access Seeker, DBCT Management must provide written acknowledgment of the receipt of this further information as soon as practicable and, in any event, within 10 Business Days of receipt of the further information.
- (c) **(Provision of further information by Access Seeker)** The Access Seeker must provide any information reasonably requested by DBCT Management under this Section 5.3 within 20 Business Days of receipt of the request from DBCT Management (or such later date as DBCT Management agrees to, it being required to act reasonably in agreeing to extend the period if the Access Seeker demonstrates good grounds for a longer period applying). If the Access Seeker does not provide the requested information within that period, its Access Application will be deemed to have been rejected, but it may apply again for Access in accordance with Section 5.2. If an Access Seeker lodges a replacement Access Application, DBCT Management will endeavour in good faith to expedite the steps leading to acknowledgement under this Section 5.3 of the Access Application.

- (d) **(Rejection if Access Seeker fails to provide information or demonstrate application criteria)** If:
- (1) an Access Application fails to comply with Section 5.2 (including where the Access Seeker fails to include the warranty provided for in, or such other information as may be required by, Schedule A); or
 - (2) DBCT Management, acting reasonably, is of the opinion that an Access Application:
 - (A) does not demonstrate that the Access Seeker is reasonably likely to commence delivery of coal to the Terminal on the date specified in item 5 of the Access Application (which must be no more than 5 years from the date of the Access Application); or
 - (B) does not demonstrate that the Access Seeker has:
 - (i) Marketable Coal Reserves that are consistent with the net tonnes specified in item 7 of the Access Application in respect of the first five Financial Years of Access applied for; and
 - (ii) Coal Resources that are, together with the Marketable Coal Reserves of the Access Seeker, consistent with the total net tonnes specified in item 7 of the Access Application,
- then DBCT Management may reject the Access Application. Where DBCT Management rejects an Access Application in accordance with this Section 5.3, the Access Application will be deemed not to have been received, for the purposes of the Queue, unless Section 5.3(e) applies.
- (e) **(Disputed rejection of Access Application)** If DBCT Management rejects an Access Application submitted by an Access Seeker and the Access Seeker, acting reasonably, is of the opinion that its Access Application should have been accepted by DBCT Management in accordance with this Framework, then the Access Seeker may refer the matter for dispute resolution in accordance with Section 16 of this Framework within 15 Business Days of receiving the notice of rejection. In that case, the Access Applicant may not be removed from the Queue, and DBCT Management must not offer to enter an Access Agreement with another Access Applicant in respect of the Access sought in the relevant Access Application, unless and until the Dispute is resolved in favour of DBCT Management.
- (f) **(Expiry of Access Application)** Subject to an Access Application or Renewal Application (as applicable) lapsing or otherwise being rejected by DBCT Management in accordance with this Framework before the relevant expiry date:
- (1) an Access Application submitted to DBCT Management before the Commencement Date will, unless the Access Application is renewed under Section 5.3A, expire on the date which is eight weeks after the Commencement Date;
 - (2) any Access Application submitted to DBCT Management on or after the Commencement Date will, unless the Application is renewed under Section 5.3A, expire on the next occurring 31 August; and
 - (3) an Access Application which has been renewed in accordance with Section 5.3A, will, unless the Access Application is further renewed under Section 5.3A, expire on the next 31 August occurring after the 31 August on which the Access

Application was to expire immediately prior to the Renewal Application being accepted.

- (g) **(Notice of Expiry)** DBCT Management will give notice of the timing of expiry to all Access Seekers with a current Access Application (including those which remain current due to a previous Renewal Application being accepted):
- (1) for Access Applications for which the expiry date is set by Section 5.3(f)(1), on the Commencement Date; and
 - (2) for Access Applications for which the expiry date is set by Section 5.3(f)(2) or 5.3(f)(3), at least 1 month and no more than 3 months prior to expiry date of the Access Application.

5.3A Renewal Applications

- (a) **(Renewal Application)** An Access Applicant that wishes to renew its Access Application must:
- (1) submit to DBCT Management a Renewal Application in the form specified in Schedule A and include:
 - (A) the warranty in the form specified in Schedule A; and
 - (B) such other information that may be required, as specified in Schedule A, not later than 15 Business Days before the date that its Access Application is due to expire; and
 - (2) when submitting the Renewal Application, unconditionally and irrevocably agree to comply with the requirements, obligations and processes in:
 - (A) this Framework relating to it or its Renewal Application; and
 - (B) the Deed Poll, including the conditions set out in clauses 8.4, 9, 10 and 11 of the Deed Poll,and if the Access Seeker does not do so then DBCT Management may refuse to accept the Renewal Application.
- (b) **(Forecasts in Renewal Application)** DBCT Management acknowledges that, at the time a Renewal Application is made, some information provided in the Renewal Application may be a forecast only. The Access Applicant must, however, use its best endeavours to ensure that any such information contained in a Renewal Application is as accurate as reasonably possible.
- (c) **(Acknowledgement by DBCT Management)** Upon receiving a purported Renewal Application under this Section 5.3A, DBCT Management must, within 10 Business Days of its receipt, acknowledge in writing to the Access Applicant receipt of the Renewal Application and confirm whether the application is a Renewal Application complying with this Section 5.3A.
- (d) **(Rejection if Access Seeker fails to provide information or demonstrate renewal criteria)** If:
- (1) an Access Applicant fails to comply with this Section 5.3A in respect of a Renewal Application (including where the Access Applicant fails to include the warranty provided for in, or such other information as may be required by, Schedule A); or
 - (2) DBCT Management, acting reasonably, is of the opinion that a Renewal Application submitted by an Access Applicant:

- (A) does not demonstrate that the Access Applicant is reasonably likely to commence delivery of coal to the Terminal on the date specified in item 5 of the Renewal Application (which must be no more than 5 years from the date of the Renewal Application); or
- (B) does not demonstrate that the Access Applicant has:
 - (i) Marketable Coal Reserves that are consistent with the net tonnes specified in item 7 of the Renewal Application in respect of the first five Financial Years of Access applied for; and
 - (ii) Coal Resources that are, together with the Marketable Coal Reserves of the Access Applicant, consistent with the total net tonnes specified in item 7 of the Renewal Application,

then DBCT Management may reject the Renewal Application. If DBCT Management rejects a Renewal Application or the Access Applicant fails to submit a Renewal Application to DBCT Management within the timeframe required in Section 5.3A(a), then the Access Applicant's current Access Application will expire on its expiry date (as determined in accordance with Section 5.3(f)) and the Access Applicant will be removed from the Queue on the date the Access Application expires, unless Section 5.3A(e) applies.

- (e) **(Disputed rejection of Renewal Application)** If DBCT Management rejects a Renewal Application submitted by an Access Applicant and the Access Applicant, acting reasonably, is of the opinion that its Renewal Application should have been accepted by DBCT Management in accordance with this Framework, then the Access Applicant may refer the matter for dispute resolution in accordance with Section 16 of this Framework within 15 Business Days of receiving the notice of rejection. In that case, the Access Applicant may not be removed from the Queue, and DBCT Management must not offer to enter an Access Agreement with another Access Applicant in respect of the Access sought in the relevant Renewal Application, unless and until the Dispute is resolved in favour of DBCT Management.
- (f) **(New Access Application if renewal is substantially different)** If DBCT Management, acting reasonably, is of the view that a Renewal Application is substantially different to the Access Seeker's current Access Application, then subject to paragraph (g) of this Section 5.3A, DBCT Management will treat the Renewal Application as a new Access Application, and the process set out in this Section 5 will recommence from that point. If the difference is an increase in the annual Tonnage required or a longer term, then only the additional annual Tonnage or additional term (as applicable) will be taken to constitute the subject of a new Access Application.
- (g) With respect to the renewal of an Access Application referred to in paragraph (b) of the definition of 'Access Application', if the first Renewal Application after the Commencement Date is for an increase in the term from 5 or more years, then the extended term will not be taken to constitute the subject of a new Access Application and will instead be considered as part of the Renewal Application.
- (h) **(Renewed Access Application)** To the extent that a Renewal Application is confirmed by DBCT Management as a Renewal Application complying with Section 5.3A (or is determined as complying with Section 5.3A in a Dispute referred by the Access Applicant in accordance with Section 5.3A(e)):
 - (1) the Access Applicant's current Access Application will be taken to have been renewed;

- (2) the content of the Renewal Application will be taken to be the Access Applicant's Access Application for the purposes of this Framework; and
- (3) the priority of the Access Applicant in the Queue will continue to be determined by the Access Application Date.

5.4 Priority of Access Applications and execution of Access Agreements

- (a) **(Formation of Queue)** If at any time there are two or more current Access Applications and there is or will be insufficient Available System Capacity associated with Existing Terminal Capacity at any relevant time to accommodate an increase in the Handling of coal applied for in all of those Access Applications, a queue (the **Queue**) will be formed.
- (b) **(General rules for priority in Queue)** Subject to any other provision in Section 5, the priority of an Access Seeker in the Queue will be determined by their Access Application Date, with an earlier Access Application Date having priority in the Queue over any later Access Application Date. An Access Seeker may be removed from the Queue once their Access Application is no longer current in accordance with the terms of Sections 5.3, 5.4, 5.6, 5.7(a)(2), 5.7(a)(4), 5.8, 5.9 or 5.10 of this Framework. An Access Seeker may lose priority in the Queue pursuant to Sections 5.4 or 5.10. The Queue will cease to exist if Available System Capacity at all relevant times subsequently exceeds the amount of capacity requested in all of the then current Access Applications.
- (c) **(Notice of formation of or change in Queue)** Promptly after a Queue is first formed and promptly after each occasion that the Annual Contract Tonnage applied for in the Queue is increased or decreased, DBCT Management must notify each Access Seeker in the Queue of:
 - (1) the Annual Contract Tonnage applied for in priority to that Access Seeker in the Queue;
 - (2) the total Annual Contract Tonnage applied for in the Queue at that time; and
 - (3) a breakdown of the Annual Contract Tonnage applied for in the Queue by the dates for commencement of Access and Annual Contract Tonnage applied for in each Access Application (without any identification of the Access Seeker which made each Access Application but with identification of the dates for commencement of Access).

(Access Agreements for Available System Capacity from the Existing Terminal)

- (d) **(Entry into Access Agreement for Available System Capacity)** Promptly upon being advised in writing by an Access Holder or Existing User that all or part of its Annual Contract Tonnage in respect of the Existing Terminal will become available, DBCT Management will:
 - (1) notify each Access Seeker in the Queue of the date for the commencement of such Access and the relevant Tonnage; and
 - (2) issue an Indicative Access Proposal for Available System Capacity in respect of the relevant Tonnage to the Access Seeker who is first in the Queue.
- (e) **(Entry into Access Agreement not conditional on Terminal Capacity Expansion by Access Seekers not first in the Queue but seeking Access at an earlier date)** The following process will apply in relation to Access Seekers who are not first in the Queue but are ready to enter into an Access Agreement that is not conditional on a Terminal Capacity Expansion:

- (1) An Access Seeker who is not first in the Queue (the Notifying Access Seeker) but is seeking Access from existing Available System Capacity at a date that is at least 6 months earlier than the date for commencement of Access applied for in the Access Application which is first in the Queue, may give notice in writing to DBCT Management in accordance with Section 5.4(e)(2) (**Notice**).
- (2) The Notice is to state that the Notifying Access Seeker is prepared to enter into an Access Agreement consistent (subject to the next sub-section) with its Access Application on the terms of the Standard Access Agreement or on any other terms agreed between DBCT Management and the Access Seeker.
- (3) The Notice may state that the Notifying Access Seeker wishes to enter into an Access Agreement for a lower Tonnage, shorter term or earlier date for commencement of Access than requested in the Access Application, provided that any revised Access commencement date must not precede the date of the Notice.

If DBCT Management receives such Notice from the Notifying Access Seeker, it must promptly:

- (4) notify, in writing, all other Access Seekers that are ahead of the Notifying Access Seeker in the Queue (each a **Notified Access Seeker**) of this development (including the requested date for commencement of Access, but not the identity of the Notifying Access Seeker); and
- (5) allow 3 months from the date when such notice is given by DBCT Management for each Notified Access Seeker to:
 - (A) deliver to DBCT Management two signed copies of an Access Agreement consistent with its Access Application (except that it may be for a lower Tonnage, shorter term or earlier date for commencement of Access than requested in the Access Application, provided that any revised Access commencement date must not precede the date of the Notice) and on the terms of the Standard Access Agreement or on other terms agreed between DBCT Management and a Notified Access Seeker; and
 - (B) deliver to DBCT Management any Security required by DBCT Management (acting consistently with this Framework).

- (f) **(Execution of Access Agreements in order of Access Seekers in Queue which commit)**
If, during the above 3 month period, one or more of the Notified Access Seekers:

- (1) delivers to DBCT Management such signed copies of an Access Agreement for Access to commence on a date which is the same as or earlier than the date for commencement of Access referred to in section 5.4(e)(3) (which, for clarification, may be a retrospective date, provided that any revised Access commencement date must not precede the date of the Notice); and
- (2) also provides any Security reasonably required by DBCT Management (or does not provide such Security but the circumstances in Section 5.4(g) apply),

then DBCT Management must:

- (3) give priority to such of those Notified Access Seekers that are seeking Access on the earliest date for commencement of Access (provided that, if there are two or more Notified Access Seekers each seeking Access commencing on the same date, priority will be given to the Notified Access Seekers in order of their position in the Queue);

- (4) (subject to there being sufficient Available System Capacity at the relevant time) execute those copies of the Access Agreement and re-deliver one signed copy to such Notified Access Seeker; and
 - (5) repeat that process in order of the date for commencement of the Access that they are seeking with each successive Notified Access Seeker (if any) which has delivered during the 3 month period such a signed Access Agreement and any Security required by DBCT Management (acting consistently with this Framework).
- (g) **(Issues with provision of requested Security)** If a Notified Access Seeker is unable to provide any Security reasonably required by DBCT Management within the 3 month period referred to in Section 5.4(f) (or if, by the end of the first month of that 3 month period, the Access Seeker disputes DBCT Management's entitlement to the Security requested), the Access Agreement to be executed and delivered by the relevant Notified Access Seeker in that period will be modified so that it is a condition precedent to it becoming effective that such Security is provided to DBCT Management within 20 Business Days after the Execution Date (or, if so disputed, Security which the Independent Expert determines to be fair is provided within 20 Business Days after the Independent Expert makes that determination), and the "Effective Date" will be adjusted accordingly.
- (h) **(Execution of Access Agreement with Notifying Access Seeker, if sufficient remaining Capacity)** If, after all Access Agreements with all Notified Access Seekers referred to in Section 5.4(e)(5) who have duly delivered signed documents (and provided Security if relevant) have been executed (or negotiations have ceased pursuant to Section 5.8), there is still sufficient Available System Capacity, then DBCT Management will conclude an Access Agreement with the Notifying Access Seeker for that Available System Capacity (or that part of it which the Notifying Access Seeker requires).
- (i) **(Clarifications)** For clarity:
- (1) **(Position in Queue may be lost by not executing Access Agreement)** any Notified Access Seeker that does not within the above 3 month period deliver to DBCT Management a signed Access Agreement:
 - (A) may be removed by DBCT Management from the Queue, in which case the Notified Access Seeker's Access Application will be taken to have been rejected and the Access Application negotiation process for that Notified Access Seeker will be discontinued, unless a bona fide Dispute in relation to the removal is referred under Section 16 – in which case, the Notified Access Seeker will maintain its position in the Queue until that Dispute is resolved; or
 - (B) will not, if DBCT Management does not remove the Notified Access Seeker from the Queue, lose its place in the Queue (although a Notifying Access Seeker which does execute an Access Agreement pursuant to this Section 5.4 will no longer be in the Queue in respect of the tonnage the subject of that Access Agreement) and the Access Application negotiation process for that Access Seeker will otherwise continue in accordance with Section 5 of this Framework;
 - (2) **(Considerations regarding removal from Queue)** in considering whether to remove an Access Seeker from the Queue under Section 5.4(i)(1), DBCT Management will have regard to:

- (A) the date that the Access Seeker proposes to commence delivering coal to the Terminal in comparison with the date that the Notifying Access Seeker proposes to commence delivering coal to the Terminal;
 - (B) the tonnes that the Access Seeker requires to commence delivering coal to the Terminal in comparison with the tonnes that the Notifying Access Seeker proposes to commence delivering to the Terminal; and
 - (C) the likelihood of future Access becoming available at the Terminal on or prior to the date for commencement of Access sought by the Access Seeker that DBCT Management is considering whether to remove from the Queue;
- (3) **(Amendments to Access Application)** except as provided for in Section 5.4(f)(1), an Access Seeker may not amend the date for commencement of delivery of coal to the Terminal specified in its Access Application during the 3 month period which commences on the date the Access Seeker receives a notice from DBCT Management under Section 5.4(e)(4);
- (4) **(Offers of Access Agreement not to exceed Available System Capacity)** unless otherwise required by the Port Services Agreement or Section 11 of this Framework, DBCT Management must not offer to enter into an Access Agreement for Annual Contract Tonnage which would result in Aggregate Annual Contract Tonnage of all Access Holders and Existing Users exceeding the Available System Capacity at a relevant time; and
- (5) **(Access Seeker may accept lesser tonnage if insufficient capacity for tonnage applied for)** where the process in Sections 5.4(c), 5.4(e) and 5.4(f) would have the effect of giving an Access Seeker a right to enter into an Access Agreement, except for the fact that there is insufficient Available System Capacity to meet that Access Seeker's Access Application in full, DBCT Management must inform that Access Seeker to that effect, and the Access Seeker may elect to require an Access Agreement for a lesser tonnage consistent with Available System Capacity from time to time during the period originally applied for (subject to the other terms of this Framework), with the balance of the Annual Contract Tonnage originally applied for remaining the subject of the Access Application.

(Conditional Access Agreements)

- (j) **(Entry into an Access Agreement conditional on Terminal Capacity Expansion)** The following process will apply in relation to the entry into Access Agreements that are conditional, wholly or partly, on a Terminal Capacity Expansion (**Conditional Access Agreement**):
- (1) When the Aggregate Annual Contract Tonnage sought within the next 5 years by Applicants in a Queue cannot be met from Available System Capacity, such that a Terminal Capacity Expansion may be justified, DBCT Management will invite an offer from each Applicant in the Queue to enter into a Conditional Access Agreement.
 - (2) Unless otherwise specified in a Conditional Access Agreement, the date for commencement of Access under a Conditional Access Agreement will be the date on which the Terminal Capacity Expansion is Complete and operating, and DBCT Management notifies Access Seekers in accordance with Section 11.1(l) or 11.1(q), as applicable, on which date the Conditional Access Agreement will take effect as an Access Agreement.

- (3) In response to an invitation from DBCT Management given under Section 5.4(j)(1), any Access Seeker may make an offer to enter into a Conditional Access Agreement that may be (but need not be) subject to a condition precedent which relates to:
- (A) **(Conditional on Terminal Capacity Expansion)** the triggering of an obligation by DBCT Management to perform a specified Terminal Capacity Expansion with a specified estimated cost within a specified estimated timeframe;
 - (B) **(Conditional on other System elements)** DBCT Management being reasonably satisfied that a Service Provider (other than DBCT Management), Access Holder, Existing User, Access Seeker or other relevant entity has committed or will commit, subject only to conditions which are customary for that Service Provider and an expansion of that nature, to providing an expansion of a relevant part of the System which is necessary to create sufficient Available System Capacity; and/or
 - (C) **(Conditional on Section 5.4(o) being satisfied)** DBCT Management being reasonably satisfied that the Access Seeker's Access rights are matched by an entitlement held by the Access Seeker or a person on its behalf to rail infrastructure access rights relating to the coal the subject of the Conditional Access Agreement.

The following provisions relate to any such offer:

- (4) **(Invitation to each Access Seeker)** DBCT Management must give the same notice (**Expansion Notice**) at the same time to each Access Seeker in the Queue, inviting them to submit to DBCT Management (by way of offer to DBCT Management) two signed copies of such a Conditional Access Agreement consistent with their Access Application (except that it may be for a lower tonnage or shorter term than originally requested provided there is a bona fide commercial reason for seeking such lower tonnage or shorter term) on the terms of the Standard Access Agreement or on any other terms which DBCT Management has notified the Access Seeker would be acceptable to DBCT Management, and subject to the condition precedent referred to above.
- (5) **(Position in Queue may be lost by not offering a Conditional Access Agreement)** Any Access Seeker that does not, within 3 months after DBCT Management gives the Access Seeker an Expansion Notice, deliver to DBCT Management a signed Conditional Access Agreement in accordance with the Expansion Notice:
- (A) may, subject to Section 5.4(j)(6), be removed by DBCT Management from the Queue, in which case the Access Seeker's Access Application will be taken to have been rejected and the Access Application negotiation process for that Access Seeker will be discontinued; or
 - (B) will not, if DBCT Management does not remove the Access Seeker from the Queue, lose its place in the Queue (although if DBCT Management executes a Conditional Access Agreement offered by any other Access Seeker pursuant to this Section 5.4(j), that Access Seeker will, subject to Section 5.4(j)(11), no longer be in the Queue in respect of the Tonnage the subject of that Conditional Access Agreement) and the Access Application negotiation process for the Access Seeker will otherwise continue in accordance with Section 5 of this Framework.

- (6) **(Considerations regarding removal from Queue)** In considering whether to remove an Access Seeker from the Queue under section 5.4(j)(5)(A), DBCT Management will have regard to the extent to which the additional Annual Contract Tonnage that will be facilitated by the contemplated Terminal Capacity Expansion is reasonably required to provide the Access rights sought by the Access Seeker.
- (7) **(Amendments to Access Application)** Except as provided in Section 5.4(k)(5), an Access Seeker may not amend its Access Application during the 40 Business Day period which commences on the date the Access Seeker receives an Expansion Notice.
- (8) **(Acceptance of offers in order of priority in Queue)** If, during the 3 month period following the giving of an Expansion Notice one or more of the Access Seekers in the Queue:
- delivers to DBCT Management such signed copies of a Conditional Access Agreement; and
 - provides any Security required by DBCT Management (or the circumstances in Section 5.4(j)(9) apply),
- DBCT Management will then give priority to the Access Seeker so doing which has the highest ranking in the Queue and (subject to there being sufficient Available System Capacity should the Terminal Capacity Expansion the subject of the condition precedent proceed) will execute their Conditional Access Agreement. DBCT Management will then repeat the process down the Queue with each successive Access Seeker (if any) which has delivered such a signed Conditional Access Agreement and any relevant Security during the 3 month period.
- (9) **(Issues with provision of Security requested)** If an Access Seeker is unable to provide the Security required by DBCT Management within the 3 month period referred to in Section 5.4(j)(8) (or, by the fifth Business Day of the 3 month period referred to in Section 5.4(j)(8), the Access Seeker disputes DBCT Management's entitlement to the Security requested), the Conditional Access Agreement to be executed will be modified so that it is a further condition precedent to it becoming effective that such Security is provided to DBCT Management within 20 Business Days after the Execution Date (or, if so disputed, a Security which the Independent Expert determines to be fair is provided within 20 Business Days after the Independent Expert makes that determination), and the "Effective Date" will be adjusted accordingly.
- (10) **(Termination if condition precedent not fulfilled)** Each Conditional Access Agreement referred to in Section 5.4(j)(4) and 5.4(j)(8) (as applicable) must be on the basis that it will terminate if a relevant condition precedent referred to in Section 5.4(j)(3) is not fulfilled within a reasonable period from the date of execution of the Conditional Access Agreement (which will not be less than 3 months). However, DBCT Management and an Access Seeker can agree to extend this period from time to time, as long as an extension for the same period has been offered by DBCT Management to all Access Seekers who have such condition precedent.

- (11) **(Access Seeker rejoins Queue if Conditional Access Agreements terminate)** If a Conditional Access Agreement referred to in Section 5.4(j)(8) terminates because:
- (A) a condition precedent referred to in Section 5.4(j)(3) has not been fulfilled within the reasonable period nominated (or any extended period as agreed between DBCT Management and each Access Seeker in accordance with Section 5.4(j)(10)), the relevant Access Seekers will resume their respective positions in the Queue as if the Access Seekers had never signed the Conditional Access Agreements; or
 - (B) a condition precedent that requires the Access Seeker to provide Security (as referred to in Section 5.4(j)(9)) is not fulfilled, DBCT Management may exercise its discretion to remove that Access Seeker from the Queue in accordance with Sections 5.4(j)(5) and 5.4(j)(6) and, if so removed, the negotiation process for that Access Seeker in respect of the Terminal Capacity Expansion will be discontinued.
- (12) **(Reductions in contracted tonnage if estimated expansion of Terminal Capacity not achieved)** Each Conditional Access Agreement will include a provision entitling DBCT Management to re-determine Terminal Capacity and Expansion Component Capacity in accordance with Section 11.1(k) and to proportionately reduce the Annual Contract Tonnage allocated under the Conditional Access Agreement to the Access Seeker, subject to the following rules:
- (A) in relation to Socialised Terminal Capacity, if the capacity at the Existing Terminal determined by DBCT Management in accordance with Section 11.1(k)(3) is less than the estimation of aggregate (expanded) capacity at the Existing Terminal made at the time of entry into the Conditional Access Agreement, then DBCT Management will proportionately reduce the Annual Contract Tonnage in all Conditional Access Agreements so that the aggregate Tonnage of all Conditional Access Agreements is equal to the additional capacity at the Existing Terminal determined in accordance with Section 11.1(k) after the deduction of capacity required to eliminate any shortfall between aggregate Annual Contract Tonnages and capacity at the Existing Terminal which existed prior to the Terminal Capacity Expansion (see Section 5.4(k)(3));
 - (B) unless otherwise agreed with participating Access Seekers, in relation to a Differentiated Expansion Component, any Differentially Priced Capacity will be allocated to meet the full entitlements of Access Seekers as set out under relevant Conditional Access Agreements.
- (13) **(Reduced Tonnages revert to Queue)** If DBCT Management reduces the Annual Contract Tonnage allocated under a Conditional Access Agreement in accordance with Section 5.4(j)(12), then - in respect of the number of those tonnes which are reduced - an Access Seeker which has had its tonnes reduced will be:
- (A) placed equal first in the Queue with any other Access Seekers whose tonnes have been reduced following the Terminal Capacity Expansion; and
 - (B) taken not to have signed the relevant Conditional Access Agreement in respect of those tonnes.
- (14) **(Section 5.4(o) not affected)** Nothing in this Section 5.4(j) is to be construed as limiting or in any way being contrary to the principle of Handling of Annual

Contract Tonnage only being able to be availed of to the extent of matching rail access entitlement, in Section 5.4(o).

(Overriding principles)

- (k) Despite any other provision of this Section 5.4:
 - (1) **(Existing Access Applications transitioned)** Any outstanding Access Application lodged by an Access Seeker under the 2017 Access Undertaking which applied prior to this Framework will (for the purpose only of determining priority of lodgement and therefore priority in the Queue) be deemed to have been an Access Application lodged under this Framework, as if this Framework had commenced on the date that the first such Access Application was lodged;
 - (2) **(Application for extension of term has priority)** An Access Application to extend the term of an Access Agreement (to the extent that it does not increase the relevant Annual Contract Tonnage) to accord with a bona fide re-estimation of the life of a mine will have precedence over an Access Application for new tonnage;
 - (3) **(Terminal Capacity Expansion allocated first to eliminate shortfalls in capacity below already contracted tonnage)** If a Terminal Capacity Expansion is being Socialised, then the additional Terminal Capacity which results from that Terminal Capacity Expansion (determined in accordance with Section 11.1(k)) will be:
 - (A) firstly utilised to eliminate shortfalls in Annual Contract Tonnages under existing Access Agreements and Existing User Agreements; and
 - (B) only thereafter allocated to Annual Contract Tonnages under Conditional Access Agreements entered into in respect of that Terminal Capacity Expansion and proportionately reduced in accordance with Section 5.4(j)(12).
 - (4) **(Allocation of Differentially Priced Capacity)** Differentially Priced Capacity will be utilised to meet Annual Contract Tonnages under Access Agreements entered into by the Access Seekers in respect of the relevant Differentiated Expansion Component. Consequently, Access Seekers and Access Holders who are not Differentially Priced Access Seekers in respect of that Differentiated Expansion Component will have no entitlement to have that Differentially Priced Capacity utilised to eliminate shortfalls in Annual Contract Tonnages under their Access Agreements.
 - (5) **(Alternative arrangements in some cases if they achieve greater utilisation)** If, in a particular case, the strict application of the process set out in this Section 5.4 would result in a materially greater amount of Available System Capacity not being able to be utilised than could otherwise be the case if an alternative process is followed, then (in the interests of maximising coal exports from Queensland) DBCT Management may enter into one or more Access Agreements in accordance with that alternative process.
- (l) **(Options to extend term taken into account)** For the purpose of this Section 5.4, an Access Holder or Existing User which has an option to extend the term of its Access Agreement or Existing User Agreement (as relevant) will initially be deemed to have exercised that option, when determining whether or not a Queue exists or needs to be formed in relation to a new Access Application. However, if DBCT Management has the right to do so, it may, on each occasion in which a Queue is formed or re-formed,

endeavour to have the exercise of that option brought forward or waived (in the latter case with the intention that one or more waivers may result in the Queue no longer existing).

- (m) **(Other provisions of Framework not limited)** Nothing in this Section 5.4 will be taken to limit or be contrary to:
 - (1) any right DBCT Management has pursuant to Section 5.8; or
 - (2) any rights or obligations of DBCT Management in Section 11 relating to the expansion of the Terminal (in particular the principle of new Access Agreements only being entered into consistently with anticipated System Capacity).
- (n) **(Disclosure of certain Access Application details)** DBCT Management may at any time and from time to time disclose to any person the aggregate tonnage which is the subject of Access Applications but, except as:
 - (1) required by law;
 - (2) consented to by the relevant Access Seeker;
 - (3) reasonably necessary or desirable in relation to planning for operation of the Terminal; or
 - (4) reasonably required to be disclosed to a rail infrastructure provider to assist in development of the System Master Plan,DBCT Management will not disclose details of an Access Application (including details of the Access Seeker).
- (o) **(Entitlement to have Annual Contract Tonnage Handled must be matched by below rail access)** Despite any other provision in this Framework, DBCT Management must not enter into an Access Agreement with an Access Seeker unless it contains Clause 11.5 of the Standard Access Agreement (under which the Access Holder is not entitled to have its Annual Contract Tonnage Handled at the Terminal, to the extent and for such period as, the Access Holder has not demonstrated to the reasonable satisfaction of DBCT Management that that Annual Contract Tonnage is matched by an entitlement held by the Access Holder or a person on its behalf to railway track access relating to the coal the subject of the Access Agreement).
- (p) **(Notification of Differentially Priced Capacity)** Promptly following Completion of a Differentiated Expansion Component, DBCT Management will notify all Expansion Parties, Access Seekers in the Queue and all Access Holders of the following:
 - (1) the date of Completion;
 - (2) the Differentially Priced Capacity; and
 - (3) if any tonnage associated with the Differentiated Expansion Component is uncontracted and, if so, the tonnage which is available for Access Seekers.
- (q) **(Formation of a Differentiated Queue)** If at any time there are two or more current Access Applications received in respect of Differentially Priced Capacity and there is or will be insufficient System Capacity associated with Differentially Priced Capacity which is available at any relevant time to accommodate an increase in Handling of coal applied for in all of those Access Applications, a new queue will form in respect of the Differentially Priced Capacity (the **Differentiated Queue**).
- (r) **(Queuing Principles for a Differentiated Queue)** DBCT Management will manage any Differentiated Queue in accordance with the following principles:

- (1) DBCT Management will apply the same general rules for priority as apply with respect to the Queue, under this Section 5.4.
- (2) Access Seekers must specify which queue they wish to join when applying for Access (the Queue or a Differentiated Queue).
- (3) Access Seekers may be in both the Queue and a Differentiated Queue separately and simultaneously under different Access Applications.
- (4) Where capacity becomes available in either the Queue or a Differentiated Queue (but not both queues), DBCT Management will invite all Access Seekers in the relevant queue to submit a signed Access Agreement in the priority order of the relevant queue.
- (s) **(Commercial discretion of DBCT Management where Access Application involves both queues)** Where Available System Capacity relies on Terminal Capacity that comprises both Socialised Capacity and Differentially Priced Capacity, DBCT Management will invite Access Seekers in both the Queue and the Differentiated Queue to submit a relevant signed Access Agreement in accordance with the queuing principles in this Section 5.4.
- (t) **(Reordering of queues applying commercial discretion)** If, having obtained signed Access Agreements from Access Seekers in respect of Available System Capacity under Section 5.4(s), DBCT Management determines that the most efficient use of Available System Capacity is to contract with the same Access Seeker in respect of both Socialised Terminal Capacity and Differentially Priced Capacity, it may accept a signed Access Agreement other than in the order of the relevant queue, provided that, prior to accepting such signed Access Agreement and subject to Section 5.4(u), DBCT Management:
 - (1) has notified all other Access Seekers in each Queue of:
 - (A) its intention to reorder one or both queues; and
 - (B) any commercial principles which it intends to apply when reordering one or both queues; and
 - (2) has provided all Access Seekers with a reasonable opportunity to respond; and
 - (3) is satisfied (acting reasonably), based on any responses received from Access Seekers and applying those commercial principles, that there is no Access Seeker which is higher in either queue that is prepared to contract on an equivalent basis.

For this purpose, any commercial principles must operate as between Access Seekers strictly on a non-discriminatory basis.

- (u) **(Dispute in relation to reordering of a queue)**
 - (1) An Access Seeker may refer any Dispute in relation to reordering of a queue under Section 5.4(t) as a Dispute under Section 16.
 - (2) If a Dispute is raised in respect of any reordering of a queue, DBCT Management will not enter into any relevant Access Agreement under Section 5.4(t) unless and until the Dispute is withdrawn or determined and in accordance with any such determination.

5.5 Indicative Access Proposal

- (a) **(Timing for Indicative Access Proposal)** As soon as practicable and in any event within 20 Business Days following receipt of an Access Application (or, if additional

information has been requested by DBCT Management under Section 5.3, within 20 Business Days of receipt of all of the additional information requested), DBCT Management must use its reasonable endeavours to provide the relevant Access Seeker with a response containing proposed terms and conditions of Access (**Indicative Access Proposal**).

- (b) **(Notice of additional time needed by DBCT Management)** If it is not reasonable to provide an Indicative Access Proposal within 20 Business Days of receipt of an Access Application (or, if applicable, the additional information requested under Section 5.3), DBCT Management must, as soon as practicable, but in any event, within 20 Business Days, advise the relevant Access Seeker of its estimate of the extra time required to deliver the Indicative Access Proposal.
- (c) **(Dispute by Access Seeker as to need for additional time)** If the Access Seeker is of the opinion that the estimate of extra time for preparation of the Indicative Access Proposal is excessive, then the Access Seeker may refer the matter for Expert Determination. DBCT Management must use reasonable efforts to provide the Indicative Access Proposal within the estimated time period provided by DBCT Management or as otherwise determined by the Independent Expert.
- (d) **(Content of Indicative Access Proposal)** The Indicative Access Proposal must set out:
 - (1) an indicative assessment as to whether there is sufficient Available System Capacity at all relevant times (having regard amongst other things to outstanding Access Applications in a Queue) to accommodate the Access Application;
 - (2) advice in respect of the existence of (but not the identity of) other Access Seekers who have already submitted an Access Application and the aggregate tonnage profile(s) requested in those Access Applications;
 - (3) the Standard Access Agreement or a draft access agreement where the Access Application contemplates Access on Different Terms;
 - (4) the expiry date of the Indicative Access Proposal, which will be 30 Business Days following the date the Access Seeker receives the Indicative Access Proposal (should there be no notification by the Access Seeker pursuant to Section 5.6 that the Indicative Access Proposal has not been prepared in accordance with the Framework);
 - (5) if there is sufficient Available System Capacity to accommodate the Access Application, advice to that effect, and:
 - (A) if it is reasonable to provide such an indication, a non-binding indication of the expected Access Charges for the requested Services in the Access Application based on an allocation of Non-Expansion Costs in accordance with Section 10.7;
 - (B) if the sufficiency of Available System Capacity for the provision of any of the Access sought depends on the Completion of a planned or reasonably expected Terminal Capacity Expansion:
 - (i) an initial assessment of the Pricing Method that will be applicable to the Access sought (including reasons), having regard to the required Terminal Capacity Expansion, any relevant Price Ruling(s) by an Expansion Arbitrator and the Expansion Pricing Principles;
 - (ii) a non-binding indication of the expected Access Charges for the purposes of sub-paragraph (A) (where it is reasonable to provide such

- an indication) that is based on the applicable Pricing Method determined by the initial assessment referred to at sub-paragraph (B)(i); and
- (iii) if the Pricing Method for the required Terminal Capacity Expansion has not yet been determined by an Expansion Arbitrator, a non-binding indication of the expected Access Charges for the purposes of sub-paragraph (A) (where it is reasonable to provide such an indication) that also includes an indication of the expected Access Charges where the applicable Pricing Method is not that determined by the initial assessment referred to at sub-paragraph (B)(i);
- (C) the current Terminal Master Plan and System Master Plan;
- (D) details of any additional information required by DBCT Management to progress the Access Application and develop the terms and conditions for acceptance; and
- (E) details of any security, guarantee, other support or other information required by DBCT Management to establish the solvency and creditworthiness of the Access Seeker and, where DBCT Management requires, its guarantor; and
- (6) if there is insufficient Available System Capacity (as determined by reference to the assessment of System Capacity undertaken prior to the time of giving the indicative assessment) to accommodate the Access Application, advice to that effect, and:
- (A) reasonable particulars as to why this circumstance prevails;
- (B) an estimate of what the Available System Capacity is at relevant times;
- (C) whether a Queue has been formed in accordance with Section 5.4 of this Framework (including as a result of the relevant Access Application);
- (D) an initial assessment of the Pricing Method that will be applicable to the Access sought (including reasons) having regard to any planned or reasonably expected Terminal Capacity Expansions, any relevant Price Ruling(s) by an Expansion Arbitrator and the Expansion Pricing Principles;
- (E) if it is reasonable to provide such an indication:
- (i) a non-binding indication of the expected Access Charges for the requested Services in the Access Application where the applicable Pricing Method is as determined by the initial assessment referred to at sub-paragraph (D) and Non-Expansion Costs are allocated in accordance with Section 10.7; and
- (ii) if the Pricing Method for the required Terminal Capacity Expansion has not yet been determined by an Expansion Arbitrator, a non-binding indication of the expected Access Charges for the requested Services in the Access Application where the applicable Pricing Method is not that determined by the initial assessment referred to at sub-paragraph (D) and Non-Expansion Costs are allocated in accordance with Section 10.7;
- (F) a copy of the System Master Plan and an indicative timetable for any expansion of System Capacity which may be undertaken (if any).

- (e) **(Best Endeavours indication of Access Charges)** In assessing the applicable Pricing Method and providing a non-binding indication of the likely resulting Access Charges for the purpose of this Section 5, DBCT Management shall use its best endeavours to provide an accurate indication of the likely Pricing Method and Access Charges, having regard to all available information.
- (f) **(Indicative Access Proposal not binding on DBCT Management)** The Indicative Access Proposal will, unless it contains specific conditions to the contrary, contain indicative arrangements only and does not oblige DBCT Management to provide Access.
- (g) **(Access Seeker may dispute time-frame)** If, after 20 Business Days following DBCT Management's acknowledgment of the Access Application, the Access Seeker believes that DBCT Management is not making reasonable progress in the preparation of the Indicative Access Proposal, the Access Seeker may refer the timing of the provision by DBCT Management of the Indicative Access Proposal for Expert Determination.
- (h) **(Where Terminal Capacity Expansion is needed to satisfy an Access Application)** Where there is not sufficient Available System Capacity to accommodate the Access Application and the Access Seeker wishes to continue the negotiation process provided for in this Section 5, such negotiations may continue on the basis that a Terminal Capacity Expansion may be undertaken in accordance with Section 11 of this Framework which (whether with or without any relevant expansion of other components of the System) is estimated to provide sufficient Available System Capacity. In this case, if DBCT Management is unable to comply with the timeframes specified in Section 5 of this Framework, it will advise the Access Seeker of the estimated timeframes. If the Access Seeker does not believe the proposed timetable is reasonable or believes that DBCT Management is not making reasonable progress, it may refer the timetable for Expert Determination.

5.6 Response to Indicative Access Proposal

- (a) **(Access Seeker's response)** If the Access Seeker intends to progress its Access Application on the basis of the arrangements set out in the Indicative Access Proposal, it must notify DBCT Management of its intention to do so within 30 Business Days of the date it receives the Indicative Access Proposal. If the Access Seeker does not notify DBCT Management of its intention before the expiry date of the Indicative Access Proposal, its Access Application will be deemed to have lapsed and it may apply again for Access in accordance with Section 5.2 (unless a longer period for notification is agreed between the parties).
- (b) **(DBCT Management to expedite any replacement Access Application)** If an Access Application lapses but the Access Seeker lodges a replacement Access Application, DBCT Management will endeavour in good faith to expedite the steps leading to the issue of a new Indicative Access Proposal.
- (c) **(Notice of non-complying Indicative Access Proposal)** If the Access Seeker considers that the Indicative Access Proposal has not been prepared in accordance with Section 5.5 of this Framework, it must give DBCT Management notice in writing within 20 Business Days of receipt of the Indicative Access Proposal to that effect, setting out the reasons why the Access Seeker believes that the Indicative Access Proposal is inconsistent with Section 5.5 of this Framework.
- (d) **(Response to notice of non-compliance)** DBCT Management must use all reasonable efforts to respond to a notice of non-compliance under paragraph (c) of this Section 5.6, including, where appropriate, the making of revisions to the Indicative Access

Proposal, within 20 Business Days of the notice. If DBCT Management is unable to respond within this time period, it must notify the Access Seeker of the date on which it expects to be able to respond.

- (e) **(Dispute relating to Indicative Access Proposal)** If the Access Seeker is not satisfied with:
- (1) the response to the notice given under paragraph (c) of this Section 5.6; or
 - (2) DBCT Management's estimated date to respond to that notice,
- the Access Seeker may refer the matter for Expert Determination.

5.7 Negotiation process

- (a) **(Parties to negotiate if Access Seeker wishes to)** If the Access Seeker indicates its willingness to progress its Access Application under Section 5.6 (or otherwise, in the case of an Access Application of the type referred to in paragraph (b) of the definition of that term), then both parties must commence negotiations as soon as reasonably possible to progress towards an Access Agreement or a Conditional Access Agreement. The period for negotiation will commence on the date notified by the Access Seeker under Section 5.6(a) (or the date 5 Business Days after the commencement of the Term in the case of an Access Application referred to in paragraph (b) of the definition of the term Access Application, even if there have been discussions prior to that date) and end upon any of the following events:
- (1) execution of an Access Agreement or Conditional Access Agreement in respect of Access sought by the Access Seeker;
 - (2) written notification by the Access Seeker that it no longer wishes to proceed with its Access Application (at which time its Access Application will be deemed to have lapsed);
 - (3) DBCT Management issuing a Negotiation Cessation Notice to the Access Seeker in accordance with Section 5.8;
 - (4) the expiration of 6 months from the commencement of the negotiation period or, if both parties agree to an extension of the negotiation period, the expiration of the agreed extended term, provided that agreement to extend the negotiation period is not unreasonably withheld by either party;
 - (5) a reduction in Available System Capacity due to:
 - (A) another Access Seeker finalising an Access Agreement in accordance with this Framework, where that reduction in Available System Capacity adversely affects DBCT Management's ability to offer Access to the Access Seeker under the terms of the Indicative Access Proposal; or
 - (B) a sustained change in the System operating assumptions of one or more components of the Dalrymple Bay Coal Chain requiring re-determination of System Capacity under Section 11.1, where that reduction in Available System Capacity adversely affects DBCT Management's ability to provide Access to the Access Seeker under the terms of the Indicative Access Proposal; or
 - (6) DBCT Management receiving Notice from a Notifying Access Seeker in accordance with section 5.4(e), for the process contemplated by Section 5.4(f) to occur.

- (b) **(Review of Indicative Access Proposal)** In the event that the negotiation period is suspended for the reasons set out in Section 5.7(a)(5) or Section 5.7(a)(6) (and once the process contemplated by Section 5.4(f) to Section 5.4(h) is complete, if applicable), DBCT Management must review the Indicative Access Proposal and prepare a revised Indicative Access Proposal in accordance with Section 5.5 and the negotiation process will recommence from the date this is provided to the Access Seeker.
- (c) **(Revisions to Access Application)** During the negotiation period, the Access Seeker may review and revise the information provided to DBCT Management in the Access Application, provided that such revision does not substantially alter the nature of the Access rights sought by the Access Seeker and is not otherwise prohibited under Section 5.4(i)(3), 5.4(j)(7) or 5.10(h). If DBCT Management is reasonably of the view that an Access Seeker's revision of information provided to DBCT Management in the Access Application has substantially altered the nature of the Access rights sought by the Access Seeker, then subject to paragraphs (d) and (e) of this Section 5.7, DBCT Management will treat the revised information as a new Access Application, and the process set out in this Section 5 will recommence from that point. If the revision is for an increase in the annual tonnage required or a longer term, then only the additional annual tonnage or additional term (as applicable) will be taken to constitute the subject of a new Access Application.
- (d) **(Certain extensions of term do not create new Access Application)** If, in the case of an Access Application referred to in paragraph (b) of the definition of that term, the revision is for an increase in the term from 5 or more years, then the extended term will be treated as part of the original Access Application.
- (e) **(Reduction in tonnage applied for does not create new Access Application)** A reduction in tonnage or term will not, of itself, constitute a new Access Application pursuant to this paragraph if there is a bona fide commercial reason for such reduction.
- (f) **(Dispute relating to negotiation)** If a Dispute arises between the parties during the negotiation period and the parties are unable to resolve the Dispute to their mutual satisfaction, then either party may seek to resolve the Dispute in accordance with the dispute resolution process set out in Section 16 within 3 months after the end of the negotiation period in accordance with Section 5.7(a)(4).
- (g) **(Negotiations to continue despite Dispute)** To remove any doubt, the negotiation process and the obligations of the parties in that regard are to continue notwithstanding the commencement of a dispute resolution process pursuant to Section 16 of this Framework.

5.8 Negotiation Cessation Notice

- (a) **(Negotiation Cessation Notice)** At any time during the negotiation process under Section 5.7, DBCT Management may give notice to an Access Seeker that it does not intend to enter into an Access Agreement with the Access Seeker (such notice being a Negotiation Cessation Notice), if:
 - (1) an Access Seeker does not comply with all of its material obligations contained in this Framework;
 - (2) DBCT Management is reasonably of the opinion that there is no reasonable likelihood that the Access Seeker will comply with the material terms and conditions of an Access Agreement;

- (3) DBCT Management is reasonably of the opinion that the Access Seeker has no genuine intention of gaining Access, or has no reasonable likelihood of utilising Access, at the level of capacity sought;
 - (4) DBCT Management is reasonably of the opinion that the Access Seeker or its guarantor is not or is likely not to be reputable or of good financial standing;
 - (5) except where the decision of an Independent Expert contains manifest error, the Access Seeker does not materially comply with a decision of the Independent Expert pursuant to Section 16.3; or
 - (6) an Access Seeker does not materially comply with a decision of the Arbitrator pursuant to Section 16.4.
- (b) **(Negotiation Cessation Notice to include reasons)** A Negotiation Cessation Notice must identify the reasons for DBCT Management's decision not to enter into an Access Agreement with the Access Seeker.
- (c) **(Examples of no reasonable likelihood of compliance)** It will be reasonable for DBCT Management to form the view that circumstances in Section 5.8(a)(2) or 5.8(a)(4) apply if for example:
- (1) the Access Seeker is Insolvent;
 - (2) the Access Seeker, or a Related Body Corporate of the Access Seeker, is currently or has in the previous two years been in material default of any Access Agreement (which has not been promptly rectified), Existing User Agreement or any other agreement where its performance under that agreement is relevant to the Access Seeker's likely performance under an Access Agreement; or
 - (3) the Access Seeker or a proposed provider of Security fail to establish their solvency and creditworthiness in accordance with Section 5.9.
- (d) **(Dispute as to Negotiation Cessation Notice)** If the Access Seeker reasonably considers that DBCT Management has improperly given it a Negotiation Cessation Notice, then (provided that Section 5.8(c)(1), 5.8(c)(2) or 5.8(c)(3) do not apply) the Access Seeker may refer the matter to dispute resolution in accordance with Section 16. If the resolution of the Dispute is in favour of the Access Seeker, DBCT Management must re-commence negotiations with that Access Seeker.
- (e) **(Recovery of costs of DBCT Management)** Subject to any Dispute on the matter being otherwise determined, DBCT Management may recover from the Access Seeker its reasonable costs incurred in negotiations with the Access Seeker where it ceases negotiations in accordance with a Negotiation Cessation Notice validly issued under this Section 5.8. A Dispute about the recovery of these costs may be referred to dispute resolution in accordance with Section 16 of this Framework.

5.9 Creditworthiness of Access Seeker

- (a) **(Access Seeker to be creditworthy)** DBCT Management:
- (1) may remove from the Queue; and
 - (2) regardless of whether the relevant Access Seeker has been removed from the Queue by DBCT Management, will not be required to enter into an Access Agreement or proceed with an Access Application with,
- an Access Seeker which is or has become Insolvent or which, after DBCT Management's reasonable request, fails within a reasonable period to establish or confirm its likely creditworthiness for the term of the Access Agreement required, or

- to provide adequate Security from another entity which establishes or confirms its likely creditworthiness for the term of the Access Agreement required.
- (b) **(Information as to solvency)** To confirm the solvency and creditworthiness of an Access Seeker and, where DBCT Management requires, the provider of a Security, the Access Seeker will provide such information as may be reasonably requested by DBCT Management to establish that solvency and creditworthiness.
 - (c) **(Provision of Security)** If an Access Seeker or, where DBCT Management requires, its Security provider, is unable to establish their solvency and creditworthiness in their own right, creditworthiness may be established by the Access Seeker and Security provider by providing further Security (as reasonably required by DBCT Management), for example (but not limited to) any one or more of:
 - (1) letters of credit;
 - (2) tripartite agreements with project financiers; and
 - (3) guarantees or security from entities with a Standard and Poors or Moodys rating of not less than investment grade.
 - (d) **(Access Agreement may permit Security to be required)** For clarification, nothing in this Section 5.9 limits the rights of DBCT Management under an Access Agreement to require Security (or additional Security) after the commencement of an Access Agreement in accordance with the terms of that Access Agreement.

5.10 Funding of feasibility studies

- (a) **(Funding of System Capacity studies)** If DBCT Management is required to undertake a System Capacity assessment under Section 11.1 which is not otherwise funded as part of feasibility studies for an Expansion Component under this Section 5.10, DBCT Management may recover the reasonable costs of such assessment as attributable to the Existing Terminal through NECAP. DBCT Management will consult with and make available the results of all capacity assessments undertaken in accordance with Section 11.1 to all Access Holders and Expansion Parties, including separately identifying:
 - (1) the assessed capacity of the Existing Terminal;
 - (2) the projected capacity of a Terminal Capacity Expansion, including, if relevant, the projected capacity of a Differentiated Expansion Component; and
 - (3) the Expansion Component options being considered in any feasibility studies under this Section 5.10.
- (b) **(Request for Access Applicants to Fund Feasibility Studies)** If DBCT Management, acting reasonably, concludes that the Aggregate Annual Contract Tonnages applied for in Access Applications lodged with it, together with all other relevant circumstances, justify the undertaking of a study to determine the feasibility of a relevant Terminal Capacity Expansion then DBCT Management may, subject to Section 5.10(c), give Access Applicants in the Queue a notice requesting that they enter into a Funding Agreement or Underwriting Agreement with DBCT Management. DBCT Management may not make such a request unless a Funding Agreement or Underwriting Agreement (as applicable) has been made and published on the DBCT Management's website in accordance with Section 5.10(q)(9)(E).
- (c) **(Notices will be given simultaneously)** DBCT Management will, in giving notices under Section 5.10(b), give such notices to all Access Applicants in the Queue, as relevant to the contemplated increase in Annual Contract Tonnage which would be facilitated by the Terminal Capacity Expansion under consideration, on or about the same date.

- (d) **(Requests to be proportionate to tonnages applied for)** DBCT Management will request that any funding or underwriting of the feasibility study or feasibility studies referred to in Section 5.10(b) pursuant to a Funding Agreement or Underwriting Agreement (as applicable) be proportionate amongst the relevant participating Access Applicants, according to the respective sum of the Annual Contract Tonnages requested in their Access Applications over the first 10 years of Handling under the Conditional Access Agreement applied for by them.
- (e) **(Order of responses to notices)** DBCT Management must, in dealing with responses from Access Applicants to notices given by DBCT Management under Section 5.10(b), start with the response given by the Access Applicant that has the highest ranking in the Queue and proceed to the response given by each successive Access Applicant in order of their respective ranking in the Queue.
- (f) **(Position in Queue may be lost to subsequent Applicants)** If an Access Applicant is requested by DBCT Management to enter into a Funding Agreement or Underwriting Agreement but the Access Applicant:
 - (1) declines to do so;
 - (2) fails to enter into a Funding Agreement or Underwriting Agreement (as applicable) with DBCT Management on such terms as DBCT Management reasonably requires within 3 months after being requested by DBCT Management to do so; or
 - (3) does not provide security required by DBCT Management in connection with the Funding Agreement or Underwriting Agreement (as applicable) within 3 months after being requested by DBCT Management to do so,(such an Access Applicant being a **Non-Funding Access Applicant**) then:
 - (4) DBCT Management may, subject to Section 5.10(g), remove the Non-Funding Access Applicant from the Queue, in which case the Non-Funding Access Applicant's Access Application will be taken to have been rejected; or
 - (5) if DBCT Management does not remove the Non-Funding Access Applicant from the Queue, then to the extent that any Access Applicant(s) after the Non-Funding Access Applicant in the Queue within 3 months thereafter:
 - (A) enter(s) into a Funding Agreement or Underwriting Agreement with DBCT Management; and
 - (B) provide(s) security required by DBCT Management in relation to the Funding Agreement or Underwriting Agreement (as applicable) of at least the aggregate amount that is required by DBCT Management to fund or underwrite the study referred to in Section 5.10(b) in the proportion to which the tonnage applied for by an Access Applicant bears to the additional Aggregate Annual Contract Tonnage that will be facilitated by the contemplated Terminal Capacity Expansion,those subsequent Access Applicants will, from the date on which they are legally committed to provide or underwrite such feasibility funding and provide security under the Funding Agreement or Underwriting Agreement (as applicable), have priority in the Queue ahead of the Non-Funding Access Applicant.
- (g) **(Considerations regarding removal from Queue)** In considering whether to remove an Access Seeker from the Queue under section 5.10(f)(4), DBCT Management will have regard to the extent to which the additional Annual Contract Tonnage that will be

- facilitated by the contemplated Terminal Capacity Expansion is reasonably required to provide the Access rights sought by the Access Seeker.
- (h) **(Amendments to Access Application)** An Access Seeker may not amend its Access Application during the 3 month period which commences on the date the Access Seeker receives a notice from DBCT Management under Section 5.10(b).
- (i) **(Priorities restored if feasibility study does not proceed)** If an Access Applicant obtains a higher priority in the Queue as a result of Section 5.10(f), and DBCT Management elects not to proceed with the relevant feasibility study, then the relevant Access Applicant will again have the same priority in the Queue as it would have had if Section 5.10(f) did not apply.
- (j) **(Clarifications)** Nothing in this Section 5.10:
- (1) requires DBCT Management to proceed with a FEL 1 Feasibility Study, FEL 2 Feasibility Study or FEL 3 Feasibility Study (as the case may be) unless it secures a Funding Agreement or Underwriting Agreement in respect of the full cost of that feasibility study from one or more Access Seekers;
 - (2) prohibits an Access Seeker from providing more than its required proportion in respect of any funding or underwriting requested for Feasibility Studies (but providing a greater proportion does not in itself entitle that Access Seeker to any additional tonnage under an Access Agreement); or
 - (3) is to be taken as limiting the obligations of DBCT Management in Section 11.
- (k) **(Disputes relating to requests for Feasibility Funding)** If any Access Applicant considers that the terms of the Funding Agreement, Underwriting Agreement or the amount or type of security required in connection with the Funding Agreement or Underwriting Agreement requested by DBCT Management pursuant to Sections 5.10(b) and 5.10(d) are not reasonable, it may within 3 months after being requested to enter into a Funding Agreement or Underwriting Agreement and to provide security, apply for Expert Determination to determine what is reasonable, and in such event:
- (1) the determination of the Independent Expert as to what is reasonable will apply in respect of what DBCT Management can require from each Access Applicant; and
 - (2) the period of 3 months in Section 5.10(f) will become a period ending 15 days after the Independent Expert notifies its determination.
- The terms of a Funding Agreement or Underwriting Agreement will be reasonable to the extent that they are consistent with the terms of a Standard Funding Agreement or Standard Underwriting Agreement (as applicable) approved in accordance with Section 5.10(q).
- (l) **(FEL 3 Feasibility Funding)** If DBCT Management having completed a FEL 1 Feasibility Study and FEL 2 Feasibility Study, acting reasonably and consistently with prudent business practice concludes that Aggregate Annual Contract Tonnage applied for in one or more Access Applications lodged with it, together with all other relevant circumstances, justify it undertaking a FEL 3 Feasibility Study, DBCT Management may, at its own cost, undertake a FEL 3 Feasibility Study. For clarity, if DBCT Management undertakes to independently fund a FEL 3 Feasibility Study this will not affect the entitlement of any Funding Access Seekers (which funded the relevant FEL 1 Feasibility

Study and FEL 2 Feasibility Study) to continue to participate in any subsequent Expansion Component.

- (m) **(Transitional arrangements for previous funding)** If at the Commencement Date DBCT Management is undertaking a FEL 1 Feasibility Study or FEL 2 Feasibility Study in respect of a relevant proposed Terminal Capacity Expansion, DBCT Management may (by giving not less than 14 days written notice) give Access Applicants in the Queue a notice requesting that they enter into a Funding Agreement or Underwriting Agreement with DBCT Management in which case:
 - (1) Sections 5.10(d), 5.10(e), 5.10(f), 5.10(g), 5.10(i) and 5.10(k) apply (with such modifications as the circumstances require); and
 - (2) if the Feasibility Study being undertaken at the Commencement Date is a FEL 2 Feasibility Study, the Funding Agreement and Underwriting Agreement will apply to the FEL 2 Feasibility Study and the FEL 1 Feasibility Study which preceded the FEL 2 Feasibility Study.
- (n) **(Credit for prior Funding, and refunds)** If an Access Seeker has provided funding for a Feasibility Study referred to in Section 5.10(m) prior to the Commencement Date, the amount funded will be deemed to be a contribution to the funding requested under Section 5.10(m). To the extent that an Access Seeker has contributed funds (as opposed to underwriting the funding) prior to the Commencement Date in excess of the funds required to be contributed under Section 5.10(m) DBCT Management may elect to refund to that Access Seeker such excess funding or credit it towards any further contribution to a Feasibility Study required or agreed to be paid by that Access Seeker.
- (o) **(Contributions to Funding of Feasibility Studies by DBCT Management)** DBCT Management may at its discretion elect to itself bear, or be required under law or by the Port Services Agreement to itself fund, all or part of the costs of a FEL 1 Feasibility Study, FEL 2 Feasibility Study or FEL 3 Feasibility Study which one or more Access Applicants do not fund or underwrite in accordance with a Funding Agreement or Underwriting Agreement (as applicable). Nothing in this Section 5.10(o) affects:
 - (1) DBCT Management's rights to apply to recover such sum through the Initial Terminal Infrastructure Charge in the case of a Differentiated Expansion Component, or adjustment to the Terminal Infrastructure Charge for the Existing Terminal on the occurrence of a Review Event of the kind described in paragraph (b) of the definition of that term in the case of a Socialised Expansion, if the relevant proposed Terminal Capacity Expansion proceeds;
 - (2) DBCT Management's rights to apply to have such sum included in the prudent Capital Expenditure determined by an Expansion Arbitrator if DBCT Management is required by Section 11 of this Framework to investigate or undertake a Terminal Capacity Expansion; or
 - (3) DBCT Management's obligation (if any) to fund a FEL 3 Feasibility Study.
- (p) **(Refund of FEL 1, FEL 2 and FEL 3 contributions if Terminal Capacity Expansion proceeds)** In the event that the Terminal Capacity Expansion the subject of a FEL 1 Feasibility Study and FEL 2 Feasibility Study and FEL 3 Feasibility Study proceeds and substantial site works commence, DBCT Management will promptly following the commencement of substantial site works:

- (1) refund to each Funding Access Seeker who contributed funds (as opposed to underwriting the funding) under Section 5.10(b) for that Terminal Capacity Expansion the funds provided by that Access Seeker; and
 - (2) release any underwriting commitment made by each Funding Access Seeker in respect of that Terminal Capacity Expansion.
- (q) **(Preparation and approval of Standard Funding Agreement or Standard Underwriting Agreement)**
- (1) DBCT Management must prepare a proposed Standard Funding Agreement or proposed Standard Underwriting Agreement (as applicable) (**Proposed Standard Funding/Underwriting Agreement**) where:
 - (A) DBCT Management considers there to be reasonable likelihood that the Aggregate Annual Contract Tonnage applied for in Access Applications or Conditional Access Agreements may justify undertaking Feasibility Studies during the term of the Access Framework; or
 - (B) DBCT Management receives a written notice from an Access Seeker or Access Holder requesting DBCT Management develop a Proposed Standard Funding/Underwriting Agreement.
 - (2) In preparing a Proposed Standard Funding/Underwriting Agreement DBCT Management must consult with Access Seekers, Expansion Parties and Access Holders.
 - (3) A Proposed Standard Funding/Underwriting Agreement must be reasonable in all of the circumstances having regard to terms of the Framework and:
 - (A) the legitimate business interests of DBCT Holding in its capacity as the owner of the Terminal;
 - (B) the legitimate business interests of DBCT Management in its capacity as the operator of the Terminal;
 - (C) the public interest, including the public interest in having competition in markets (whether or not in Australia); and
 - (D) the interests of Access Seekers who have signed an Access Application Form or Access Renewal Form (as set out at Schedule A), or who are a party to a Conditional Access Agreement, and Access Applicants, including whether adequate provision has been made for compensation if the rights of the existing Access Holders or Existing Users are adversely affected.
 - (4) DBCT Management must publish the Proposed Standard Funding/Underwriting Agreement on its website and must separately notify all Access Holders and Access Seekers promptly following publication of DBCT Management's Proposed Standard Funding/Underwriting Agreement.
 - (5) An Access Seeker or Access Holder may, within 3 months after receiving the notice from DBCT Management, give DBCT Management a Dispute Notice under Section 16.1 regarding whether the Proposed Standard Funding/Underwriting Agreement is consistent with Section 5.10(q)(3). Such notice must specify the way in which the Access Seeker or Access Holder considers that the Proposed Standard Funding/Underwriting Agreement fails to satisfy Section 5.10(q)(3) and, if necessary, any amendments which the Access Seeker or Access Holder considers are necessary to satisfy Section 5.10(q)(3).

- (6) If the Dispute is not resolved in accordance with Section 16.2, such Dispute is to be resolved in accordance with Section 16.4.
- (7) If the Dispute is to be resolved in accordance with Section 16.4, an Arbitrator is to decide whether the Proposed Standard Funding/Underwriting Agreement satisfies Section 5.10(q)(3). If the Arbitrator decides that the Proposed Standard Funding/Underwriting Agreement does not satisfy Section 5.10(q)(3), the Arbitrator is to decide the terms of an alternative proposed Standard Funding Agreement or alternative proposed Standard Underwriting Agreement (as applicable) (**Alternative Proposed Standard Funding/Underwriting Agreement**) that it considers will satisfy Section 5.10(q)(3), provided that the Arbitrator must give DBCT Management a reasonable opportunity to consider and comment on the draft. The Arbitrator will take into account any comments made by DBCT Management in relation to the Arbitrator's draft.
- (8) Notwithstanding a notice given under Section 5.10(q)(5), the Arbitrator may approve the Proposed Standard Funding/Underwriting Agreement, if the Arbitrator considers it reasonable in all of the circumstances having regard to terms of the Framework and the matters set out in Section 5.10(q)(3).
- (9) If:
 - (A) no notice is given under Section 5.10(q)(5);
 - (B) notice is given under Section 5.10(q)(5) but the Dispute is resolved under Section 16.2;
 - (C) the Arbitrator decides that the Proposed Standard Funding/Underwriting Agreement satisfies Section 5.10(q)(3); or
 - (D) the Arbitrator decides that an Alternative Proposed Standard Funding/Underwriting Agreement satisfies Section 5.10(q)(3),then:
 - (E) the Proposed Standard Funding/Underwriting Agreement or the Alternative Proposed Standard Funding/Underwriting Agreement (as the case may be) will become the approved Standard Funding Agreement or the approved Standard Underwriting Agreement (as applicable), which is to be published on DBCT Management's website; and
 - (F) DBCT Management will, if requested by Access Seekers or Access Holders, enter into agreements with Access Seekers or Access Holders, on the terms of the approved Standard Funding Agreement or approved Standard Underwriting Agreement (as applicable), unless otherwise agreed between DBCT Management and the relevant Access Seeker or Access Holder.
- (10) For clarity, nothing in this Section 5.10(q) limits or restricts DBCT Management or an Access Seeker or Access Holder from referring as a Dispute any failure to agree reasonable amendments to a Standard Funding Agreement/Underwriting Agreement where it is being used in respect of a specific Terminal Capacity Expansion.

5.11 Access Agreement Process

If an Access Agreement provides a mechanism for applications for additional capacity to be made by the relevant Access Holder under that Agreement, those provisions may be utilised by that Access Holder in respect of additional capacity sought under that Agreement, but such application will be treated as an Access Application for the purposes of this Section 5.

5.12 Review of Pricing Method and Indicative Access Charges

- (a) **(Review of estimated Access Charges)** Where an Indicative Access Proposal has been prepared on the basis that a Terminal Capacity Expansion would be required in order to accommodate the relevant Access Application:
- (1) as soon as practicable and in any event within 20 Business Days following completion of a FEL 1 Feasibility Study, DBCT Management must review the Indicative Access Proposal and provide the Access Seeker with a revised assessment of the applicable Pricing Method and estimated Access Charges for the Services requested in the Access Application (a **Revised Pricing Proposal**);
 - (2) as soon as practicable and in any event within 20 Business Days following completion of a FEL 2 Feasibility Study which supports proceeding to a FEL 3 Feasibility Study (including where that support is conditional on whether an Expansion Component will be priced Differentially or Socialised), DBCT Management must (unless it has already done so pursuant to Section 11.5(a)) review the Revised Pricing Proposal and apply to an Expansion Arbitrator for a Price Ruling in respect of the Terminal Capacity Expansion under Section 11.5 that determines:
 - (A) the applicable Pricing Method for the Terminal Capacity Expansion; and
 - (B) the prudent Capital Expenditure in respect of the Terminal Capacity Expansion, with which any determination of an amended TIC to apply in respect of the Existing Terminal or the Floor TIC in respect of a Differentiated Expansion Component following Completion of the Terminal Capacity Expansion under Section 10.4(e) or 10.6(b)(3) respectively should be consistent.
- (b) **(Application for Price Ruling)** An application for a Price Ruling shall include:
- (1) information about the nature and amount of Capital Expenditure forecast to carry out the Terminal Capacity Expansion, as assessed in any Feasibility Studies;
 - (2) information about any Different Terms that will have been agreed;
 - (3) information about the increase in Terminal Capacity expected to arise from the Terminal Capacity Expansion (and expected increases to System Capacity);
 - (4) information about positive or negative impacts on existing Access Holders or existing operations of the Terminal;
 - (5) information about the forecast demand for Access to the increased Terminal Capacity;
 - (6) an assessment of the Pricing Method applicable to the Terminal Capacity Expansion, applying the Expansion Pricing Principles;
 - (7) information about the anticipated impact on Non-Expansion Costs for the Terminal; and
 - (8) an estimate of the Terminal Infrastructure Charge that will apply to the Differentiated Terminal Component if the Terminal Capacity Expansion was Differentiated, or the amendment to the Terminal Infrastructure Charge that will apply if the Terminal Capacity Expansion was Socialised, having regard to the information referred to above and the other pricing arrangements set out in Section 10.

- (c) **(Expansion Arbitrator to provide Price Ruling)** In response to an application for a Price Ruling, the Expansion Arbitrator shall, after conducting an investigation:
 - (1) determine the application; and
 - (2) determine whether the Terminal Capacity Expansion should be Socialised or Differentiated, applying the Expansion Pricing Principles.

5.13 Access Transfers

- (a) In processing any request by an Access Holder or Access Seeker for a transfer of rights or entitlements under an Access Agreement (whether by way of assignment or novation), DBCT Management must consent to any such proposed transfer unless DBCT Management (acting reasonably) is satisfied that:
 - (1) the assignor is in material breach of its Access Agreement; or
 - (2) the assignee:
 - (A) is not of good financial standing, creditworthy and able to fully discharge the financial obligations of the Access Holder under the relevant Access Agreement or the assignee has not otherwise provided security in a form acceptable to DBCT Management (acting reasonably) for the performance of the obligations under this Agreement in respect of the transferred rights or entitlements;
 - (B) is incapable of performing the obligations of the Access Holder under the Access Agreement in respect of the transferred rights or entitlements, including complying with the Terminal Regulations; or
 - (C) is unable to reasonably demonstrate that the rights or entitlements to be transferred under the relevant Access Agreement are matched by an entitlement to railway track access held by the assignee or a person on its behalf.
- (b) The assignor must provide all information reasonably required by DBCT Management to assess the criteria specified in Section 5.13(a) to DBCT Management in a timely manner.
- (c) DBCT Management must take all steps necessary to assess and respond to any request for a transfer as soon as reasonably practicable.
- (d) An Access Holder or an Access Seeker may refer to the Arbitrator as a Dispute under section 16 of this Framework:
 - (1) any refusal by DBCT Management to consent to a transfer;
 - (2) any failure to agree the reasonable terms governing an Access Agreement which is the subject of a transfer;
 - (3) any failure by DBCT Management in assessing or responding to a request for transfer in a timely manner.

6 Terminal Regulations

6.1 Compliance with Terminal Regulations

- (a) **(Compliance by DBCT Management and Operator)** DBCT Management acknowledges that under the Operation & Maintenance Contract DBCT Management and the Operator must comply with the Terminal Regulations. DBCT Management must comply

with, and will procure that the Operator complies with, the Terminal Regulations in force from time to time.

- (b) **(Compliance by Access Holders is condition of Access)** Each Access Holder must observe the Terminal Regulations, in force from time to time, as a condition of Access to and the right to have its coal Handled at the Terminal.

6.2 Amendment of Terminal Regulations

- (a) **(Process for amending Terminal Regulations)** The Operator may, from time to time, by written notice to DBCT Management, propose amendments to the Terminal Regulations regarding operational issues. If the Operator submits to DBCT Management a proposed amendment to the Terminal Regulations DBCT Management must:
- (1) conduct reasonable consultation with Access Holders, Access Seekers, Expansion Parties and/or Rail Operators in relation to the proposed amendment; and
 - (2) following the completion of such reasonable consultation, notify the Access Holders, Access Seekers, Expansion Parties and Rail Operators:
 - (A) of the wording of the proposed amendment;
 - (B) whether it has given its consent to the proposed amendment;
 - (C) of the detailed reasons for its decision to give (or not give) consent to the proposed amendment; and
 - (D) except in the case of notification to Rail Operators, that there is a 30 day period for notifying DBCT Management of any objections to the decision to consent or not consent (as applicable) to the amendment.
- (b) **(Implementation of amended Terminal Regulations)** A proposed amendment to the Terminal Regulations will not be implemented unless:
- (1) DBCT Management has conducted reasonable consultation with Access Holders, Access Seekers, Expansion Parties and Rail Operators in accordance with Section 6.2(a)(1); and
 - (2) one of the following has occurred:
 - (A) DBCT Management has consented to the proposed amendment to the Terminal Regulations and no Access Holder, Access Seeker or Expansion Party has given notice to DBCT Management objecting to consent being provided to the proposed amendments within 30 days of being notified of the amendments by DBCT Management;
 - (B) DBCT Management has consented to the proposed amendments to the Terminal Regulations and while an Access Holder, Access Seeker or Expansion Party has given notice to DBCT Management objecting to consent being provided to the proposed amendments within 30 days of being notified of the amendments by DBCT Management, an Independent Expert appointed to hear the objection (in accordance with Section 6.2(f)) has rejected that objection; or
 - (C) DBCT Management has not consented to the proposed amendments to the Terminal Regulations, but an Access Holder, Access Seeker or Expansion Party has given notice to DBCT Management objecting to consent not being provided, and an Independent Expert appointed to hear the objection (in accordance with Section 6.2(g)) has upheld that objection.

- (c) **(Consent of DBCT Management)** DBCT Management will only give its consent to a proposed amendment to the Terminal Regulations under Section 6.2(b)(2)(A) or 6.2(b)(2)(B) if it has conducted reasonable consultation with Access Holders, Access Seekers, Expansion Parties and Rail Operators in accordance with Section 6.2(a)(1) and, taking into account the results of such consultation, it reasonably considers that:
- (1) the amendments relate to operational issues;
 - (2) the amended Terminal Regulations, as a whole, will operate equitably amongst Existing Users, Access Holders, Access Seekers (should they become Access Holders) and Expansion Parties (should they become Access Holders) and, where the relevant amendments affect Rail Operators, amongst affected Rail Operators;
 - (3) the amendments are consistent with this Framework, and any Access Agreements; and
 - (4) the amendments are reasonably necessary for the operation of the Terminal in accordance with applicable laws and regulatory standards, Approvals, Good Operating and Maintenance Practice or any costs or obligations imposed are justified by the efficiency benefits arising from those costs or obligations.
- (d) **(Criteria for disputing refusal to provide consent)** If DBCT Management does not provide its consent to a proposed amendment to the Terminal Regulations, an Access Holder, Access Seeker or Expansion Party may object to DBCT Management's refusal to provide consent if they reasonably consider that:
- (1) the amendments relate to operational issues;
 - (2) the amended Terminal Regulations, as a whole, will operate equitably amongst Existing Users, Access Holders, Access Seekers (should they become Access Holders) and Expansion Parties (should they become Access Holders) and, where the relevant amendments affect Rail Operators, amongst affected Rail Operators;
 - (3) the amendments are consistent with this Framework and any Access Agreement of the Access Holder, Access Seeker or Expansion Party (as the case may be); and
 - (4) the amendments are reasonably necessary for the operation of the Terminal in accordance with applicable laws and regulatory standards, Approvals, Good Operating and Maintenance Practice or any costs or obligations imposed are justified by the efficiency benefits arising from those costs or obligations.
- (e) **(Notice of amendments to Terminal Regulations)** DBCT Management must notify all Access Holders, Access Seekers, Expansion Parties and Rail Operators of any amendments to the Terminal Regulations that have been approved and must provide a copy of the amended Terminal Regulations to these parties (which may be by way of reference to the website on which the amended Terminal Regulations are available in accordance with Section 6.2(i)).
- (f) **(Objection to DBCT Management decision to approve amendment of Terminal Regulations)**
- (1) If:
 - (A) DBCT Management has given its consent to a proposed amendment to the Terminal Regulations; and

- (B) an Access Holder, Access Seeker or Expansion Party objects to the proposed amendment on the basis that it reasonably considers that the criteria specified in Sections 6.2(c)(1) to 6.2(c)(4) are not satisfied,

then the Access Holder, Access Seeker or Expansion Party may, within 30 days after being notified of DBCT Management's consent, notify DBCT Management of its objection to the consent to the proposed amendment, such objection to be determined by an Independent Expert.

- (2) If, in response to an objection notified by an Access Holder, Access Seeker or Expansion Party (whether under Section 6.2(f)(1) of this Framework or any corresponding provision of an Access Agreement), the Independent Expert determines that the criteria specified in Sections 6.2(c)(1) to 6.2(c)(4) are not satisfied then:
- (A) the proposed amendment and DBCT Management's consent to the proposed amendment will be taken to have been withdrawn; and
 - (B) the proposed amendment will not be made.

(g) **(Objection to DBCT Management decision to reject amendment of Terminal Regulations)**

- (1) If:
- (A) DBCT Management has refused to give its consent to a proposed amendment to the Terminal Regulations; and
 - (B) an Access Holder, Access Seeker or Expansion Party objects to DBCT Management not providing consent to the proposed amendment on the basis that it reasonably considers that the criteria specified in Sections 6.2(c)(1) to 6.2(c)(4) are satisfied,

then the Access Holder, Access Seeker or Expansion Party may within 30 days of being notified of DBCT Management's refusal to give its consent to a proposed amendment to the Terminal Regulations, notify DBCT Management of its objection to DBCT Management not providing consent for the proposed amendment, such objection to be determined by an Independent Expert.

- (2) If, in response to an objection notified by an Access Holder, Access Seeker or Expansion Party (whether under Section 6.2(g)(1) of this Framework or any corresponding provision of an Access Agreement), the Independent Expert determines that the criteria in Sections 6.2(c)(1) to 6.2(c)(4) are satisfied, then:
- (A) DBCT Management's consent to the proposed amendment will be deemed to have been given; and
 - (B) the proposed amendment will be made.

(h) **(Protection of DBCT Management)** Subject to DBCT Management complying with Section 6.2(b), DBCT Management will not be liable to Access Seekers (and the Standard Access Agreement will provide that DBCT Management will have no liability (on any basis whatsoever) to an Access Holder which executes it) as a result of DBCT Management consenting to an amendment to the Terminal Regulations or the due implementation and observance of an amendment to the Terminal Regulations, as long as DBCT Management had in all respects acted reasonably and in good faith and (acting reasonably and in good faith) had formed the opinion required by Section 6.2(c). For clarification, this does not affect DBCT Management's obligation to do anything required on its part to cause the termination or consequential amendment

of a Terminal Regulation after any determination that the Terminal Regulation breaches this Framework or a relevant Access Agreement.

- (i) **(DBCT Management to make copies available)** DBCT Management must make a copy of the Terminal Regulations available to each Access Holder, Access Seeker and Rail Operator (which may be by displaying it on DBCT Management's website).
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7 Confidentiality requirements

7.1 Confidential Information to be kept confidential

Subject to Sections 5.4(c) and 16.4(e) each relevant Access Seeker, Access Holder and DBCT Management will, at all times, keep confidential and not disclose to any other person, any Confidential Information exchanged under the negotiation arrangements in Section 5 of this Framework or any other part of this Framework, except:

- (a) where disclosure is required by any law or legally binding order of any court, government, semi-government authority, administrative or judicial body, or requirement of a stock exchange or regulator;
- (b) with the prior written consent of the relevant Access Seeker, Access Holder or DBCT Management, as applicable;
- (c) where disclosure is to the recipient's professional advisors provided that such professional advisors are under a duty of confidentiality;
- (d) to the extent disclosure is necessary for notifications to financiers, brokers, insurers or claims assessors or reasonably necessary in connection with seeking financing from a bona fide financier, provided that the broker, insurer, claims assessor or financier to whom the disclosure is made is under a legal obligation to keep the information confidential;
- (e) where disclosure is made to any person or body established to provide coordination in the Dalrymple Bay Coal Chain;
- (f) where disclosure is to a Capacity Expert, an Independent Expert, an Arbitrator, an Expansion Arbitrator, or a court (in the case of a party seeking urgent injunctive relief) to the extent necessary for resolving a Dispute provided that DBCT Management does not disclose the Confidential Information of one Access Seeker or Access Holder to another Access Seeker or Access Holder without the first-mentioned Access Seeker's or Access Holder's consent, unless directed to by a Capacity Expert, an Independent Expert, an Arbitrator, an Expansion Arbitrator or a court (as the case may be); or
- (g) to the extent disclosure is required to protect the safety or security of persons or property or in connection with an accident or emergency.

7.2 Confidentiality deed

If required by either party, the parties will enter into a confidentiality deed substantially in the form set out in Schedule D of this Framework.

7.3 Use of Confidential Information

Without limiting the circumstances specified in this Section 7 in which Confidential Information may be used or disclosed, an Access Seeker, an Access Holder and DBCT Management must otherwise only use Confidential Information provided to it under this Framework for the purposes for which it was provided.

7.4 Reporting of aggregated information

For the avoidance of doubt, nothing in this Section 7 prevents DBCT Management from:

- (a) complying with its obligations under Sections 9.1 and 9.2; or
 - (b) disclosing, in the ordinary course of business, financial reporting information which has been aggregated with other information of a similar nature such that it cannot reasonably be, and is not reasonably capable of being, identified with, attributed to or used to identify, any Access Seeker, Access Holder, Existing User or Rail Operator.
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8 Ring-fencing arrangements

8.1 No related Supply Chain Businesses

DBCT Management and its Related Bodies Corporate will not own or operate a Supply Chain Business in any market that is related to or uses the Terminal.

8.2 Non-discrimination

DBCT Management will not:

- (a) engage in conduct for the purpose of preventing or hindering an Access Holder's or Access Seeker's Access; or
- (b) unfairly differentiate between Access Seekers, Access Holders or Rail Operators.

8.3 Confidentiality undertaking by board members

DBCT Management will ensure that each of its directors executes a confidentiality deed pursuant to which the relevant director agrees to only use and disclose Confidential Information obtained as a director of DBCT Management in connection with its role as a director of DBCT Management.

8.4 Complaint handling

If an Access Holder or Access Seeker considers that DBCT Management may have breached one or more of its obligations under this Section 8 they may raise a Dispute in respect of such complaint in accordance with Section 16 of this Framework.

9 Reporting by DBCT Management

9.1 Indicators relating to compliance with this Framework

DBCT Management will Publicly Report on an annual basis the following information:

- (a) **(Indicative Access Proposals)** the number and percentage of total Indicative Access Proposals provided within the applicable timeframe;
- (b) **(Access Applications)** the number and percentage of Access Applications received for which an extension of time for provision of an Indicative Access Proposal was sought by DBCT Management;
- (c) **(Response times)** the average delay (in days) taken to provide an Indicative Access Proposal not provided within the applicable timeframe;
- (d) **(Disputes)** the number of instances where a Dispute has been referred to dispute resolution in accordance with Section 16;
- (e) **(Negotiation periods for successful outcomes)** the average length of the negotiation period (in days), where the negotiation period has commenced and has ceased as the

- result of the execution of an Access Agreement in respect of the Access sought by the Access Seeker;
- (f) **(Negotiation periods where no Access Agreement signed)** the average length of the negotiation period (in days), where the negotiation period has commenced and has ceased as the result of any reason other than the execution of an Access Agreement in respect of the Access sought by the Access Seeker;
 - (g) **(Access Transfer Applications)** in respect of the Access Transfer processes set out in Section 5.13, the following:
 - (1) the number of requests received for a transfer of rights or entitlements; and
 - (2) the period taken to resolve each transfer, being in each case the period from the date of receipt of the request and ending on the earliest of the date that:
 - (A) an Access Agreement facilitating the transfer was executed by DBCT Management;
 - (B) DBCT Management gave notice to the transferor that consent for the transfer was refused; or
 - (C) any notice was given to the Arbitrator of a Dispute in relation to the purported transfer;
 - (h) **(Access Agreements concluded)** the number of instances where a negotiation period that had commenced, ceased as the result of the execution of an Access Agreement in respect of the Access sought by the Access Seeker; and
 - (i) **(Complaints)** written complaints received by DBCT Management in relation to its compliance with this Framework.

9.2 Indicators relating to service quality

DBCT Management is required to Publicly Report on the following service quality key performance indicators for the Terminal on a quarterly basis:

- (a) **(System delivery):**
 - (1) number of trains requested by the Operator and scheduled by the rail providers to arrive at the Terminal;
 - (2) actual number of trains completing unloading at the Terminal;
 - (3) number of tonnes of coal scheduled to be delivered to the Terminal; and
 - (4) number of tonnes of coal actually delivered to the Terminal,
for each month of the quarter.
- (b) **(Inloading performance):**
 - (1) average train unloading time at the Terminal (on a Terminal job-open to job-close basis); and
 - (2) average train unload time (from permission to unload the train until unloading of the last wagon is complete),
for each month of the quarter.
- (c) **(Stockyard performance):**
 - (1) average stock-build time per parcel; and
 - (2) average stock-residence time per parcel,
for each month of the quarter.

- (d) **(Out-loading performance):**
in respect of each outloading conveyor:
- (1) average gross load rate per vessel class – first coal to last coal; and
 - (2) average utilisation of out-load conveyors,
- for each month of the quarter.
- (e) **(Vessel performance):**
- (1) number of vessels (by class);
 - (2) average number of parcels per vessel (by class);
 - (3) total tonnes per vessel (by class); and
 - (4) total tonnes shipped,
- for each month of the quarter.
- (f) **(Vessel queuing)** (vessels which have arrived and are awaiting berthing to load):
- (1) average daily total vessels in queue;
 - (2) average daily number of vessels in queue where relevant coal is not yet available to be railed to the Terminal (“dead ships”);
 - (3) vessel queuing times;
 - (4) queue ordering; and
 - (5) average waiting time to berth at anchor,
- for each month of the quarter.
- (g) **(Operating efficiency)** inloading and outloading.
- (h) **(Environmental performance):**
- (1) number of times during each month of the quarter that the “management objective” (as provided for in the Terminal’s environmental licence and approvals) in dust deposition was exceeded; and
 - (2) number of times during each month of the quarter that the “acoustic quality objective” (as provided for in the Terminal’s environmental licence and approvals) was exceeded.
- (i) **(Other)** any additional or alternative service quality key performance indicators that DBCT Management and Access Holders agree from time to time.

10 Pricing arrangements

10.1 Application of Pricing Provisions

- (a) The Access Charges for each Terminal Component in respect of which the Access Holder has an entitlement to Access will be as agreed between DBCT Management and the Access Holder.
- (b) If DBCT Management and an Access Seeker are unable to agree Initial Access Charges to apply from the commencement of an Access Agreement or increased Access and one of them refers a Dispute relating to those Initial Access Charges for resolution in accordance with the dispute resolution process set out in Section 16 in accordance with Section 5.7(f) of this Framework, any determination by the Arbitrator of terms relating to Initial Access Charges in accordance with Section 16.4 of this Framework

must be in accordance with Sections 10.3 to 10.5, except to the extent necessary to give effect to any matter agreed by the parties to the Arbitration.

- (c) If a Dispute concerning the Access Charges to apply under an Access Agreement, which contains pricing provisions that are substantively identical to those of the Standard Access Agreement applicable at the time of entry into that Access Agreement, for a Pricing Period that commences during the term of that Access Agreement (including the Initial Access Charges to apply from the start of the Pricing Period, the method of calculating, paying and reconciling the Access Charges to apply for the Pricing Period or any consequential changes in the drafting of the provisions of the Access Agreement) is referred by DBCT Management or the Access Holder for resolution in accordance with Section 16 of this Framework, in making any Arbitration determination in accordance with Section 16.4 of this Framework the Arbitrator must:
 - (1) determine the Initial Access Charges to apply from the start of the Pricing Period in accordance with Sections 10.3 to 10.5 of this Framework; and
 - (2) subject to paragraph (1) above, give effect to and make a determination that is consistent with the Standard Access Agreement in place under the Access Framework at the time of the Arbitrator's determination,
- except to the extent necessary to give effect to any matter agreed by the parties to the Arbitration.
- (d) Section 10.6 applies to the review during a Pricing Period of the Access Charges applicable under an Access Agreement that contains pricing provisions that are substantively identical to those of the Standard Access Agreement applicable at the time of entry into the Access Agreement, and any determination by an Arbitrator of a Dispute concerning such a review that is referred for resolution by DBCT Management or the Access Holder in accordance with Section 16.4 of this Framework must be in accordance with Section 10.6, except to the extent necessary to give effect to any matter agreed by the parties to the Arbitration.
 - (e) Sections 10.7 and 10.8 apply in accordance with their terms.

10.2 Interpretation of Pricing Provisions

- (a) In this Framework, the following principles of interpretation shall apply:
 - (1) (**Single meaning where only Socialisation applies**) for so long as Access to the Terminal continues to be priced on a Socialised basis, the terms and definitions of this Framework relevant to pricing apply to all Access collectively; and
 - (2) (**Alternative meanings where Differentiation applies**) where, pursuant to Section 10.8, Access to the Terminal is charged to one or more Access Holders on a Differentiated basis, the terms and definitions of this Framework relevant to pricing apply to each Terminal Component separately.
- (b) To avoid doubt, if an Access Holder seeks and obtains increased Access in respect of a Terminal Component on one or more occasions, the Access Holder may have more than one Access Agreement and/or a different Terminal Infrastructure Charge for the Terminal Component may apply to each of the tranches of Access obtained by the Access Holder.

10.3 Access Charges

Access Charges for each Terminal Component will comprise two parts:

- (a) a Terminal Infrastructure Charge; and

- (b) an Operation & Maintenance Charge.

10.4 Terminal Infrastructure Charge

- (a) (**TIC**) The Access Agreement will impose a Terminal Infrastructure Charge (**TIC**) for each Terminal Component in respect of which the Access Holder has an entitlement to Access or increased Access, being an amount per tonne payable by the Access Holder at a relevant time, calculated (and adjusted as required) in accordance with this Section 10 and Schedule C, Sections 2 and 3.
- (b) (**Applies to Annual Contract Tonnage**) The TIC will apply to all Annual Contract Tonnage, or where:
 - (1) Section 10.2(a)(2) applies, a different TIC will apply to the Annual Contract Tonnage in respect of each Terminal Component for which the Access Holder has an entitlement to Access;
 - (2) Section 10.2(b) applies, a different TIC may apply to the Annual Contract Tonnage in respect of each tranche of Access to which the Access Holder has obtained an entitlement.
- (c) (**Payment of TIC**) Each Access Holder will pay to DBCT Management in respect of its Annual Contract Tonnage a payment in each Month of each Financial Year during the term of its Access Agreement (the **Monthly Payment**) calculated (and adjusted as required) in accordance with Schedule C.
- (d) (**Determination of Initial TIC**) Subject to paragraph (e), in any Arbitration of a kind referred to in Section 10.1(b) or 10.1(c), the Arbitrator must determine a TIC for a Terminal Component to apply under the Access Agreement from commencement of that Agreement, increased Access under that Agreement or the relevant Pricing Period (**Initial TIC**) that:
 - (1) reflects a TIC that would be agreed between a willing but not anxious buyer and a willing but not anxious seller of coal handling services for mines within a geographic boundary drawn so as to include all mines that have acquired, currently acquire or may acquire coal handling services supplied at the Port of Hay Point;
 - (2) is no less than the Floor TIC calculated in accordance with Schedule C, Section 2(a); and
 - (3) is no greater than the Ceiling TIC calculated in accordance with Schedule C, Section 2(b) to (f).
- (e) (**Determination of Initial TIC if Arbitration already occurred in Pricing Period**) In any Arbitration of the kind referred to in Section 10.1(b), the Arbitrator must determine the Initial TIC to apply for the Terminal Component under the Access Agreement from commencement of that Access Agreement or increased Access under that Access Agreement as follows where an Arbitration determination on an Initial TIC for one or more Access Holders has previously been made under Section 16.4 of this Framework for the Pricing Period in which that Access Agreement or increased Access will commence:
 - (1) subject to paragraph (2), the Initial TIC to apply from commencement of the Access Agreement or increased Access under the Access Agreement must be equal to the Initial TIC for the Pricing Period determined in the first completed Arbitration for that Pricing Period adjusted:

- (A) based on escalation for the annual change in the Consumer Price Index in accordance with Schedule C, Section 3(a) to (d); and
- (B) for any Review Event that has occurred since the completion of the first completed Arbitration in accordance with Schedule C, Section 3(e) to (j);
- (2) if the resultant Initial TIC for the Access Seeker is higher than the Ceiling TIC applicable at the time of Arbitration or lower than the Floor TIC applicable at that time, the Arbitrator must not apply any Review Event adjustment or adjustments under paragraph (1) to the Initial TIC determined in the first completed Arbitration for the Pricing Period to the extent that the Review Event adjustment or adjustments would otherwise result in an Initial TIC for the Access Seeker that is higher than the Ceiling TIC or lower than the Floor TIC.
- (f) **(Determination of Floor TIC following Terminal Capacity Expansion)** In any Arbitration of a kind referred to in Section 10.1(b) or 10.1(c) following the Completion and hand over to the Operator of a Terminal Capacity Expansion:
 - (1) any determination of the Floor TIC by the Arbitrator must be consistent with any Price Ruling by the Expansion Arbitrator in respect of that Terminal Capacity Expansion; and
 - (2) the Arbitrator must accept Capital Expenditure incurred in respect of that Terminal Capacity Expansion is prudent if the Expansion Arbitrator has determined under Section 11.5 that that Capital Expenditure is prudent and take that prudent Capital Expenditure and any associated construction related financing costs determined in accordance with Section 11.6 into account in determining the Floor TIC.

Nothing in this paragraph precludes the Arbitrator from determining that any additional Capital Expenditure incurred in respect of the Terminal Capacity Expansion is also prudent and also taking that additional Capital Expenditure and any associated construction related financing costs determined in accordance with Section 11.6 into account in determining the Floor TIC.
- (g) **(Determination of Ceiling TIC)** Data from an independent third party data provider must be used in any determination of the Ceiling TIC in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) by an Arbitrator unless the Arbitrator is satisfied that the data from the provider is manifestly incorrect in one or more respects and the error or, if there is more than one error, the errors considered collectively, are 'material', where 'material' means that the error(s) have a material effect on the resultant Ceiling TIC. In that case, the Arbitrator may disregard the independent third party data provider's data and use alternative data but only to the extent that the Arbitrator is satisfied that the provider's data is manifestly incorrect.

10.5 Operation & Maintenance Charge

- (a) **(Terminal Operating Costs recovery)** Terminal Operating Costs will be recovered from the Access Holder through the Operation & Maintenance Charge. The Operation & Maintenance Charge for the Access Holder will be calculated on the basis outlined in the Standard Access Agreement and otherwise in accordance with the Operations & Maintenance Contract.
- (b) Where a Differentiated Expansion Component exists and Terminal Operating Costs are required to be allocated between different Terminal Components, then the Operation

& Maintenance Charge for each Access Holder will be calculated in accordance with the following procedure:

- (1) the quantum of Terminal Operating Costs, and the proposed allocation among Terminal Components, will be advised to DBCT Management by the Operator. The Operator will determine the allocation in accordance with Section 10.7(a);
 - (2) DBCT Management will review the quantum and allocation proposed by the Operator and, where relevant, make any variation it considers necessary to comply with Section 10.5(c)(3); and
 - (3) DBCT Management will recover Terminal Operating Costs allocated to a Terminal Component from an Access Holder through the Operation & Maintenance Charge determined in accordance with paragraph (a).
- (c) **(Notifications, payments and adjustments)** DBCT Management will:
- (1) notify Access Holders of estimated Terminal Operating Costs annually in advance;
 - (2) recover such estimated costs monthly;
 - (3) notify Access Holders of any applicable adjustment at the end of each Financial Year – to recover any shortfall or to reimburse Access Holders in the event of under-recovery or over-recovery of Terminal Operating Costs by DBCT Management; and
 - (4) recover or reimburse at the end of each quarter and at the end of a Financial Year (as the case may be), such amount (if any) as referred to in Section 10.5(c)(3).

10.6 Review of TIC applicable under Access Agreements in form of the Standard Access Agreement

- (a) **(Reviews of TIC during a Pricing Period)** On each occasion referred to in Schedule C, Section 3(a) or 3(e) during a Pricing Period, DBCT Management will amend the TIC for a Terminal Component then applicable under an Access Agreement that contains pricing provisions that are substantively identical to those of the Standard Access Agreement applicable at the time of entry into the Access Agreement, to the extent that it is affected by the occasion, in accordance with Schedule C, Section 3. The TIC will be amended (effective from the relevant date in Schedule C, Section 3(c) or 3(i)) when DBCT Management gives notice to the relevant Access Holder of the amended TIC.
- (b) **(Arbitration of Dispute arising from reviews of TIC during a Pricing Period)** In any Arbitration of the kind referred to in Section 10.1(d) of this Framework, the Arbitrator:
 - (1) must apply Schedule C, Section 3 to determine an amended TIC;
 - (2) if the resultant amended TIC for the Access Holder is higher than the Ceiling TIC applicable at the time of Arbitration or lower than the Floor TIC applicable at that time, must not apply the amendment to the TIC that would otherwise result under paragraph (1) to the extent that that amendment would otherwise result in an amended TIC that is higher than the Ceiling TIC or lower than the Floor TIC;
 - (3) if the Dispute relates to a Review Event referred to in paragraph (b) of the definition of Review Event, must:
 - (A) make a determination in respect of the amended TIC to apply in accordance with Schedule C, Section 3(g) that is consistent with any Price

Ruling by the Expansion Arbitrator in respect of the relevant Socialised Expansion; and

- (B) accept that Capital Expenditure in respect of the relevant Socialised Expansion is prudent if the Expansion Arbitrator has determined under Section 11.5 that that Capital Expenditure is prudent and take that prudent Capital Expenditure and any associated construction related financing costs determined in accordance with Section 11.6 into account in determining the amended TIC.

Nothing in this paragraph precludes the Arbitrator from determining that any additional Capital Expenditure incurred in respect of the relevant Socialised Expansion is also prudent and also taking that additional Capital Expenditure and any associated construction related financing costs determined in accordance with Section 11.6 into account in determining the amended TIC to apply in accordance with Schedule C, Section 3(g); and

- (4) if the Dispute relates to a Review Event referred to in paragraph (c) of the definition of Review Event, must accept that NECAP is prudent and include it in the determination of the 'Adjustment amount' under Schedule C, Section 3(h) if required by Section 11.10(b) of this Framework and may otherwise accept that NECAP is prudent and include it in the determination of the 'Adjustment amount' under Schedule C, Section 3(h) having regard to the matters set out in Section 11.10(c) of this Framework.
- (c) **(Date amended TIC takes effect)** Until the amended TIC is determined as provided for in this Section 10.6 and Schedule C, Section 3, the TIC applicable immediately prior to the occasion referred to in Schedule C, Section 3(a) or 3(e) will remain in effect and continue to be due and payable. When DBCT Management gives notice or the Arbitrator communicates the determination of the amended TIC determined as provided for in this Section 10.6 and Schedule C, Section 3, the amended TIC will apply with effect from the relevant date in Schedule C, Section 3(c) or 3(i) (**Effective Date**) and DBCT Management will calculate the amount which would have been payable to it by way of Monthly Payments in the period since the Effective Date if that amended TIC had been in effect from that time and the relevant party must pay to the other party the difference between that amount and the amount actually received by DBCT Management by way of Monthly Payments between the Effective Date and the date DBCT Management gives notice or the Arbitrator communicates the determination of the amended TIC.

10.7 Cost Allocation

- (a) **(Cost allocation as per Cost Allocation Manual)** Where this Framework provides for:
 - (1) the allocation of Terminal Operating Costs among multiple Terminal Components; or
 - (2) the inclusion in the NECAP Asset Base of Capital Expenditure not related to a Terminal Capacity Expansion, and there are multiple Terminal Components, the cost in question is to be allocated in accordance with the Cost Allocation Manual or, if no Cost Allocation Manual exists, in accordance with the Cost Allocation Principles. Any Dispute as to the allocation of costs in accordance with the Cost Allocation Manual may be referred to dispute resolution under Section 16 of the Framework.

- (b) **(Preparation of draft Cost Allocation Manual)** When the first Price Ruling is made, DBCT Management must prepare a draft Cost Allocation Manual and submit it to the Independent Expert for approval.
- (c) **(Preparation of revised draft Cost Allocation Manual)** DBCT Management shall, if so requested by the Independent Expert, prepare and submit within 60 days of such request, a revised draft Cost Allocation Manual that satisfies the requirements of the Independent Expert.
- (d) **(Consulting in good faith with the Operator)** DBCT Management shall consult in good faith with the Operator in preparing the Cost Allocation Manual and updating it, from time to time.
- (e) **(Approval of Cost Allocation Manual)** As soon as practicable after the Independent Expert approves the final Cost Allocation Manual, DBCT Management must publish the Cost Allocation Manual on its website.
- (f) **(Cost Allocation Manual requirements)** The Cost Allocation Manual should:
 - (1) provide a transparent basis for assigning costs to separate Terminal Components in different circumstances; and
 - (2) be consistent with the Cost Allocation Principles.
- (g) **(Cost Allocation Principles):** Non-Expansion Costs should be allocated:
 - (A) **(Identifiable cost)** if the cost is uniquely identified or directly incurred in relation to a particular Terminal Component, to that Terminal Component;
 - (B) **(Attributable cost)** if the cost is not an identifiable cost, but there is a reasonable causal relationship between the cost and one or more Terminal Components, to those Terminal Components, in proportion to their reasonably estimated cost drivers; and
 - (C) **(Non-identifiable and non-attributable cost)** if the cost is neither identifiable nor attributable to a particular Terminal Component, on a reasonable basis between the Terminal Components.

10.8 Expansion Pricing Principles

- (a) In assessing whether or not Differentiation should apply in respect of a proposed Terminal Capacity Expansion, the following principles shall apply:
 - (1) where Socialisation of a Terminal Capacity Expansion would decrease the Floor TIC for the Existing Terminal determined in accordance with Schedule C, Section 2(a), the Terminal Capacity Expansion should be treated as forming part of the Existing Terminal for the purpose of determining Access Charges in accordance with Sections 10.3 to 10.5 of this Framework and the Floor TIC for the Existing Terminal should be determined by reference to the sum of the costs of the Existing Terminal and the costs of the Terminal Capacity Expansion (a **Socialised Expansion**);
 - (2) where Socialisation of a Terminal Capacity Expansion would increase the Floor TIC for the Existing Terminal determined in accordance with Schedule C, Section 2(a) (a **Cost Sensitive Expansion**), subject to Section 10.8(b), the Terminal Capacity Expansion should be treated as a separate Terminal Component, and the Floor TIC for that Terminal Component determined by reference to the costs of the Terminal Capacity Expansion (and without reference to the costs of the Existing Terminal) (a **Differentiated Expansion Component**).

- (b) A Cost Sensitive Expansion may be treated as forming part of the Existing Terminal (and therefore, not treated as a Differentiated Expansion Component) where circumstances exist that justify Socialisation. In determining whether there are circumstances that warrant Socialisation, consideration must be given to:
- (1) the materiality of the increase in the Floor TIC for the Existing Terminal determined in accordance with Schedule C, Section 2(a) that would be affected by socialising the Cost Sensitive Expansion;
 - (2) the extent to which assets or infrastructure the subject of the Cost Sensitive Expansion will operate wholly or partly, in an integrated way with the Existing Terminal or as a stand-alone development;
 - (3) the extent to which the Cost Sensitive Expansion is likely to benefit users of the Existing Terminal (for example, such as through higher efficiency, reliability or flexibility of the Existing Terminal);
 - (4) any differences in the risks of providing Access to users of the Existing Terminal in respect of additional Terminal Capacity created by the Cost Sensitive Expansion;
 - (5) the financeability of any proposed expansion pricing arrangement, including by reason of the risk of Differentially Priced Access Holders switching between high and low priced Terminal Capacity that otherwise has identical functionality; and
 - (6) any other factor that the Expansion Arbitrator considers relevant.

It is acknowledged that there may be circumstances in which parts and not the whole of a Cost Sensitive Expansion may be Socialised.

11 Terminal Capacity Expansion

11.1 Procedure for determining Terminal Capacity and System Capacity

- (a) DBCT Management will, at each time required in Section 11.1(k), either:
- (1) (**Estimate capacities**) accept an estimation that has been accepted by the Capacity Expert as provided for in Section 11.1(m)(3) of the maximum reasonably achievable capacity (measured in tonnes of coal per Financial Year) of:
 - (A) the Terminal (on a “name-plate capacity” basis) (**Terminal Capacity**), including separately identifying:
 - (i) the capacity of the Existing Terminal (on a “name-plate capacity” basis) (**Existing Terminal Capacity**); and
 - (ii) the capacity of each Expansion Component (on a “name-plate capacity” basis) (each an **Expansion Component Capacity**), which for clarity may constitute either Socialised Terminal Capacity or Differentially Priced Capacity depending upon the nature of the relevant Expansion Component; and
 - (B) the System (**System Capacity**),

provided that the estimation was accepted by the Capacity Expert as provided for in Section 11.1(m)(3) in the immediately preceding 6 months and there has been no change in any of the factors to be taken into account in estimating the Terminal Capacity, the Expansion Component Capacity or the System Capacity since the estimation accepted by the Capacity Expert that is reasonably expected

to materially affect the Terminal Capacity, the Expansion Component Capacity or the System Capacity; or

- (2) **(Determine capacities after advice and consultation)** (to the extent that there is no estimation as provided for in Section 11.1(m)(3)) acting reasonably and after:

- (A) taking advice from a Capacity Expert appointed by DBCT Management under this Section 11.1 **(Capacity Expert)**; and
- (B) consultation by DBCT Management and that Capacity Expert with the Operator, Access Holders, any Expansion Parties, and other Service Providers or their respective nominees,

determine Terminal Capacity, Expansion Component Capacity and System Capacity (as applicable) in accordance with this Section 11.1, having regard to:

- (C) **(Terminal operating assumptions)** in respect of Terminal Capacity – the following Terminal operating assumptions:

- (i) DBCT Management's obligations, Access Holders' entitlements under Access Agreements and Existing Users' entitlements under Existing User Agreements (including taking into account historical and reasonably estimated rates of utilisation of the Terminal Capacity, but also having regard to reasonably foreseeable future changes in capacity utilisation rates);
- (ii) DBCT Management's requirement to comply with Good Operating and Maintenance Practice;
- (iii) the Terminal Regulations;
- (iv) an objective of maximum reasonably achievable capacity for the Terminal without unduly increasing vessel waiting times as a result of the operation of the Terminal;
- (v) rail and vessel interfaces with the Terminal;
- (vi) the estimated additional capacity which it is anticipated will become available in a relevant Financial Year as a result of any proposed Terminal Capacity Expansion; and
- (vii) any other matter DBCT Management reasonably considers appropriate;

- (D) **(Terminal operating assumptions – Differentiated Expansion Component)** in respect of Expansion Component Capacity for a Differentiated Expansion Component – the Terminal operating assumptions set out at Section 11.1(a)(2)(C), to the extent applicable solely to the Differentiated Expansion Component; and

- (E) **(System operating assumptions)** in respect of System Capacity – the following System operating assumptions (to the extent that such information is available to DBCT Management):

- (i) operating modes of the System;
- (ii) rail infrastructure characteristics (e.g. single track, double track, passing loops and speed restraints);
- (iii) the tonnes to be loaded by or on behalf of an Access Holder or Existing User at each relevant train load out facility;

- (iv) Terminal Capacity as assessed in accordance with Section 11.1(a)(2)(C) and the capacity and performance implications arising out of Terminal interfaces with rail unloading and vessel loading;
 - (v) quantity, configuration and performance characteristics of locomotives and rolling stock;
 - (vi) capacity and performance of mine loading facilities;
 - (vii) the System Master Plan; and
 - (viii) any other matter DBCT Management reasonably considers appropriate.
- (b) **(Additional assumptions)** For clarification, Terminal Capacity, Expansion Component Capacity and System Capacity are to be:
- (1) estimated making a projected allowance (as applicable to either Terminal Capacity and/or Expansion Component Capacity alone or to System Capacity) for interruptions or loss of capacity from maintenance, repairs, inclement weather, breakdowns, derailments, cancellations, loading and unloading issues (including sticky coal), vessel-types (based on a historical analysis);
 - (2) estimated as at the date of estimation and for the Financial Year in which that date falls and for each of the following two Financial Years; and
 - (3) assumed to continue at no lesser rate indefinitely after the periods referred to in Section 11.1(b)(2), except to the extent that (at the time of making the estimation) DBCT Management or the Capacity Expert are actually aware of a reasonably certain future material decrease in capacity (for example, where DBCT Management is aware of a decrease in capacity caused by a planned shutdown in another part of the System).
- (c) **(Disclosure of process and advice)** Subject to any confidentiality restrictions applying to DBCT Management, DBCT Management must disclose to the Access Holders, Access Seekers, Expansion Parties, the Operator and other Service Providers its decision making process in relation to its estimations of Terminal Capacity, Expansion Component Capacity and System Capacity and provide them with a copy of any report that DBCT Management receives from the Capacity Expert in relation to estimating those capacities. DBCT Management will not enter into any confidentiality restrictions which would prevent disclosure for the purposes of this Section 11.1(c) except as may be commercially reasonable and customary to avoid disclosure of commercially sensitive information.
- (d) **(Capacity Expert)** Any Capacity Expert to be appointed by DBCT Management under this Section 11.1 will be:
- (1) where a group of Access Holders whose combined Annual Contract Tonnage for the then current Financial Year is greater than 50% of the Aggregate Annual Contract Tonnage of all Access Holders for that Financial Year object (in accordance with Section 11.1(g)) to the Capacity Expert nominated by DBCT Management, a Capacity Expert appointed in accordance with Section 11.1(g);
 - (2) where a majority of the group of Expansion Parties for an Expansion Component object (in accordance with Section 11.1(g)) to the Capacity Expert nominated by DBCT Management, a Capacity Expert appointed in accordance with Section 11.1(g); or

- (3) where Section 11.1(d)(1) and (2) do not apply, a Capacity Expert nominated by DBCT Management.
- (e) **(Notice of proposed Capacity Expert)** DBCT Management will advise all Access Holders (and, where relevant, Expansion Parties) as to the identity of any Capacity Expert it proposes appointing pursuant to Section 11.1(a)(2) and request that any objection to that Capacity Expert be given in writing to DBCT Management within 14 days after receipt of DBCT Management's notice.
- (f) **(Appointment if no objection)** If no group of Access Holders or Expansion Parties determined in accordance with Section 11.1(d) objects in writing to the Capacity Expert nominated by DBCT Management within the 14 day period referred to in Section 11.1(e), DBCT Management will promptly appoint the Capacity Expert nominated by it.
- (g) **(Procedure if objection to proposed Capacity Expert)** If a group of Access Holders or Expansion Parties determined in accordance with Section 11.1(d) objects within the 14 day period provided for in Section 11.1(e):
- (1) DBCT Management will promptly request the Resolution Institute to nominate a Capacity Expert, and it will engage the Capacity Expert so nominated; and
 - (2) the 6 month period referred to in Section 11.1(k)(1) will not commence until the Capacity Expert has been nominated by the Resolution Institute.
- (h) **(Independent Capacity Expert to consult)** DBCT Management must require its Capacity Expert to consult (as far as is practicable, and to the extent that consultation has not already occurred in respect of a relevant estimation of Terminal Capacity, Expansion Component Capacity or System Capacity (as applicable)) with the Operator, Access Holders, any Access Seekers and other Service Providers, or their respective nominees with respect to the factors referred to in Sections 11.1(a)(2)(C), and 11.1(a)(2)(E).
- (i) **(Objection to estimation by Capacity Expert)** Despite Section 16, DBCT Management's estimation of Terminal Capacity, Expansion Component Capacity and System Capacity under Section 11.1(a) may not be disputed or challenged (including under Section 16 of this Framework) or otherwise subject to review by or on behalf of Access Holders or Access Seekers:
- (1) except on the basis that it has been determined in bad faith, in breach of the Framework or an Access Agreement, or on the basis of a manifest error;
 - (2) unless Access Holders whose combined Annual Contract Tonnage for the then current Financial Year is greater than 50% of the Aggregate Annual Contract Tonnage for all Access Holders for that Financial Year each object on the same or similar grounds; or
 - (3) unless Expansion Parties whose combined projected Annual Contract Tonnage would amount to greater than 50% of the projected Expansion Component Capacity, each object on the same or similar grounds.
- (j) **(Determination of Capacity conclusive)** The capacity of the Terminal, Differentiated Expansion Component and System Capacity estimated under Section 11.1(a) (or, if applicable, Section 16) will constitute Terminal Capacity, Expansion Component Capacity or System Capacity (as relevant) for the purposes of this Framework until it is next reassessed.

- (k) **(Times for re-determination of Capacity)** Terminal Capacity, Expansion Component Capacity and System Capacity will be assessed by DBCT Management in accordance with Section 11.1(a) and will be reassessed during the Term of this Framework:
- (1) before entering into any new Access Agreement or otherwise increasing Aggregate Annual Contract Tonnage unless the Terminal Capacity, the Expansion Component Capacity and the System Capacity was assessed or reassessed in accordance with Section 11.1(a) in the immediately preceding 12 months and there has been no change in any of the factors to be taken into account in estimating the Terminal Capacity, the Expansion Component Capacity or the System Capacity since that time that is reasonably expected to materially affect the Terminal Capacity, the Expansion Component Capacity or the System Capacity;
 - (2) during each stage of a Feasibility Study being conducted by DBCT Management in accordance with Section 5.10;
 - (3) (subject to Section 11.1(g)(2)) not later than 6 months, or such time as otherwise agreed by the parties, after each of the following:
 - (A) the Completion of each Terminal Capacity Expansion; and
 - (B) the time at which DBCT Management becomes aware of the completion of each material and discrete expansion (such materiality to be determined by DBCT Management acting reasonably) of any other component of the System; or
 - (4) otherwise at DBCT Management's discretion.
- (l) **(Notification of assessments of Terminal Capacity, Expansion Component Capacity and System Capacity)** DBCT Management must promptly notify DBCT Holdings, each Access Holder and each Access Seeker of each capacity assessment undertaken in accordance with this Section 11.1.
- (m) **(Requirements for Capacity Expert report process)** The following will apply to a Capacity Expert's report for the purposes of Section 11.1(a):
- (1) subject to confidentiality restrictions applying to DBCT Management, DBCT Management must provide to the Capacity Expert all relevant information which DBCT Management has or to which it has access, to assist the Capacity Expert to reach his or her estimation. DBCT Management will not enter into any confidentiality restrictions which would prevent disclosure for the purposes of this Section 11.1(m) except as may be commercially reasonable and customary to avoid disclosure of commercially sensitive information;
 - (2) DBCT Management must, as far as practicable, use reasonable endeavours to work cooperatively with each other Service Provider (for example by regularly providing information relevant to System Capacity) and, as far as practicable, using reasonable endeavours to agree on the joint engagement of Capacity Experts for the purposes of both this Framework and in respect of similar obligations by other Service Providers; and
 - (3) if the Capacity Expert reasonably considers that there is either agreement or broad consensus amongst stakeholders in the Dalrymple Bay Coal Chain as to Terminal Capacity, Expansion Component Capacity or System Capacity (such agreement or consensus having been reached having regard to the Capacity Expert's report(s)), the Capacity Expert must accept that agreement or broad

consensus as evidence of Terminal Capacity, Expansion Component Capacity or System Capacity (as the case may be) except to the extent that the Capacity Expert reasonably forms the opinion that there is compelling evidence to the contrary.

- (n) **(Tonnages under Access Agreements and Existing User Agreements must not exceed System Capacity)** DBCT Management must not enter into any Access Agreement if the Aggregate Annual Contract Tonnage would (after including the tonnage under the new Access Agreement) exceed the System Capacity (as determined for a relevant time), unless otherwise required to do so by the Access Framework (including pursuant to Section 11.3), law, or an agreement relating to its tenure of the Terminal including the Framework Agreement or the Port Services Agreement. For clarification:
- (1) **(Access Agreements can be conditional on capacity resulting from a Terminal Capacity Expansion)** this does not prohibit DBCT Management from entering into a Conditional Access Agreement as long as the terms of all such Conditional Access Agreements are such that the increase in Aggregate Annual Contract Tonnage consequent on the Completion of the relevant Terminal Capacity Expansion will nevertheless not cause Aggregate Annual Contract Tonnage to exceed System Capacity (based on the estimated System Capacity at the Completion of the relevant Terminal Capacity Expansion); and
 - (2) **(Framework not breached if System Capacity exceeded after good faith reasonable efforts)** DBCT Management will not be in breach of this Framework if it has complied with this Framework (or made good faith and reasonable attempts to comply) but the re-determination of System Capacity in accordance with Section 11.1(k) reveals that System Capacity is less than the Aggregate Annual Contract Tonnage at that time.
- (o) **(Protection of DBCT Management)** Notwithstanding any other provision of this Framework, if DBCT Management complies (or makes a good faith and reasonable attempt to comply) with the provisions of this Section 11.1, DBCT Management will not have any liability (whether for loss, damage, cost, expense or other remedy) to any Access Seeker (and the Standard Access Agreement will provide that DBCT Management will not be liable to an Access Holder which executes it):
- (1) for any breach of this Section 11.1;
 - (2) for any delay which arises as a result of the Aggregate Annual Contract Tonnage (which was expected not to exceed Terminal Capacity, Expansion Component Capacity or System Capacity) subsequently exceeding Terminal Capacity, Expansion Component Capacity or System Capacity for any reason;
 - (3) if one or more factors related to utilisation of capacity of the Terminal, or any other part of the System subsequently changes (for example, changes in service levels required pursuant to a right of Access Holders under a Standard Access Agreement, the nature of coal Handled, an Access Holder's use of the Terminal, vessel mix, railway infrastructure, rolling stock or locomotives, rail loading facilities of mines or any other relevant factor) provided that such factor is not a breach by DBCT Management of any other part of this Framework or an Access Agreement; or
 - (4) for any defect, error or omission on the part of the Capacity Expert appointed under Section 11.1.

- (p) **(Recovery of Capacity Expert's costs)** The costs of a Capacity Expert appointed under Section 11.1(d):
 - (1) following the Completion of and handover to the Operator of a Terminal Capacity Expansion will be borne by DBCT Management, and may be included in the prudent Capital Expenditure for the Terminal Capacity Expansion as an Other Cost in accordance with Section 11.5(a)(3)(B); and
 - (2) in all circumstances other than as described in Section 11.1(p)(1), be borne by DBCT Management.
- (q) **(Provisional allocation pending determination of Capacity)** Notwithstanding any other provision of this Framework, DBCT Management may, on a provisional basis, allocate after the Completion of a Terminal Capacity Expansion the anticipated increase in Terminal Capacity and Expansion Component Capacity (if relevant depending on the Terminal Capacity Expansion) until Terminal Capacity, Expansion Component Capacity (if relevant depending on the Terminal Capacity Expansion) and System Capacity is determined in accordance with Section 11.1(k).

11.2 Terminal Capacity Expansion consultation

- (a) **(Meeting agendas)** DBCT Management will hold meetings with Access Holders and, where they exist, Expansion Parties not less than twice per Financial Year to consult in good faith upon the following issues:
 - (1) current Terminal Capacity, Expansion Component Capacity and System Capacity;
 - (2) constraints on current Terminal Capacity, Expansion Component Capacity and System Capacity including the impact on vessel waiting times and Access Holder transport costs;
 - (3) future contracts/forecasts that may impact on Terminal Capacity, Expansion Component Capacity and System Capacity;
 - (4) significant issues relevant to Terminal Capacity, Expansion Component Capacity and System Capacity;
 - (5) the timing and nature of the next Terminal Capacity Expansion (if any) and the impact on current capacity requirements, pricing and the Terminal Master Plan and System Master Plan; and
 - (6) any proposed changes to the Terminal Regulations.
- (b) DBCT Management will also hold such meetings to consult in good faith upon these issues in respect of Differentially Priced Capacity with Differentially Priced Access Holders for the relevant Differential Expansion Component.
- (c) **(Meeting administration)** DBCT Management will distribute, in a timely manner, agendas, detailed briefing material and a copy of the minutes of each of these meetings to all Access Holders, Expansion Parties and DBCT Holdings.
- (d) **(Separate meetings with Expansion Parties)** For the avoidance of doubt, nothing in this Section 11.2 limits or restricts DBCT Management from meeting separately with Expansion Parties to the extent that the matters raised relate only to a Differentiated Expansion Component.

11.3 General obligation to undertake Terminal Capacity Expansions

- (a) Subject to Sections 11.7 and 11.8 of this Framework, DBCT Management will undertake Terminal Capacity Expansions as are necessary to:

- (1) **(Accommodate growth)** accommodate the actual and reasonably anticipated future growth of demand (having regard to Access Applications received by DBCT Management and other relevant factors) for the use of the Terminal by Access Holders and Access Seekers;
 - (2) **(Eliminate shortfalls in Terminal Capacity)** eliminate sustained shortfalls in actual Terminal Capacity below the aggregate of Annual Contract Tonnages of Access Holders and Existing Users, whatever the reason for such shortfalls;
 - (3) **(Good Operating and Maintenance Practices)** ensure that the Terminal complies with Good Operating and Maintenance Practice in respect of quality standards for such facilities, good environmental practice and applicable environmental standards; and
 - (4) **(Laws)** comply with Approvals and applicable laws,
- provided that DBCT Management will nevertheless have regard to the System Master Plan and the expected capacity of other components of the System, with the intention that the capacity of the Terminal will (as far as practicable and economic and can reasonably be anticipated) not significantly and disproportionately exceed System Capacity for more than 12 months after the Completion of a Terminal Capacity Expansion.
- (b) **(Factors to be taken into account)** It is recognised that:
 - (1) the name-plate capacity of each individual component of the System will, on a "stand alone" basis at all times, be likely to exceed the aggregate System Capacity to some extent; and
 - (2) DBCT Management does not have any control over any part of the System other than the Terminal, and DBCT Management's estimate of expected capacity of the other components of the System will have limited accuracy (for example, because of changes in or operation of the System or the operation of any upstream components of the System in relation to the Terminal, delays in expansions of other parts of the System (including in the circumstance in which another Service Provider delays an expansion which was provided for in a System Master Plan) and other differences to DBCT Management's assumptions).
 - (c) **(Protection of DBCT Management)** Accordingly DBCT Management will not have any liability to an Access Seeker (and the Standard Access Agreement will provide that DBCT Management will not be liable to an Access Holder who executes it) if DBCT Management makes a good faith and reasonable attempt to comply with this Section 11.3, even if it does not actually comply with this Section 11.3.

11.4 Accommodation of Capacity

- (a) **(General obligation to accommodate Access Applications)** Subject to Sections 5.4(j), 11.7 and 11.8 of this Framework, and the proviso in Section 11.3(a), DBCT Management will use best endeavours to ensure that, as soon as reasonably practical after DBCT Management receives from a reasonably creditworthy Access Seeker a bona fide offer to enter into an Access Agreement that will be unconditional and legally binding and require the Access Seeker to obtain Handling of coal at the Terminal for a period in excess of 5 years (or 10 years or more Handling of coal if acceptance of the offer would require a Capacity Expansion), the Terminal is able to Handle that coal without a material and sustained increase in:
 - (1) vessel waiting times; or

- (2) the average net costs (after taking into account any discounts or rebates available to Access Holders) across all Access Holders of transporting coal from the rail loading points at mine sites to the Terminal for Handling, over any period of three consecutive months,
- attributable to delays caused by the provision of Services in respect of the additional volume. DBCT Management will disclose to all Access Holders and Access Seekers its process for so calculating vessel waiting times and average net costs to Access Holders.
- (b) **(Bona fide offers and reasonably creditworthy Access Seekers)** Without limiting the circumstances in which DBCT Management may be taken to have received from a reasonably creditworthy Access Seeker a bona fide offer to enter into an Access Agreement, if:
- (1) DBCT Management receives an offer from an Access Seeker to enter into an Access Agreement on the terms of the Standard Access Agreement, or receives an offer from an Access Seeker to enter into an Access Agreement where any departure of the terms of that offer from the terms of a Standard Access Agreement is not likely to increase cost (direct or indirect) or risks to DBCT Management; and
 - (2) the Access Seeker has satisfied DBCT Management (acting reasonably) in accordance with Section 5.9 that the Access Seeker (or any relevant Security provider) has the financial and other relevant resources to enable it to discharge its obligations under the relevant Access Agreement,

then for the purpose of this Section 11.4, DBCT Management will be taken to have received from a reasonably creditworthy Access Seeker a bona fide offer to enter into an Access Agreement.

11.5 Undertaking Terminal Capacity Expansions

- (a) **(Terminal Capacity Expansion application to be lodged with Arbitrator)** If DBCT Management proposes to expand the Terminal during the Term of the Framework (either because it is obliged to do so under this Framework or wishes to do so without being obliged to do so), then in respect of the particular expansion to the Terminal it will submit to an arbitrator appointed in accordance with Section 16.4 (**Expansion Arbitrator**) a Terminal Capacity Expansion application, which must include the following information:
- (1) details of the scope of the proposed Terminal Capacity Expansion, including:
 - (A) confirmation of Terminal operating assumptions and System operating assumptions in the FEL 3 Feasibility Study, including confirmation of the capacity of the Existing Terminal and System Capacity prior to the proposed Terminal Capacity Expansion and the proposed Expansion Component Capacity; and
 - (B) either:
 - (i) confirmation that, and details of how, the Terminal Capacity Expansion complies with both the current Terminal Master Plan and System Master Plan; or
 - (ii) a justification acceptable to the Expansion Arbitrator as to why it does not, and need not, comply with the Terminal Master Plan or System Master Plan, but will nevertheless be economically and operationally prudent;

- (2) the terms and conditions of any Access Agreements that are conditional on the Terminal Capacity Expansion;
 - (3) the estimated cost of the proposed Terminal Capacity Expansion categorised into:
 - (A) works that are proposed to be managed under the Tender and Contract Management Process (**TCMP**) (**Contract Costs**); and
 - (B) work and costs which are not to be managed under the TCMP (**Other Costs**);
 - (4) the estimated timetable for the proposed Terminal Capacity Expansion;
 - (5) a high level project execution strategy, which will, among other things, identify risks and risk mitigation;
 - (6) either:
 - (A) evidence that the 60/60 Requirement has been complied with; or
 - (B) DBCT Management's justification for the Terminal Capacity Expansion without the 60/60 Requirement having been complied with;
 - (7) the process for the tendering and awarding of contracts, standard form contract terms, and the contract management process for the management of contracts post award (these processes together constitute the TCMP);
 - (8) the process by which costs will be expended, tracked and managed if they are not covered by the TCMP; and
 - (9) an application for a Price Ruling in respect of the Terminal Capacity Expansion, if one has not already been made.
- (b) **(Monthly reporting to Expansion Arbitrator)** DBCT Management will also submit to the Expansion Arbitrator (with a copy to each Access Holder) a monthly report setting out:
- (1) the status of each contract awarded under the TCMP, including the degree of completion and the anticipated final cost inclusive of actual and provisioned variations;
 - (2) the status of each element of the Other Costs, including the costs incurred, the degree of completion and the anticipated final costs; and
 - (3) if anticipated final costs vary from the costs initially forecast, details of and the reasons for the variation.
- (c) **(Expansion Arbitrator to confirm Price Ruling following application for Expansion)** Following receipt of an application under Section 5.12(a)(2) or 11.5(a)(9), the Expansion Arbitrator will provide to DBCT Management and each Expansion Party notice of, in respect of a relevant Expansion Component:
- (1) where a Price Ruling has been made in accordance with Section 5.12(c), the content of the Expansion Arbitrator's ruling and details of any material changes apparent in the application which may require a new or varied Price Ruling to be made, including the extent to which the circumstances of the Expansion Component vary from the assumptions made in the original Price Ruling;
 - (2) where a Price Ruling has not been made in accordance with 5.12(c), but a Price Ruling Application has been made under Section 5.12(a)(2) or 11.5(a)(9), a copy

of the Price Ruling Application and information on the Expansion Arbitrator's process for determining a Price Ruling for that Terminal Capacity Expansion.

- (d) **(DBCT Management to provide information to the Expansion Arbitrator)** DBCT Management will provide all information required by the Expansion Arbitrator or any advisor to the Expansion Arbitrator to enable the Expansion Arbitrator to assess the prudence of any proposed or actual Capital Expenditure. Prior to disclosing any confidential information, DBCT Management must ensure that the Expansion Arbitrator (and any advisor to the Expansion Arbitrator) enters into a confidentiality deed with DBCT Management to the effect that the Expansion Arbitrator (and any advisor to the Expansion Arbitrator) must keep the information confidential and only use that information for the purpose of its engagement under this Section 11.5.
- (e) **(Expansion Arbitrator's acceptance of prudence of contract costs)**
- (1) The Expansion Arbitrator will accept that Capital Expenditure in respect of a proposed Expansion Component is prudent and any determination by an Arbitrator of a Floor TIC or amended TIC to apply in respect of the Existing Terminal or a Floor TIC to apply in respect of the Differentiated Expansion Component (as relevant) following the Completion of the Terminal Capacity Expansion should take that Capital Expenditure into account in accordance with Section 10.4(f) or 10.6(b)(3) (as applicable) if DBCT Management can demonstrate and the Expansion Arbitrator is satisfied that:
- (A) the scope of the works complies with Section 11.5(f) and the requirements of that Section have been met; and
- (B) the standard and specifications of the works is appropriate, as provided for in Section 11.5(g) and the requirements of that Section have been met; and
- (C) the works were undertaken in accordance with the approved TCMP or were otherwise reasonable, as provided for in Sections 11.5(i), 11.5(j), 11.5(k) and 11.5(l) and the requirements of those Sections have been met.
- (2) In the event that the Expansion Arbitrator considers that any elements specified in Section 11.5(e)(1) are not satisfactorily met, the Expansion Arbitrator will undertake an assessment of the prudence of the Capital Expenditure as if the works were Other Costs, as provided for in Section 11.5(m). In undertaking this assessment, the Expansion Arbitrator will take into account the extent to which DBCT Management has achieved compliance with the expansion approval process outlined in this Section 11.5, including consistency with any assumptions associated with a Price Ruling.
- (f) **(Expansion Arbitrator's acceptance of scope of works)**
- (1) The Expansion Arbitrator will accept the scope of the proposed Terminal Capacity Expansion if it is satisfied that:
- (A) the scope is consistent with the current Terminal Master Plan and System Master Plan and applicable laws;
- (B) the 60/60 Requirement has been complied with; and
- (C) (together with any other relevant expansions of one or more components of the System) the Terminal Capacity Expansion will result in an increase in System Capacity and will not be expected to result in Terminal Capacity significantly and disproportionately exceeding System Capacity for more than 12 months after Completion of a Terminal Capacity Expansion.

- (2) The Expansion Arbitrator will accept or not accept the scope within 20 Business Days of being provided with all of the information it requires to assess the proposed works and the criteria listed in Section 11.5(f)(1). If the Expansion Arbitrator does not accept the scope of the proposed works, it will give reasons in writing.
- (g) **(Expansion Arbitrator's acceptance of standard and specifications of works)**
- (1) The Expansion Arbitrator will review the standard and specifications of works relating to a Terminal Capacity Expansion and all relevant contract terms to ensure that the works do not involve any unnecessary works or contain design standards that exceed those standards necessary to comply with Clause 12.1 of the Port Services Agreement, or, in the case of contract terms, are not likely to materially adversely impact on a prudent balance between price and risk.
- (2) The Expansion Arbitrator will accept or not accept on a contract by contract basis the standard, specifications, and contract terms for the works within 20 Business Days of receipt of the technical specifications, design drawings and contract terms for the works and any other information needed by the Expansion Arbitrator to review the standard, specifications and contract terms for the works. If the Expansion Arbitrator does not accept the standard, specifications and contract terms of the works, it will give reasons in writing.
- (3) If DBCT Management amends the submitted technical specifications and/or design drawings and/or material contract terms after an approval by the Expansion Arbitrator, DBCT Management will immediately advise the Expansion Arbitrator of the changes. The Expansion Arbitrator will accept or not accept the changes.
- (h) **(60/60 Requirement)**
- (1) **(What is the 60/60 Requirement)** In this Section 11.5, the "60/60 Requirement" is satisfied when:
- (A) DBCT Management has executed Access Agreements from Access Holders, each of which provides for the Handling of coal for a period of at least 10 years duration, for at least 60% of the proposed Terminal Capacity increment.
- (B) 60% of all Access Holders and Expansion Parties (as determined by their Annual Contract Tonnages reduced by the relevant exclusions set out in Section 11.5(h)(1)(C)) do not oppose the Terminal Capacity Expansion, having been given the information and notice in Section 11.5(h)(2) at least 15 Business Days before it is determined whether or not the 60/60 Requirement has been satisfied.
- (C) The relevant exclusions are the tonnages of any Access Holder of existing capacity at the Terminal where the Access Holder is:
- (i) legally and beneficially, the same entity as; or
- (ii) a related body corporate of an Access Holder that is legally and beneficially, the same entity as,
- an Expansion Party that is within Section 11.5(h)(1)(A). For clarification, where an Expansion Party or Access Holder is, or acts on behalf of, a joint venture, the Expansion Party or Access Holder will only be "legally and beneficially" the same, in respect of both an Access Agreement and an

Access Application or two or more Access Agreements and Access Applications, where each of the entities comprising the joint venture relating to each relevant Access Agreement and Access Application is the same (or a related body corporate of the same) entity in each context.

- (2) **(DBCT Management to provide information for 60/60 Requirement process)** DBCT Management will provide the Access Holders and Expansion Parties referred to in Section 11.5(h)(1)(B) relevant to a proposed Terminal Capacity Expansion with the following information, for the purposes of determining whether the 60/60 Requirement can be complied with in respect of a proposed Terminal Capacity Expansion:
- (A) outline details of the scope of the proposed Terminal Capacity Expansion works;
 - (B) details of how the Terminal Capacity Expansion complies with the current Terminal Master Plan and System Master Plan;
 - (C) without limitation to Section 5.10, provide a copy of the capacity assessment undertaken in accordance with Section 11.1 which separately identifies the capacity of the Existing Terminal and the proposed Expansion Component Capacity;
 - (D) cost estimates for the proposed Terminal Capacity Expansion and each element of the Terminal Capacity Expansion, including contingency, financing and escalation allowances;
 - (E) a schedule of each element of the proposed Terminal Capacity Expansion;
 - (F) the projected total Terminal Capacity and System Capacity following the Terminal Capacity Expansion;
 - (G) a high level project execution strategy, which strategy will, among other things, identify risks and risk mitigation;
 - (H) a schedule of likely reductions in Terminal Capacity and System Capacity during construction;
 - (I) an outline of Existing User Agreement tonnages, Access Agreement tonnages, Conditional Access Agreement tonnages and Access Application tonnages and contract periods;
 - (J) an estimate of what effect the proposed Terminal Capacity Expansion will have on each Terminal Component's Terminal Infrastructure Charges and Operation and Maintenance Charges;
 - (K) a notice that the above information is being expressly provided in contemplation of the 60/60 Requirement (even if the notice was given prior to the Commencement Date);
 - (L) where a Price Ruling has been made in respect of a relevant Terminal Capacity Expansion, the content of the Expansion Arbitrator's Price Ruling; and
 - (M) where a Price Ruling has not yet been made in respect of a relevant Terminal Capacity Expansion, the application for a Price Ruling filed with the Expansion Arbitrator under Section 11.5(a)(9).
- (3) **(60/60 Requirement conclusive)** Once evidence of compliance with the 60/60 Requirement has been provided and accepted by the Expansion Arbitrator it will

not be subject to further review (provided that the evidence presented was not misleading or deceptive and there has been no dishonesty or manifest error).

- (4) **(60/60 Requirement determines deemed need for Terminal Capacity Expansion)** If Section 11.5(a)(6)(A) applies, the Expansion Arbitrator will confirm the sufficiency (or sufficiencies) of evidence of the 60/60 Requirement within 20 Business Days of receipt of the Terminal Capacity Expansion application. If the Expansion Arbitrator provides such confirmation, it will be deemed to have accepted the need for the Terminal Capacity Expansion.
- (5) **(Expansion Arbitrator review if 60/60 Requirement not met)** If Section 11.5(a)(6)(B) applies, the Expansion Arbitrator will, within 3 months of receipt of the Terminal Capacity Expansion application, review whether the Terminal should be expanded in the way proposed by DBCT Management. If the Expansion Arbitrator does not accept that the Terminal should be expanded in the way proposed by DBCT Management, it will give reasons in writing.

(i) **(Tender and Contract Management Processes)**

- (1) **(General principles for Expansion Arbitrator approval)** The Expansion Arbitrator will approve DBCT Management's TCMP if it is satisfied that it is consistent with the following general principles, namely that the TCMP:
 - (A) is in accordance with good industry practice;
 - (B) will generate an efficient and competitive outcome;
 - (C) will avoid conflict of interest or collusion amongst tenderers;
 - (D) is prudent in the circumstances of the Terminal Capacity Expansion project; and
 - (E) will avoid unreasonable exposure to contract variation claims.
- (2) **(Detailed considerations for Expansion Arbitrator approval)** In particular, in considering whether or not to approve DBCT Management's TCMP, the Expansion Arbitrator will consider whether (amongst other things):
 - (A) there is a clear process for the calling of tenders, including having clear specifications for tenders, and processes for mitigating conflicts of interest (except when it is assessed that calling tenders is likely to be less advantageous than an alternative means of negotiating a contract);
 - (B) (where applicable) there is a tender assessment process which contains clear and appropriate processes for determining the successful tender, with any decisions to approve a tender that is not the lowest tender being appropriately justified and documented;
 - (C) the basis of payment for works is clearly specified and the basis for undertaking the works is in accordance with good commercial practice;
 - (D) there is a process for managing contracts before and after award that accords with good commercial practice for a project of the type and scale of the Terminal Capacity Expansion and provides appropriate guidance on the criteria that DBCT Management should apply to decisions regarding the management of the Terminal Capacity Expansion, including but not limited to:
 - (i) safety during construction and operation;

- (ii) compliance with environmental requirements during construction and operation;
 - (iii) minimising disruption to operating capacity during construction;
 - (iv) accommodation of the reasonable requests of Access Holders and Expansion Parties to change the scope and sequence of construction to suit their needs;
 - (v) a prudent balance between:
 - (A) a higher price in return for more certainty as to final cost;
 - (B) a lower price accepting that final cost may be less certain; and
 - (C) costs, schedule and minimising disruption to operating capacity during construction;
 - (vi) minimising whole of asset life costs including future maintenance and operating costs; and
 - (vii) minimising total project cost which may at times not be consistent with minimisation of individual contract costs;
- (E) there is a process for managing contract variations and/or escalation that occurs post award of a contract, requiring that reasonable consideration be given to managing the risk of contract variations and/or escalation and the allocation of potential risks during the management of the contract and requiring the provision of clear documentary evidence regarding the nature and reasonableness of any variation and/or escalation; and
- (F) DBCT Management has engaged an auditor in accordance with Section 11.5(l) to monitor compliance with the TCMP.
- (3) **(Notification of TCMP decision by Expansion Arbitrator)** The Expansion Arbitrator will within 20 Business Days of the Expansion Arbitrator receiving all the information it requires to assess the TCMP give DBCT Management a notice in writing whether it will approve or not approve the TCMP, setting out:
- (A) reasons for its decision; and
 - (B) if requested, the way the TCMP should be amended.
- (4) **(Amendment of TCMP)** DBCT Management may at any time and from time to time request amendments to an approved TCMP by giving written notice to the Expansion Arbitrator. Promptly following receipt of a request to amend the TCMP the Expansion Arbitrator will approve or not approve the amendments. In considering such amendments the Expansion Arbitrator will apply Sections 11.5(i)(1), 11.5(i)(2) and 11.5(i)(3).
- (j) **(Indicators of prudent contract value)** The Expansion Arbitrator will accept that the value of a contract as awarded is prudent and will include it in his or her determination of the prudent Capital Expenditure for the Terminal Capacity Expansion if:
- (1) the Expansion Arbitrator has approved DBCT Management's TCMP in accordance with Section 11.5(i);
 - (2) the Expansion Arbitrator is satisfied that contract provisions regarding contract variations and escalation accord with good commercial practice; and

- (3) the auditor engaged in accordance with Section 11.5(l) certifies that the works have been conducted in accordance with the approved TCMP.
- (k) **(Indicators of prudent variations and escalations)** The Expansion Arbitrator will accept that contract variations and/or escalations post award of a contract are prudent and will include them in his or her determination of the prudent Capital Expenditure for the Terminal Capacity Expansion if:
- (1) **(Compliance with TCMP)** a contract which has been accepted as prudent under Section 11.5(j) has been managed in accordance with the approved TCMP;
 - (2) **(Auditor certification)** the auditor engaged in accordance with Section 11.5(l) has certified that contract variations and/or escalations have been handled in a manner consistent with the relevant contract provisions; and
 - (3) **(Variations and escalations)** the Expansion Arbitrator is satisfied that the cost of contract variations and/or escalations is otherwise appropriate, having regard to the following:
 - (A) whether adequate consideration was given to properly managing the risk of contract variations and/or escalation or the allocation of potential risks during the awarding and management of the contract;
 - (B) whether the contract has been appropriately managed when regard is had for matters outlined in Section 11.5(i)(2)(D);
 - (C) whether the contract variations and/or escalations are appropriately justified; and
 - (D) whether the contract has been managed with a regard to a prudent balance between costs, schedule and minimising disruption to operating capacity during construction.
- (l) **(Independent external audit)** As part of the implementation of the approved TCMP, DBCT Management will engage an independent external auditor to audit the compliance of DBCT Management's tender and contract management processes with the TCMP approved under this Section 11.5. The process in this regard will be as follows:
- (1) **(Appointment)** DBCT Management will appoint the auditor, subject to obtaining the Expansion Arbitrator's prior approval of the selection of the auditor and the Expansion Arbitrator's prior approval of the terms and conditions of the engagement of the auditor;
 - (2) **(Acknowledgement of duty)** the auditor will be required to acknowledge and accept that the auditor owes a separate contractual duty of care to the Expansion Arbitrator in the provision of the audit and, in the event of a conflict between the auditor's obligations to DBCT Management and its duty of care to the Expansion Arbitrator, the auditor's duty of care to the Expansion Arbitrator will take precedence;
 - (3) **(Audit process to be agreed and approved)** the auditor must agree the processes for conducting an audit with DBCT Management and obtain the Expansion Arbitrator's approval of the audit process. The audit process will consist of a proposed work program, including audit costs (which shall be payable by DBCT Management and included in the prudent Capital Expenditure determined by the Expansion Arbitrator, for the execution of the audit;

- (4) **(Provision of information to auditor)** DBCT Management will, within a nominated timeframe that is determined by the auditor to be reasonable after consultation with DBCT Management, provide any relevant information the auditor reasonably requires for the purpose of conducting the audit;
 - (5) **(Confidentiality deed)** if required by DBCT Management, the auditor will enter into a confidentiality deed with DBCT Management in relation to any information provided by DBCT Management to the effect that it must keep the information confidential and only use that information for the purpose of conducting the audit and completing the audit report detailed below;
 - (6) **(Audit reports)** the auditor will compile an audit report identifying whether DBCT Management has complied in all material respects with the approved TCMP including in relation to contract variations and/or escalation. If the auditor identifies that DBCT Management has not complied in all material respects with the approved TCMP, then the audit report is also to contain details on the relevant non-compliance, any reasons stated by DBCT Management for the relevant non-compliance, and whether the non-compliance was reasonable in the circumstances;
 - (7) **(Progress reports)** the auditor will provide progress reports on the audit process every 6 months. The auditor will also provide a copy of the audit report to DBCT Management and the Expansion Arbitrator upon completion of the audit. The Expansion Arbitrator may have the audit report published on DBCT Management's website if it considers it appropriate; and
 - (8) **(Expansion Arbitrator may require additional detail)** if the Expansion Arbitrator forms the view that any of the auditor's reports (whether progress reports or a final report) are lacking in detail or otherwise deficient, the Expansion Arbitrator may direct DBCT Management to instruct the auditor to review the audit report and, in doing so, to address the concerns of the Expansion Arbitrator.
- (m) **(Prudence of Other Costs)**
- (1) **(Expansion Arbitrator to assess prudence)** The Expansion Arbitrator will undertake an assessment of the prudence of Other Costs, and costs to which Section 11.5(e)(2) applies, after the relevant costs have been expended.
 - (2) **(Considerations relating to prudence)** In assessing whether actual Capital Expenditure is prudent, the Expansion Arbitrator will have regard to the scope of the works undertaken, the standard of the works undertaken and the reasonableness of the cost of works undertaken.
 - (3) **(Factors relevant to scope of work)** In assessing the scope of the works and any associated ancillary services undertaken, the Expansion Arbitrator will have regard to (amongst other things):
 - (A) the scope of the proposed Terminal Capacity Expansion;
 - (B) the current Terminal Master Plan and System Master Plan (or to the extent that there is no current System Master Plan, the considerations DBCT Management is required to have regard to under Section 14.2(c));
 - (C) the extent of current contracted demand, likely future demand and any spare capacity considered appropriate, and the need for capital works to accommodate that demand;

- (D) the appropriateness of DBCT Management's processes to evaluate and select proposed capital works, including the extent to which alternatives are evaluated as part of the process;
 - (E) the extent to which capital projects that were undertaken were subjected to DBCT Management's evaluation and selection process; and
 - (F) the extent to which consultation has occurred with relevant stakeholders about the proposed capital works.
- (4) **(Factors relevant to standard and specifications)** In assessing the standard and specifications of the works undertaken, the Expansion Arbitrator will ensure that the proposed works do not involve any unnecessary works or contain design standards that exceed those standards necessary to comply with Clause 12.1 of the Port Services Agreement and section 11, Schedule E of this Framework.
- (5) **(Factors relevant to reasonableness)** In assessing the reasonableness of the cost of works undertaken, the Expansion Arbitrator will have regard to, (among other things):
- (A) the level of such costs and risks relative to the scale, nature, cost and complexity of the project;
 - (B) the circumstances prevailing in the markets for engineering, equipment supply and construction;
 - (C) the manner in which the Terminal Capacity Expansion has been managed, including but not limited to the manner in which DBCT Management has balanced the needs of:
 - (i) safety during construction and operation;
 - (ii) compliance with environmental requirements during construction and operation;
 - (iii) minimising disruption to operating capacity during construction;
 - (iv) accommodating the reasonable requests of Access Holders to change the scope and sequence of the works undertaken to suit their needs;
 - (v) a prudent balance between:
 - (A) a higher price in return for more certainty as to final cost;
 - (B) a lower price, accepting that final cost may be less certain; and
 - (C) costs, schedule and minimising disruption to operating capacity during construction;
 - (vi) minimising whole of asset life costs including future maintenance and operating costs; and
 - (vii) minimising the total cost of the Terminal Capacity Expansion which may at times not be consistent with minimisation of individual costs.
- (6) **(Assessing capital expenditure)** In assessing the prudence of Capital Expenditure undertaken, the Expansion Arbitrator will take advice as necessary from independent advisors using appropriate benchmarks and experience, and consult as necessary with relevant stakeholders (the cost of which advisers will be borne by DBCT Management at the discretion of the Expansion Arbitrator).

- (7) **(Audit costs)** The costs of the external auditor referred to in Section 11.5(l) and the advisers referred to in Section 11.5(m)(6) (where payable by DBCT Management) will form part of the Other Costs.
- (n) **(Preliminary assessment of Other Costs)** If requested by DBCT Management, the Expansion Arbitrator will undertake a preliminary assessment of the reasonableness of the Other Costs and shall advise DBCT Management of the results of such assessment. The Expansion Arbitrator will not be bound by this assessment when determining the prudence of actual Capital Expenditure and whether the Capital Expenditure should be included in its determination of the prudent Capital Expenditure for the Terminal Expansion Component.

11.6 Interest during construction for Terminal Capacity Expansions

- (a) In the event of a Terminal Capacity Expansion approved by the Expansion Arbitrator pursuant to Section 11.5, construction related financing costs (which will include a return on capital over the construction period on the Terminal Capacity Expansion expenditure prudently incurred) will be included in the prudent Capital Expenditure for the Terminal Capacity Expansion for the purposes of and taken into account in any determination of a Floor TIC or amended TIC to apply in respect of the Existing Terminal or a Floor TIC to apply in respect of a Differentiated Expansion Component (as the case may be) following Completion of the Terminal Capacity Expansion in accordance with Section 10.4(f) or 10.6(b)(3) (as applicable). The return on capital over the construction period to be included in the prudent Capital Expenditure for the Terminal Capacity Expansion and taken into account in determining the Floor TIC or amended TIC will be calculated at the WACC(1) Rate.

11.7 Unreasonable and uneconomic proposed Terminal Capacity Expansions

If, having regard to:

- (a) the actual or anticipated long-term demand for the Services;
 - (b) the extent to which a Terminal Capacity Expansion under the relevant stage of the Terminal Master Plan would produce capacity in excess of demand;
 - (c) the cost of the Terminal Capacity Expansion;
 - (d) the extent to which DBCT Management can demonstrate on reasonable evidence that the costs of the Terminal Capacity Expansion would be unlikely to be accepted by an Expansion Arbitrator as prudent for the purposes of determining Access Charges in respect of that Terminal Capacity Expansion; and
 - (e) the long-term nature of DBCT Management's investment in the Terminal,
- the cost to DBCT Management of complying with Sections 11.3, 11.4 and 11.5 would be unreasonable and uneconomic, DBCT Management may submit to DBCT Holdings a written proposal that:
- (f) provides details of the above matters; and
 - (g) proposes a modification to or temporary delay in the Terminal Capacity Expansion that would otherwise be required to be undertaken under this Section 11, on terms and conditions that are not inconsistent with the objectives in Clause 2.2 of the Port Services Agreement,

and DBCT Management and DBCT Holdings will consult with one another, the State, Access Holders and Access Seekers, in good faith in respect of the proposal. DBCT Holdings will not unreasonably withhold or delay its agreement to such modification or delay. DBCT

Management will be relieved of its obligations under this Section 11 to the extent that DBCT Holdings agrees to modify or delay a Terminal Capacity Expansion (whether such agreement is given under the Framework or the Port Services Agreement).

11.8 Inability to proceed with a proposed Terminal Capacity Expansion

If DBCT Management would otherwise be required to proceed with a Terminal Capacity Expansion but, despite its best endeavours, is:

- (a) unable to procure a relevant tenure to or interest in land or seabed necessary for such Terminal Capacity Expansion;
- (b) unable to procure an approval in respect of the occupation or operation of the Terminal, that is required for DBCT Management to lawfully undertake any construction or development otherwise required by a Terminal Capacity Expansion under this Section 11; or
- (c) reasonably of the view that it is not possible to increase Terminal Capacity,

then the obligations of DBCT Management under this Section 11 will be suspended to the extent affected by that inability while that inability continues. DBCT Management will continue to use its best endeavours to (as applicable) procure that approval (including amending, resubmitting or substituting the application and amending the relevant design or work program for the construction or development to procure the approval), procure the interest or tenure, or identify a means of increasing Terminal Capacity.

11.9 Terminal Capacity Expansions to comply with Terminal Master Plan

If DBCT Management wishes to undertake a Terminal Capacity Expansion under this Section 11, it will do so by undertaking the next applicable stage or stages of development contemplated by the Terminal Master Plan (which is intended to be integrated with the System Master Plan) that are necessary to at least provide the necessary relevant additional Handling capacity.

11.10 Non-expansion Capital Expenditure

- (a) **(Good Operating and Maintenance Practice and Port Services Agreement)** DBCT Management will incur NECAP as is necessary to ensure:
 - (1) that the Terminal complies with Good Operating and Maintenance Practice; and
 - (2) that DBCT Management complies with its obligations under the Port Services Agreement.
- (b) **(Streamlined approval of NECAP)** For the purposes of Section 10.6(b), the Arbitrator must accept that NECAP is prudent and include it in the determination of the amended TIC:
 - (1) provided that DBCT Management confirms, to the reasonable satisfaction of the Arbitrator, that the expenditure incurred falls within the definition of Capital Expenditure;
 - (2) if:
 - (A) prior to DBCT Management incurring the NECAP, the NECAP was unanimously approved by all Access Holders whose TIC would be amended by reference to that NECAP; or
 - (B) no Access Holder whose TIC would be amended by reference to that NECAP objected to the NECAP within 20 Business Days after receiving

written notice from DBCT Management of NECAP incurred by it which expressly drew their attention to this Section; and

- (3) if the Operator has recommended in writing the incurring of the NECAP.
- (c) (**Inclusion of NECAP where specific criteria satisfied**) For the purposes of Section 10.6(b), the Arbitrator may accept that NECAP which does not comply with all the conditions in Section 11.10(b) is nonetheless prudent having regard to (among other things):
 - (1) the need for the work to be undertaken for the efficient operation and use of the Terminal having regard to demand, cost benefit and other relevant factors;
 - (2) the scope of the work undertaken;
 - (3) the standard of the work undertaken;
 - (4) the circumstances prevailing in the markets for engineering, equipment supply and construction;
 - (5) safety during construction and operation;
 - (6) compliance with environmental requirements during construction and operation;
 - (7) minimising whole of asset life costs; and
 - (8) the advice of independent advisors using appropriate benchmarks and experience and which advisors are appointed (and paid for) by DBCT Management.

12 Terms and conditions of Access

12.1 Access Agreements

- (a) (**Standard Access Agreement guide for all Access**) The granting of Access will be underpinned by the Standard Access Agreement.
- (b) (**Parties to Access Agreements**) The parties to each Access Agreement will include DBCT Management, DBCT Trustee and the relevant Access Holder.
- (c) (**Consistency with Standard Access Agreement**) If the Access Seeker so requires (although DBCT Management and the Access Seeker are able to agree otherwise), the Access Agreement will be substantively identical to the Standard Access Agreement.
- (d) (**Different terms**) DBCT Management or an Access Seeker may seek Access on terms which are different (Different Terms) from the Standard Access Agreement.
- (e) (**Standard Access Agreement is guide for access negotiations**) For Access required on terms other than the Standard Access Agreement, the terms of the Standard Access Agreement will provide guidance as to the terms and conditions that are to be included in the relevant Access Agreement.
- (f) (**Execution copies to be prepared**) Once an Access Seeker has notified DBCT Management that it is satisfied with the terms and conditions of the Access Agreement as drafted, DBCT Management will, as soon as reasonably practicable, provide a final Access Agreement to the Access Seeker for execution.
- (g) (**Prompt execution**) The parties will use reasonable efforts to duly execute the final Access Agreement as soon as practicable after negotiations are finalised.

12.2 Minimum Term of Access Agreements

- (a) (**10 years where Terminal Capacity Expansion required**)

- (1) An Access Agreement which will, if entered into by DBCT Management, require a Terminal Capacity Expansion, must:
 - (A) provide for the Handling of coal for a minimum term of 10 years; and
 - (B) not allow the Access Holder to voluntarily reduce the Annual Contract Tonnage earlier than the end of that 10 year period, except for any right of DBCT Management to terminate for default.
 - (2) A series of Access Agreements which will, if entered into by DBCT Management with an Access Seeker, require a Terminal Capacity Expansion must:
 - (A) provide for the Handling of coal for a minimum Weighted Average Term of 10 years; and
 - (B) not allow the Access Holder to voluntarily reduce the Annual Contract Tonnage under any Access Agreement in the series earlier than the tenth anniversary of commencement of the term of the latest-dated Access Agreement in the series, except for any right of DBCT Management to terminate for default.
- (b) **(Replacement Agreements for existing mines)** An Access Agreement in respect of an existing mine for which there is already an Access Agreement may be for any term, but:
- (1) if it is for less than 5 years that term and the relevant tonnages must correspond with the expected remaining life of that mine; and
 - (2) no option to extend the term may be granted under it if the term is for less than 10 years.
- (c) **(Constraints on term for new mine)** The term of an Access Agreement relating to a new mine (including a mine where production is being resumed after a full closure or a sustained period of dormancy) may be for any term, but:
- (1) if it is for a term of less than 5 years, DBCT Management may reserve the right to terminate it on not less than 12 months' notice if:
 - (A) DBCT Management executes an Access Agreement for a period in excess of 5 years, commencing during that term; and
 - (B) DBCT Management would have been unable to execute that new Access Agreement without a Terminal Capacity Expansion of the Terminal, had the first mentioned Access Agreement not been terminated at that time; and
 - (2) no option to extend the term may be granted under it if the Access Agreement provides for the Handling of coal for a term of less than 10 years.
- (d) **(Increased Tonnage or term is deemed new Access Agreement)** For clarification, increasing the term of, or Annual Contract Tonnage under, an Access Agreement will be taken to constitute a separate Access Agreement in respect of the increased term or tonnage for the purposes of this Section 12.2.
- (e) **(Clarification re options)** Reference to an Access Agreement in this Section 12.2 does not include an Access Agreement resulting from the exercise of an option to renew or extend the term under a previous Access Agreement.

13 Whole of supply chain efficiency

13.1 Engagement in Dalrymple Bay Coal Chain efficiency improvement

DBCT Management will, on a “best endeavours” basis, engage with other stakeholders to develop and implement mechanisms to improve the overall efficiency of the Dalrymple Bay Coal Chain (including forums established pursuant to or arising out of a Memorandum of Understanding dated 1 April 2008 between stakeholders in the DBCT Coal Chain or any subsequent agreement or arrangement replacing or pursuant to that Memorandum of Understanding).

14 Master plans

14.1 Terminal Master Plan

- (a) **(What the Terminal Master Plan is)** The Terminal Master Plan is the framework and reasoning for the expansion of the Terminal in the most logical and efficient way. It is intended to be a part of, and integrated with, the System Master Plan (and to the extent that at any time there is no System Master Plan, having regard to DBCT Management’s knowledge of the System and System Capacity for the relevant period).
- (b) **(Schedule F)** Until changed pursuant to the Framework and the Port Services Agreement, the Terminal Master Plan is the Terminal Master Plan in Schedule F.
- (c) **(Annual review)** DBCT Management must review the Terminal Master Plan at least annually and otherwise in accordance with its obligations under the Port Services Agreement.
- (d) **(Consultation)** Without limiting Section 14.1(c) DBCT Management must consult with all other Service Providers, Access Holders, Access Seekers and the Operator in respect of any proposed amendment to the Terminal Master Plan.
- (e) **(DBCT Management to make copies available)** DBCT Management must make a copy of the Terminal Master Plan available to each other Service Provider and to each Access Holder and Access Seeker and the Operator (which may be by way of reference to a website) promptly after each amendment of the Terminal Master Plan.

14.2 System Master Plan

- (a) **(Participate in System Master Planning)** DBCT Management must use its reasonable endeavours to:
 - (1) (to the extent that it has not already occurred at the Commencement Date) reach agreement with each other Service Provider and DBCT Holdings (after consultation with those stakeholders and with all Access Holders and Access Seekers and the Operator) on a System Master Plan; and
 - (2) review (and if necessary revise) that System Master Plan by agreement with each other Service Provider, following ongoing consultation with all the above mentioned stakeholders.
- (b) **(Withdrawal from System Master Planning)** DBCT Management may at any time, acting reasonably, propose amendments to an existing or proposed System Master Plan. If after a reasonable time each other Service Provider does not agree to the amendments proposed by DBCT Management, DBCT Management may withdraw its agreement in respect of that System Master Plan in which case there will be assumed

to be no System Master Plan for the purposes of this Framework. DBCT Management will publish on its website its reasons for withdrawing its agreement to a System Master Plan.

- (c) **(If no System Master Plan)** If at any time for any reason there is (or is deemed to be) no System Master Plan in force, where a provision of this Framework requires DBCT Management (or a Capacity Expert / an Independent Expert / an Arbitrator / Expansion Arbitrator (as relevant)) to have regard to a System Master Plan, DBCT Management (or a Capacity Expert / an Independent Expert / an Arbitrator / Expansion Arbitrator (as relevant)) will have regard to the Terminal Master Plan together with what it reasonably considers to be the present and likely future state of the other relevant components of the System and what DBCT Management (or a Capacity Expert / an Independent Expert / an Arbitrator / Expansion Arbitrator (as relevant)) reasonably understands to be generally accepted System operating assumptions.
- (d) **(Protection of DBCT Management)** DBCT Management will not be liable to an Access Seeker (and the Standard Access Agreement will provide that DBCT Management will not be liable to an Access Holder who executes it) if DBCT Management makes a good faith and reasonable attempt to comply with this Section 14.
- (e) **(DBCT Management's obligations in System Master Planning process)** The following apply to DBCT Management in relation to its endeavours to agree a System Master Plan pursuant to Section 14.2(a) and 14.2(b):
 - (1) DBCT Management must fully and promptly provide to all other relevant stakeholders all information (to the extent that it is available to DBCT Management) which might reasonably be considered to be relevant for the purpose of determining a System Master Plan (but this does not require DBCT Management to disclose any information which could reasonably be considered to be commercially sensitive to it, any Access Holder or Access Seeker or any other person); and
 - (2) DBCT Management must, as far as practicable, work cooperatively with each other Service Provider (for example by regularly providing information relevant to System Capacity and, as far as practicable, using reasonable endeavours to agree on the joint engagement of Capacity Experts for the purpose of the Framework and similar obligations by other Service Providers).

15 Governing Law

This Framework is governed by the laws in force in the State of Queensland.

16 Dispute resolution

16.1 Disputes

- (a) **(Disputes under this Framework)** If any dispute or question arises under or in relation to this Framework, including in relation to the negotiation of Access between an Access Seeker and DBCT Management (**Dispute**) then, unless otherwise expressly agreed by both parties in writing, such Dispute will be resolved in the manner specified in this Framework (where applicable) and in accordance with this Section. Without limitation to the forgoing, any dispute concerning:

- (1) the Access Charges to apply under an Access Agreement, which contains pricing provisions that are substantively identical to those of the Standard Access Agreement applicable at the time of entry into the Access Agreement, for a Pricing Period that commences during the term of that Access Agreement (including the Initial Access Charges to apply from the start of the Pricing Period, the method of calculating, paying and reconciling the Access Charges to apply for the Pricing Period or any consequential changes in the drafting of the provisions of the Access Agreement); or
- (2) the review during a Pricing Period of the Access Charges applicable under an Access Agreement that contains pricing provisions that are substantively identical to those of the Standard Access Agreement applicable at the time of entry into the Access Agreement in accordance with Section 10.6 of this Framework,

is a Dispute under this Framework and will be resolved in the manner specified in this Framework and in accordance with this Section.

- (b) (**Notice of Dispute**) Either party may give to the other party to the Dispute notice in writing (**Dispute Notice**) specifying the Dispute and requiring that it be dealt with in the manner specified in this Framework (where applicable) and as set out in this Section 16.
- (c) (**Disputes under Access Agreements**) Unless otherwise specified by this Framework or agreed by the parties, disputes under an Access Agreement will be dealt with in accordance with the provisions of that Access Agreement and are not dealt with under this Framework.
- (d) (**Dispute under Deed Poll**) Subject to clause 9.2.3 of the Deed Poll, the courts of Queensland have exclusive jurisdiction to determine any disputes arising under the Deed Poll.

16.2 Chief Executive resolution

- (a) (**Reference to CEOs**) Unless otherwise agreed by both parties or provided for in this Framework (including where the Framework provides that a Dispute or other matter is to be referred to or determined by an Independent Expert (or Expert Determination) or an Arbitrator (or Arbitration)), any Dispute will be referred in the first instance and in any event within 10 Business Days of the giving of the Dispute Notice to the Chief Executive of DBCT Management (or his or her nominee) and the Chief Executive of the Access Seeker or Access Holder (or his or her nominee) for resolution.
- (b) In the event that:
 - (1) resolution is not reached within 10 Business Days of referral; or
 - (2) either Chief Executive appoints a nominee in accordance with this Section 16 that is unacceptable to the other party,

where this Framework provides that the Dispute is to be referred to Expert Determination (or determination by an Independent Expert), the Dispute will be referred to an Independent Expert in accordance with Section 16.3 unless otherwise agreed by the parties. All other Disputes will be referred to Arbitration in accordance with Section 16.4.

16.3 Expert Determination

Where a matter is referred to Expert Determination (or determination by an Independent Expert) in accordance with Section 16.2 or as otherwise specified in accordance with this Framework, then the following will apply:

- (a) **(Appointment)** An Independent Expert may be appointed by the parties, or where agreement cannot be reached by the parties within five Business Days, by the Resolution Institute.
- (b) **(Criteria for Independent Expert)** In any event the Independent Expert must:
 - (1) have appropriate qualifications and practical experience having regard to the nature of the Dispute;
 - (2) have no interest or duty which conflicts or may conflict with his or her function as Independent Expert, he or she being required to fully disclose any such interest or duty before his or her appointment; and
 - (3) not be a current or immediate past employee of the Access Seeker or Access Holder, or DBCT Management or of a Related Body Corporate of either of them.
- (c) **(Acceptance of appointment)** The Independent Expert appointed pursuant to this Section 16.3 must not act until the Independent Expert has given written notice of the acceptance of his or her appointment to both parties.
- (d) **(Provision of information to Independent Expert)** The parties must upon request by the Independent Expert, provide or make available to the Independent Expert:
 - (1) all information in their possession or control (other than Confidential Information);
 - (2) all Confidential Information (subject to entry into arrangements to preserve confidentiality which are acceptable to all relevant parties, acting reasonably); and
 - (3) all other assistance, that the Independent Expert may reasonably require. Any such information or assistance must be provided as soon as reasonably practicable. Any determination made by an Independent Expert in relation to a Dispute must be consistent with the provisions of this Framework;
- (e) **(Determination to be given to each party)** The Independent Expert will provide both parties with a copy of the written determination in relation to the Dispute within a reasonable time after his or her appointment.
- (f) **(Confidentiality)** The Independent Expert appointed pursuant to this Section 16.3 is required to undertake to the parties in writing to keep confidential all matters coming to his or her knowledge by reason of this appointment and performance of his or her duties.
- (g) **(Not arbitration)** Any person nominated as an Independent Expert pursuant to this Section 16.3 is deemed to be and must act as an Independent Expert and not as an arbitrator. The law relating to arbitration including, without limitation, the *Commercial Arbitration Act 2013* (Qld) as it may be amended from time to time, does not apply to the Independent Expert or to the determination or to the procedures by which the Independent Expert may reach that determination.
- (h) **(Independent Expert's decision final)** In the absence of manifest error, the decision of the Independent Expert is final and binding upon the parties. If a party believes that

there was a manifest error it may refer the matter to the Arbitrator for a determination in accordance with Section 16.4. If the Arbitrator determines that there was a manifest error, then the parties may agree to refer the Dispute to another Independent Expert in accordance with this Section 16.3, or failing such agreement, either party may refer the Dispute to the Arbitrator for resolution in accordance with Section 16.4.

- (i) **(Costs of Independent Expert)** The costs of the Independent Expert and the reasonable costs of the parties are to be borne by the parties in such proportions as determined by the Independent Expert. If two or more Access Seekers or Access Holders are parties to a Dispute involving substantially the same issues and there are no special circumstances making it necessary or desirable for them to be separately represented, it will only be reasonable for those Access Seekers and Access Holders in aggregate to recover the costs of being collectively represented in any Dispute.

16.4 Determination by Arbitration

- (a) All Disputes referred to Arbitration (or determination by an Arbitrator) under this Framework must be conducted in accordance with this Section 16.4.
- (b) The Dispute shall be submitted to Arbitration in accordance with, and subject to, the Resolution Institute Arbitration Rules.
- (c) The Arbitration must be effected by a single suitably qualified and experienced arbitrator who is either:
- (1) agreed upon between the parties; or
 - (2) in default of such agreement within five Business Days after the Dispute is referred for Arbitration, nominated by the Resolution Institute.
- (d) Any party to the Arbitration may be represented before the Arbitrator by a member of the legal profession without the need for leave of the Arbitrator.
- (e) The proceeding, including any determination by the Arbitrator, will be kept confidential between the parties and the Arbitrator, with the exception that DBCT Management may disclose an Initial TIC for a Terminal Component and a Pricing Period determined by an Arbitrator in any Arbitration under this Section 16.4 to:
- (1) an Access Seeker in subsequent negotiations with that Access Seeker concerning an Initial TIC for that Terminal Component and that Pricing Period to apply to the Access Seeker from the commencement of an Access Agreement or increased Access under an Access Agreement; or
 - (2) the Arbitrator in and the party or parties to any later Arbitration on an Access Dispute concerning an Initial TIC for that Terminal Component and that Pricing Period for the purpose of Section 10.4(e) of this Framework,
- subject to the Access Seeker in subsequent negotiations and the party or parties to any later Arbitration first undertaking to maintain the confidentiality of the outcome of the first-mentioned Arbitration.
- (f) Subject to paragraph (g), in any Dispute relating to the terms and conditions of Access, the Arbitrator must determine on terms and conditions of Access that are substantively identical to the terms of the Standard Access Agreement, except to the extent necessary to give effect to any matter agreed by the parties to the Arbitration.
- (g) In any Dispute relating to Access Charges, the Arbitrator must determine on terms and conditions relating to Access Charges that are:

- (1) in accordance with Section 10 of this Framework; and
- (2) subject to paragraph (1), substantively identical to the terms of the Standard Access Agreement,
- except to the extent necessary to give effect to any matter agreed by the parties to the Arbitration.
- (h) In making a determination, the Arbitrator must have regard to the terms of the Framework and to the following matters:
- (1) the Framework Objective;
 - (2) DBCT Management's binding legal obligations and obligations under law;
 - (3) DBCT Management's legitimate business interests and investment in the Terminal;
 - (4) the legitimate business interests of persons who have, or may acquire, rights to use the Terminal;
 - (5) the public interest, including the benefit to the public in having competitive markets;
 - (6) the value of the service to:
 - (A) the Access Seeker or Access Holder;
 - (B) a class of Access Seekers or Access Holders;
 - (7) the direct costs to DBCT Management of providing Access to the Terminal, including any costs of a Terminal Capacity Expansion, but not costs associated with losses arising from increased competition;
 - (8) the economic value to DBCT Management of any Terminal Capacity Expansion, or other additional investment in the Terminal, that DBCT Management or an Access Seeker or an Access Holder has undertaken or agreed to undertake;
 - (9) the quality of the Services;
 - (10) the operational and technical requirements necessary for the safe and reliable operation of the Terminal;
 - (11) the economically efficient operation of the Terminal;
 - (12) any other matters to which the Arbitrator thinks it is appropriate to have regard.
- (i) Subject to paragraph (j), any Arbitration commenced under this Framework may be consolidated with any other arbitration commenced under:
- (1) this Framework; and / or
 - (2) an Access Agreement or other agreement entered into as contemplated by the Framework,
- provided that the issue(s) which each arbitrator has been asked to determine concern common questions of fact or law. Such consolidated arbitration shall be determined by the arbitrator appointed for the arbitration proceeding that was commenced first in time.
- (j) Any Arbitration concerning a Dispute about the Access Charges to apply under an Access Agreement, which contains pricing provisions that are substantively identical to those of the Standard Access Agreement applicable at the time of entry into the Access Agreement, for a Pricing Period that commences during the term of that Access Agreement (including the Initial Access Charges to apply from the start of the Pricing

Period, the method of calculating, paying and reconciling the Access Charges to apply for the Pricing Period or any consequential changes in the drafting of the provisions of the Access Agreement) must be consolidated with any other Arbitration concerning a dispute of this kind in respect of the same Pricing Period so that there is a single Arbitration of such Disputes for a Pricing Period. Such consolidated Arbitration does not prevent an Arbitrator from making a specific determination that would apply to individual Access Holders or groups of Access Holders.

- (k) The venue for any Arbitration will be Brisbane, Queensland.
- (l) Unless otherwise determined by the Arbitrator, the costs of the Arbitration shall be paid by the unsuccessful party.

16.5 Urgent matters

Nothing in this Section 16 prevents a party from seeking urgent injunctive relief from a court.

17 Limitations to Losses and Damages

Subject to the terms of an Access Agreement, Funding Agreement, Underwriting Agreement or any other agreement entered into with DBCT Management as contemplated by this Framework, and notwithstanding any other Section of this Framework:

- (a) damages is not a remedy for any breach of this Framework;
 - (b) the only remedy available for any breach of this Framework is specific performance; and
 - (c) DBCT Management is not liable to Access Holders or Access Seekers for any indirect Loss or Consequential Loss arising in connection with this Framework.
-

18 Severability

- (a) Subject to Section 18(b), if a provision of this Framework is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this Framework.
- (b) Section 18(a) does not apply if severing the provision:
 - (1) materially alters the scope and nature of this Framework; or
 - (2) would be contrary to public policy.

Schedule A – Access Application Form and Renewal Application Form

Access Application Form

[Note: this form to be issued on Access Seeker's letterhead]

To: Chief Executive Officer
DBCT Management

DBCT Access Application

TAKE NOTICE that the Access Seeker named below applies for Access to the Services at Dalrymple Bay Coal Terminal pursuant to section 5.2 of the Access Framework .

Name of Access Seeker	
Origin of Coal (Mine Name)	
Street address	
Telephone	
Attention	
Email address	

The Access Seeker warrants that it has:

- (a) rights to below rail infrastructure; and/or
- (b) made or will promptly make an application to the relevant railway infrastructure service provider to obtain rights to rail infrastructure (which it reasonably expects will be granted if this Access Application is granted); and/or
- (c) otherwise made arrangements,

to ensure that rail access is sufficient to deliver to the Terminal the tonnages which are the subject of this Access Application.

Category of Access Application:	
A	A new Access Seeker (<i>please (1) complete Schedule A attached and (2) provide evidence of solvency or security offered to enable DBCT Management to assess creditworthiness</i>). <input type="checkbox"/>
B	An existing Access Holder seeking additional capacity (including an extension of the Term) pursuant to a mechanism in its Access Agreement (as contemplated by section 5.11 of the Access Framework). <input type="checkbox"/>
C	An existing Access Holder seeking additional capacity (including an extension of the Term) other than in the circumstances contemplated by Section 5.11 of the Access Framework. <input type="checkbox"/>
D	An Existing User seeking additional capacity (including an extension of the Term). <input type="checkbox"/>
<i>For existing Access Holders making a category B or C application or Existing Users making a category D application, please complete the declaration below or Schedule A attached:</i>	
I confirm that all details required by Schedule A attached in relation to the Services required at the Terminal, and any Security required, will be as per our [existing Access Agreement / Existing User Agreement] <i>[strike through the inapplicable reference and tick box at right]</i> . <input type="checkbox"/>	
<i>[Note: If box is not ticked, please complete Schedule A attached]</i>	
Name	DBCT Management use only Received Date:
Position	
Signed	Access Application Date: <i>[per section 5.4(b) of the Access Framework]</i>
Date	

The Access Seeker unconditionally and irrevocably agrees:

- (a) to comply with the requirements, obligations and processes in:
 - a. the Framework relating to it or its Access Application; and
 - b. the Deed Poll, including the conditions set out in clauses 8.4, 9, 10 and 11 of the Deed Poll; and
- (b) that the Access Application is governed by the laws in force in the State of Queensland.

Schedule A to the Access Application of [insert name]

(Note – where the Access Seeker is an existing Access Holder or Existing User and the details are relevantly the same as the Services being provided under the Access Agreement or Existing User Agreement respectively, state “as existing”. Cross reference to further sheets to be attached where there is insufficient room in the table below.

1	Name and contact details	As above
2	Stockpiling requirements	
3	Blending requirements	
4	Number of products	
5	Date of commencement of delivery of coal to the Terminal	
6	Description of each type of coal (including coal qualities such as moisture content, dust extinction moisture level, “stickiness”, and contamination levels and any special requirements the Access Seeker has in relation to its coal, including any special equipment or particular Handling processes) to be delivered to the Terminal	
7	Net tonnes of coal per annum requested for each Financial Year where access is requested	Year Mtpa
8	Proposed number of trains and wagons per train for each week from the proposed date of commencement of the delivery of coal to the Terminal to the end of the first full Financial Year:	
9	Proposed gross tonnes per wagon	
10	To the extent possible, the number, type and respective gross and deadweight tonnages of vessels, on a month by month basis, expected to ship the Access Seeker’s coal from the proposed date of the commencement of the delivery of coal to the Terminal to the end of the first full Financial Year, including details of the numbers of single and part vessel consignments.	
11	Requirements for trial shipments (if any)	
12	<ul style="list-style-type: none"> • A report prepared by a ‘competent person’ (as defined in the JORC Code) in accordance with the JORC Code and the Coal Guidelines which provides an estimate of Marketable Coal Reserves and Coal Resources as at the date the report is prepared (which must be within 12 months of the date of the Access Application) which are to be allocated for shipment under the Access Seeker’s Access Agreement. The estimate must be calculated in accordance with the JORC Code and the Coal Guidelines. The report and the key documents used to develop the report must be verified by a ‘competent person’ (as defined in the JORC Code). • An explanation of how the estimate of Marketable Coal Reserves and Coal Resources in the report is consistent with having sufficient: <ul style="list-style-type: none"> • Marketable Coal Reserves for the net tonnes of coal per annum requested for each of the first 5 Financial Years in item 7 in respect of which Access is applied for; and • Coal Resources, together with the Marketable Coal Reserves, for the net tonnes of coal per annum requested for each Financial Year in item 7. 	
13	<ul style="list-style-type: none"> • A description of the coal mine project that will be used as the source of coal to be delivered by the Access Seeker to the Terminal (Source Mine Project). • The project timeline (including key milestones) for the construction, commissioning and production phases of the Source Mine Project. • An explanation of how the Source Mine Project is currently tracking against the project timeline and a description of the current stage of the Source Mine Project. • An explanation of how the project timeline referred to above is consistent with the date for commencement of delivery of coal to the Terminal (as specified in item 5). • An assessment of the prospects of the Access Seeker obtaining any debt or equity finance required in order for the Source Mine Project to achieve the key milestones referred to in the project timeline including commencement of the production phase. • The Access Seeker’s progress in obtaining the necessary approvals for the Source Mine Project. 	

Name	Signed
Position	
Date	

Access Renewal Form

[Note: this form to be issued on Access Seeker's letterhead]

To: Chief Executive Officer
DBCT Management

DBCT Renewal Application

TAKE NOTICE that the Access Seeker named below applies to renew its Access Application for Access to the Services at Dalrymple Bay Coal Terminal pursuant to section 5.3A of the Access Framework .

Name of Access Seeker	
Origin of Coal (Mine Name)	
Street address	
Telephone	
Attention	
Email address	

The Access Seeker warrants that it has:

- (a) rights to below rail infrastructure; and/or
- (b) made or will promptly make an application to the relevant railway infrastructure service provider to obtain rights to rail infrastructure (which it reasonably expects will be granted if this Renewal Application is granted); and/or
- (c) otherwise made arrangements,

to ensure that rail access is sufficient to deliver to the Terminal the tonnages which are the subject of this Renewal Application.

Category of Renewal Application		
A	A renewal of an Access Application which was submitted by a new Access Seeker (<i>please complete the declaration below or (1) complete Schedule A attached and (2) provide evidence of solvency or security offered to enable DBCT Management to assess creditworthiness</i>). I confirm that all details required by Schedule A attached in relation to the Services required at DBCT, and any Security required, will be as per our current Access Application [tick box at right]. [Note: If box is not ticked, please complete Schedule A attached]	<input type="checkbox"/>
B	A renewal of an Access Application which was submitted by an existing Access Holder seeking additional capacity (including an extension of the Term) pursuant to a mechanism in its Access Agreement (as contemplated by section 5.11 of the Access Framework).	<input type="checkbox"/>
C	A renewal of an Access Application which was submitted by an existing Access Holder seeking additional capacity (including an extension of the Term) other than in the circumstances contemplated by section 5.11 of the Access Framework.	<input type="checkbox"/>
D	A renewal of an Access Application which was submitted by an Existing User seeking additional capacity (including an extension of the Term). <i>For existing Access Holders making a category B or C Renewal Application or Existing Users making a category D Renewal Application, please complete the declaration below or Schedule A attached:</i> I confirm that all details required by Schedule A attached in relation to the Services required at the Terminal, and any Security required, will be as per our current Access Application and [existing Access Agreement / Existing User Agreement] [strike through the inapplicable reference and tick box at right].	<input type="checkbox"/>

[Note: If box is not ticked, please complete Schedule A attached]

Name	<i>DBCT Management use only</i> Received Date:
Position	
Signed	
Date	

The Access Seeker unconditionally and irrevocably agrees:

- (a) to comply with the requirements, obligations and processes in:
 - a. the Framework relating to it or its Access Application and Access Renewal Form; and
 - b. the Deed Poll, including the conditions set out in clauses 8.4, 9, 10 and 11 of the Deed Poll; and
- (b) the Access Application and Access Renewal Form are governed by the laws in force in the State of Queensland.

Schedule A to the Renewal Application of [insert name]

(Note – where the Access Seeker is an existing Access Holder or Existing User and the details are relevantly the same as the Services being provided under the Access Agreement or Existing User Agreement respectively, state “as existing”. Cross reference to further sheets to be attached where there is insufficient room in the table below.)

1	Name and contact details	As above
2	Stockpiling requirements	
3	Blending requirements	
4	Number of products	
5	Date of commencement of delivery of coal to the Terminal	
6	Description of each type of coal (including coal qualities such as moisture content, dust extinction moisture level, “stickiness”, and contamination levels and any special requirements the Access Seeker has in relation to its coal, including any special equipment or particular Handling processes) to be delivered to the Terminal	
7	Net tonnes of coal per annum requested for each Financial Year where access is requested	Year Mtpa
8	Proposed number of trains and wagons per train for each week from the proposed date of commencement of the delivery of coal to the Terminal to the end of the first full Financial Year	
9	Proposed gross tonnes per wagon	
10	To the extent possible, the number, type and respective gross and deadweight tonnages of vessels, on a month by month basis, expected to ship the Access Seeker's coal from the proposed date of the commencement of the delivery of coal to the Terminal to the end of the first full Financial Year, including details of the numbers of single and part vessel consignments	
11	Requirements for trial shipments (if any)	
12	<ul style="list-style-type: none"> • A report prepared by a ‘competent person’ (as defined in the JORC Code) in accordance with the JORC Code and the Coal Guidelines which provides an estimate of Marketable Coal Reserves and Coal Resources as at the date the report is prepared (which must be within 12 months of the date of the Renewal Application) which are to be allocated for shipment under the Access Seeker's Access Agreement. The estimate must be calculated in accordance with the JORC Code and the Coal Guidelines. The report and the key documents used to develop the report must be verified by a ‘competent person’ (as defined in the JORC Code). • An explanation of how the estimate of Coal Resources in the report is consistent with being able to economically extract the net tonnes of coal per annum requested for each Financial Year in item 7 by the relevant Financial Years (including the proportion which is 'Marketable Coal Reserves' as defined in the JORC Code, and the Access Seeker's approach to converting those Coal Resources to Marketable Coal Reserves). • An explanation of how the estimate of Marketable Coal Reserves and Coal Resources in the report is consistent with having sufficient: • Marketable Coal Reserves for the net tonnes of coal per annum requested for the first five Financial Year in item 7 in respect of which Access applied for; and • Coal Resources, together with the Marketable Coal Reserves, for the net tonnes of coal per annum requested for each Financial Year in item 7. 	
13	<ul style="list-style-type: none"> • A description of the coal mine project that will be used as the source of coal to be delivered by the Access Seeker to the Terminal (Source Mine Project). • The project timeline (including key milestones) for the construction, commissioning and production phases of the Source Mine Project. • An explanation of how the Source Mine Project is currently tracking against the project timeline and a description of the current stage of the Source Mine Project. • An explanation of how the project timeline referred to above is consistent with the date for commencement of delivery of coal to the Terminal (as specified in item 5). • An assessment of the prospects of the Access Seeker obtaining any debt or equity finance required in order for the Source Mine Project to achieve the key milestones referred to in the project timeline including commencement of the production phase. • The Access Seeker's progress in obtaining the necessary approvals for the Source Mine Project. 	

Name	Signed
Position	
Date	

Schedule B – Standard Access Agreement

[Standard Access Agreement attached separately]

Schedule C – The Terminal Infrastructure Charge

For the avoidance of doubt, the terms and provisions of this Schedule should be interpreted in accordance with Section 10.1(e) of the Framework.

Part A - Rules for calculating Initial Terminal Infrastructure Charge and Monthly Payment applicable in Arbitration on Initial Access Charges

1. Monthly Payment (MP)

Access Holder “u” (**AH_u**) must pay to DBCT Management a Monthly Payment in respect of its Annual Contract Tonnage in each Month “m” of each Financial Year ($MP_{u,m}$), calculated as follows:-

$$MP_{u,m} = TIC \times MRT_{u,m}$$

where:-

TIC is the Terminal Infrastructure Charge applicable to AH_u for a relevant Financial Year in respect of the Existing Terminal or Differentiated Expansion Component (as relevant), as amended or adjusted in accordance with Section 3 of this Schedule C; and

MRT_{u,m} is the number of tonnes which is the proportion of the Annual Contract Tonnage applicable to AH_u in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) attributable to each Month “m” of a Financial Year. Where the rate of the Annual Contract Tonnage for the Access Holder does not vary in a Financial Year and applies to the full Financial Year, the MRT_{u,m} for the AH_u will be one-twelfth of their Annual Contract Tonnage for the relevant Financial Year. Where the rate of the Annual Contract Tonnage for the AH_u varies during a Financial Year, the MRT_{u,m} will vary from Month to Month to reflect one-twelfth of the annualised rate of the Annual Contract Tonnage at that time.

The Monthly Payment will be adjusted during a Financial Year where the TIC is amended or adjusted in accordance with Schedule C, Section 3.

To avoid doubt, if an Access Holder has more than one TIC for a Terminal Component due to the Access Holder obtaining increased Access to the Terminal Component at a different TIC, the Monthly Payment formula above must be applied separately in relation to the TIC applicable to each tranche of Access to the Terminal Component obtained by the Access Holder, with the total Monthly Payment for the Access Holder being the sum of the Monthly Payments for each tranche of Access.

2. Initial Terminal Infrastructure Charge

The Floor TIC

- (a) The Floor TIC in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) is the TIC for that Terminal Component that would apply under a QCA administered pricing regime.

The Ceiling TIC

- (b) The Ceiling TIC in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) is the highest TIC for that Terminal Component at which coal volumes served by that Terminal Component would be the same as if the Floor TIC in respect of that Terminal Component applied.

- (c) The Ceiling TIC in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) is to be set equal to the lowest 'willingness to pay' (as defined in paragraph (d) below) to be served at the relevant Terminal Component of those mines expected to be served at the Terminal Component, where:
- (1) mines are served at the Terminal Component in the order of their 'willingness to pay' to be served at that Terminal Component, with those with higher 'willingness to pay' served before those with lower 'willingness to pay'; and
 - (2) the coal volumes to be served at the Terminal Component are the same as if the Floor TIC in respect of that Terminal Component applied and do not exceed the capacity of that Terminal Component to serve those coal volumes.
- (d) For the purpose of paragraph (c), a mine's 'willingness to pay' to be served at the Existing Terminal or Differentiated Expansion Component (as relevant) is:
- (1) expressed on a dollar per tonne basis;
 - (2) zero if:
 - (A) the mine's coal volumes are not technically capable of being delivered to the Terminal (in that the mine is not connected to the Terminal by rail);
 - (B) the mine's coal volumes are technically capable of being delivered to a coal terminal other than the Terminal (in that the mine is connected to that other coal terminal by rail) and its expected profit per tonne is greater when its coal volumes are served at that other coal terminal than when its coal volumes are served at the Terminal; or
 - (C) the mine's expected profit per tonne when its coal volumes are serviced at the relevant Terminal Component is less than zero; and
 - (3) otherwise calculated as:
 - (A) the Floor TIC for the relevant Terminal Component; plus
 - (B) the expected profit per tonne where the mine's coal volumes are served at the relevant Terminal Component at the Floor TIC for that Terminal Component; less
 - (C) either:
 - (i) the highest expected profit per tonne where the mine's coal volumes are served at a coal terminal other than the Terminal that is technically capable of taking delivery of those coal volumes (in that the mine is connected to that terminal by rail), if this expected profit per tonne is greater than zero; or
 - (ii) zero, if there is either no coal terminal other than the Terminal that is technically capable of taking delivery of the mine's coal volumes or no coal terminal other than the Terminal that provides an expected profit per tonne greater than zero.
- (e) For the purpose of assessing a mine's 'willingness to pay' for the purposes of paragraphs (d)(2) and (3) above, expected profit per tonne when its coal volumes are served at a coal terminal is calculated as:
- (1) the FOB coal price;
 - less

- (2) mine costs, being the sum of operating costs, royalty payments, depreciation and a reasonable return on the capital costs of developing and operating the mine;
 - (3) rail transport charges for delivering coal to the coal terminal; and
 - (4) applicable infrastructure and handling charges for using port infrastructure including the coal terminal;
- on the basis that:
- (5) miners make terminal usage decisions without reference to any contractual limitations on coal volumes to be served at the Terminal or any other coal terminal; and
 - (6) the volumes of coal that miners prefer to deliver to any coal terminal other than the Terminal must not, when aggregated, exceed the capacity expected to be available at that other coal terminal to serve those coal volumes.
- (f) To avoid doubt, for the purpose of this paragraphs (c) to (e):
- (1) in deriving the Ceiling TIC for the Existing Terminal or a Differentiated Expansion Component (as relevant), any TIC applicable in respect of any other Terminal Component and mines' 'willingness to pay' to be served at any other Terminal Component should be disregarded; and
 - (2) Section 10.4(g) of the Framework applies to forecasting of the coal volumes of mines.

Part B - Review of the TIC during a Pricing Period under Access Agreements in form of Standard Access Agreement

3. Review of the TIC

Annual amendment of the TIC

- (a) A TIC in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) for AH_u will be amended annually on each 1 July after the Initial TIC for AH_u commenced to apply in accordance with paragraphs (b) to (d) of this Section 3.
- (b) A TIC in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) to apply to AH_u from each 1 July after the Initial TIC for AH_u commenced to apply must be escalated for the annual change in the Consumer Price Index by application of the following formula:

$$\text{TIC}_t = \text{TIC}_{t-1} \times (1 + \text{CPI}_t)$$

where:

TIC_t is the TIC in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) to apply with effect from 1 July in Financial Year t consequent upon the adjustment under this paragraph (b);

TIC_{t-1} is the TIC in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) applicable as at 30 June in Financial Year t-1 immediately prior to the occurrence of the adjustment under this paragraph (b); and

CPI_t is the annual percentage change in the Australian Bureau of Statistics CPI All Groups, Weighted Average of Eight Capital Cities from the March quarter in Financial Year t-2 to the March quarter in Financial Year t-1.

- (c) By each 15 May after the Initial TIC in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) for AH_u commenced to apply or as soon as practicable thereafter, DBCT Management will notify that AH_u of the CPI adjustment and resultant TIC to apply with effect from 1 July in the next Financial Year.
- (d) If a Review Event occurs in the period after DBCT Management has notified AH_u of a TIC to apply with effect from 1 July in the next Financial Year under paragraph (c) above but before that 1 July that affects that TIC, DBCT Management will promptly notify that AH_u of the amended TIC to apply with effect from 1 July of the next Financial Year in accordance with paragraphs (e) to (j) below.

Amendment of the TIC if a Review Event occurs

- (e) If a Review Event occurs, DBCT Management will give notice as soon as reasonably practicable of the amended TIC determined in accordance with paragraph (f), (g) or (h) below (as the case may be) to apply because of the Review Event.
- (f) In the case of a Review Event referred to in paragraph (a) of the definition of Review Event (relating to a change in Aggregate Annual Contract Tonnage), a TIC in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) then applicable for AH_u will be amended by application of the following formula, unless the Review Event occurs as a consequence of a Review Event referred to in paragraph (b) of the definition of Review Event (relating to the Completion and hand over to the Operator of a Socialised Expansion), in which case the TIC will be amended in accordance with paragraph (g):

$$TIC_t = UAF_t \times TIC_{t-1}$$

where:

TIC_t is the TIC in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) applicable for AH_u consequent upon the Review Event;

UAF_t is the utilisation adjustment factor, which is equal to TUR_t / TUR_{t-1};

TUR is the terminal utilisation ratio, calculated as follows:

(Existing Terminal Capacity or Differentially Priced Capacity (as relevant) / Aggregate Annual Contract Tonnage in respect of the Existing Terminal or Differentiated Expansion Component (as relevant));

TUR_{t-1} is the TUR immediately prior to the occurrence of the Review Event;

TUR_t is the TUR consequent upon the Review Event; and

TIC_{t-1} is the TIC in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) applicable for AH_u immediately prior to the occurrence of the Review Event.

- (g) In the case of a Review Event referred to in paragraph (b) of the definition of Review Event (relating to a Socialised Expansion), a TIC in respect of the Existing Terminal then applicable for AH_u will be adjusted to an amount calculated as follows:

$$TIC_t = UAF_t \times (TIC_{t-1} - Floor\ TIC_{t-1}) + Floor\ TIC_t$$

where:

TIC_t is the TIC in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) applicable for AH_u consequent upon the Review Event;

UAF_t is the utilisation adjustment factor, which is equal to TUR_t/TUR_{t-1} ;

TUR is the terminal utilisation ratio, calculated as follows:

(Existing Terminal Capacity or Differentiated Expansion Component Capacity (as relevant) / Aggregate Annual Contract Tonnage in respect of the Existing Terminal or Differentiated Expansion Component (as relevant))

TUR_{t-1} is the TUR immediately prior to the occurrence of the Review Event;

TUR_t is the TUR consequent upon the Review Event;

TIC_{t-1} is the TIC in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) applicable for AH_u immediately prior to the occurrence of the Review Event;

Floor TIC_{t-1} is the Floor TIC in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) immediately prior to the occurrence of the Review Event; and

Floor TIC_t is the Floor TIC in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) consequent upon the Review Event.

- (h) In the case of a Review Event referred to in paragraph (c) of the definition of Review Event (relating to NECAP), the TIC in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) that would otherwise apply for AH_u in Financial Year t (after making all other adjustments required by paragraphs (c) and (e)) will be adjusted for that Financial Year t by an amount calculated as follows:

Adjustment amount $_t$ = $NECAP\ Allowance_t / \text{Aggregate Annual Contract Tonnage}_t$

where:

$NECAP\ Allowance_t$ is equal to the sum of the Return on $NECAP_t$ and the Return of $NECAP_t$;

$Return\ on\ NECAP_t$ is the product of the $NECAP\ Asset\ Base_t$ and the WACC(2) Rate;

$Return\ of\ NECAP_t$ is equal to the sum, for each 12 month period ending 31 March in which any program of NECAP included in NECAP Asset Base $_t$ for the Existing Terminal or Differentiated Expansion Component (as relevant) was Completed and handed over to the Operator, of the total NECAP for any program of NECAP Completed and handed over to the Operator in the 12 month period divided by an asset life of 20 years;

$NECAP\ Asset\ Base_t$ is the $NECAP\ Asset\ Base$ for the Existing Terminal or Differentiated Expansion Component (as relevant) as at 1 July for Financial Year t and is derived by rolling forward the value of the $NECAP\ Asset\ Base$ from the preceding Financial Year $t-1$ as follows:

$NECAP\ Asset\ Base_t = NECAP\ Asset\ Base_{t-1} + NECAP_{t-1} - Return\ of\ NECAP_{t-1};$

$NECAP\ Asset\ Base_{t-1}$ is the value of the $NECAP\ Asset\ Base$ at the start of Financial Year $t-1$ and is zero where Financial Year t is the Financial Year

in which the Initial TIC for the relevant Pricing Period commenced;

NECAP_{t-1} is the value of the NECAP incurred in any prior period (including NECAP in any period preceding the Commencement Date) on any program of NECAP which was Completed and handed over to the Operator by DBCT Management in the twelve months ending 31 March in Financial Year t-1 and allocated to the Terminal Component or Differentiated Expansion Component (as relevant) in accordance with Section 10.7 of this Framework including NECAP referred to in Section 11.10(b) and NECAP referred to in Section 11.10(c);

Return of NECAP_{t-1} is the Return of NECAP included in the NECAP Allowance_{t-1} in determining the Adjustment amount for Financial Year t-1 in accordance with this paragraph (h) and is zero where Financial Year t is the Financial Year in which the Initial TIC for the relevant Pricing Period commenced.

- (i) Any amendment made pursuant to paragraph (e) above will be effective from the first day of the Month following the Month in which the Review Event occurs, except for those Review Events of the kind described at paragraph (c) of the Review Event definition, which will be effective from the relevant 1 July.
- (j) For clarification, if a review under paragraph (c) above occurs simultaneously with a review under paragraph (e), they will be reviewed together and the amendments to the TIC under paragraph (c) and under paragraph (e) for each Review Event will be applied cumulatively and become effective on the relevant 1 July.
- (k) If DBCT Management or the Access Holder, acting reasonably, considers that an amended TIC determined in accordance with this Schedule C, Part B would be higher than the Ceiling TIC applicable at the time of determining the amended TIC or lower than the Floor TIC applicable at that time, they may raise a Dispute in accordance with Section 16 of this Framework and any determination by an Arbitrator must be in accordance with Section 10.6(b) of this Framework.

Schedule D – Confidentiality deed

This confidentiality deed

is made on between the following parties:

1. **DBCT Management Pty Limited**
ACN 097 698 916
of Level 15, Waterfront Place, 1 Eagle Street, Brisbane QLD 4000
(DBCT Management)
 2. **[insert name of receiving party]**
[insert ABN/ACN/ARBN]
of [insert address]
(Access Seeker)

Recitals

- A. DBCT Management and the Access Seeker wish to negotiate the terms of an Access Agreement under which DBCT Management will provide Access to the Services.
 - B. The parties have agreed to the disclosure of certain Confidential Information to each other in order to assist them to reach a negotiated outcome on the terms and conditions of Access to the Services.
 - C. The parties have agreed that any Confidential Information is provided on the terms of this deed and that they will not use or disclose the Confidential Information except as provided in this deed.

This deed witnesses

that in consideration of, among other things, the mutual promises contained in this deed, the parties agree:

1 Definitions and interpretation

1.1 Definitions

In this deed:

Access Framework means the Dalrymple Bay Coal Terminal Access Framework dated 9 September 2020 as varied or replaced from time to time;

Confidential Information means any information, data or other matter disclosed to a party by or on behalf of another party where:

- (a) the disclosure of the information, data or other matter by the Recipient might reasonably be expected to affect the commercial affairs of the owner of the information, data or other matter; or
 - (b) the information, data or other matter is marked or otherwise clearly identified as confidential by a party when disclosed,
provided that such information, data or other matter:
 - (c) is not already in the public domain;
 - (d) does not become available to the public through means other than a breach of this confidentiality deed or of the confidentiality provisions of the Access Framework;

- (e) was not in the other party's lawful possession prior to such disclosure; or
- (f) is not received by the other party independently from a third party free to disclose such information, data or other matter,

and provided further that the information, data or other matter will cease to be Confidential Information if the information has ceased to retain its confidential nature, for example because:

- (g) the disclosure of the information, data or other matter by the Recipient would no longer reasonably be expected to affect the commercial affairs of the owner of the information, data or other matter;
- (h) the information, data or other matter is now in the public domain through means other than a breach of this confidentiality deed or of the confidentiality provisions of the Access Framework; or
- (i) the information, data or other matter has been received by the Recipient independently from a third party free to disclose the information, data or other matter.

Corporations Act means the *Corporations Act 2001* (Cth);

Discloser means a person who discloses Confidential Information to a Recipient pursuant to negotiations for Access under Part 5 of the Access Framework;

Document includes any note, memorandum, record, report, financial information, summary, analysis, calculation, strategic assessment, market survey, business plan, computer program, computer record, circuit, circuit layout, drawing, specification, material or any other means by which information may be stored or reproduced;

Express Purpose means to assist the Recipient to reach a negotiated outcome with the Discloser as to the terms and conditions of Access;

Recipient means a person who receives Confidential Information pursuant to negotiations for Access under Part 5 of the Access Framework; and

Specified Person means:

- (a) an officer or employee of a Recipient;
- (b) a professional adviser to a Recipient;
- (c) a financier of a Recipient;
- (d) a professional adviser to a financier of a Recipient;
- (e) an officer, employee, or a professional adviser to a related body corporate of a Recipient; or
- (f) an officer or employee of the Operator,

who has a specific need to have access to the Confidential Information for the Express Purpose.

1.2 Interpretation

- (a) Terms defined in the Access Framework have the same meaning in this deed unless otherwise defined.
- (b) Headings are for convenience only and do not affect interpretation.
- (c) In this deed, unless the context otherwise requires:
 - (1) words importing the singular include the plural and vice versa;

- (2) a reference to any thing (including, but not limited to, any right) includes a part of that thing but nothing in this Clause 1.2(c)(2) implies that performance of part of an obligation constitutes performance of the obligation;
 - (3) the term “related body corporate” has the meaning given to that term under the Corporations Act;
 - (4) the term “associate” has the meaning given to that term in Section 15 of the Corporations Act;
 - (5) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency; and
 - (6) a reference to a person includes that person’s successors and legal personal representatives.
-

2 Confidentiality

The Recipient must:

- (a) hold the Confidential Information in strict confidence and not disclose, or cause or permit the disclosure of, the Confidential Information, except as permitted under this deed or with the prior written consent of the Discloser;
 - (b) not disclose, or cause or permit the disclosure to any person of, any opinion in respect of the Confidential Information or a Document created in accordance with Clause 3(c), except as permitted under this deed;
 - (c) keep the Confidential Information and any Documents created in accordance with Clause 3(c) in a way such that it is reasonably protected from any use, disclosure or access which is inconsistent with this deed;
 - (d) promptly notify the Discloser if it suspects, or becomes aware of, any unauthorised use, storage, copying or disclosure of the Confidential Information;
 - (e) do anything reasonably required by the Discloser to prevent or stop a breach or threatened breach of this deed or an infringement or threatened infringement of the Discloser’s rights arising out of this deed by any person, whether by court proceedings or otherwise; and
 - (f) maintain such procedures as are reasonably necessary to ensure compliance with this deed by the Recipient and each Specified Person and, upon request, provide the Discloser details of the procedures adopted.
-

3 Permitted use and disclosure

The Recipient may:

- (a) only use the Confidential Information for the Express Purpose;
- (b) not make use of the Confidential Information to the commercial, financial or competitive disadvantage of the Discloser (but this does not preclude the Recipient from using the Confidential Information in negotiations with the Discloser or in any dispute proceedings);

- (c) create, or cause or permit to be created, a Document which reproduces, is based on, utilises or relates to Confidential Information only if that creation is solely for the Express Purpose; and
 - (d) only disclose Confidential Information (including as contained in a Document created in accordance with Clause 3(c)) to a Specified Person, and may only make such disclosure solely for the Express Purpose.
-

4 Return and destruction of information

- (a) If requested by the Discloser, the Recipient must promptly return to the Discloser, or destroy or delete as the Discloser directs, all original Documents and copies which:
 - (1) are or contain Confidential Information; and
 - (2) reproduce, are based on, utilise or relate to Confidential Information.
 - (b) If a Document or a copy referred to in Clause 4(a) contains information which is Confidential Information of the Recipient, then the Recipient is not required to return that Document but must destroy or delete the portion of the Document containing the Confidential Information of the Discloser.
 - (c) Nothing in this clause 4 requires the destruction or return of documentation contained in any board papers or information retained by a professional adviser in accordance with usual professional practice.
-

5 Operation of this deed

- (a) This deed continues without limitation in time but, subject to Clause 5(b), does not apply to any Confidential Information that:
 - (1) the Recipient or a Specified Person is required to disclose by any applicable law or legally binding order of any court, government, semi-government authority, administrative or judicial body, or a requirement of a stock exchange or regulator;
 - (2) is in the public domain other than as a result of a breach of this deed;
 - (3) was at the time of disclosure already in the lawful possession of the Recipient; or
 - (4) is received by the Recipient from a person (other than a Discloser or any employee, officer, agent or adviser of a Discloser) legally entitled to possess that information and provide it to the Recipient.
- (b) If the Recipient or a Specified Person must make a disclosure referred to in Clause 5(a)(1):
 - (1) the Recipient must only disclose, and must ensure that the Specified Person only discloses the minimum Confidential Information required to comply with the applicable law, order or requirement; and
 - (2) before making such disclosure, the Recipient must:
 - (A) give the Discloser reasonable written notice of:
 - (i) the full circumstances of the required disclosure; and

- (ii) the Confidential Information which it, or the Specified Person, proposes to disclose; and
- (B) consult with the Discloser as to the form of the disclosure.
-

6 Acknowledgment

The Recipient acknowledges that:

- (a) the Confidential Information is secret and highly confidential to the Discloser;
 - (b) this deed does not convey any proprietary or other interest in the Confidential Information to the Recipient or any Specified Person;
 - (c) disclosure of Confidential Information in breach of this deed could cause considerable commercial and financial detriment to the Discloser;
 - (d) damages may be inadequate compensation for breach of this deed and, subject to the court's discretion, the Discloser may restrain by an injunction or similar remedy, any conduct or threatened conduct which is or would be a breach of this deed; and
 - (e) some or all of the Confidential Information may be relevant to the price or value of securities of the Discloser. The Recipient undertakes that it will not deal in those securities in breach of the insider trading provisions of the Corporations Act.
-

7 Recipient to ensure others comply

The Recipient must:

- (a) inform each Specified Person of the Recipient's obligations under this deed;
 - (b) procure that each Specified Person strictly observes all of the Recipient's obligations under this deed as if those obligations were imposed on that person; and
 - (c) generally ensure that no officer, employee, adviser or agent of the Recipient does anything which, if done by the Recipient, would be inconsistent with this deed.
-

8 Indemnity

The Recipient indemnifies the Discloser in respect of any claim, action, damage, loss, cost, charge, expense, outgoing or payment which the Discloser suffers, incurs or is liable for in respect of:

- (a) any breach of this deed by the Recipient;
 - (b) any failure by the Recipient to ensure compliance by any Specified Person with the terms of this deed; or
 - (c) any infringement of the Discloser's rights in respect of the Confidential Information by the Recipient or a Specified Person.
-

9 Disclaimer

- (a) Neither the Discloser, nor any of its related bodies corporate nor any of their respective officers, employees or advisers:
 - (1) makes any representation or warranty:
 - (A) as to the accuracy or completeness of the Confidential Information;
-

- (B) that the Confidential Information has been audited, verified or prepared with reasonable care; or
 - (C) that the Confidential Information is the totality of the information that a prospective Access Seeker may require in order to negotiate an Access Agreement;
- (2) accepts any responsibility for any interpretation, opinion or conclusion that the Recipient or a Specified Person may form as a result of examining the Confidential Information;
 - (3) accepts any responsibility to inform the Recipient of any matter arising or coming to the Discloser's notice which may affect or qualify any Confidential Information which the Discloser provides to the Recipient; and
 - (4) is liable, and the Recipient covenants not to make any claim or commence or pursue any proceedings against any of them, for any loss of any kind (including, without limitation, damages, costs, interest, loss of profits, or special loss or damage) arising from:
 - (A) an error, inaccuracy, incompleteness or similar defect in the Confidential Information; or
 - (B) any default, negligence or lack of care in relation to the preparation or provision of the Confidential Information.
- (b) The Recipient acknowledges that it is making an independent assessment of the Confidential Information and that it will carry out, and rely solely on, its own investigation and analyses in relation to the Confidential Information.
 - (c) Any reliance by the Recipient, or any Specified Person, on any Confidential Information, or any use of any Confidential Information, is solely at its own risk.

10 Governing law and jurisdiction

- (a) This deed is governed by the laws of Queensland.
- (b) Any dispute arising out of or in connection with this deed shall be resolved in accordance with the dispute resolution provisions contained in section 16 of the Access Framework.

11 Waivers

- (a) Waiver of any right, power, authority, discretion or remedy arising on default under this deed must be in writing and signed by the party granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of a right, power, authority, discretion or remedy created or arising on default under this deed does not result in a waiver of that right, power, authority, discretion or remedy.

12 Variation

Any variation of this deed must be in writing and signed by the parties.

13 Entire agreement

This deed is the entire agreement between the parties in respect of its subject matter.

Executed as a deed:

Signed sealed and delivered by
DBCT Management
by:

Director/Secretary

Director

Name (please print)

Name (please print)

Signed sealed and delivered by
[insert Access Seeker]
by:

Director/Secretary

Director

Name (please print) Name (please print)

Schedule E – Services

1 Train scheduling

DBCT Management must (subject to availability of trains and factors beyond its control) co-ordinate cargo assembly windows at the terminal to receive coal parcels and provide train operators and Access Holders with details of cargo receival windows suitable for terminal acceptance of trains and ensure sufficient unloading capacity is made available at the Terminal, to allow each Access Holder to ship its Annual Contract Tonnage of coal in each Financial Year.

2 Train unloading

If a train carrying an Access Holder's coal arrives at the Terminal within its designated cargo build window, DBCT Management must ensure that the train is unloaded at a rate (consistent with the type and condition of the coal) consistent with achieving Handling of the Annual Contract Tonnage of coal for an Access Holder.

3 Reclaiming and vessel loading

DBCT Management must:

- (a) make the Terminal available for berthing by vessels (which are satisfactory in all respects to receive coal) nominated by each Access Holder, such that not less than the Annual Contract Tonnage can be Handled by DBCT Management on behalf of that Access Holder in each Financial Year (as long as the vessel and/or cargo mix required by the Access Holder (or its customer) does not unreasonably impact on the efficiency of the Terminal); and
- (b) load each Access Holder's coal into a vessel which is nominated by the Access Holder and is available for loading so as to achieve the objective in paragraph 3(a).

4 Incidental services

DBCT Management must provide the following services incidental to coal Handling (unless provided directly by the Operator):

- sampling and survey services;
- vessel monitoring;
- co-ordination with ships' agents, masters, customers and other relevant entities;
- crew disembarkation services; and
- wharfage and line services.

5 Miscellaneous services

If required by an Access Holder or any Approval or statutory authority notified to DBCT Management, DBCT Management must, in accordance with Good Operating and Maintenance Practice, provide the following miscellaneous services to the Access Holder:

- moisture adding;
- compacting;
- surfactant adding;
- dozing;
- blending (subject to Section 6(d) below); and

- any other services reasonably requested from time to time in writing by an Access Holder to DBCT Management, provided that such services will not unreasonably impact on the efficiency or capacity of the Terminal.

6 Stockpiling and blending

- (a) DBCT Management must provide to each Access Holder sufficient stockpile areas to allow cargo assembly (i.e. assembly of cargo for a nominated vessel with an appropriate arrival time) for vessels onto which the Access Holder's coal is to be loaded.
- (b) Remnant management areas will be determined by the Operator in areas of the Terminal which are not required for cargo assembly and which can be made available for dedicated stockpiling without materially affecting efficiency of the Terminal. DBCT Management must ensure that each Access Holder is offered the opportunity to use a proportion of that stockpiling area which accords with its proportion of the Aggregate Annual Contract Tonnage under all Access Agreements and Existing User Agreements.
- (c) The stockpiling rights in Section 6(a) and 6(b) are subject to any other obligation of DBCT Management under any Existing User Agreement with an Existing User entered into prior to 1 July 2004 (to the extent that such obligation has not been waived).
- (d) DBCT Management must blend coal if so requested, but subject to requirements in the Terminal Regulations from time to time, which may:
 - (1) require coal to be blended before it is received at the Terminal, where reasonably practicable;
 - (2) require coal to be blended into a stockpile where reasonably practicable (rather than being blended from stockpile); and
 - (3) limit the proportions in which coal may be blended (to limit the increase in consumption of capacity of the Terminal consumed because of blending).
- (e) DBCT Management must transfer each Access Holder's coal from the train unloading facility at the Terminal to the relevant stockpile area or a cargo assembly area and stockpile an Access Holder's coal in that area (except to the extent that a quality plan under the Terminal Regulations has been agreed to which provides for direct loading from train to vessel).

7 Prevention of contamination

DBCT Management must take all practicable measures to maintain the integrity of each Access Holder's coal at the Terminal, including (without limitation) by:

- (a) avoiding contamination of the Access Holder's coal, including (without limitation) contamination with other coal or waste material; and
- (b) minimising handling and associated degradation of the Access Holder's coal.

8 Data provision

DBCT Management must provide such information and access to systems as are reasonable to inform Access Holders of relevant data relating to handling of their coal.

9 Co-ordination

Subject to the Access Holder providing relevant information to DBCT Management within a reasonable time, DBCT Management must:

- (a) ensure, as far as practicable, that it discharges its obligations in this Schedule in accordance with the requirements of the Access Holder's reasonable quality plans, reasonable shipping programs and contracts as notified to DBCT Management and the Operator from time to time consistent with Terminal Regulations; and
- (b) (subject to the foregoing and having regard to equity amongst Access Holders and Existing Users) use its best endeavours to minimise the aggregate cost to the Access Holder arising out of Handling at the Terminal (including Demurrage Costs and rail freight).

10 Terminal Regulations, Force Majeure, Laws and Operation & Maintenance Contract

The provision of each of the above Services by DBCT Management is subject to (and DBCT Management's obligations are modified to the extent of):

- (a) any relevant provisions of the Terminal Regulations in so far as they:
 - (1) require scheduling of Access Holders' and Existing Users' railing in and shipment of coal in ways which promote Terminal and System efficiency and endeavours to achieve the objective of even shipments by Access Holders and Existing Users;
 - (2) temporarily reduce the tonnage of coal which may be Handled or Services provided, during such periods as capacity of the Terminal or relevant Services becomes restricted, provided that such reductions and restrictions affect all Access Holders and Existing Users equitably (but this does not relieve the Access Holder or DBCT Management respectively from any liability which they might have in respect of causing capacity or Services to have become restricted);
 - (3) prescribe requirements for trains, unloading of trains, stockpiling and cargo assembly of vessels, arrival of vessels, loading of vessels, pre-loading requirements and order of loading and unloading and other matters where possible (including matters of the type dealt with in the Terminal Regulations as at the Commencement Date) which promotes the efficient, safe and equitable utilisations of Terminal Capacity and System Capacity and Terminal Services;
 - (4) require Access Holders to co-operate with the Operator and other Access Holders and Existing Users in relation to scheduling, loading, unloading, priorities and other matters relating to the operation of the Terminal; and
 - (5) allow the exercise of discretions on the part of the Operator in limited cases, where it is reasonable to do so, to optimise Terminal or System efficiency and the power is required to be exercised in good faith and in a non-discriminatory way;
- (b) in respect of an Access Holder, any specific provision of their Access Agreement including any provisions relating to an event of force majeure;
- (c) DBCT Management:
 - (1) being able to require the Operator under the Operation & Maintenance Contract to provide such services; and
 - (2) without limiting Section 10(c) any specific provision in the Operation & Maintenance Contract including any provisions relating to an event of force majeure.

The provision of the above Services by DBCT Management must be carried out in accordance with Good Operating and Maintenance Practice and all applicable laws.

11 Standard for Services

- (a) The provision of the above Services by DBCT Management must be carried out with due skill, care and diligence in accordance with this Framework, the Terminal Regulations, Good Operating and Maintenance Practice and all applicable laws.
- (b) When providing the above Services, DBCT Management must take into account the following factors, where relevant:
 - (1) lowest total whole of life cost;
 - (2) reliability and economy of performance;
 - (3) maximising the effective life of the Terminal; and
 - (4) DBCT Management's non-discrimination obligations under this Framework.

Schedule F – Terminal Master Plan

[Terminal Master Plan attached separately]

[*Drafting Note: DBCTM's 2018 Master Plan is attached at Appendix 19 of DBCTM's submission dated 30 May 2018*]

Schedule G – Definitions and Interpretation

1. Definitions

In this Framework:

2017 Access Undertaking means the Dalrymple Bay Coal Terminal Access Undertaking prepared in accordance with the requirements of the *Queensland Competition Authority Act 1997* (Qld) and approved on 16 February 2017.

60/60 Requirement has the meaning given in Section 11.5(h).

Access means access under an Access Agreement to the Services to be provided by DBCT Management at the Terminal.

Access Agreement means an access agreement between DBCT Management and an Access Holder negotiated under Section 5 of this Framework (or otherwise entered into during the Term).

Access Applicant means a person who has submitted to DBCT Management a valid Access Application that has been confirmed by DBCT Management as compliant with Section 5.2 of this Framework and has not lapsed, expired or otherwise been validly rejected by DBCT Management.

Access Application means:

- (a) an application for Access made or deemed to have been made under Section 5.2 of this Framework;
 - (b) for the purposes of Sections 5.3A, 5.4, 5.7, 5.8, 5.9, and Section 16 only – an Access Application which was duly submitted to DBCT Management prior to the Commencement Date under and in accordance with the 2017 Access Undertaking for the Terminal and which has not been dealt with on the Commencement Date. For clarification, the time of the submission of the Schedule A information (before or after the Commencement Date) will not affect the date on which the application is taken to have been received by DBCT Management; and
 - (c) for the purposes of Section 5.4 only – an application of the kind referred to in Section 5.10(q)(9)(F) which is made after the Commencement Date,
- as renewed from time to time in accordance with this Framework.

Access Application Date means:

- (a) where paragraph (b) of this definition does not apply, the date that the Access Application was received by DBCT Management; or
- (b) the date that the Access Application was deemed to be made if the Access Application was substantially altered in accordance with Section 5.3A or 5.7.

Access Charges means amounts payable by an Access Holder under an Access Agreement for the Services.

Access Holder means a party who has an entitlement to Access under an Access Agreement.

Access Seeker means a party seeking Access, or increased Access, to the Services and includes a party to a Conditional Access Agreement.

Access Transfer has the meaning given in Section 5.13 of this Framework.

Aggregate Annual Contract Tonnage means, in respect of a relevant Financial Year:

- (a) in respect of a Differentiated Expansion Component, the sum of the Annual Contract Tonnages for only the Differentially Priced Access Holders in respect of that Expansion Component; and

- (b) in respect of the Existing Terminal, the sum of the Annual Contract Tonnages for all Existing Users and Access Holders other than Differentially Priced Access Holders in that Financial Year.

Alternative Proposed Standard Funding/Underwriting Agreement means the alternative proposed Standard Funding Agreement or alternative proposed Standard Underwriting Agreement as specified under Section 5.10(q)(7).

Annual Contract Tonnage means, for an Access Holder or Existing User in a relevant Financial Year, the number of tonnes of coal in that Financial Year that the Access Holder or Existing User is entitled to have Handled under its Access Agreement or Existing User Agreement (as relevant), as amended from time to time, including tonnage which an Access Holder or Existing User is entitled to have Handled but which may not, at a practical level, be able to be Handled due to circumstances such as a force majeure event or relevant provisions of Terminal Regulations and any tonnage which an Access Holder or Existing User would be entitled to have Handled but for the suspension of the Access Holder's or Existing User's right to have the tonnage Handled under an Access Agreement or Existing User Agreement (as relevant).

Approval means any and all licences, approvals, consent or permits required from any Government Agency or third party for the construction, occupation, development or operation of the Terminal for the provision of the Services, performance of the Leases, or the Port Services Agreement, including but not limited to:

- (a) environmental approvals and licences;
- (b) planning and development approvals and licences; and
- (c) local government approvals and licences.

Arbitration means an arbitration commenced under section 16.4.

Arbitrator means an arbitrator appointed under Section 16.4.

Available System Capacity means, in respect of a relevant time, the amount of System Capacity at that time not contracted to be Handled. It is derived by subtracting the Aggregate Annual Contract Tonnage as at the relevant time from System Capacity at that time. Where that subtraction results in a negative number, it will be taken to be "nil". Where Available System Capacity is to be determined in respect of a future time DBCT Management will estimate it taking all relevant factors into account (including System Capacity expected to arise out of a System Capacity Expansion which has been or can reasonably be expected to be committed to at the time of the estimation).

Business Day means a day other than a Saturday, a Sunday, or a public holiday in Brisbane.

Capacity Expert has the meaning given in clause 11.1(a)(2)(A).

Capital Expenditure means expenditure (incurred by DBCT Management) which:

- (a) relates to replacement or expansion of any part of the Terminal;
- (b) relates to refurbishment or upgrade of any part of the Terminal which can reasonably be expected to extend the life of the relevant part beyond its original useful life or is undertaken for environmental or safety reasons;
- (c) otherwise relates to the refurbishment or upgrade of Terminal plant and/or infrastructure which is reasonably expected to improve whole of life cost, or is incurred with the agreement of the Operator; or
- (d) is ancillary or incidental to paragraphs (a), (b) or (c),

but not expenditure recovered through HCF or HCV (as those terms are defined in the Standard Access Agreement).

Ceiling TIC means the TIC calculated in accordance with Schedule C, Section 2(b)-(f).

Coal Guidelines means the ‘Australian Guidelines for Estimating and Reporting of Inventory Coal, Coal Resources and Coal Reserves’ published by the Coalfields Geology Council of New South Wales and the Queensland Resources Council or its successor document, as updated from time to time.

Coal Resources has the meaning given to it in the JORC Code.

Commencement Date means the day following the Expiry Date.

Completion means, in respect of relevant works comprising a Terminal Capacity Expansion or other Capital Expenditure program:

- (a) the works are electrically and mechanically complete; and
- (b) testing and commissioning has been satisfactorily completed (including load commissioning), but where punchlist items (being items intended to be carried out after practical completion and commencement of full operation of the relevant items) are not necessarily complete, and **Complete** and **Completed** have corresponding meanings.

Conditional Access Agreement has the meaning given to it in Section 5.4(j) of this Framework.

Confidential Information means any information, data or other matter disclosed to a person by, or on behalf of, another person where:

- (a) the disclosure of the information, data or other matter by the recipient might reasonably be expected to affect the commercial affairs of the owner of the information, data or other matter; or
- (b) the information, data or other matter is marked or otherwise clearly identified as confidential by a party when disclosed;

provided that such information, data or other matter:

- (c) is not already in the public domain;
- (d) does not become available to the public through means other than a breach of the confidentiality provisions in this Framework or a breach of any confidentiality deed contemplated in Section 7 of this Framework;
- (e) was not in the other party’s lawful possession prior to such disclosure; or
- (f) is not received by the other party independently from a third party free to disclose such information, data or other matter;

and provided further that the information, data or other matter will cease to be Confidential Information if the information, data or other matter has ceased to retain its confidential nature, for example because:

- (g) the disclosure of the information, data or other matter by the recipient would no longer reasonably be expected to affect the commercial affairs of the owner of the information, data or other matter;
- (h) the information, data or other matter has entered in the public domain through means other than a breach of the confidentiality provisions in this Framework or a breach of any confidentiality deed contemplated in Section 7 of this Framework; or
- (i) the information, data or other matter has been received by the recipient independently from a third party free to disclose the information, data or other matter.

Consequential Loss means any one or more of the following:

- (a) Loss of profits; or

- (b) Loss of opportunity to make profits; or
- (c) Loss of business opportunity; or
- (d) special exemplary or punitive damages; or
- (e) any Loss which does not directly and naturally flow in the normal course of events from the occurrence of the event giving rise to the liability for such Loss, whether or not such Loss was in the contemplation of the relevant party at the relevant time,

including any of the above types of Loss arising from an interruption to a business or activity.

Construction Period Risk Free Rate means the rate calculated by averaging the yield of the 10 year Commonwealth Government bond over the 20 Business Days preceding the earlier of:

- (a) the first draw down date on construction debt financing; or
- (b) the interest rate set date on construction debt financing;

effected by DBCT Management in respect of a relevant Terminal Capacity Expansion.

Control has the meaning given to that term in the *Corporations Act 2001* (Cth) and **Controlled** has a corresponding meaning.

Cost Allocation Principles has the meaning given in Section 10.7.

Cost Sensitive Expansion has the meaning given in Section 10.8(a)(2).

Dalrymple Bay Coal Chain means all infrastructure relating to railing and shipping of coal (from mine outloaders to Terminal shiploaders and adjacent infrastructure), excluding Hay Point, generally referred to as the *Dalrymple Bay Coal Chain*, (unless all relevant stakeholders otherwise agree).

DBCT Holdings means DBCT Holdings Pty Limited ACN 096 395 783 and its successors and assigns, including persons taking by way of novation.

DBCT Management means DBCT Management Pty Ltd ACN 097 698 916 and its successors and permitted assigns, including persons taking by way of novation.

DBCT Trustee means DBCT Investor Services Pty Ltd ACN 052 156 082 as trustee of the DBCT Trust.

Deed Poll means the irrevocable deed poll dated [insert] given by DBCT Management under which it covenants to comply with the Framework.

Demurrage Costs means the average cost across all Access Holders and Existing Users of demurrage in respect of the loading of Coal on vessels at the Terminal over any period of 3 consecutive months (as estimated by the Operator in accordance with its historical practice of estimating notional demurrage costs).

Different Terms has the meaning given in Section 12.1(d).

Differentiation, in respect of a Terminal Capacity Expansion, means the Terminal Capacity Expansion should be treated as a separate Terminal Component for the purpose of determining Access Charges in accordance with Sections 10.3 to 10.5 of this Framework, and the Floor TIC for that Terminal Component determined in accordance with Section 10.4(f) by reference to the costs of the Terminal Capacity Expansion (and without reference to the costs of the Existing Terminal), and **Differentiated** has a corresponding meaning.

Differentiated Expansion Component has the meaning giving in Section 10.8(a)(2).

Differentially Priced Access Agreement means an Access Agreement under which the Access Charges are to be differentially priced and Services are to be provided by DBCT Management from capacity created by a Differentiated Expansion Component.

Differentially Priced Access Holder means an Access Holder who is party to a Differentially Priced Access Agreement.

Differentially Priced Capacity means capacity associated with a Differentiated Expansion Component.

Differentiated Queue has the meaning set out in Section 5.4(q).

Dispute has the meaning given to that term in Section 16.1.

Dispute Notice has the meaning given to that term in Section 16.1.

Early Termination means the termination of an Access Agreement or Existing User Agreement (**Terminated Agreement**) before its originally scheduled expiry date (but not where that occurred as a result of the exercise of a contractual right to terminate which was included in the Terminated Agreement when it was entered into, other than a right to do so for default in payment or insolvency of the Access Holder or Existing User, or default by DBCT Management. For the purpose of this definition, termination for default in payment or insolvency will be taken to have occurred if DBCT Management terminates the Terminated Agreement on other grounds but in circumstances where a default in payment or the insolvency of the Access Holder or Existing User could have been reasonably expected within a reasonably short time thereafter had that termination not occurred).

Execution Date has the meaning given in the Standard Access Agreement.

Existing Terminal means the Terminal as it exists at the Commencement Date together with each Socialised Expansion of that existing Terminal.

Existing Terminal Capacity has the meaning given in Section 11.1(a)(1).

Existing User means a party who has an entitlement to have coal Handled through the Terminal as at the Commencement Date.

Existing User Agreement means an agreement which is in force as at the Commencement Date by which DBCT Management has granted an Existing User an entitlement to have coal Handled through the Terminal.

Expansion Arbitrator has the meaning given in clause 11.5(a).

Expansion Component means in respect of a Terminal Capacity Expansion, the Differentiated Expansion Component or that part of the Existing Terminal (as the case may be) that is the subject of the expansion, as determined in accordance with this Framework.

Expansion Component Capacity means, for an Expansion Component, the maximum reasonably achievable capacity of that Expansion Component (measured in tonnes per Financial Year) as estimated pursuant to Section 11.1.

Expansion Parties means, in respect of an Expansion Component, any Funding Access Seeker or any party to a Conditional Access Agreement associated with that Expansion Component.

Expansion Pricing Principles means the principles set out in Section 10.8.

Expert Determination means an expert determination process commenced under Section 16.3.

Expiry Date means 8 September 2020.

Feasibility Studies means in relation to a proposed Terminal Capacity Expansion, a FEL 1 Feasibility Study, FEL 2 Feasibility Study and FEL 3 Feasibility Study.

FEL 1 Feasibility Study means in respect of a proposed Terminal Capacity Expansion, a study that:

- (a) estimates Terminal Capacity and System Capacity in accordance with Section 11.1 of the Framework;

- (b) identifies possible Terminal Expansion Components that will create additional Terminal Capacity, including any potential system capacity expansions that may be required to create complementary additional System Capacity;
- (c) makes a preliminary assessment of the available Terminal capacity that will be created by the Terminal Expansion Components;
- (d) makes a preliminary assessment of the available Terminal capacity that will be created by the Terminal capacity expansion
- (e) unless otherwise agreed by DBCT Management and the relevant Funding Access Seeker, includes an indicative assessment of:
 - (1) project objectives in relation to the creation of additional Terminal Capacity; and
 - (2) the possible Terminal Expansion Components:
 - (A) a broad cost estimate with a +/- 50% accuracy (or such other accuracy where agreed with the Funding Access Seekers (acting reasonably));
 - (B) a preliminary financial analysis and risk assessment; and
 - (C) indicative timeframes for developing and completing the possible Terminal Components; and
 - (3) includes a proposed scope, budget, duration and deliverables for a FEL 2 Feasibility Study including the reasons for selecting the possible Terminal Components that will be considered during that FEL 2 Feasibility Study.

FEL 2 Feasibility Study means in respect of a proposed Terminal Capacity Expansion, a study that:

- (a) re-confirms Terminal operating assumptions and System operating assumptions undertaken in the FEL 1 Feasibility Study and, if they differ from the previous study, re-estimates Terminal Capacity and System Capacity in accordance with Section 11.1 of the Framework;
- (b) confirms the project objectives in relation to the creation of additional Terminal Capacity and the possible Terminal Expansion Components that will create the additional Terminal Capacity;
- (c) assesses each of the possible Terminal Components in respect of:
 - (1) the technical and operating requirements for that Terminal Capacity Expansion;
 - (2) an indicative assessment of the additional Capacity that might reasonably be expected by implementing that Terminal Capacity Expansion; and
 - (3) a preliminary risk assessment for that Terminal Capacity Expansion;
- (d) includes preliminary survey and geotechnical investigation to support the level of design and cost accuracy required for the study;
- (e) identifies the preferred Terminal Capacity Expansion to be studied under a FEL 3 Feasibility Study; and
- (f) provides:
 - (1) a high level engineering assessment of the preferred Terminal Capacity Expansion;
 - (2) analysis of the technical and economic feasibility of the preferred Terminal Capacity Expansion and identifies why it is preferred;
 - (3) a project budget, with a +/-20% level of accuracy (or such other accuracy where agreed with the Funding Access Seekers (acting reasonably));

- (4) an indicative design and construct schedule for the preferred Terminal Capacity Expansion that includes time tolerances; and
 - (5) potential benefits (including additional Terminal Capacity, maintenance and operating benefits) of the preferred Terminal Capacity Expansion; and
- (g) includes a proposed scope, budget, duration and deliverables for a FEL 3 Feasibility Study;
 - (h) includes an assessment of the available Terminal Capacity that will be created by the Terminal Capacity Expansion; and
 - (i) includes an assessment of the available Terminal Capacity that will be created by the preferred Terminal Expansion Component.

FEL 3 Feasibility Study means in respect of a proposed Terminal Capacity Expansion, a study that, in relation to the preferred Terminal Capacity Expansion identified in a FEL 2 Feasibility Study :

- (a) re-confirms Terminal operating assumptions and System operating assumptions undertaken in the FEL 1 or FEL2 Feasibility Study and, if they differ from the previous studies, re-estimates Terminal Capacity and System Capacity in accordance with Section 11.1 of the Framework;
- (b) details the project objective for the preferred Terminal Capacity Expansion;
- (c) provides a detailed assessment of technical and operating requirements of the preferred Terminal Capacity Expansion;
- (d) includes survey and geotechnical investigations to support the level of design and cost accuracy;
- (e) provides a detailed design for the preferred Terminal Capacity Expansion;
- (f) provides the following details of the preferred Terminal Capacity Expansion's scope:
 - (1) an optimised project configuration that would provide the targeted additional Terminal Capacity to be created by the preferred Terminal Capacity Expansion;
 - (2) a detailed cost estimate with a +/-10% level of accuracy (or such other accuracy where agreed with the Funding Access Seekers (acting reasonably);
 - (3) a detailed design and construction project schedule;
 - (4) the basis on which the project contingency was determined;
 - (5) a financial evaluation, including (if applicable) the estimated impact on the relevant TICs;
 - (6) a procurement methodology and report on any previous approaches to the construction market that are relevant to the preferred Terminal Capacity Expansion;
 - (7) a project management plan comprised of:
 - (A) resource management plan;
 - (B) cost management plan;
 - (C) design management plan
 - (D) quality management plan;
 - (E) safety management plan;
 - (F) schedule management plan;
 - (G) risk management plan;
 - (H) project packaging and delivery strategy;
 - (I) procurement management plan;

- (J) interface management plan;
 - (K) change management plan;
 - (L) environmental management plan;
 - (M) project phases, milestones and deliverables;
 - (N) project risk assessment report; and
 - (O) regulators notification, if needed, and
- (8) provides a detailed capacity assessment on the available Terminal Capacity to be created by the preferred Terminal Expansion Component and the associated impact, if any, on the capacity rating of the base Terminal,

and including the outcomes of any analysis and decisions made in relation to the above matters (with reasons, where applicable).

Financial Year means 1 July in a calendar year to 30 June in the next following calendar year. Where the context allows, it also includes a period shorter than 12 months – from the Commencement Date to the next 30 June, inclusive, and from the last 1 July during the Term to the Terminating Date inclusive - but where that period is less than 12 months, any provision of this Framework which, in respect of a Financial Year, assumes a full 12 months period, will be taken to be modified proportionately.

Floor TIC means the TIC calculated in accordance with Schedule C, Section 2(a).

Framework means this Access Framework (including its schedules) as amended from time to time.

Framework Agreement means the framework agreement between DBCT Holdings, the State, PCQ, DBCT Trustee, DBCT Management and others dated 31 August 2001.

Framework Objective has the meaning given in clause 1.31.3(a).

Funding Access Seeker means an Access Seeker that has entered into a Funding Agreement or Underwriting Agreement with DBCT Management.

Funding Agreement means an agreement on such terms as DBCT Management reasonably requires, including in relation to the provision of such security to DBCT Management as it reasonably requires, pursuant to which an Access Applicant must fund the reasonable and proper costs of:

- (a) a FEL 1 Feasibility Study; and
- (b) after a satisfactory outcome from a FEL 1 Feasibility Study, a FEL 2 Feasibility Study and a FEL 3 Feasibility Study, in respect of a proposed Terminal Capacity Expansion.

Good Operating and Maintenance Practice means adherence to a standard of practice which includes the exercise of that degree of skill, diligence, prudence and foresight which would reasonably be expected from a competent, experienced and qualified operator of a facility comparable with the Terminal.

Government Agency means a minister, government, government department or another government body, a governmental, semi-governmental or judicial person or a person (whether autonomous or not) charged with the administration of any applicable law.

Handle means the receiving by rail, unloading, stacking, storing, reclaiming and loading of vessels with coal and any other relevant Services required by the Access Holder or Existing User using any of the infrastructure at the Terminal.

Independent Expert means an independent expert appointed under Section 16.3.

Indicative Access Proposal has the meaning given to that term in Section 5.5.

Initial Access Charges means the Access Charges for a Terminal Component to apply under an Access Agreement from the commencement of that Agreement, the commencement of increased Access under that Agreement or the commencement of a Pricing Period under that Agreement.

Initial TIC means the TIC for a Terminal Component to apply under an Access Agreement from the commencement of that Agreement, the commencement of increased Access under that Agreement or the commencement of a Pricing Period under that Agreement.

Insolvent means, for an Access Seeker, where one of the following events has happened in relation to the Access Seeker:

- (a) it is unable to pay all its debts as and when they become due and payable or it has failed to comply with a statutory demand as provided in Section 459F(1) of the *Corporations Act 2001* (Cth);
- (b) a resolution is passed to place it in voluntary liquidation or to appoint an administrator;
- (c) an application is made to a court for it to be wound up and the application is not dismissed or withdrawn within 14 days;
- (d) the appointment of a controller (as defined in the *Corporations Act 2001* (Cth)) of any of its assets, if that appointment is made and not terminated within 14 days after it is made; or
- (e) it resolves to enter into or enters into any form of arrangement (formal or informal) with its creditors or any of them, including a deed of company arrangement.

JORC Code the ‘Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves’ prepared by the Joint Ore Reserves Committee of The Australasian Institute of Mining and Metallurgy, Australian Institute of Geoscientists and the Minerals Council of Australia, as updated from time to time.

Leases means the Primary Leases and the Secondary Leases.

Lease Term has the meaning ascribed to that term in the Framework Agreement.

Loss means any damage, loss (including loss of reputation), cost, expense, fine, penalty or liability incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Marketable Coal Reserves has the meaning given to it in the JORC Code.

Month means a calendar month.

Monthly Payment has the meaning given to it in Section 10.4(c).

NECAP Asset Base means, in respect of a Terminal Component, the NECAP Asset Base for that Terminal Component determined in accordance with Schedule C, Section 3(h).

NECAP Risk Free Rate means, in respect of any twelve month period ending 31 March, the rate calculated by averaging the yield of the 10 year Commonwealth Government bond over the 20 Business Days preceding that 31 March.

Negotiation Cessation Notice means a notice given in accordance with the provisions of Section 5.8.

Non-Expansion Capital Expenditure or **NECAP** means Capital Expenditure not related to the development of a Terminal Capacity Expansion.

Non-Expansion Costs means Terminal Operating Costs and Capital Expenditure not related to the development of a Terminal Capacity Expansion.

Notice has the meaning given to that term in Section 5.4(e)(1).

Notified Access Seeker has the meaning given to that term in Section 5.4(e).

Notifying Access Seeker has the meaning given to that term in Section 5.4(e).

Notional Contracted Tonnage or **NCT** means, in respect of a Financial Year the Aggregate Annual Contract Tonnage.

Operation & Maintenance Charge means the component of Access Charges under which DBCT Management recovers Terminal Operating Costs from Access Holders and is calculated in accordance with Section 10.5.

Operation & Maintenance Contract or **OMC** means the contract between DBCT Management, the DBCT Trustee and the Operator under which the Operator is engaged by DBCT Management to operate and maintain the Terminal on a day to day basis. The terms of the OMC are summarised for convenience in Schedule H.

Operator means Dalrymple Bay Coal Terminal Pty Limited ACN 010 268 167.

Other Costs has the meaning given in Section 11.5(a)(3)(B).

PCQ means Ports Corporation of Queensland Limited ACN 126 302 994.

Port Services Agreement has the meaning ascribed to that term in the Framework Agreement.

Price Ruling means a ruling by an Expansion Arbitrator in respect of a Terminal Capacity Expansion on the Pricing Method and the prudent Capital Expenditure (including the need) for the Terminal Capacity Expansion made following receipt of an application from DBCT Management under Section 5.12(a) or 11.5(a) of this Framework.

Pricing Method means the method of pricing Access created by a Terminal Capacity Expansion, being either Socialised or Differential.

Pricing Period means the period commencing on the Commencement Date and ending on 30 June 2026 and each subsequent 5 year period during the Term.

Primary Leases has the meaning ascribed to that term in the Framework Agreement.

Proposed Standard Funding/Underwriting Agreement means the proposed Standard Funding Agreement or proposed Standard Underwriting Agreement (as applicable) by DBCT Management under Section 5.10(q)(1).

Publicly Report means to upload information onto DBCT Management's website so that it is publicly accessible.

QCA means the Queensland Competition Authority, a statutory authority established under the QCA Act.

QCA Act means the Queensland Competition Authority Act 1997 (Qld).

Queue has the meaning given in Section 5.4(a).

Rail Operator means an entity that:

- (a) provides above rail services to an Access Holder for the purpose of transporting coal to the Terminal; or
- (b) is nominated by an Access Seeker as likely to provide above rail services to that Access Seeker for the purpose of transporting coal to the Terminal.

Related Body Corporate has the meaning given to that term in the *Corporations Act 2001* (Cth).

Related Entity has the meaning given to that term in the *Corporations Act 2001* (Cth).

Renewal Application has the meaning given in Section 5.3A.

Review Event means any one or more of the following events:

- (a) a change in the Aggregate Annual Contract Tonnage in respect of the Existing Terminal or Differentiated Expansion Component (as relevant), including (without limitation) a change

- in Aggregate Annual Contract Tonnage occurring as a consequence of the Early Termination of any Access Agreement or Existing User Agreement;
- (b) in respect of the Existing Terminal, Completion and handover to the Operator of the whole of a discrete phase of a Socialised Expansion; and
 - (c) each 1 July in a Pricing Period, in respect of any Terminal Component, provided any program of NECAP was:
 - (1) Completed and handed over to the Operator by DBCT Management in the twelve month period ending on 31 March occurring immediately prior to that 1 July and allocated to that Terminal Component in accordance with Section 10.7 of this Framework, including:
 - (A) NECAP referred to in Section 11.10(b); and
 - (B) NECAP referred to in Section 11.10(c); or
 - (2) included in the NECAP Asset Base for any previous Financial Year of the Pricing Period.

Secondary Leases has the meaning ascribed to that term in the Framework Agreement.

Security means any form of security or guarantee required to be provided by an Access Seeker or Access Holder to DBCT Management pursuant to Section 5.9.

Service Provider means:

- (a) DBCT Management, as the provider of Services at the Terminal;
- (b) each provider at a relevant time of railway infrastructure ("below rail") for any part of the System;
- (c) each provider at a relevant time of railway freight services ("above rail") for any part of the System.

Services means the services set out in Schedule E of this Framework.

Socialisation, in respect of a Terminal Capacity Expansion, means the Terminal Capacity Expansion should be treated as forming part of the Existing Terminal for the purpose of determining Access Charges in accordance with Sections 10.3 to 10.5 of this Framework, and the Floor TIC for the Existing Terminal determined in accordance with Section 10.4(f) by reference to the sum of the costs of the Existing Terminal and the costs of the Terminal Capacity, and **Socialised** has a corresponding meaning.

Socialised Expansion has the meaning given in Section 10.8(a)(1).

Socialised Terminal Capacity means capacity associated with a Socialised Expansion.

Standard Funding Agreement means the standard Funding Agreement approved in accordance with Section 5.10(q).

Standard Underwriting Agreement means the standard Underwriting Agreement approved in accordance with Section 5.10(q).

Standard Access Agreement means the standard access agreement set out in Schedule B of this Framework.

State means the State of Queensland.

Supply Chain Business means an entity (or group of entities) which:

- (a) provides, or proposes to provide, above rail services in Queensland which access the Terminal;

- (b) owns or holds an interest in, or proposes to acquire such an interest in, coal-producing mines in Queensland that export coal via the Terminal;
- (c) purchases coal that has been produced in Australia and exports that coal via the Terminal;
- (d) provides shipping services from the Terminal; or
- (e) trades in capacity at the Terminal.

System means, in respect of the Dalrymple Bay Coal Chain, the following components of infrastructure relating to the transport of coal from mines whose coal is Handled by the Terminal:

- (a) rail loading facility of mines whose coal is Handled by the Terminal;
- (b) railway infrastructure in the Dalrymple Bay Coal Chain;
- (c) railway locomotives and rolling stock used in the Dalrymple Bay Coal Chain; and
- (d) Terminal unloading, stacking, loading and other Handling facilities,

and all interfaces between such components.

System Capacity means at a relevant time, the maximum reasonably achievable estimated capacity of the System (measured in tonnes per financial year) as determined pursuant to Section 11.1 in respect of that time. Where System Capacity is required to be estimated in respect of a future time (for example, for the purposes of Section 5.4) DBCT Management will estimate it taking all relevant factors into account (including System Capacity expected to arise out of a System Capacity Expansion which has been or can reasonably be expected to be committed to at the time of the estimation).

System Capacity Expansion means the construction, upgrade, refinement, purchase, installation and/or erection of new works or items or modifications to existing works or items intended to materially increase the System Capacity.

System Master Plan means, at a relevant time, the master plan (if any) determined pursuant to Section 14.

TCMP has the meaning given in Section 11.5(a)(7).

Term means the period between (and including each of) the Commencement Date and the Terminating Date.

Terminal means the land and port infrastructure located at the Port of Hay Point which is owned by DBCT Holdings or the State and leased to DBCT Trustee and/or DBCT Management, and known as the Dalrymple Bay Coal Terminal, and includes the following:

- (a) loading and unloading equipment;
- (b) stacking, reclaiming, conveying and other handling equipment;
- (c) wharves and piers;
- (d) deepwater berths; and
- (e) shiploaders,

and for the avoidance of doubt, includes the Existing Terminal and any Differentiated Expansion Component.

Terminal Capacity means the maximum reasonably achievable capacity of the Terminal (measured in tonnes per Financial Year) as estimated pursuant to Section 11.1.

Terminal Capacity Expansion means the construction, upgrade, refinement, purchase, installation and/or erection of new works or items or modifications to existing works or items intended to materially increase the **Terminal Capacity**.

Terminal Component means each of:

- (a) the Existing Terminal; and
- (b) the Differentiated Expansion Component.

Terminal Infrastructure Charge or TIC has the meaning given in Section 10.4.

Terminal Master Plan (a copy of the version which was current at the Commencement Date is attached at Schedule F) means the master plan approved by DBCT Holdings under the Port Services Agreement, and related engineering and other reports, as amended from time to time with the approval of DBCT Holdings under the Port Services Agreement.

Terminal Operating Costs means any amounts:

- (a) reasonably incurred or charged by the Operator (including any margin payable to the Operator under the Operation & Maintenance Contract);
- (b) in the nature of an operating expense for the Terminal and reasonably incurred or charged by DBCT Management with the express written consent of not less than 66% of Access Holders and Existing Users by contract tonnage; and
- (c) reasonably incurred by DBCT Management in exercising its rights under the Operation & Maintenance Contract to step in or take work out of the hands of the Operator (as a result of a default by the Operator),

but excluding Capital Expenditure other than minor Capital Expenditure not exceeding \$3 million per Financial Year.

Terminal Regulations means regulations in force from time to time governing procedures for the operation of the Terminal and provision of the Services under an Access Agreement.

Terminating Date means the earlier of:

- (a) the date which is 10 years from the Commencement Date; and
- (b) the date on which use of the Terminal is taken to be a service declared under Part 5, Division 2 of the *Queensland Competition Authority Act 1997* (Qld).

Tonnage means the volume of Access supplied under an Access Agreement or access supplied under an Existing User Agreement (as the context requires), determined by reference to the volume of coal Handled or contracted to be Handled.

Underwriting Agreement means an agreement on such terms as DBCT Management reasonably requires, including in relation to the provision of such security to DBCT Management as it reasonably requires, which gives DBCT Management the right to call for, and requires an Access Applicant to fund in response to such call, the reasonable and proper costs of:

- (a) a FEL 1 Feasibility Study; and
- (b) after a satisfactory outcome from a FEL 1 Feasibility Study, a FEL 2 Feasibility Study,

in respect of a proposed Terminal Capacity Expansion, if the proposed Terminal Capacity Expansion does not proceed.

WACC(1) Rate means a rate equivalent to the Construction Period Risk Free Rate plus 4.00%.

WACC(2) Rate means, in respect of Financial Year t, the weighted average of the rates equivalent to the NECAP Risk Free Rate plus 5.00% for each twelve month period ending 31 March in which any program of NECAP included in the NECAP Asset Base for Financial Year t for the Existing Terminal or Differentiated Expansion Component (as relevant) was Completed and handed over to the Operator, where the weights are equal to the proportion of the value of the NECAP Asset Base for Financial Year t referable to the program(s) of NECAP Completed and handed over to the Operator in the twelve month period.

2. Interpretation

In this Framework unless the context otherwise requires:

- (a) reference to any statute or statutory provision includes any modification or re-enactment of, or any legislative provisions substituted for, and all legislation and statutory instruments issued under such legislation or such provision;
- (b) words denoting the singular include the plural and vice versa;
- (c) words denoting persons or individuals include corporations, associations, trustees, instrumentalities and partnerships and vice versa;
- (d) words denoting any gender include all genders;
- (e) references to parties, Parts, Sections, Annexures and Schedules are references to parties, Parts, Sections, Annexures and Schedules to this Framework as modified or varied from time to time;
- (f) references to any document, deed or agreement include references to such document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (g) references to any party to this Framework or any other document, deed or agreement include its successors, permitted assigns, or permitted subcontractors and the obligations of any party extends to those persons;
- (h) all references to dates and times are to Brisbane time;
- (i) all references to "\$" and "dollars" are to the lawful currency of Australia;
- (j) a reference to "including" shall be construed as "including, but not limited to," and "include" and "includes" shall be construed similarly;
- (k) where a provision provides that a party "may" do something, "may" shall be construed as discretionary and without obligation;
- (l) where any word or phrase is given a defined meaning, any other grammatical form of that word or phrase has a corresponding meaning;
- (m) where there is a requirement under this Framework to consider whether Access Holders are being treated or will be affected equitably, the party so considering must have regard to (amongst other things) the Access Holders' respective Annual Contract Tonnages and the extent to which (if at all) Differential Pricing applies to the Annual Contract Tonnages the subject of each Access Agreement;
- (n) where measurement of coal "Handled" is being made in respect of a period, the tonnage loaded into vessels will be taken to be the tonnage Handled in that period; and
- (o) headings are for convenience only and do not affect interpretation of this Framework.

Schedule H – Terms of Operation and Maintenance Contract

Term	Summary of term
Parties	<p>DBCT Management Pty Ltd (DBCTM), DBCT Investor Services Pty Limited as trustee of the DBCT Trust (DBCT Trustee) and the operator, Dalrymple Bay Coal Terminal Pty Limited (Operator).</p> <p>The Operation and Maintenance Contract (Contract) defines the relationships between the parties and their rights and obligations.</p>
Term	<p>The Contract will expire on [date] unless terminated earlier. Other than for default of DBCTM (refer further below), the Operator cannot terminate the Contract before this date.</p> <ul style="list-style-type: none"> • If DBCTM wishes to terminate the Contract other than for the Operator's default, DBCTM must give 5 years' prior notice of termination; and • If an access undertaking is in place and the Operator wishes to terminate other than for DBCTM's default, the Operator can terminate by giving not less than two years notice to DBCTM. If the period of notice given will expire during the term of an access undertaking, the notice period will be extended and take on the from earlier of expiry of the access undertaking or 5 years after the date that a notice of termination is given.
Intentions of the parties	<p>The parties' intentions include (among other things):</p> <ul style="list-style-type: none"> • The Operator will be responsible for day-to-day operation and maintenance of the Terminal; • The Operator must ensure that its performance of services is coordinated in accordance with the relevant access undertaking in force at the time to the extent that no act or omission by the Operator would cause DBCTM to be in breach of a provision of the access undertaking; and • Subject to DBCTM's rights under the Contract (for example in relation to default by the Operator), DBCTM will not intervene in the day-to-day operation and maintenance of the Terminal.
Operator's engagement	<p>DBCTM has engaged the Operator to perform the services. The Operator is an independent contractor and not an agent of DBCTM. The services include all things necessary for the operation, maintenance and management of the Terminal.</p>
Operational Services to be performed by the Operator	<p>Operation of the Terminal specifically includes the following services:</p> <ul style="list-style-type: none"> • coordinate the ordering and scheduling of trains; • train unloading; • coal stockpile management, reclamation and handling; • coal blending if required by users of the Terminal; • vessel ordering; and • the loading of ships in accordance with the Terminal Regulations. In the absence of other applicable provisions in the Terminal Regulations, the Operator must normally load ships in order of arrival (subject to there being relevant coal at the Terminal and all prerequisites to loading having been complied with). <p>These services must be provided in accordance with the approved access undertaking and user agreements and are to be further detailed in an Appendix to the specification included in the Contract.</p>
Maintenance Services to be performed by the Operator	<p>The Operator must maintain the Terminal and each component of the Terminal at its operating capacity as specified in the Contract. This specifically includes:</p> <ul style="list-style-type: none"> • planned maintenance and repair in accordance with an annual operation, maintenance and capital plan (prepared by the Operator); • unplanned maintenance and repair as required (for example following equipment breakdown); • condition monitoring and maintenance management; and • upkeep of the Terminal, including activities such as maintenance of access roads and dust suppression.

Term	Summary of term
Standard of Operator's performance	<p>The Operator must operate and maintain the Terminal in order to ensure it is capable of operating:</p> <ul style="list-style-type: none"> • at its rated design capacity; • in accordance with good operating and maintenance practice; and • in good and substantial repair. <p>The Operator must ensure that the Terminal is maintained and operated so as to achieve, as far as practical, the best and most cost effective outcome, taking account, as appropriate, of:</p> <ul style="list-style-type: none"> • lowest total whole of life cost; • reliability and economy of performance; • maximising the effective life of the Terminal; • good operating and maintenance practice; • in the case of competing interests between users, fairness; and • the obligations of DBCT Management under the access undertaking and any user agreements. These obligations are subject to DBCTM having expended appropriate capital if relevant. <p>The Operator must provide everything that is necessary for performance of the services, other than any things specified in the Contract as to be provided by DBCTM. The Operator's supply obligations include the supply of water and power to the Terminal. The Operator is also required to supply and maintain spares for the Terminal.</p> <p>The Operator can subcontract parts of the Services without DBCTM's consent, however remains liable for the standard of performance. The Operator is specifically required to supervise the execution of all Services.</p>
Annual operation, maintenance and capital plan	<p>The Operator must, in consultation with DBCTM, prepare and submit an annual operation, maintenance and capital plan by 15 May. The plan will identify the proposed budget for the next financial year and will foreshadow the likely plan and budget for the subsequent two years (i.e. provide a three year budget snapshot).</p>
Payments to the Operator	<p>DBCTM pays the Operator all reasonably incurred costs of performing the services (that is, operating and maintaining the Terminal in accordance with the Contract) plus a margin.</p> <p>The Operator is also entitled to be paid:</p> <ul style="list-style-type: none"> • reimbursement of capital expended by the Operator, subject to certain conditions (outlined below in capital works); • consulting fees in respect of capital works (refer further below in relation to capital works); and • a project management commission if the Operator project manages a non-expansion capital project. <p>The Contract acknowledges that it is intended that amounts paid to the Operator will be recovered by DBCTM from users under their user agreements. The Operator has obligations to assist DBCTM to facilitate this pass through.</p>
Terminal Regulations	<p>Both the Operator and DBCTM are required to comply with the Terminal Regulations.</p> <p>The Operator may propose amendments to the Terminal Regulations for DBCTM's consent, which DBCTM must not unreasonably withhold but which will be subject to the requirements of the access undertaking in relation to such amendments.</p> <p>DBCTM must require each Terminal user pursuant to their user agreement(s) to comply with the Terminal regulations as applicable from time to time.</p>
Access to the Terminal	<p>DBCTM has granted the Operator a licence to use, occupy and control the Terminal as is necessary to perform the services in accordance with the Contract.</p> <p>The Operator must give DBCTM and its personnel such access to the Terminal as they reasonably require from time to time. However, such access is subject to compliance with the Operator's applicable procedures (including safety requirements). DBCTM must also take reasonable measures not to impede the Operator's performance of the services.</p>

Term	Summary of term
Care of and risk in the Terminal	The Operator has care of the Terminal and assumes the risk of damage to the Terminal and all things located at it (including coal). The Operator must insure the Terminal in accordance with the insurance program detailed in the Contract.
Safety and environmental compliance	<p>The Operator has primary responsibility for the management of safety at the Terminal and for compliance with legal requirements with respect to safety at the Terminal.</p> <p>The Operator also has primary responsibility for the compliance of the Terminal with all relevant environmental laws and requirements. Among other things, the Operator is required to obtain and maintain all required approvals from authorities with respect to the performance of the services.</p>
Records and audits	<p>The Operator must maintain records (including financial records) relating to the services.</p> <p>From time to time, DBCTM may appoint a suitably qualified person to conduct an audit of the records maintained by the Operator and/or of the Operator's relevant systems and procedures.</p> <p>The Operator must work with DBCTM to ensure that DBCTM is able to comply with its reporting obligations under the approved access undertaking.</p>
Continuous improvement	The Operator must work with DBCTM in undertaking reviews to identify and develop options for improved efficiency of the Terminal as well as of the coal transport chain. The parties have coordination obligations in relation to the implementation of the findings of such reviews.
Capital works	<p>Either the Operator or DBCTM can propose that capital works are undertaken. The Operator has obligations to participate in planning for proposed capital works. The Operator is entitled to be paid consulting fees (which are separate and additional to its usual monthly payments) for this participation.</p> <p>If capital works are to proceed, DBCTM and the Operator may agree that the capital works will be implemented by the Operator, DBCTM or another contractor.</p> <p>There is a handover process which applies once capital works have been completed. From the time of handover, the capital works become part of the Terminal and the Operator's obligations to provide the services extend to include that part of the Terminal.</p>
Force majeure	The Contract defines events of force majeure. If a party is affected by such an event, it may be granted relief from performance of its affected obligations under the Contract, subject to compliance with certain requirements.
Dispute resolution	<p>The Contract specifies a dispute resolution procedure which includes the following provisions:</p> <ul style="list-style-type: none"> • If a dispute between DBCTM and the Operator arises out of or in connection with the Contract, then either party may give the other party a notice of dispute. • Neither party may commence any court proceedings or arbitration in respect of any dispute which is the subject of a notice of dispute until the party has complied with the dispute resolution procedure specified in the Contract. • Within 14 days after service of a notice of dispute, the senior executives of each party must confer at least once to attempt to resolve the dispute and failing resolution, to consider and, if possible, agree on methods of resolving the dispute by other means. • If the dispute cannot be resolved by the senior executives after a further period of 14 days or if at any time either party considers that the other party is not making reasonable efforts to resolve the dispute, either party may refer the dispute to conciliation. • If the dispute is not resolved by conciliation within a period of 14 days after nomination of the conciliator, the parties may agree to refer the dispute to arbitration or either party may pursue any other means of dispute resolution including litigation. • The Contract will specify procedures with respect to conciliation and arbitration. • The dispute resolution procedure does not prevent any party from seeking urgent interlocutory or declaratory relief from a court of competent jurisdiction where, in that party's reasonable opinion, that action is necessary to protect its rights.

Term	Summary of term
Change in control of the Operator	<p>There is a deemed assignment of the Contract if:</p> <ul style="list-style-type: none"> • a person who is not a user or its related body corporate acquires an interest in the Operator; or • a user or its related body corporate acquires an interest in the Operator which exceeds its proportionate usage of the Terminal. <p>The Contract may not be assigned without DBCTM's approval.</p>
Termination for default by either party	<p>Each party has termination rights if the other defaults under the Contract. The rights differ between the parties, but allow the non-defaulting party to require rectification or require the defaulting party to show cause, before the non-defaulting party may terminate the Contract.</p>

Dalrymple Bay Coal Terminal Access Framework

[9 September 2020]

DBCT Management Pty Ltd

Level 15
Waterfront Place
1 Eagle Street
Brisbane QLD 4000
Tel: 07 3002 3100

[Note: The DBCT Access Framework and Standard Access Agreement (SAA) provided with DBCTM's submission dated 30 May 2018 should be read in conjunction with Appendix 7 of DBCTM's submission, which sets out the pricing framework that will apply under the DBCT Access Framework and SAA. Drafting to give effect to the pricing framework is being developed. Placeholders are included in this version of the Framework for the drafting to give effect to the pricing framework. Further consequential changes may also be required as a result of the changes to give effect to the pricing framework.]

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1 Introduction

1.1 Purpose of this document

(The Terminal) The Terminal is a common user coal port. The Terminal includes in-loading, stockpiling, reclaiming, out-loading, and associated facilities for the handling of coal. The Terminal is located at the Port of Hay Point, south of Mackay in Queensland.

(Agreements with the State) On 14 September 2001 the DBCT Trustee as trustee of the DBCT Trust, and DBCT Management entered into a number of agreements with DBCT Holdings and PCQ (both wholly owned by the State) under which DBCT Trustee and DBCT Management were granted a 50 year lease (with an option for a further 49 years) of the Terminal.

(Operator) An Operator is contracted to operate the Terminal on behalf of DBCT Management pursuant to an operations and maintenance contract. The Operator of the Terminal has historically been user-owned and independent of the lessee.

(Establishment of Framework) On the Expiry Date, the declaration of coal handling services at the Terminal under the *Queensland Competition Authority Act 1997* (Qld) expired. This Framework has been developed in response and provides a balanced approach to the provision of Access and a framework (based on a negotiate/arbitrate model) to manage negotiations in an efficient and transparent manner for Access Seekers seeking Access to the Services at the Terminal.

1.2 Scope of Framework

This Framework provides for:

- (a) the negotiation and provision of Access to the Services at the Terminal; and
- (b) measures to mitigate potential adverse effects on competition which could arise out of the ownership of a related Supply Chain Business.

1.3 Object of this Framework

- (a) The objective of the Framework is to promote the economically efficient operation of, use of and investment in, the Terminal, with the effect of promoting effective competition in upstream and downstream markets.
- (b) This Framework has been prepared in accordance with, and gives effect to, the Framework Objective.

1.4 Duration of Framework

This Framework will apply on and from the Commencement Date. It will apply until the Terminating Date.

1.5 Access Agreements and effect on Existing User Agreements

This Framework applies to the negotiation of ~~new~~-Access Agreements or the negotiation of additional Access rights in addition to those already the subject of an Access Agreement or Existing User Agreement. Nothing in this Framework requires ~~a party to~~ an Existing User-
~~Agreement~~ to vary a term or provision of that Existing User Agreement.

1.6 Implementation of Differentiation in Existing User Access Agreements

[Drafting Note: Amendments to this clause 1.6 will be required in drafting changes to give effect to the pricing framework set out at Appendix 7 of DBCTM's submission dated 30 May 2018]

Following a Price Ruling that a Terminal Capacity Expansion will be a Differentiated Expansion Component, DBCT Management will:

- (a) calculate Access Charges under each Access Agreement in accordance with the provisions of this Framework; and
- (b) in good faith, take all reasonable steps to negotiate any necessary amendments to any Access Agreement executed prior to Pricing the Price, including Existing User Agreements, to ensure that they are consistent with the Access Charges being calculated in accordance with the provisions of this Framework in relation to the application of Differentiation to a Terminal Capacity Expansion and the allocation of costs relating to it. For clarity, DBCT Management must use best endeavours to ensure that such amendments are equitable and non-discriminatory as between the relevant executed Access Agreements.

2 Definitions and Interpretation

2.1 Definitions

Unless the subject or context is inconsistent, each of the capitalised terms used in the Framework has the meaning assigned to it in Schedule G.

2.2 Interpretation

The rules set out in Schedule G apply to and govern the interpretation of this Framework.

3 Role of DBCT Management and the Operator

3.1 Role of DBCT Management

- (a) The owner of the Terminal is DBCT Holdings.
- (b) DBCT Trustee and DBCT Management, under the Leases, are the lessee and sublessee of the Terminal. Under the terms of the Leases and the Port Services Agreement, DBCT Management is solely responsible for providing Access to Access Holders and Access Seekers during the Lease Term.
- (c) DBCT Management will comply with and give effect to this Framework and any applicable laws relating to the provision of Access, except as otherwise provided for under an Access Agreement or required by law.
- (d) DBCT Management will ensure that employees, subcontractors and agents of subcontractors comply with the requirements of this Framework, except as otherwise provided for under an Access Agreement or required by law.
- (e) Where the performance of an obligation under this Framework requires a Related Body Corporate of DBCT Management to take or refrain from taking some action, DBCT Management must procure that the Related Body Corporate takes or refrains from taking that action.
- (f) DBCT Management must procure that any Related Body Corporate provides all necessary assistance and information so that it is in a position to comply with where this is required for the performance by DBCT Management of an obligation under this Framework.

3.2 Role of the Operator

During the term of the Framework, DBCT Management acknowledges and agrees that:

- (a) the Operator is and will remain Dalrymple Bay Coal Terminal Pty Limited ACN 010 268 167 (**DBCT PL**) and that DBCT PL is majority owned or wholly owned by Access Holders and Existing Users;
- (b) each Access Holder and Existing User has a right under the constitution of DBCT PL to become a shareholder of DBCT PL;
- (c) if an Access Holder or Existing User is not a shareholder of DBCT PL but wishes to become a shareholder of DBCT PL then that Access Holder or Existing User may, in accordance with the constitution of DBCT PL, apply to become a shareholder of DBCT PL by making an application to DBCT PL at the following address:

Dalrymple Bay Coal Terminal Pty Limited
M.S. F283
Mackay, Queensland, 4740
Attention: Chief Executive and General Manager;

- (d) the Operator carries out its obligations under the Operation & Maintenance Contract and Terminal Regulations independently of DBCT Management.

3.3 Operation and Maintenance Contract

During the term of the Framework, DBCT Management undertakes to:

- (a) maintain the Operation & Maintenance Contract; and
- (b) ensure that the terms of the Operation and Maintenance Contract, if amended at any time, remain substantially consistent with the terms set out in Schedule H.

4 Services to be provided

DBCT Management must provide the Services at the Terminal to Access Holders in accordance with this Framework and each Access Agreement, including in compliance with the Terminal Regulations (and, without limitation, in accordance with the level of service set out in Schedule E of this Framework).

5 Negotiation arrangements

5.1 Framework for negotiation

- (a) **(Outline)** This Section 5 of this Framework outlines the process which will be followed to enable Access Seekers to obtain Access. It deals with:
 - (1) ~~(a)~~ an Access Application by an Access Seeker and a Renewal Application by an Access Applicant;
 - (2) ~~(b)~~ provision of an Indicative Access Proposal by DBCT Management;
 - (3) ~~(c)~~ negotiations to develop an Access Agreement;
 - (4) ~~(d)~~ principles for the entering into of an Access Agreements where it is conditional upon a Terminal Capacity Expansion; and
 - (5) ~~(e)~~ various other provisions relating to when and the basis on which Access Agreements may be entered into pursuant to Access Applications.

- (b) **(Progressing Access Applications)** DBCT Management will take all reasonable steps to progress each Access Application and any negotiations to develop an Access Agreement with an Access Seeker in a timely manner and will complete each relevant step as soon as is practicable.—
- (c) **(Negotiations to be in good faith)** DBCT Management and an Access Seeker must negotiate in good faith for reaching an Access Agreement.
- (d) **(No unfair differentiation between Access Seekers)** DBCT Management must not unfairly differentiate between Access Seekers in a way that has a material adverse effect on the ability of one or more Access Seekers to compete with other Access Seekers.
- (e) **(DBCT Management to satisfy Access Seeker's requirements)** In negotiations for an Access Agreement, DBCT Management must make all reasonable efforts to try to satisfy the reasonable requirements of the Access Seeker.

5.2 Application for Access and information to be provided

- (a) **(Form of Access Application)** Any application for Access must be in the form specified in Schedule A and include:
 - (1) ~~(a)~~ a warranty in the form specified in; and
 - (2) ~~(b)~~ such other information that may be required by,
Schedule A. —
- (b) **(Access Seeker to agree to comply with Framework and Deed Poll)** An Access Seeker must, when submitting an Access Application, unconditionally and irrevocably agree to comply with the requirements, obligations and processes in:
 - (1) this Framework relating to it or its Access Application; and
 - (2) the Deed Poll, including the conditions set out in clauses 8.4, 9, 10 and 11 of the Deed Poll,and if the Access Seeker does not do so then:-
 - (3) DBCT Management will have no obligations, and the Access Seeker no rights, under this Framework in respect of the Access Application or the Access sought in that Access Application; and
 - (4) DBCT Management may refuse to accept the Access Application.
- (c) **(Forecasts in Access Application)** DBCT Management acknowledges that, at the time an Access Application is made, some information provided in the Access Application may be a forecast only. The Access Seeker must, ~~however~~, use its best endeavours to ensure that any such information contained in an Access Application is as accurate as possible and must immediately notify DBCT Management as soon as it becomes aware that the information is, or is likely to be, inaccurate.
- (d) **(Information sought by Access Seeker prior to Access Application)** Prior to submitting an Access Application, an Access Seeker may request from DBCT Management:
~~*[Drafting Note: Amendments to this clause will be required in drafting changes to give effect to the pricing framework set out at Appendix 7 of DBCTM's submission dated 30 May 2018]*~~
 - (1) ~~(c)~~ reasonably available preliminary information relating to the Access Application (including copies of the then current Standard Access Agreement

and Terminal Regulations) – which DBCT Management must provide within 10 Business Days of DBCT Management receiving the request;

- (d) ~~where there is a Reference Tariff in respect of the Existing Terminal or any Differentiated Expansion Component, the information set out in sections 101(2)(d) to (h) of the QCA Act which DBCT Management must provide within 10 Business Days of DBCT Management receiving the request. For clarification, if one or more Expansion Components exist, DBCT Management is to provide this information in respect of the Existing Terminal and each Differentiated Expansion Component:~~
- (e) ~~where there is no relevant Reference Tariff, the information set out in sections 101(2)(a) to (h) of the QCA Act which DBCT Management must provide within 10 Business Days of DBCT Management receiving the request; and~~
 - (2) ~~(f)~~ initial meetings to discuss the proposed Access Application and the requirements of the Access Application Form set out in Schedule A – which DBCT Management must facilitate within a reasonable time after being requested to do so.

(Revisions to Access Application)

- (e) ~~(g)~~ At any time after an Access Seeker submits an Access Application to DBCT Management but prior to the commencement of the negotiation period referred to in Section 5.7 in respect of the Access Application, an Access Seeker may notify DBCT Management that it wishes to revise certain information specified in its Access Application.
- (f) ~~(h)~~ In considering whether to allow an Access Seeker to revise certain information specified in its Access Application, DBCT Management will have regard to the impact of the proposed revision, if allowed by DBCT Management, on other Access Seekers and Access Holders.
- (g) ~~(i)~~ Without otherwise limiting DBCT Management's discretion to allow an Access Seeker to revise information specified in its Access Application, DBCT Management will allow an Access Seeker to revise information specified in its Access Application in accordance with Section 5.4(c) or if DBCT Management is reasonably of the opinion that the proposed revision:
 - (1) if allowed by DBCT Management, would not substantially alter the nature of the Access rights sought by the Access Seeker in its Access Application prior to the revision;
 - (2) if allowed by DBCT Management, would not adversely impact on other Access Seekers or Access Holders; and
 - (3) is not otherwise prohibited under Section 5.4(i)(3), 5.4(j)(7) or 5.10(h).
- (h) ~~(j)~~ For the avoidance of doubt, any revision of information specified in an Access Application which would, if allowed by DBCT Management, increase the annual Tonnage specified in the Access Application or extend the term specified in the Access Application will be taken to be a substantial alteration of the Access rights sought by the Access Seeker in its Access Application.

5.3 What happens after lodgement of Access Application

- (a) **(Acknowledgement by DBCT Management)** Upon receiving a purported Access Application under Section 5.2, DBCT Management must, within 10 Business Days of its

receipt, acknowledge in writing to the Access Seeker receipt of the application and confirm whether the application is an Access Application complying with Section 5.2.

- (b) **(Request by DBCT Management for further information)** DBCT Management may request from the Access Seeker additional information where DBCT Management can reasonably demonstrate the need for such information for the purpose of preparing an Indicative Access Proposal, or clarification of information provided, including (but not limited to) obtaining further information to establish the solvency and creditworthiness of the Access Seeker and, where DBCT Management requires, a Security provider. Upon receiving the required information or clarification from the Access Seeker, DBCT Management must provide written acknowledgment of the receipt of this further information as soon as practicable and, in any event, within 10 Business Days of receipt of the further information.
- (c) **(Provision of further information by Access Seeker)** The Access Seeker must provide any information reasonably requested by DBCT Management under this Section 5.3 within 20 Business Days of receipt of the request from DBCT Management (or such later date as DBCT Management agrees to, it being required to act reasonably in agreeing to extend the period if the Access Seeker demonstrates good grounds for a longer period applying). If the Access Seeker does not provide the requested information within that period, its Access Application will be deemed to have been rejected, but it may apply again for Access in accordance with Section 5.2. If an Access Seeker lodges a replacement Access Application, DBCT Management will endeavour in good faith to expedite the steps leading to acknowledgement under this Section 5.3 of the Access Application.
- (d) **(Rejection if Access Seeker fails to provide information or demonstrate application criteria)** If:
 - (1) an Access Application fails to comply with Section 5.2 (including where the Access Seeker fails to include the warranty provided for in, or such other information as may be required by, Schedule A); or
 - (2) DBCT Management, acting reasonably, is of the opinion that an Access Application:
 - (A) does not demonstrate that the Access Seeker is reasonably likely to commence delivery of coal to the Terminal on the date specified in item 5 of the Access Application (which must be no more than 5 years from the date of the Access Application); or
 - (B) does not demonstrate that the Access Seeker has:
 - (i) Marketable Coal Reserves that are consistent with the net tonnes specified in item 7 of the Access Application in respect of the first five Financial Years of Access applied for; and
 - (ii) Coal Resources that are, together with the Marketable Coal Reserves of the Access Seeker, consistent with the total net tonnes specified in item 7 of the Access Application,

then DBCT Management may reject the Access Application. Where DBCT Management rejects an Access Application in accordance with this Section 5.3, the Access Application will be deemed not to have been received, for the purposes of the Queue, unless Section 5.3(e) applies.

- (e) **(Disputed rejection of Access Application)** If DBCT Management rejects an Access Application submitted by an Access Seeker and the Access Seeker, acting reasonably, is of the opinion that its Access Application should have been accepted by DBCT Management in accordance with this Framework, then the Access Seeker may refer the matter for dispute resolution in accordance with Section 16 of this Framework within 15 Business Days of receiving the notice of rejection. In that case, the Access Applicant may not be removed from the Queue, and DBCT Management must not offer to enter an Access Agreement with another Access Applicant in respect of the Access sought in the relevant Access Application, unless and until the ~~dispute~~Dispute is resolved in favour of DBCT Management.
- (f) **(Expiry of Access Application)** Subject to an Access Application or Renewal Application (as applicable) lapsing or otherwise being rejected by DBCT Management in accordance with this Framework before the relevant expiry date:
 - (1) an Access Application submitted to DBCT Management before the Commencement Date will, unless the Access Application is renewed under Section 5.3A, expire on the date which is eight weeks after the Commencement Date;
 - (2) any Access Application submitted to DBCT Management on or after the Commencement Date will, unless the Application is renewed under Section 5.3A, expire on the next occurring 31 August; and
 - (3) an Access Application which has been renewed in accordance with Section 5.3A, will, unless the Access Application is further renewed under Section 5.3A, expire on the next 31 August occurring after the 31 August on which the Access Application was to expire immediately prior to the Renewal Application being accepted.
- (g) **(Notice of Expiry)** DBCT Management will give notice of the timing of expiry to all Access Seekers with a current Access Application (including those which remain current due to a previous Renewal Application being accepted):
 - (1) for Access Applications for which the expiry date is set by Section 5.3(f)(1), on the Commencement Date; and
 - (2) for Access Applications for which the expiry date is set by Section 5.3(f)(2) or 5.3(f)(3), at least 1 month and no more than 3 months prior to expiry date of the Access Application.

5.3A Renewal Applications

- (a) **(Renewal Application)** An Access Applicant that wishes to renew its Access Application must ~~submit to DBCT Management a renewal application in the form specified in Schedule A and include:~~
 - (1) submit to DBCT Management a Renewal Application in the form specified in Schedule A and include:
 - (A) ~~(1)~~ the warranty in the form specified in Schedule A; and
 - (B) ~~(2)~~ such other information that may be required, as specified in Schedule A,
 - not later than 15 Business Days before the date that its Access Application is due to expire; and

- (2) when submitting the Renewal Application, unconditionally and irrevocably agree to comply with the requirements, obligations and processes in:
- (A) this Framework relating to it or its Renewal Application; and
- (B) the Deed Poll, including the conditions set out in clauses 8.4, 9, 10 and 11 of the Deed Poll,
- and if the Access Seeker does not do so then DBCT Management may refuse to accept the Renewal Application.
- (b) **(Forecasts in AccessRenewal Application)** DBCT Management acknowledges that, at the time a Renewal Application is made, some information provided in the Renewal Application may be a forecast only. The Access Applicant must, however, use its best endeavours to ensure that any such information contained in a Renewal Application is as accurate as reasonably possible.
- (c) **(Acknowledgement by DBCT Management)** Upon receiving a purported Renewal Application under this Section 5.3A, DBCT Management must, within 10 Business Days of its receipt, acknowledge in writing to the Access Applicant receipt of the ~~renewal application~~Renewal Application and confirm whether the application is a Renewal Application complying with this Section 5.3A.
- (d) **(Rejection if Access Seeker fails to provide information or demonstrate renewal criteria)** If:
- (1) an Access Applicant fails to comply with this Section ~~5.2~~5.3A in respect of a Renewal Application (including where the Access Applicant fails to include the warranty provided for in, or such other information as may be required by, Schedule A); or
- (2) DBCT Management, acting reasonably, is of the opinion that a Renewal Application submitted by an Access Applicant:
- (A) does not demonstrate that the Access Applicant is reasonably likely to commence delivery of coal to the Terminal on the date specified in item 5 of the Renewal Application (which must be no more than 5 years from the date of the Renewal Application); or
- (B) does not demonstrate that the Access Applicant has:
- (i) Marketable Coal Reserves that are consistent with the net tonnes specified in item 7 of the Renewal Application in respect of the first five Financial Years of Access applied for; and
- (ii) Coal Resources that are, together with the Marketable Coal Reserves of the Access Applicant, consistent with the total net tonnes specified in item 7 of the Renewal Application,
- then DBCT Management may reject the Renewal Application. If DBCT Management rejects a Renewal Application or the Access Applicant fails to submit a Renewal Application to DBCT Management within the timeframe required in Section 5.3A(a), then the Access Applicant's current Access Application will expire on its expiry date (as determined in accordance with Section 5.3(f)) and the Access Applicant will be removed from the Queue on the date the Access Application expires, unless Section 5.3A(e) applies.

- (e) **(Disputed rejection of Renewal Application)** If DBCT Management rejects a Renewal Application submitted by an Access Applicant and the Access Applicant, acting reasonably, is of the opinion that its Renewal Application should have been accepted by DBCT Management in accordance with this Framework, then the Access Applicant may refer the matter for dispute resolution in accordance with Section 16 of this Framework within 15 Business Days of receiving the notice of rejection. In that case, the Access Applicant may not be removed from the Queue, and DBCT Management must not offer to enter an Access Agreement with another Access Applicant in respect of the Access sought in the relevant Renewal Application, unless and until the ~~dispute~~Dispute is resolved in favour of DBCT Management.
- (f) **(New Access Application if renewal is substantially different)** If DBCT Management, acting reasonably, is of the view that a Renewal Application is substantially different to the Access Seeker's current Access Application, then subject to ~~the following~~ paragraph (g) of this Section 5.3A, DBCT Management will treat the Renewal Application as a new Access Application, and the process set out in this Section 5 will recommence from that point. If the difference is an increase in the annual Tonnage required or a longer term, then only the additional annual Tonnage or additional term (as applicable) will be taken to constitute the subject of a new Access Application.
- (g) With respect to the renewal of an Access Application referred to in paragraph (b) of the definition of 'Access Application', if the first Renewal Application after the Commencement Date is for an increase in the term from 5 or more years, then the extended term will not be taken to constitute the subject of a new Access Application and will instead be considered as part of the Renewal Application.
- (h) **(Renewed Access Application)** To the extent that a Renewal Application is confirmed by DBCT Management as a Renewal Application complying with Section 5.3A (or is determined as complying with Section 5.3A in a ~~dispute~~Dispute referred by the Access Applicant in accordance with Section 5.3A(e)):
 - (1) the Access Applicant's current Access Application will be taken to have been renewed;
 - (2) the content of the Renewal Application will be taken to be the Access Applicant's Access Application for the purposes of this Framework; and
 - (3) the priority of the Access Applicant in the Queue will continue to be determined by the Access Application Date.

5.4 Priority of Access Applications and execution of Access Agreements

- (a) **(Formation of Queue)** If at any time there are two or more current Access Applications and there is or will be insufficient Available System Capacity associated with ~~Socialised~~Existing Terminal Capacity at any relevant time to accommodate an increase in the Handling of coal applied for in all of those Access Applications, a queue (the **Queue**) will be formed.
- (b) **(General rules for priority in Queue)** Subject to any other provision in Section 5, the priority of an Access Seeker in the Queue will be determined by their Access Application Date, with an earlier Access Application Date having priority in the Queue over any later Access Application Date. An Access Seeker may be removed from the Queue once their Access Application is no longer current in accordance with the terms of Sections 5.3, 5.4, 5.6, 5.7(a)(2), 5.7(a)(4), 5.8, 5.9 or 5.10 of this Framework. An Access Seeker may lose priority in the Queue pursuant to Sections 5.4 or 5.10. The

Queue will cease to exist if Available System Capacity at all relevant times subsequently exceeds the amount of capacity requested in all of the then current Access Applications.

- (c) **(Notice of formation of or change in Queue)** Promptly after a Queue is first formed and promptly after each occasion that the Annual Contract Tonnage applied for in the Queue is increased or decreased, DBCT Management must notify each Access Seeker in the Queue of:
- (1) the Annual Contract Tonnage applied for in priority to that Access Seeker in the Queue;
 - (2) the total Annual Contract Tonnage applied for in the Queue at that time; and
 - (3) a breakdown of the Annual Contract Tonnage applied for in the Queue by the dates for commencement of Access and Annual Contract Tonnage applied for in each Access Application (without any identification of the Access Seeker which made each Access Application but with identification of the dates for commencement of Access).

(Access Agreements for Available System Capacity from the Existing Terminal)

- (d) **(Entry into Access Agreement for Available System Capacity)** Promptly upon being advised in writing by an Access Holder or Existing User that all of part of its Annual Contract Tonnage in respect of the Existing Terminal will become available, DBCT Management will:
- (1) notify each Access Seeker in the Queue of the date for the commencement of such Access and the relevant Tonnage; and
 - (2) issue an Indicative Access Proposal for Available System Capacity in respect of the relevant Tonnage to the Access Seeker who is first in the Queue.
- (e) **(Entry into Access Agreement not conditional on Terminal Capacity Expansion by Access Seekers not first in the Queue but seeking Access at an earlier date)** The following process will apply in relation to Access Seekers who are not first in the Queue but are ready to enter into an Access Agreement that is not conditional on a Terminal Capacity Expansion:
- (1) An Access Seeker who is not first in the Queue (the Notifying Access Seeker) but is seeking accessAccess from existing Available System Capacity at a date that is at least 6 months earlier than the date for commencement of Access applied for in the Access Application which is first in the Queue, may give notice in writing to DBCT Management in accordance with Section 5.4(e)(2) **(Notice)**.
 - (2) The Notice is to state that the Notifying Access Seeker is prepared to enter into an Access Agreement consistent (subject to the next sub-section) with its Access Application on the terms of the Standard Access Agreement or on any other terms agreed between DBCT Management and the Access Seeker.
 - (3) The Notice may state that the Notifying Access Seeker wishes to enter into an Access Agreement for a lower Tonnage, shorter term or earlier date for commencement of Access than requested in the Access Application, provided that any revised Access commencement date must not precede the date of the Notice.

If DBCT Management receives such Notice from the Notifying Access Seeker, it must promptly:

- (4) notify, in writing, all other Access Seekers that are ahead of the Notifying Access Seeker in the Queue (each a **Notified Access Seeker**) of this development (including the requested date for commencement of Access, but not the identity of the Notifying Access Seeker); and
 - (5) allow 3 months from the date when such notice is given by DBCT Management for each Notified Access Seeker to:
 - (A) deliver to DBCT Management two signed copies of an Access Agreement consistent with its Access Application (except that it may be for a lower Tonnage, shorter term or earlier date for commencement of Access than requested in the Access Application, provided that any revised Access commencement date must not precede the date of the Notice) and on the terms of the Standard Access Agreement or on other terms agreed between DBCT Management and a Notified Access Seeker); and
 - (B) deliver to DBCT Management any Security required by DBCT Management (acting consistently with this Framework).
- (f) **(Execution of Access Agreements in order of Access Seekers in Queue which commit)**
If, during the above 3 month period, one or more of the Notified Access Seekers:
- (1) delivers to DBCT Management such signed copies of an Access Agreement for Access to commence on a date which is the same as or earlier than the date for commencement of Access referred to in section 5.4(e)(3) (which, for clarification, may be a retrospective date, provided that any revised Access commencement date must not precede the date of the Notice); and
 - (2) also provides any Security reasonably required by DBCT Management (or does not provide such Security but the circumstances in Section 5.4(g) apply),
then DBCT Management must:
 - (3) give priority to such of those Notified Access Seekers that are seeking Access on the earliest date for commencement of Access (provided that, if there are two or more Notified Access Seekers each seeking Access commencing on the same date, priority will be given to the Notified Access Seekers in order of their position in the Queue);
 - (4) (subject to there being sufficient Available System Capacity at the relevant time) execute those copies of the Access Agreement; ~~and re-deliver one signed copy to such Notified Access Seeker; and~~
 - (A) ~~re-deliver one signed copy to such Notified Access Seeker; and~~
 - (5) ~~(B) repeat that process in order of the date for commencement of the access~~ Access that they are seeking with each successive Notified Access Seeker (if any) which has delivered during the 3 month period such a signed Access Agreement and any Security required by DBCT Management (acting consistently with this Framework).
- (g) **(Issues with provision of requested Security)** If a Notified Access Seeker is unable to provide any Security reasonably required by DBCT Management within the 3 month period referred to in Section 5.4(f), (or if, by the end of the first month of that 3 month period, the Access Seeker disputes DBCT Management's entitlement to the Security requested), the Access Agreement to be executed and delivered by the relevant Notified Access Seeker in that period will be modified so that it is a condition

precedent to it becoming effective that such Security is provided to DBCT Management within 20 Business Days after the Execution Date (or, if so disputed, Security which the Independent Expert determines to be fair is provided within 20 Business Days after the Independent Expert makes that determination), and the “Effective Date” will be adjusted accordingly.

- (h) **(Execution of Access Agreement with Notifying Access Seeker, if sufficient remaining Capacity)** If, after all Access Agreements with all Notified Access Seekers referred to in Section 5.4(e)(5) who have duly delivered signed documents (and provided Security if relevant) have been executed (or negotiations have ceased pursuant to Section 5.8), there is still sufficient Available System Capacity, then DBCT Management will conclude an Access Agreement with the Notifying Access Seeker for that Available System Capacity (or that part of it which the Notifying Access Seeker requires).
- (i) **(Clarifications)** For clarity:
 - (1) **(Position in Queue may be lost by not executing Access Agreement)** any Notified Access Seeker that does not within the above 3 month period deliver to DBCT Management a signed Access Agreement:
 - (A) may be removed by DBCT Management from the Queue, in which case the Notified Access Seeker’s Access Application will be taken to have been rejected and the Access Application negotiation process for that Notified Access Seeker will be discontinued, unless a bona fide ~~dispute~~Dispute in relation to the removal is referred under Section 16 – in which case, the Notified Access Seeker will maintain its position in the Queue until that ~~dispute~~Dispute is resolved; or
 - (B) will not, if DBCT Management does not remove the Notified Access Seeker from the Queue, lose its place in the Queue (although a Notifying Access Seeker which does execute an Access Agreement pursuant to this Section 5.4 will no longer be in the Queue in respect of the tonnage the subject of that Access Agreement) and the Access Application negotiation process for that Access Seeker will otherwise continue in accordance with Section 5 of this Framework;
 - (2) **(Considerations regarding removal from Queue)** in considering whether to remove an Access Seeker from the Queue under Section 5.4(i)(1), DBCT Management will have regard to:
 - (A) the date that the Access Seeker proposes to commence delivering coal to the Terminal in comparison with the date that the Notifying Access Seeker proposes to commence delivering coal to the Terminal;
 - (B) the tonnes that the Access Seeker requires to commence delivering coal to the Terminal in comparison with the tonnes that the Notifying Access Seeker proposes to commence delivering to the Terminal; and
 - (C) the likelihood of future Access becoming available at the Terminal on or prior to the date for commencement of Access sought by the Access Seeker that DBCT Management is considering whether to remove from the Queue;
 - (3) **(Amendments to Access Application)** except as provided for in Section 5.4(f)(1), an Access Seeker may not amend the date for commencement of delivery of

coal to the Terminal specified in its Access Application during the 3 month period which commences on the date the Access Seeker receives a notice from DBCT Management under Section 5.4(e)(4);

- (4) **(Offers of Access Agreement not to exceed Available System Capacity)** unless otherwise required by the Port Services Agreement or Section 11 of this Framework, DBCT Management must not offer to enter into an Access Agreement for Annual Contract Tonnage which would result in Aggregate Annual Contract Tonnage of all Access Holders and Existing Users exceeding the Available System Capacity at a relevant time; and
- (5) **(Access Seeker may accept lesser tonnage if insufficient capacity for tonnage applied for)** where the process in Sections 5.4(c), 5.4(e) and 5.4(f) would have the effect of giving an Access Seeker a right to enter into an Access Agreement, except for the fact that there is insufficient Available System Capacity to meet that Access Seeker's Access Application in full, DBCT Management must inform that Access Seeker to that effect, and the Access Seeker may elect to require an Access Agreement for a lesser tonnage consistent with Available System Capacity from time to time during the period originally applied for (subject to the other terms of this Framework), with the balance of the Annual Contract Tonnage originally applied for remaining the subject of the Access Application.

(Conditional Access Agreements)

- (j) **(Entry into an Access Agreement conditional on Terminal Capacity Expansion)** The following process will apply in relation to the entry into Access Agreements that are conditional, wholly or partly, on a Terminal Capacity Expansion (**Conditional Access Agreement**):
 - (1) When the Aggregate Annual Contract Tonnage sought within the next 5 years by Applicants in a Queue cannot be met from Available System Capacity, such that a Terminal Capacity Expansion may be justified, DBCT Management will invite an offer from each Applicant in the Queue to enter into a Conditional Access Agreement.
 - (2) Unless otherwise specified in a Conditional Access Agreement, the date for commencement of Access under a Conditional Access Agreement will be the date on which the Terminal Capacity Expansion is Complete and operating, and DBCT Management notifies Access Seekers in accordance with Section 11.1(l) or 11.1(q), as applicable, on which date the Conditional Access Agreement will take effect as an Access Agreement.
 - (3) In response to an invitation from DBCT Management given under Section 5.4(j)(1), any Access Seeker may make an offer to enter into a Conditional Access Agreement that may be (but need not be) subject to a condition precedent which relates to:
 - (A) **(Conditional on Terminal Capacity Expansion)** the triggering of an obligation by DBCT Management to perform a specified Terminal Capacity Expansion with a specified estimated cost within a specified estimated timeframe;
 - (B) **(Conditional on other System elements)** DBCT Management being reasonably satisfied that a Service Provider (other than DBCT Management), Access Holder, Existing User, Access Seeker or other

relevant entity has committed or will commit, subject only to conditions which are customary for that Service Provider and an expansion of that nature, to providing an expansion of a relevant part of the System which is necessary to create sufficient Available System Capacity; and/or

- (C) **(Conditional on Section 5.4(o) being satisfied)** DBCT Management being reasonably satisfied that the Access Seeker's Access ~~Rights~~rights are matched by an entitlement held by the Access ~~Holder~~Seeker or a person on its behalf to rail infrastructure access rights relating to the coal the subject of the Conditional Access Agreement.

The following provisions relate to any such offer:

- (4) **(Invitation to each Access Seeker)** DBCT Management must give the same notice (**Expansion Notice**) at the same time to each Access Seeker in the Queue, inviting them to submit to DBCT Management (by way of offer to DBCT Management) two signed copies of such a Conditional Access Agreement consistent with their Access Application (except that it may be for a lower tonnage or shorter term than originally requested provided there is a bona fide commercial reason for seeking such lower tonnage or shorter term) on the terms of the Standard Access Agreement or on any other terms which DBCT Management has notified the Access Seeker would be acceptable to DBCT Management, and subject to the condition precedent referred to above.
- (5) **(Position in Queue may be lost by not offering a Conditional Access Agreement)** Any Access Seeker that does not, within 3 months after DBCT Management gives the Access Seeker an Expansion Notice, deliver to DBCT Management a signed Conditional Access Agreement in accordance with the Expansion Notice:
 - (A) may, subject to Section 5.4(j)(6), be removed by DBCT Management from the Queue, in which case the Access Seeker's Access Application will be taken to have been rejected and the Access Application negotiation process for that Access Seeker will be discontinued; or
 - (B) will not, if DBCT Management does not remove the Access Seeker from the Queue, lose its place in the Queue (although if DBCT Management executes a Conditional Access Agreement offered by any other Access Seeker pursuant to this Section 5.4(j), that Access Seeker will, subject to Section 5.4(j)(11), no longer be in the Queue in respect of the Tonnage the subject of that Conditional Access Agreement) and the Access Application negotiation process for the Access Seeker will otherwise continue in accordance with Section 5 of this Framework.
- (6) **(Considerations regarding removal from Queue)** In considering whether to remove an Access Seeker from the Queue under section 5.4(j)(5)(A), DBCT Management will have regard to the extent to which the additional Annual Contract Tonnage that will be facilitated by the contemplated Terminal Capacity Expansion is reasonably required to provide the Access rights sought by the Access Seeker.
- (7) **(Amendments to Access Application)** Except as provided in Section 5.4(k)(5), an Access Seeker may not amend its Access Application during the 40 Business Day

period which commences on the date the Access Seeker receives an Expansion Notice.

- (8) **(Acceptance of offers in order of priority in Queue)** If, during the 3 month period following the giving of an Expansion Notice one or more of the Access Seekers in the Queue:

- (A) delivers to DBCT Management such signed copies of a Conditional Access Agreement; and
- (B) provides any Security required by DBCT Management (or the circumstances in Section 5.4(j)(9) apply),

DBCT Management will then give priority to the Access Seeker so doing which has the highest ranking in the Queue and (subject to there being sufficient Available System Capacity should the Terminal Capacity Expansion the subject of the condition precedent proceed) will execute their Conditional Access Agreement. DBCT Management will then repeat the process down the Queue with each successive Access Seeker (if any) which has delivered such a signed Conditional Access Agreement and any relevant Security during the 3 month period.

- (9) **(Issues with provision of Security requested)** If an Access Seeker is unable to provide the Security required by DBCT Management within the 3 month period referred to in Section 5.4(j)(8) (or, by the fifth Business Day of the 3 month period referred to in Section 5.4(j)(8), the Access Seeker disputes DBCT Management's entitlement to the Security requested), the Conditional Access Agreement to be executed will be modified so that it is a further condition precedent to it becoming effective that such Security is provided to DBCT Management within 20 Business Days after the Execution Date (or, if so disputed, a Security which the Independent Expert determines to be fair is provided within 20 Business Days after the Independent Expert makes that determination), and the "Effective Date" will be adjusted accordingly.

- (10) **(Termination if condition precedent not fulfilled)** Each Conditional Access Agreement referred to in Section 5.4(j)(4) and 5.4(j)(8) (as applicable) must be on the basis that it will terminate if a relevant condition precedent referred to in Section 5.4(j)(3)~~(A) or 5.4(j)(3)(B)~~ is not fulfilled within a reasonable period from the date of execution of the Conditional Access Agreement (which will not be less than 3 months). However, DBCT Management and an Access Seeker can agree to extend this period from time to time, as long as an extension for the same period has been offered by DBCT Management to all Access Seekers who have such condition precedent.

- (11) **(Access Seeker rejoins Queue if Conditional Access Agreements terminate)** If a Conditional Access Agreement referred to in Section 5.4(j)(8) terminates because:

- (A) a condition precedent referred to in Section 5.4(j)(3)~~(A) or 5.4(j)(3)(B)~~ has not been fulfilled within the reasonable period nominated (or any extended period as agreed between DBCT Management and each Access Seeker in accordance with Section 5.4(j)(10)), the relevant Access Seekers will resume their respective positions in the Queue as if the Access Seekers had never signed the Conditional Access Agreements; or

- (B) a condition precedent that requires the Access Seeker to provide Security (as referred to in Section 5.4(j)(9)) is not fulfilled, DBCT Management may exercise its discretion to remove that Access Seeker from the Queue in accordance with Sections 5.4(j)(5) and 5.4(j)(6) and, if so removed, the negotiation process for that Access Seeker in respect of the Terminal Capacity Expansion will be discontinued.
- (12) **(Reductions in contracted tonnage if estimated expansion of Terminal Capacity not achieved)** Each Conditional Access Agreement will include a provision entitling DBCT Management to re-determine Terminal Capacity and Expansion Component Capacity in accordance with Section 11.1(k) and to proportionately reduce the Annual Contract Tonnage allocated under the Conditional Access Agreement to the Access Seeker, subject to the following rules:
- (A) in relation to Socialised Terminal Capacity, if the capacity at the Existing Terminal determined by DBCT Management in accordance with Section 11.1(k)(~~23~~) is less than the estimation of aggregate (expanded) capacity at the Existing Terminal made at the time of entry into the Conditional Access Agreement, then DBCT Management will proportionately reduce the Annual Contract Tonnage in all Conditional Access Agreements so that the aggregate Tonnage of all Conditional Access Agreements is equal to the additional capacity at the Existing Terminal determined in accordance with Section 11.1(k) after the deduction of capacity required to eliminate any shortfall between aggregate Annual Contract Tonnages and capacity at the Existing Terminal which existed prior to the Terminal Capacity Expansion (see Section 5.4(k)(3));
- (B) unless otherwise agreed with participating Access Seekers, in relation to a Differentiated Expansion Component, any Differentially Priced Capacity will be allocated to meet the full entitlements of Access Seekers as set out under relevant Conditional Access Agreements.
- (13) **(Reduced Tonnages revert to Queue)** If DBCT Management reduces the Annual Contract Tonnage allocated under a Conditional Access Agreement in accordance with Section 5.4(j)(12), then - in respect of ~~those~~the number of ~~Tonnes~~those tonnes which are reduced - an Access Seeker which has had its ~~Tonnes~~tonnes reduced will be:
- (A) placed equal first in the Queue with any other Access Seekers whose ~~Tonnes~~tonnes have been reduced following the Terminal Capacity Expansion; and
- (B) taken not to have signed the relevant Conditional Access Agreement in respect of those ~~Tonnes~~tonnes.
- (14) **(Section 5.4(o) not affected)** Nothing in this Section 5.4(j) is to be construed as limiting or in any way being contrary to the principle of Handling of Annual Contract Tonnage only being able to be availed of to the extent of matching rail access entitlement, in Section 5.4(o).

(Overriding principles)

- (k) Despite any other provision of this Section 5.4:

- (1) **(Existing Access Applications transitioned)** Any outstanding Access Application lodged by an Access Seeker under the 2017 Access Undertaking which applied prior to this Framework will (for the purpose only of determining priority of lodgement and therefore priority in the Queue) be deemed to have been an Access Application lodged under this Framework, as if this Framework had commenced on the date that the first such Access Application was lodged;
 - (2) **(Application for extension of term has priority)** An Access Application to extend the term of an Access Agreement (to the extent that it does not increase the relevant Annual Contract Tonnage) to accord with a bona fide re-estimation of the life of a mine will have precedence over an Access Application for new tonnage;
 - (3) **(Terminal Capacity Expansion allocated first to eliminate shortfalls in capacity below already contracted tonnage)** If a Terminal Capacity Expansion is being Socialised, then the additional Terminal Capacity which results from that Terminal Capacity Expansion (determined in accordance with Section 11.1(k)) will be:
 - (A) firstly utilised to eliminate shortfalls in Annual Contract Tonnages under existing Access Agreements and Existing User Agreements; and
 - (B) only thereafter allocated to Annual Contract Tonnages under Conditional Access Agreements entered into in respect of that Terminal Capacity Expansion and proportionately reduced in accordance with Section 5.4(j)(12).
 - (4) **(Allocation of Differentially Priced Capacity)** Differentially Priced Capacity will be utilised to meet Annual Contract Tonnages under Access Agreements entered into by the Access Seekers in respect of the relevant Differentiated Expansion Component. Consequently, Access Seekers and Access Holders who are not Differentially Priced Access Seekers in respect of that Differentiated Expansion Component will have no entitlement to have that Differentially Priced Capacity utilised to eliminate shortfalls in Annual Contract Tonnages under their Access Agreements.
 - (5) **(Alternative arrangements in some cases if they achieve greater utilisation)** If, in a particular case, the strict application of the process set out in this Section 5.4 would result in a materially greater amount of Available System Capacity not being able to be utilised than could otherwise be the case if an alternative process is followed, then (in the interests of maximising coal exports from Queensland) DBCT Management may— enter into one or more Access Agreements in accordance with that alternative process.
- (I) **(Options to extend term taken into account)** For the purpose of this Section 5.4, an Access Holder or Existing User which has an option to extend the term of its Access Agreement or Existing User Agreement (as relevant) will initially be deemed to have exercised that option, when determining whether or not a Queue exists or needs to be formed in relation to a new Access Application. However, if DBCT Management has the right to do so, it may, on each occasion in which a Queue is formed or re-formed, endeavour to have the exercise of that option brought forward or waived (in the latter case with the intention that one or more waivers may result in the Queue no longer existing).

- (m) **(Other provisions of Framework not limited)** Nothing in this Section 5.4 will be taken to limit or be contrary to:
 - (1) any right DBCT Management has pursuant to Section 5.8; or
 - (2) any rights or obligations of DBCT Management in Section 11 relating to the expansion of the Terminal (in particular the principle of new Access Agreements only being entered into consistently with anticipated System Capacity).
- (n) **(Disclosure of certain Access Application details)** DBCT Management may at any time and from time to time disclose to any person the aggregate tonnage which is the subject of Access Applications but, except as:
 - (1) required by law;
 - (2) consented to by the relevant Access Seeker;
 - (3) reasonably necessary or desirable in relation to planning for operation of the Terminal; or
 - (4) reasonably required to be disclosed to a rail infrastructure provider to assist in development of the System Master Plan,DBCT Management will not disclose details of an Access Application (including details of the Access Seeker).
- (o) **(Entitlement to have Annual Contract Tonnage Handled must be matched by below rail access)** Despite any other provision in this Framework, DBCT Management must not enter into an Access Agreement with an Access Seeker unless it contains Clause 11.5 of the Standard Access Agreement (under which the Access Holder is not entitled to have its Annual Contract Tonnage Handled at the Terminal, to the extent and for such period as, the Access Holder has not demonstrated to the reasonable satisfaction of DBCT Management that that Annual Contract Tonnage is matched by an entitlement held by the Access Holder or a person on its behalf to railway track access relating to the coal the subject of the Access Agreement).
- (p) **(Notification of Differentially Priced Capacity)** Promptly following Completion of a Differentiated Expansion Component, DBCT Management will notify all Expansion Parties, Access Seekers in the Queue and all Access Holders of the following:
 - (1) the date of Completion;
 - (2) the Differentially Priced Capacity; and
 - (3) if any ~~Tonnage~~tonnage associated with the Differentiated Expansion Component is uncontracted and, if so, the ~~Tonnage~~tonnage which is available for Access Seekers.
- (q) **(Formation of a Differentiated Queue)** If at any time there are two or more current Access Applications received in respect of Differentially Priced Capacity and there is or will be insufficient System Capacity associated with Differentially Priced Capacity which is available at any relevant time to accommodate an increase in Handling of coal applied for in all of those Access Applications, a new queue will form in respect of the Differentially Priced Capacity (the **Differentiated Queue**).
- (r) **(Queuing Principles for a Differentiated Queue)** DBCT Management will manage any Differentiated Queue in accordance with the following principles:
 - (1) DBCT Management will apply the same general rules for priority as apply with respect to the Queue, under this Section 5.4.

- (2) Access Seekers must specify which queue they wish to join when applying for Access (the Queue or a Differentiated Queue).
 - (3) Access Seekers may be in both the Queue and a Differentiated Queue separately and simultaneously under different Access Applications.
 - (4) Where capacity becomes available in either the Queue or a Differentiated Queue (but not both queues), DBCT Management will invite all Access Seekers in the relevant queue to submit a signed Access Agreement in the priority order of the relevant queue.
- (s) **(Commercial discretion of DBCT Management where Access Application involves both queues)** Where Available System Capacity relies on Terminal Capacity that comprises both Socialised Capacity and Differentially Priced Capacity, DBCT Management will invite Access Seekers in both the Queue and the Differentiated Queue to submit a relevant signed Access Agreement in accordance with the queuing principles in this Section 5.4.
- (t) **(Reordering of queues applying commercial discretion)** If, having obtained signed Access Agreements from Access Seekers in respect of Available System Capacity under Section 5.4(s), DBCT Management determines that the most efficient use of Available System Capacity is to contract with the same Access Seeker in respect of both Socialised Terminal Capacity and Differentially Priced Capacity, it may accept a signed Access Agreement other than in the order of the relevant queue, provided that, prior to accepting such signed Access Agreement and subject to Section 5.4(u), DBCT Management:
- (1) has notified all other Access Seekers in each Queue of:
 - (A) its intention to reorder one or both queues; and
 - (B) any commercial principles which it intends to apply when reordering one or both queues; and
 - (2) has provided all Access Seekers with a reasonable opportunity to respond; and
 - (3) is satisfied (acting reasonably), based on any responses received from Access Seekers and applying those commercial principles, that there is no Access Seeker which is higher in either queue that is prepared to contract on an equivalent basis.
- For this purpose, any commercial principles must operate as between Access Seekers strictly on a non-discriminatory basis.
- (u) **(Dispute in relation to reordering of a queue)**
- (1) An Access Seeker may refer any disputeDispute in relation to reordering of a queue under Section 5.4(t) as a Dispute under Section 16.
 - (2) If a Dispute is raised in respect of any reordering of a queue, DBCT Management will not enter into any relevant Access Agreement under Section 5.4(t) unless and until the Dispute is withdrawn or determined and in accordance with any such determination.

5.5 Indicative Access Proposal

- (a) **(Timing for Indicative Access Proposal)** As soon as practicable and in any event within 20 Business Days following receipt of an Access Application (or, if additional information has been requested by DBCT Management under Section 5.3, within 20

Business Days of receipt of all of the additional information requested), DBCT Management must use its reasonable endeavours to provide the relevant Access Seeker with a response containing proposed terms and conditions of Access (**Indicative Access Proposal**).

- (b) **(Notice of additional time needed by DBCT Management)** If it is not reasonable to provide an Indicative Access Proposal within 20 Business Days of receipt of an Access Application (or, if applicable, the additional information requested under Section 5.3), DBCT Management must, as soon as practicable, but in any event, within 20 Business Days, advise the relevant Access Seeker of its estimate of the extra time required to deliver the Indicative Access Proposal.
- (c) **(Dispute by Access Seeker as to need for additional time)** If the Access Seeker is of the opinion that the estimate of extra time for preparation of the Indicative Access Proposal is excessive, then the Access Seeker may refer the matter for Expert Determination. DBCT Management must use reasonable efforts to provide the Indicative Access Proposal within the estimated time period provided by DBCT Management or as otherwise determined by the Independent Expert.
- (d) **(Content of Indicative Access Proposal)** The Indicative Access Proposal must set out:

[Drafting Note: This paragraph (d) and (e) will be amended in drafting changes to give effect to the pricing framework set out at Appendix 7 of DBCTM's submission dated 30 May 2018]

 - (1) an indicative assessment as to whether there is sufficient Available System Capacity at all relevant times (having regard amongst other things to outstanding Access Applications in a Queue) to accommodate the Access Application;
 - (2) advice in respect of the existence of (but not the identity of) other Access Seekers who have already submitted an Access Application and the aggregate tonnage profile(s) requested in those Access Applications;
 - (3) the Standard Access Agreement or a draft access agreement where the Access Application contemplates Access on ~~non-Reference~~Different Terms;
 - (4) the expiry date of the Indicative Access Proposal, which will be 30 Business Days following the date the Access Seeker receives the Indicative Access Proposal (should there be no notification by the Access Seeker pursuant to Section 5.6 that the Indicative Access Proposal has not been prepared in accordance with the Framework);
 - (5) if there is sufficient Available System Capacity to accommodate the Access Application, advice to that effect, and:
 - (A) if it is reasonable to provide such an indication, a non-binding indication of the expected Access Charges for the requested Services in the Access Application based on an allocation of Non-Expansion Costs in accordance with Section 10.7:
 - (B) if the sufficiency of Available System Capacity for the provision of any of the Access sought depends on the Completion of a planned or reasonably expected Terminal Capacity Expansion:
 - (i) ~~(A)~~ an initial assessment of the Pricing Method that will be applicable to the Access sought (including reasons), having regard to ~~any~~

~~planned or reasonably expected~~ the required Terminal Capacity Expansion ~~that is required, any relevant QCA rulings~~ Price Ruling(s) by an Expansion Arbitrator and the Expansion Pricing Principles;

(B) ~~an initial (alternative) estimate(s) of the Access Charge(s), including an estimate of current and, where reasonable to provide such estimate, prospective Access Charges, for the requested Services in the Access Application based on:~~

- (ii) ~~(i) the initial assessment of a non-binding indication of the expected Access Charges for the purposes of sub-paragraph (A) (where it is reasonable to provide such an indication) that is based on the applicable Pricing Method determined by the initial assessment referred to at sub-paragraph (B)(i); and~~
- (iii) ~~(ii) where provision of any of the Access sought depends upon completion of a if the Pricing Method for the required Terminal Capacity Expansion, the Pricing Method for which has not yet been determined by the QCA, the alternative Pricing Method, with the Non Expansion Costs being allocated in accordance with Section 10.11 for any estimates related to a Differentiated Expansion Component; an Expansion Arbitrator, a non-binding indication of the expected Access Charges for the purposes of sub-paragraph (A) (where it is reasonable to provide such an indication) that also includes an indication of the expected Access Charges where the applicable Pricing Method is not that determined by the initial assessment referred to at sub-paragraph (B)(i);~~

- (C) the current Terminal Master Plan and System Master Plan;
- (D) details of any additional information required by DBCT Management to progress the Access Application and develop the terms and conditions for acceptance; and
- (E) details of any security, guarantee, other support or other information required by DBCT Management to establish the solvency and creditworthiness of the Access Seeker and, where DBCT Management requires, its guarantor; and

(6) if there is insufficient Available System Capacity (as determined by reference to the assessment of System Capacity undertaken prior to the time of giving the indicative assessment) to accommodate the Access Application, advice to that effect, and:

- (A) reasonable particulars as to why this circumstance prevails;
- (B) an estimate of what the Available System Capacity is at relevant times;
- (C) whether a Queue has been formed in accordance with Section 5.4 of this Framework (including as a result of the relevant Access Application);
- (D) an initial assessment of the Pricing Method ~~that will be~~ applicable to the Access sought (including reasons) having regard to any planned or reasonably expected Terminal Capacity Expansions, ~~any relevant QCA rulings~~ Price Ruling(s) by an Expansion Arbitrator and the Expansion Pricing Principles;

- (E) ~~where reasonable, an estimate of prospective Access Charges for the requested Services in the Access Application based on:~~if it is reasonable to provide such an indication:
- (i) ~~the initial assessment of a non-binding indication of the expected Access Charges for the requested Services in the Access Application where the applicable Pricing Method is as determined by the initial assessment referred to at sub-paragraph (D) and Non-Expansion Costs are allocated in accordance with Section 10.7;~~ and
 - (ii) ~~the alternative Pricing Method,~~
 - (iii) ~~with the Non-Expansion Costs being if the Pricing Method for the required Terminal Capacity Expansion has not yet been determined by an Expansion Arbitrator, a non-binding indication of the expected Access Charges for the requested Services in the Access Application where the applicable Pricing Method is not that determined by the initial assessment referred to at sub-paragraph (D) and Non-Expansion Costs are allocated in accordance with Section 10.11 for any estimates related to a Differentiated Expansion Component; and 10.7;~~
- (F) a copy of the System Master Plan and an indicative timetable for any expansion of System Capacity which may be undertaken (if any).
- (e) **(Best Endeavours estimate indication of Access Charges)** In ~~estimating assessing~~ the applicable Pricing Method(s) and providing a non-binding indication of the likely resulting Access Charges for the purpose of this Section 5, DBCT Management shall use its best endeavours to provide an accurate ~~assessment~~indication of the likely Pricing Method and Access Charges, having regard to all available information.
- (f) **(Indicative Access Proposal not binding on DBCT Management)** The Indicative Access Proposal will, unless it contains specific conditions to the contrary, contain indicative arrangements only and does not oblige DBCT Management to provide Access.
- (g) **(Access Seeker may dispute time-frame)** If, after 20 Business Days following DBCT Management's acknowledgment of the Access Application, the Access Seeker believes that DBCT Management is not making reasonable progress in the preparation of the Indicative Access Proposal, the Access Seeker may refer the ~~matter for dispute resolution in accordance with Section 16 of this Framework~~timing of the provision by DBCT Management of the Indicative Access Proposal for Expert Determination.
- (h) **(Where Terminal Capacity Expansion is needed to satisfy an Access Application)** Where there is not sufficient Available System Capacity to accommodate the Access Application and the Access Seeker wishes to continue the negotiation process provided for in this Section 5, such negotiations may continue on the basis that a Terminal Capacity Expansion may be undertaken in accordance with Section 11 of this Framework which (whether with or without any relevant expansion of other components of the System) is estimated to provide sufficient Available System Capacity. In this case, if DBCT Management is unable to comply with the timeframes specified in Section 5 of this Framework, it will advise the Access Seeker of the estimated timeframes. If the Access Seeker does not believe the proposed timetable is reasonable or believes that DBCT Management is not making reasonable progress, it

may refer the ~~matter to dispute resolution in accordance with Section 16 of this Framework~~[timetable for Expert Determination](#).

5.6 Response to Indicative Access Proposal

- (a) **(Access Seeker's response)** If the Access Seeker intends to progress its Access Application on the basis of the arrangements set out in the Indicative Access Proposal, it must notify DBCT Management of its intention to do so within 30 Business Days of the date it receives the Indicative Access Proposal. If the Access Seeker does not notify DBCT Management of its intention before the expiry date of the Indicative Access Proposal, its Access Application will be deemed to have lapsed and it may apply again for Access in accordance with Section 5.2 (unless a longer period for notification is agreed between the parties).
- (b) **(DBCT Management to expedite any replacement Access Application)** If an Access Application lapses but the Access Seeker lodges a replacement Access Application, DBCT Management will endeavour in good faith to expedite the steps leading to the issue of a new Indicative Access Proposal.
- (c) **(Notice of non-complying Indicative Access Proposal)** If the Access Seeker considers that the Indicative Access Proposal has not been prepared in accordance with Section 5.5 of this Framework, it must ~~notify~~[give](#) DBCT Management [notice](#) in writing within 20 Business Days of receipt of the Indicative Access Proposal, ~~notice~~ to that effect, setting out the reasons why the Access Seeker believes that the Indicative Access Proposal is inconsistent with Section 5.5 of this Framework.
- (d) **(Response to notice of non-compliance)** DBCT Management must use all reasonable efforts to respond to ~~this~~[a notice of non-compliance under paragraph \(c\) of this Section 5.6](#), including, where appropriate, the making of revisions to the Indicative Access Proposal, within 20 Business Days of the ~~notification under this Section 5.6 notice~~. If DBCT Management is unable to respond within this time period, it must notify the Access Seeker of the date on which it expects to be able to respond.
- (e) **(Dispute relating to Indicative Access Proposal)** If the Access Seeker is not satisfied with:
 - (1) the response to the notice given under [paragraph \(c\) of this Section 5.6](#); or
 - (2) DBCT Management's estimated date to respond to ~~the~~[that](#) notice,
 the Access Seeker may ~~seek to resolve the dispute in accordance with the dispute resolution procedure in Section 16~~[refer the matter for Expert Determination](#).

5.7 Negotiation process

- (a) **(Parties to negotiate if Access Seeker wishes to)** If the Access Seeker indicates its willingness to progress its Access Application under Section 5.6 (or otherwise, in the case of an Access Application of the type referred to in paragraph (b) of the definition of that term), then both parties must commence negotiations as soon as reasonably possible to progress towards an Access Agreement or a Conditional Access Agreement. The period for negotiation will commence on the date notified by the Access Seeker under Section 5.6(a) (or the date 5 Business Days after the commencement of the Term in the case of an Access Application referred to in paragraph (b) of the definition of ~~that~~[the](#) term [Access Application](#), even if there have been discussions prior to that date) and end upon any of the following events:

- (1) execution of an Access Agreement or Conditional Access Agreement in respect of Access sought by the Access Seeker;
 - (2) written notification by the Access Seeker that it no longer wishes to proceed with its Access Application (at which time its Access Application will be deemed to have lapsed);
 - (3) DBCT Management issuing a Negotiation Cessation Notice to the Access Seeker in accordance with Section 5.8;
 - (4) the expiration of 6 months from the commencement of the negotiation period or, if both parties agree to an extension of the negotiation period, the expiration of the agreed extended term, provided that agreement to extend the negotiation period is not unreasonably withheld by either party;
 - (5) a reduction in Available System Capacity due to:
 - (A) another Access Seeker finalising an Access Agreement in accordance with this Framework, where that reduction in Available System Capacity adversely affects DBCT Management's ability to offer Access to the Access Seeker under the terms of the Indicative Access Proposal; or
 - (B) a sustained change in the System operating assumptions of one or more components of the Dalrymple Bay Coal Chain requiring re-determination of System Capacity under Section 11.1, where that reduction in Available System Capacity adversely affects DBCT Management's ability to provide Access to the Access Seeker under the terms of the Indicative Access Proposal; or
 - (6) DBCT Management receiving Notice from a Notifying Access Seeker in accordance with section 5.4(e), for the process contemplated by Section 5.4(f) to occur.
- (b) **(Review of Indicative Access Proposal)** In the event that the negotiation period is suspended for the reasons set out in Section 5.7(a)(5) or Section 5.7(a)(6)~~,⁷~~ (and once the process contemplated by Section 5.4(f) to Section 5.4(h) is complete, if applicable)⁸, DBCT Management must review the Indicative Access Proposal and prepare a revised Indicative Access Proposal in accordance with Section 5.5 and the negotiation process will recommence from the date this is provided to the Access Seeker.
- (c) **(Revisions to Access Application)** During the negotiation period, the Access Seeker may review and revise the information provided to DBCT Management in the Access Application, provided that such revision does not substantially alter the nature of the Access rights sought by the Access Seeker and is not otherwise prohibited under Section 5.4(i)(3), 5.4(j)(7) or 5.10(h). If DBCT Management is reasonably of the view that an Access Seeker's revision of information provided to DBCT Management in the Access Application has substantially altered the nature of the Access rights sought by the Access Seeker, then subject to ~~the following paragraph~~⁹ paragraphs (d) and (e) of this Section 5.7, DBCT Management will treat the revised information as a new Access Application, and the process set out in this Section 5 will recommence from that point. If the revision is for an increase in the annual tonnage required or a longer term, then only the additional annual tonnage or additional term (as applicable) will be taken to constitute the subject of a new Access Application.

- (d) **(Certain extensions of term do not create new Access Application)** If, in the case of an Access Application referred to in paragraph (b) of the definition of that term, the revision is for an increase in the term from 5 or more years, then the extended term will be treated as part of the original Access Application.
- (e) **(Reduction in tonnage applied for does not create new Access Application)** A reduction in tonnage or term will not, of itself, constitute a new Access Application pursuant to this paragraph if there is a bona fide commercial reason for such reduction.
- (f) **(Dispute relating to negotiation)** If at any time a Dispute arises between the parties during the negotiation period ~~a dispute arises between the parties that, after reasonable negotiations, and~~ the parties are unable to resolve the Dispute to their mutual satisfaction, then either party may seek to resolve the ~~dispute~~ Dispute in accordance with the dispute resolution process set out in Section 16 ~~within 3 months after the end of the negotiation period in accordance with Section 5.7(a)(4).~~
- (g) **(Negotiations to continue despite ~~dispute~~ Dispute)** To remove any doubt, the negotiation process and the obligations of the parties in that regard are to continue notwithstanding the commencement of a dispute resolution process pursuant to Section 16 of this Framework.

5.8 Negotiation Cessation Notice

- (a) **(Negotiation Cessation Notice)** At any time during the negotiation process under Section 5.7, DBCT Management may give notice to an Access Seeker that it does not intend to enter into an Access Agreement with the Access Seeker (such notice being a Negotiation Cessation Notice), if:
 - (1) an Access Seeker does not comply with all of its material obligations contained in this Framework;
 - (2) DBCT Management is reasonably of the opinion that there is no reasonable likelihood that the Access Seeker will comply with the material terms and conditions of an Access Agreement;
 - (3) DBCT Management is reasonably of the opinion that the Access Seeker has no genuine intention of gaining Access, or has no reasonable likelihood of utilising Access, at the level of capacity sought;
 - (4) DBCT Management is reasonably of the opinion that the Access Seeker or its guarantor is not or is likely not to be reputable or of good financial standing;
 - (5) except where the decision of an Independent Expert contains manifest error, the Access Seeker does not materially comply with a decision of the Independent Expert pursuant to Section 16.3; or
 - (6) an Access Seeker does not materially comply with a decision of the Arbitrator pursuant to Section 16.4.
- (b) **(Negotiation Cessation Notice to include reasons)** A Negotiation Cessation Notice must identify the reasons for DBCT Management's decision not to enter into an Access Agreement with the Access Seeker.
- (c) **(Examples of no reasonable likelihood of compliance)** It will be reasonable for DBCT Management to form the view that circumstances in Section 5.8(a)(2) or 5.8(a)(4) apply if for example:

- (1) the Access Seeker is Insolvent;
 - (2) the Access Seeker, or a Related Body Corporate of the Access Seeker, is currently or has in the previous two years been in material default of any Access Agreement (which has not been promptly rectified), Existing User Agreement or any other agreement where its performance under that agreement is relevant to the Access Seeker's likely performance under an Access Agreement; or
 - (3) the Access Seeker or a proposed provider of Security fail to establish their solvency and creditworthiness in accordance with Section 5.9.
- (d) **(Dispute as to Negotiation Cessation Notice)** If the Access Seeker reasonably considers that DBCT Management has improperly given it a Negotiation Cessation Notice, then (provided that Section 5.8(c)(1), 5.8(c)(2) or 5.8(c)(3) do not apply) the Access Seeker may refer the matter to dispute resolution in accordance with Section 16. If the resolution of the disputeDispute is in favour of the Access Seeker, DBCT Management must re-commence negotiations with that Access Seeker.
- (e) **(Recovery of costs of DBCT Management)** Subject to any disputeDispute on the matter being otherwise determined, DBCT Management may recover from the Access Seeker its reasonable costs incurred in negotiations with the Access Seeker where it ceases negotiations in accordance with a Negotiation Cessation Notice validly issued under this Section 5.8. ~~The Access Seeker may refer a~~ A Dispute about the recovery of these costs may be referred to dispute resolution in accordance with Section 16 of this Framework.

5.9 Creditworthiness of Access Seeker

- (a) **(Access Seeker to be creditworthy)** DBCT Management:
- (1) may remove from the Queue; and
 - (2) regardless of whether the relevant Access Seeker has been removed from the Queue by DBCT Management, will not be required to enter into an Access Agreement or proceed with an Access Application with, an Access Seeker which is or has become Insolvent or which, after DBCT Management's reasonable request, fails within a reasonable period to establish or confirm its likely creditworthiness for the term of the Access Agreement required, or to provide adequate Security from another entity which establishes or confirms its likely creditworthiness for the term of the Access Agreement required.
- (b) **(Information as to solvency)** To confirm the solvency and creditworthiness of an Access Seeker and, where DBCT Management requires, the provider of a Security, the Access Seeker will provide such information as may be reasonably requested by DBCT Management to establish that solvency and creditworthiness.
- (c) **(Provision of Security)** If an Access Seeker or, where DBCT Management requires, its Security provider, is unable to establish their solvency and creditworthiness in their own right, creditworthiness may be established by the Access Seeker and Security provider by providing further Security (as reasonably required by DBCT Management), for example (but not limited to) any one or more of:
- (1) letters of credit;
 - (2) tripartite agreements with project financiers; and

- (3) guarantees or security from entities with a Standard and Poors or Moodys rating of not less than investment grade.
- (d) **(Access Agreement may permit Security to be required)** For clarification, nothing in this Section 5.9 limits the rights of DBCT Management under an Access Agreement to require Security (or additional Security) after the commencement of an Access Agreement in accordance with the terms of that Access Agreement.

5.10 Funding of feasibility studies

[Drafting Note: Consequential amendments to this clause 5.10 will be required in drafting changes to give effect to the pricing framework set out at Appendix 7 of DBCTM's submission dated 30 May 2018]

- (a) **(Funding of System Capacity studies)** If DBCT Management is required to undertake a System Capacity assessment under Section 11.1 which is not otherwise funded as part of feasibility studies for an Expansion Component under this Section 5.10, DBCT Management may recover the reasonable costs of such assessment as attributable to the Existing Terminal through NECAP. DBCT Management will consult with and make available the results of all capacity assessments undertaken in accordance with Section 11.1 to all Access Holders and Expansion Parties, including separately identifying:-
 - (1) the assessed capacity of the Existing Terminal;
 - (2) the projected capacity of a Terminal Capacity Expansion, including, if relevant, the projected capacity of a Differentiated Expansion Component; and
 - (3) the Expansion Component options being considered in any feasibility studies under this Section 5.10.
- (b) **(Request for Access Applicants to Fund Feasibility Studies)** If DBCT Management, acting reasonably, concludes that the Aggregate Annual Contract Tonnages applied for in Access Applications lodged with it, together with all other relevant circumstances, justify the undertaking of a study to determine the feasibility of a relevant Terminal Capacity Expansion then DBCT Management may, subject to Section 5.10(c), give Access Applicants in the Queue a notice requesting that they enter into a Funding Agreement or Underwriting Agreement with DBCT Management. DBCT Management may not make such a request unless a Funding Agreement or Underwriting Agreement (as applicable) has been made and published on the DBCT Management's website in accordance with Section 5.10(q)(9)(AE).
- (c) **(Notices will be given simultaneously)** DBCT Management will, in giving notices under Section 5.10(ab), give such notices to all Access Applicants in the Queue, as relevant to the contemplated increase in Annual Contract Tonnage which would be facilitated by the Terminal Capacity Expansion under consideration, on or about the same date.
- (d) **(Requests to be proportionate to tonnages applied for)** DBCT Management will request that any funding or underwriting of the feasibility study or feasibility studies referred to in Section 5.10(ab) pursuant to a Funding Agreement or Underwriting Agreement (as applicable) be proportionate amongst the relevant participating Access Applicants, according to the respective Aggregate sum of the Annual Contract Tonnages requested in their Access Applications over the first 10 years of Handling under the Conditional Access Agreement applied for by them.

- (e) **(Order of responses to notices)** DBCT Management must, in dealing with responses from Access Applicants to notices given by DBCT Management under Section 5.10(~~a~~b), start with the response given by the Access Applicant that has the highest ranking in the Queue and proceed to the response given by each successive Access Applicant in order of their respective ranking in the Queue.
- (f) **(Position in Queue may be lost to subsequent Applicants)** If an Access Applicant is requested by DBCT Management to enter into a Funding Agreement or Underwriting Agreement but the Access Applicant:
 - (1) declines to do so;
 - (2) fails to enter into a Funding Agreement or Underwriting Agreement (as applicable) with DBCT Management on such terms as DBCT Management reasonably requires within 3 months after being requested by DBCT Management to do so; or
 - (3) does not provide security required by DBCT Management in connection with the Funding Agreement or Underwriting Agreement (as applicable) within 3 months after being requested by DBCT Management to do so,(such an Access Applicant being a **Non-Funding Access Applicant**) then:
 - (4) DBCT Management may, subject to Section 5.10(g), remove the Non-Funding Access Applicant from the Queue, in which case the Non-Funding Access Applicant's Access Application will be taken to have been rejected; or
 - (5) if DBCT Management does not remove the Non-Funding Access Applicant from the Queue, then to the extent that any Access Applicant(s) after the Non-Funding Access Applicant in the Queue within 3 months thereafter:
 - (A) ~~enters~~enter(s) into a Funding Agreement or Underwriting Agreement with DBCT Management; and
 - (B) ~~provides~~provide(s) security required by DBCT Management in relation to the Funding Agreement or Underwriting Agreement (as applicable) of at least the aggregate amount that is required by DBCT Management to fund or underwrite the study referred to in Section 5.10(~~a~~b) in the proportion to which the tonnage applied for by an Access Applicant bears to the ~~aggregate~~—additional Aggregate Annual Contract Tonnage that will be facilitated by the contemplated Terminal Capacity Expansion,
those subsequent Access Applicants will, from the date on which they are legally committed to provide or underwrite such feasibility funding and provide security under the Funding Agreement or Underwriting Agreement (as applicable), have priority in the Queue ahead of the Non-Funding Access Applicant.
- (g) **(Considerations regarding removal from Queue)** In considering whether to remove an Access Seeker from the Queue under section 5.10(f)(4), DBCT Management will have regard to the extent to which the additional Annual Contract Tonnage that will be facilitated by the contemplated Terminal Capacity Expansion is reasonably required to provide the Access rights sought by the Access Seeker.
- (h) **(Amendments to Access Application)** An Access Seeker may not amend its Access Application during the 3 month period which commences on the date the Access Seeker receives a notice from DBCT Management under Section 5.10(b).

- (i) **(Priorities restored if feasibility study does not proceed)** If an Access Applicant obtains a higher priority in the Queue as a result of Section 5.10(f), and DBCT Management elects not to proceed with the relevant feasibility study, then the relevant Access Applicant will again have the same priority in the Queue as it would have had ~~as~~ if Section 5.10(f) did not apply.
- (j) **(Clarifications)** Nothing in this Section 5.10:
 - (1) requires DBCT Management to proceed with a FEL 1 Feasibility Study, FEL 2 Feasibility Study or FEL 3 Feasibility Study (as the case may be) unless it secures a Funding Agreement or Underwriting Agreement in respect of the full cost of that feasibility study from one or more Access Seekers;
 - (2) prohibits an Access Seeker from providing more than its required proportion in respect of any funding or underwriting requested for Feasibility Studies (but providing a greater proportion does not in itself entitle that Access Seeker to any additional tonnage under an Access Agreement); or
 - (3) is to be taken as limiting the obligations of DBCT Management in Section 11.
- (k) **(Disputes relating to requests for Feasibility Funding)** If any Access Applicant considers that the terms of the Funding Agreement, Underwriting Agreement or the amount or type of security required in connection with the Funding Agreement or Underwriting Agreement requested by DBCT Management pursuant to Sections 5.10(b) and 5.10(d) are not reasonable, it may within 3 months after being requested to enter into a Funding Agreement or Underwriting Agreement and to provide security, apply for Expert Determination to determine what is reasonable, and in such event:
 - (1) the determination of the Independent Expert as to what is reasonable will apply in respect of what DBCT Management can require from each Access Applicant; and
 - (2) the period of 3 months in Section 5.10(f) will become a period ending 15 days after the Independent Expert notifies its determination.The terms of a Funding Agreement or Underwriting Agreement will be reasonable to the extent that they are consistent with the terms of thea Standard Funding Agreement or Standard Underwriting Agreement (as applicable), ~~or is otherwise approved by the Independent Expert~~ in accordance with Section 5.10(q).
- (l) **(FEL 3 Feasibility Funding)** If DBCT Management having completed a FEL 1 Feasibility Study and FEL 2 Feasibility Study, acting reasonably and consistently with prudent business practice concludes that Aggregate Annual Contract Tonnage applied for in one or more Access Applications lodged with it, together with all other relevant circumstances, justify it undertaking a FEL 3 Feasibility Study, DBCT Management may, at its own cost, undertake a FEL 3 Feasibility Study. For clarity, if DBCT Management undertakes to independently fund a FEL 3 Feasibility Study this will not affect the entitlement of any Funding Access Seekers (which funded the relevant FEL 1 Feasibility Study and FEL 2 Feasibility Study) to continue to participate in any subsequent Expansion Component.
- (m) **(Transitional arrangements for previous funding)** If at the Commencement Date DBCT Management is undertaking a FEL 1 Feasibility Study or FEL 2 Feasibility Study in respect of a relevant proposed Terminal Capacity Expansion, DBCT Management may

(by giving not less than 14 days written notice) give Access Applicants in the Queue a notice requesting that they enter into a Funding Agreement or Underwriting Agreement with DBCT Management in which case:

- (1) Sections 5.10(d), 5.10(e), 5.10(f), 5.10(g), 5.10(i) and 5.10(k) apply (with such modifications as the circumstances require); and
 - (2) if the Feasibility Study being undertaken at the Commencement Date is a FEL 2 Feasibility Study, the Funding Agreement and Underwriting Agreement will apply to the FEL 2 Feasibility Study and the FEL 1 Feasibility Study which preceded the FEL 2 Feasibility Study.
- (n) **(Credit for prior Funding, and refunds)** If an Access Seeker has provided funding for a Feasibility Study referred to in Section 5.10(m) prior to the Commencement Date, the amount funded will be deemed to be a contribution to the funding requested under Section 5.10(m). To the extent that an Access Seeker has contributed funds (as opposed to underwriting the funding) prior to the Commencement Date in excess of the funds required to be contributed under Section 5.10(m) DBCT Management may elect to refund to that Access Seeker such excess funding or credit it towards any further contribution to a Feasibility Study required or agreed to be paid by that Access Seeker.
- (o) **(Contributions to Funding of Feasibility Studies by DBCT Management)** DBCT Management may at its discretion elect to itself bear, or be required under law or by the Port Services Agreement to itself fund, all or part of the costs of a FEL 1 Feasibility Study, FEL 2 Feasibility Study or FEL 3 Feasibility Study which one or more Access Applicants do not fund or underwrite in accordance with a Funding Agreement or Underwriting Agreement (as applicable). Nothing in this Section 5.10(o) affects:
- (1) DBCT Management's rights to apply to ~~have such sum included in the relevant Regulated Asset Base~~ recover such sum through the Initial Terminal Infrastructure Charge in the case of a Differentiated Expansion Component, or adjustment to the Terminal Infrastructure Charge for the Existing Terminal on the occurrence of a Review Event of the kind described in paragraph (b) of the definition of that term in the case of a Socialised Expansion, if the relevant proposed Terminal Capacity Expansion proceeds;
 - (2) ~~DBCT Management's right to apply to have such sum (but not exceeding 20% of the prudent cost of the FEL 1 Feasibility Study or FEL 2 Feasibility Study (as relevant)) included in the relevant Regulated Asset Base on a Review Event if the proposed Terminal Capacity Expansion does not proceed;~~
 - (2) ~~(3)~~ DBCT Management's rights to apply to have such sum included in the relevant Regulated Asset Base prudent Capital Expenditure determined by an Expansion Arbitrator if DBCT Management is required by Section 11 of this Framework to investigate or undertake a Terminal Capacity Expansion; or
 - (3) ~~(4)~~ DBCT Management's obligation (if any) to fund a FEL 3 Feasibility Study.
- (p) **(Refund of FEL 1, FEL 2 and FEL 3 contributions if Terminal Capacity Expansion proceeds)** In the event that the Terminal Capacity Expansion the subject of a FEL 1 Feasibility Study and FEL 2 Feasibility Study and FEL 3 Feasibility Study proceeds and substantial site works commence, DBCT Management will promptly following the commencement of substantial site works:

- (1) refund to each Funding Access Seeker who contributed funds (as opposed to underwriting the funding) under Section 5.10(b) for that Terminal Capacity Expansion the funds provided by that Access Seeker; and
 - (2) release any underwriting commitment made by each Funding Access Seeker in respect of that Terminal Capacity Expansion.
- (q) **(Preparation and approval of Standard Funding Agreement or Standard Underwriting Agreement)**
- (1) DBCT Management must prepare a proposed Standard Funding Agreement or proposed **Standard Underwriting Agreement** (as applicable) (**Proposed Standard Funding/Underwriting Agreement**) where:
 - (A) DBCT Management considers there to be reasonable likelihood that the Aggregate Annual Contract Tonnage applied for in ~~an~~—Access ~~Application~~Applications or Conditional Access ~~Agreement~~Agreements may justify undertaking Feasibility Studies during the term of the Access Framework; or
 - (B) DBCT Management receives a written notice from an Access Seeker or Access Holder requesting DBCT Management ~~develops~~develop a Proposed Standard Funding/Underwriting Agreement.
 - (2) In preparing a Proposed Standard Funding/Underwriting Agreement DBCT Management must consult with Access Seekers, Expansion Parties and Access Holders.
 - (3) A Proposed Standard Funding/Underwriting Agreement must be reasonable in all of the circumstances having regard to terms of the Framework and:
 - (A) the legitimate business interests of DBCT Holding in its capacity as the owner of the Terminal;
 - (B) the legitimate business interests of DBCT Management in its capacity as the ~~Operator~~operator of the Terminal;
 - (C) the public interest, including the public interest in having competition in markets (whether or not in Australia); and
 - (D) the interests of Access Seekers who have signed an Access Application Form or Access Renewal Form (as set out at Schedule A), or who are a party to a Conditional Access Agreement, and Access Applicants, including whether adequate provision has been made for compensation if the rights of the existing Access Holders or Existing Users are adversely affected.
 - (4) DBCT Management must publish the Proposed Standard Funding/Underwriting Agreement on its website and must separately notify all Access Holders and Access Seekers promptly following publication of DBCT Management's Proposed Standard Funding/Underwriting Agreement.
 - (5) An Access Seeker or Access Holder may, within 3 months after receiving the notice from DBCT Management, give DBCT Management a Dispute Notice under Section 16.1— regarding whether the Proposed Standard Funding/Underwriting Agreement is consistent with Section 5.10(q)(3). Such notice must specify the way in which the Access Seeker or Access Holder considers that the Proposed Standard Funding/Underwriting Agreement fails to satisfy Section 5.10(q)(3)

- and, if necessary, any amendments which the Access Seeker or Access Holder considers are necessary to satisfy Section 5.10(q)(3).
- (6) If the ~~dispute~~Dispute is not resolved in accordance with Section ~~16.2~~16.2, such ~~dispute~~Dispute is to be resolved in accordance with Section 16.4.
 - (7) ~~An~~If the Dispute is to be resolved in accordance with Section 16.4, an Arbitrator is to decide whether the Proposed Standard Funding/Underwriting Agreement satisfies Section 5.10(q)(3). If the Arbitrator decides that the Proposed Standard Funding/Underwriting Agreement does not satisfy Section 5.10(q)(3)~~-it, the Arbitrator~~ is to decide the terms of an alternative proposed Standard Funding Agreement or alternative proposed Standard Underwriting Agreement (as applicable) (**Alternative Proposed Standard Funding/Underwriting Agreement**) that it considers will satisfy Section 5.10(q)(3), provided that the Arbitrator must give DBCT Management a reasonable opportunity to consider and comment on the draft. The Arbitrator will take into account any comments made by DBCT Management in relation to the Arbitrator's~~s~~ draft.
 - (8) Notwithstanding a notice given under Section 5.10(q)(5), the Arbitrator may approve the Proposed Standard Funding/Underwriting Agreement, if the Arbitrator considers it reasonable in all of the circumstances having regard to terms of the Framework and the matters set out in ~~clause~~Section 5.10(q)(3)(A) ~~to 5.10(q)(3)(F)~~.
 - (9) If:
 - (A) no notice is given under Section 5.10(q)(5);
 - (B) notice is given under Section 5.10(q)(5) but the Dispute is resolved under Section 16.2;
 - (C) the Arbitrator decides that the Proposed Standard Funding/Underwriting Agreement satisfies Section 5.10(q)(3); or
 - (D) ~~(9) If no notice is given under Section 5.10(q)(5); or if the Arbitrator decides that the Proposed Standard Funding/Underwriting Agreement satisfies Section 5.10(q)(3); or if~~ the Arbitrator decides that an Alternative Proposed Standard Funding/Underwriting Agreement satisfies Section 5.10(q)(3), then:

then:

 - (E) ~~(A)~~the Proposed Standard Funding/Underwriting Agreement or the Alternative Proposed Standard Funding/Underwriting Agreement (~~or the~~ Alternative Proposed Standard Funding/Underwriting Agreement as the case may be) will become the approved Standard Funding Agreement or the approved Standard Underwriting Agreement (as applicable), which is to be published on DBCT Management's website; and
 - (F) ~~(B)~~DBCT Management will, if requested by Access Seekers or Access Holders, enter into agreements with Access Seekers or Access Holders, on the terms of the approved Standard Funding Agreement or approved Standard Underwriting Agreement (as applicable), unless otherwise agreed between DBCT Management and the relevant Access Seeker or Access Holder.

- (10) For clarity, nothing in this Section 5.10(q) limits or restricts DBCT Management or an Access Seeker or Access Holder from referring as a Dispute any failure to agree reasonable amendments to a Standard Funding Agreement/Underwriting Agreement where it is being used in respect of a specific Terminal Capacity Expansion.

5.11 Existing User Access Agreement Process

If an Access Agreement ~~or an Existing User Agreement~~ provides a mechanism for applications for additional capacity to be made by the relevant Access Holder under that ~~agreement~~Agreement, those provisions may be utilised by that Access Holder in respect of additional capacity sought under that ~~agreement~~Agreement, but such application will be treated as an Access Application for the purposes of ~~Section 5.4, and any other Section in Section 5 which is not inconsistent with the terms of that agreement will apply~~this Section 5.

5.12 Review of Pricing Method and Indicative Access Charges

[Drafting Note: Consequential amendments to this clause will be required in drafting changes to give effect to the pricing framework set out at Appendix 7 of DBCTM's submission dated 30 May 2018]

- (a) **(Review of estimated Access Charges)** Where an Indicative Access Proposal has been prepared on the basis that a Terminal Capacity Expansion would be required in order to accommodate the relevant Access Application:
- (1) as soon as practicable and in any event within 20 Business Days following completion of a FEL 1 Feasibility Study, DBCT Management must review the Indicative Access Proposal and provide the Access Seeker with a revised assessment of the applicable Pricing Method and estimated Access Charges for the Services requested in the Access Application (a **Revised Pricing Proposal**);
 - (2) as soon as practicable and in any event within 20 Business Days following completion of a FEL 2 Feasibility Study which supports proceeding to a FEL 3 Feasibility Study (including where that support is conditional on whether an Expansion Component will be priced Differentially or Socialised), DBCT Management must (unless it has already done so pursuant to Section 11.5(a)) review the Revised Pricing Proposal and apply to an Expansion Arbitrator for a ~~determination as to how it intends to treat the following matters~~ **Price Ruling** in respect of the Terminal Capacity Expansion under Section 11.5 that determines:
- (A) the applicable Pricing Method for the Terminal Capacity Expansion; and
- (B) ~~if the applicable Pricing Method is determined by an Expansion Arbitrator to be Differential, what Access Charges should apply to the Expansion Component, (a Price Ruling); and the prudent Capital Expenditure in respect of the Terminal Capacity Expansion, with which any determination of an amended TIC to apply in respect of the Existing Terminal or the Floor TIC in respect of a Differentiated Expansion Component following Completion of the Terminal Capacity Expansion under Section 10.4(e) or 10.6(b)(3) respectively should be consistent.~~
- ~~(C) any Different Terms for an Access Agreement in respect of the Terminal Capacity Expansion agreed.~~
- (b) **(Application for Price Ruling)** An application for a Price Ruling shall include:

- (1) information about the nature and amount of Capital Expenditure forecast to carry out the Terminal Capacity Expansion, as assessed in any Feasibility Studies;
 - (2) information about any Different Terms that will have been agreed;
 - ~~(3) a justification as to why the Access Agreement (incorporating any Different Terms) does not, and need not, comply with the Standard Access Agreement, but will nevertheless be economically and operationally prudent and result in DBCT Management achieving a regulated return that is commensurate with the cost and risks involved with the Terminal Capacity Expansion;~~
 - ~~(3) (4) information about the increase in Terminal Capacity expected to arise from the Terminal Capacity Expansion (and expected increases to System Capacity);~~
 - ~~(4) (5) information about positive or negative impacts on existing users of the Terminal Access Holders or existing operations of the Terminal;~~
 - ~~(5) (6) information about the forecast demand for Access to the increased Terminal Capacity;~~
 - ~~(6) (7) an assessment of the Pricing Method applicable to the Terminal Capacity Expansion, applying the Expansion Pricing Principles;~~
 - ~~(7) (8) information about the anticipated impact on Non-Expansion Costs for the Terminal; and~~
 - ~~(8) (9) an estimate of the Reference TariffTerminal Infrastructure Charge that will apply to the Differentiated Terminal Component ~~the subject of~~ if the Terminal Capacity Expansion, ~~if it was Differentiated and if it, or the amendment to the Terminal Infrastructure Charge that will apply if the Terminal Capacity Expansion~~ was Socialised, having regard to the information referred to above and the other pricing arrangements set out in Section 10.~~
- (c) **(Expansion Arbitrator to provide Price Ruling)** In response to an application for a Price Ruling, the Expansion Arbitrator shall, after conducting an investigation:
- (1) determine the application; and
 - (2) determine whether the Terminal Capacity Expansion should be Socialised or Differentiated, applying the Expansion Pricing Principles.

5.13 Access Transfers

- (a) In processing any request by an Access Holder or Access Seeker for a transfer of rights or entitlements under an Access Agreement (whether by way of assignment or novation), DBCT Management must consent to any such proposed transfer unless DBCT Management (acting reasonably) is satisfied that:
 - (1) the assignor is in material breach of its Access Agreement; or
 - (2) the assignee:
 - (A) is not of good financial standing, creditworthy and able to fully discharge the financial obligations of the Access Holder under the relevant Access Agreement or the assignee has not otherwise provided security in a form acceptable to DBCT Management (acting reasonably) for the performance of the obligations under this Agreement in respect of the transferred rights or entitlements;

- (B) is incapable of performing the obligations of the Access Holder under the Access Agreement in respect of the transferred rights or entitlements, including complying with the Terminal Regulations; ~~and/or~~
 - (C) is unable to reasonably demonstrate that the rights or entitlements to be transferred under the relevant Access Agreement are matched by an entitlement to railway track access held by the assignee or a person on its behalf.
- (b) The assignor must provide all information reasonably required by DBCT Management to assess the criteria specified in Section 5.13(a) to DBCT Management in a timely manner.
 - (c) DBCT Management must take all steps necessary to assess and respond to any request for a transfer as soon as reasonably practicable.
 - (d) ~~Without limitation to Section 16, an~~ An Access Holder or an Access Seeker may refer to the ~~Arbitrator as a~~ dispute under section 16 of this Framework:
 - (1) any refusal by DBCT Management to consent to a transfer;
 - (2) any failure to agree the reasonable terms governing an Access Agreement which is the subject of a transfer;
 - (3) any failure by DBCT Management in assessing or responding to a request for transfer in a timely manner.

6 Terminal Regulations

6.1 Compliance with Terminal Regulations

- (a) **(Compliance by DBCT Management and Operator)** DBCT Management acknowledges that under the Operation & Maintenance Contract DBCT Management and the Operator must comply with the Terminal Regulations. DBCT Management must comply with, and will procure that the Operator complies with, the Terminal Regulations in force from time to time.
- (b) **(Compliance by Access Holders is condition of access)** Each Access Holder must observe the Terminal Regulations, in force from time to time, as a condition of ~~access~~ to and the right to have its coal Handled at the Terminal.

6.2 Amendment of Terminal Regulations

- (a) **(Process for amending Terminal Regulations)** The Operator may, from time to time, by written notice to DBCT Management, propose amendments to the Terminal Regulations regarding operational issues. If the Operator submits to DBCT Management a proposed amendment to the Terminal Regulations DBCT Management must:
 - (1) conduct reasonable consultation with Access Holders, Access Seekers, Expansion Parties and/or Rail Operators in relation to the proposed amendment; and
 - (2) following the completion of such reasonable consultation, notify the Access Holders, Access Seekers, Expansion Parties and Rail Operators ~~of:~~
 - (A) of the wording of the proposed amendment;
 - (B) whether it has given its consent to the proposed amendment;

- (C) ofthe detailed reasons for its decision to give (or not give) consent to the proposed amendment; and
 - (D) except in the case of notification to Rail Operators, that there is a 30 day period for notifying DBCT Management of any objections to the decision to consent or not consent (as applicable) to the amendment.
- (b) **(Implementation of amended Terminal Regulations)** A proposed amendment to the Terminal Regulations will not be implemented unless:
- (1) DBCT Management has conducted reasonable consultation with Access Holders, Access Seekers, Expansion Parties and Rail Operators in accordance with Section 6.2(a)(1); and
 - (2) one of the following has occurred:
 - (A) DBCT Management has consented to the proposed amendment to the Terminal Regulations and no Access Holder, Access Seeker or Expansion Party has given notice to DBCT Management objecting to consent being provided to the proposed amendments within 30 days of being notified of the amendments by DBCT Management;
 - (B) DBCT Management has consented to the proposed amendments to the Terminal Regulations and while an Access Holder, Access Seeker or Expansion Party has given notice to DBCT Management objecting to consent being provided to the proposed amendments within 30 days of being notified of the amendments by DBCT Management, an Independent Expert appointed to hear the objection (in accordance with Section 6.2(f)) has rejected that objection; or
 - (C) DBCT Management has not consented to the proposed amendments to the Terminal Regulations, but an Access Holder, Access Seeker or Expansion Party has given notice to DBCT Management objecting to consent not being provided, and an Independent Expert appointed to hear the objection (in accordance with Section 6.2(g))— has upheld that objection.
- (c) **(Consent of DBCT Management)** DBCT Management will only give its consent to a proposed amendment to the Terminal Regulations under Section 6.2(b)(2)(A) or 6.2(b)(2)(B) if it has conducted reasonable consultation with Access Holders, Access Seekers, Expansion Parties and Rail Operators in accordance with Section 6.2(a)(1) and, taking into account the results of such consultation, it reasonably considers that:
- (1) the amendments relate to operational issues;
 - (2) the amended Terminal Regulations, as a whole, will operate equitably amongst Existing Users, Access Holders, Access Seekers (should they become Access Holders) and Expansion Parties (should they become Access Holders) and, where the relevant amendments affect Rail Operators, amongst affected Rail Operators;
 - (3) the amendments are consistent with this Framework, and any Access Agreements; and
 - (4) the amendments are reasonably necessary for the operation of the Terminal in accordance with applicable laws and regulatory standards, Approvals, Good

Operating and Maintenance Practice or any costs or obligations imposed are justified by the efficiency benefits arising from those costs or obligations.

- (d) **(Criteria for disputing refusal to provide consent)** If DBCT Management does not provide its consent to a proposed amendment to the Terminal Regulations, an Access Holder, Access Seeker or Expansion Party may object to DBCT Management's refusal to provide consent if they reasonably consider that:
 - (1) the amendments relate to operational issues;
 - (2) the amended Terminal Regulations, as a whole, will operate equitably amongst Existing Users, Access Holders, Access Seekers (should they become Access Holders) and Expansion Parties (should they become Access Holders) and, where the relevant amendments affect Rail Operators, amongst affected Rail Operators;
 - (3) the amendments are consistent with this Framework and any Access AgreementsAgreement of the Access Holder, Access Seeker or Expansion Party (as the case may be); and
 - (4) the amendments are reasonably necessary for the operation of the Terminal in accordance with applicable laws and regulatory standards, Approvals, Good Operating and Maintenance Practice or any costs or obligations imposed are justified by the efficiency benefits arising from those costs or obligations.
- (e) **(Notice of amendments to Terminal Regulations)** DBCT Management must notify all Access Holders, Access Seekers, Expansion Parties and Rail Operators of any amendments to the Terminal Regulations that have been approved and must provide a copy of the amended Terminal Regulations to these parties (which may be by way of reference to the website on which the amended Terminal Regulations are available in accordance with Section 6.2(i)).-
- (f) **(Objection to DBCT Management decision to approve amendment of Terminal Regulations)**
 - (1) If:
 - (A) DBCT Management has given its consent to a proposed amendment to the Terminal Regulations; and
 - (B) an Access Holder, Access Seeker or Expansion Party objects to the proposed amendment on the basis that it reasonably considers that the criteria specified in Sections 6.2(c)(1) to 6.2(c)(4) are not satisfied,
 then the Access Holder, Access Seeker or Expansion Party may, within 30 days after being notified of DBCT Management's consent, notify DBCT Management of its objection to the consent to the proposed amendment, such objection to be determined by an Independent Expert.
 - (2) If, in response to an objection notified by an Access Holder, Access Seeker or Expansion Party (whether under Section 6.2(f)(1) of this Framework or any corresponding provision of an Access Agreement), the Independent Expert determines that the criteria specified in Sections 6.2(c)(1) to 6.2(c)(4) are not satisfied then:
 - (A) the proposed amendment and DBCT Management's consent to the proposed amendment will be taken to have been withdrawn; and

- (B) the proposed amendment will not be made.
- (g) **(Objection to DBCT Management decision to reject amendment of Terminal Regulations)**
- (1) If:
- (A) DBCT Management has refused to give its consent to a proposed amendment to the Terminal Regulations; and
- (B) an Access Holder, Access Seeker or Expansion Party objects to DBCT Management not providing consent to the proposed amendment on the basis that it reasonably considers that the criteria specified in Sections 6.2(c)(1) to 6.2(c)(4) are satisfied,
- then the Access Holder, Access Seeker or Expansion Party may within 30 days of being notified of DBCT Management's refusal to give its consent to a proposed amendment to the Terminal Regulations, notify DBCT Management of its objection to DBCT Management not providing consent for the proposed amendment, such objection to be determined by an Independent Expert.
- (2) If, in response to an objection notified by an Access Holder, Access Seeker or Expansion Party (whether under Section 6.2(g)(1) of this Framework or any corresponding provision of an Access Agreement), the Independent Expert determines that the criteria in Sections 6.2(c)(1) to 6.2(c)(4) are satisfied, then:
- (A) DBCT Management's consent to the proposed amendment will be deemed to have been given; and
- (B) the proposed amendment will be made.
- (h) **(Protection of DBCT Management)** Subject to DBCT Management complying with Section 6.2(b), DBCT Management will not be liable to ~~the Rail Operators or~~ Access Seekers (and the Standard Access Agreement will provide that DBCT Management will have no liability (on any basis whatsoever) to an Access Holder which executes it) as a result of DBCT Management consenting to an amendment to the Terminal Regulations or the due implementation and observance of an amendment to the Terminal Regulations, as long as DBCT Management had in all respects acted reasonably and in good faith and (acting reasonably and in good faith) had formed the opinion required by Section 6.2(c). For clarification, this does not affect DBCT Management's obligation to do anything required on its part to cause the termination or consequential amendment of a Terminal Regulation after any determination that the Terminal Regulation breaches this Framework or a relevant Access Agreement.
- (i) **(DBCT Management to make copies available)** DBCT Management must make a copy of the Terminal Regulations available to each Access Holder, Access Seeker and Rail Operator (which may be by displaying it on DBCT Management's website).

7 Confidentiality requirements

7.1 Confidential Information to be kept confidential

Subject to ~~Section~~Sections 5.4(c) and 16.4(e) each relevant Access Seeker, Access Holder and DBCT Management will, at all times, keep confidential and not disclose to any other person, any Confidential Information exchanged under the negotiation arrangements in Section 5 of this Framework or any other part of this Framework, except:

- (a) where disclosure is required by any law or legally binding order of any court, government, semi-government authority, administrative or judicial body, or requirement of a stock exchange or regulator;
- (b) with the prior written consent of the relevant Access Seeker, Access Holder or DBCT Management, as applicable;
- (c) where disclosure is to the recipient's professional advisors provided that such professional advisors are under a duty of confidentiality;
- (d) to the extent disclosure is necessary for notifications to financiers, brokers, insurers or claims assessors or reasonably necessary in connection with seeking financing from a bona fide financier, provided that the broker, insurer, claims assessor or financier to whom the disclosure is made is under a legal obligation to keep the information confidential;
- (e) where disclosure is made to any person or body established to provide coordination in the Dalrymple Bay Coal Chain;
- (f) where disclosure is to a Capacity Expert, ~~an expert~~, Independent Expert, an Arbitrator, an Expansion Arbitrator, or a court (in the case of a party seeking urgent injunctive relief)— to the extent necessary for resolving a Dispute provided that DBCT Management does not disclose the Confidential Information of one Access Seeker or Access Holder to another Access Seeker or Access Holder without the first-mentioned Access Seeker's or Access Holder's consent, unless directed to by ~~the~~a Capacity Expert, ~~an expert~~, Independent Expert, an Arbitrator, an Expansion Arbitrator or a court (as the case may be); or
- (g) to the extent disclosure is required to protect the safety or security of persons or property or in connection with an accident or emergency.

7.2 Confidentiality deed

If required by either party, the parties will enter into a confidentiality deed substantially in the form set out in Schedule D of this Framework.

7.3 Use of Confidential Information

Without limiting the circumstances specified in this Section 7 in which Confidential Information may be used or disclosed, ~~both the~~an Access Seeker, an Access Holder and DBCT Management must otherwise only use Confidential Information provided ~~by the other party to it under this Framework~~ for the purposes for which it was provided.

7.4 Reporting of aggregated information

For the avoidance of doubt, nothing in this Section 7 prevents DBCT Management from:

- (a) complying with its obligations under Sections 9.1 and 9.2; or
- (b) disclosing, in the ordinary course of business, financial reporting information which has been aggregated with other information of a similar nature such that it cannot reasonably be, and is not reasonably capable of being, identified with, attributed to or used to identify, any Access Seeker, Access Holder, Existing User or Rail Operator.

8 Ring-fencing arrangements

8.1 No related Supply Chain Businesses

DBCT Management and its Related Bodies Corporate will not own or operate a Supply Chain Business- in any market that is related to or uses the Terminal.

8.2 Non-discrimination

DBCT Management will not:

- (a) engage in conduct for the purpose of preventing or hindering an Access Holder's or Access Seeker's Access; or
- (b) unfairly differentiate between Access Seekers, Access Holders,~~or Rail Operators~~.

8.3 Confidentiality undertaking by board members

DBCT Management will ensure that each of its directors executes a confidentiality deed pursuant to which the relevant director agrees to only use and disclose Confidential Information obtained as a director of DBCT Management in connection with its role as a director of DBCT Management.

8.4 Complaint handling

If an Access Holder,or Access Seeker,~~Rail Operator or other affected party~~ considers that DBCT Management may have breached one or more of its obligations under this Section 8 they may raise a dispute~~Dispute~~ in respect of such complaint in accordance with Section 16 of this Framework.

9 Reporting by DBCT Management

9.1 Indicators relating to compliance with this Framework

DBCT Management will Publicly Report on an annual basis the following information:

- (a) **(Indicative Access Proposals)** the number and percentage of total Indicative Access Proposals provided within the applicable timeframe;
- (b) **(Access Applications)** the number and percentage of Access Applications received for which an extension of time for provision of an Indicative Access Proposal was sought by DBCT Management;
- (c) **(Response times)** the average delay (in days) taken to provide an Indicative Access Proposal not provided within the applicable timeframe;
- (d) **(Disputes)** the number of instances where a Dispute has been referred to dispute resolution in accordance with Section 16;
- (e) **(Negotiation periods for successful outcomes)** the average length of the negotiation period (in days), where the negotiation period has commenced and has ceased as the result of the execution of an Access Agreement in respect of the Access sought by the Access Seeker;
- (f) **(Negotiation periods where no Access Agreement signed)** the average length of the negotiation period (in days), where the negotiation period has commenced and has ceased as the result of any reason other than the execution of an Access Agreement in respect of the Access sought by the Access Seeker;

- (g) **(Access Transfer Applications)** in respect of the Access Transfer processes set out in Section 5.13, the following:
 - (1) the number of requests received for a transfer of rights or entitlements; and
 - (2) the period taken to resolve each transfer, being in each case the period from the date of receipt of the request and ending on the earliest of the date that:
 - (A) an Access Agreement facilitating the transfer was executed by DBCT Management;
 - (B) DBCT Management gave notice to the transferor that consent for the transfer was refused; or
 - (C) any notice was given to the Arbitrator of a ~~dispute~~Dispute in relation to the purported transfer;
- (h) **(Access Agreements concluded)** the number of instances where a negotiation period that had commenced, ceased as the result of the execution of an Access Agreement in respect of the Access sought by the Access Seeker; and
- (i) **(Complaints)** written complaints received by DBCT Management in relation to its compliance with this Framework.

9.2 Indicators relating to service quality

DBCT Management is required to Publicly Report on the following service quality key performance indicators for the Terminal on a quarterly basis:

- (a) **(System delivery):**
 - (1) number of trains requested by the Operator and scheduled by the rail providers to arrive at the Terminal;
 - (2) actual number of trains completing unloading at the Terminal;
 - (3) number of tonnes of coal scheduled to be delivered to the Terminal; and
 - (4) number of tonnes of coal actually delivered to the Terminal,
for each month of the quarter.
- (b) **(Inloading performance):**
 - (1) average train unloading time at the Terminal (on a Terminal job-open to job-close basis); and
 - (2) average train unload time (from permission to unload the train until unloading of the last wagon is complete),
for each month of the quarter.
- (c) **(Stockyard performance):**
 - (1) average stock-build time per parcel; and
 - (2) average stock-residence time per parcel,
for each month of the quarter.
- (d) **(Out-loading performance):**

in respect of each outloading conveyor:

 - (1) average gross load rate per vessel class – first coal to last coal; and
 - (2) average utilisation of out-load conveyors,

- for each month of the quarter.
- (e) **(Vessel performance):**
- (1) number of vessels (by class);
 - (2) average number of parcels per vessel (by class);
 - (3) total tonnes per vessel (by class); and
 - (4) total tonnes shipped,
- for each month of the quarter.
- (f) **(Vessel queuing)** (vessels which have arrived and are awaiting berthing to load):
- (1) average daily total vessels in queue;
 - (2) average daily number of vessels in queue where relevant coal is not yet available to be railed to the Terminal (“dead ships”);
 - (3) vessel queuing times;
 - (4) queue ordering; and
 - (5) average waiting time to berth at anchor,
- for each month of the quarter.
- (g) **(Operating efficiency)** inloading and outloading.
- (h) **(Environmental performance):**
- (1) number of times during each month of the quarter that the “management objective” (as provided for in the Terminal’s environmental licence and approvals) in dust deposition was exceeded; and
 - (2) number of times during each month of the quarter that the “acoustic quality objective” (as provided for in the Terminal’s environmental licence and approvals) was exceeded.
- (i) **(Other)** any additional or alternative service quality key performance indicators that DBCT Management and Access Holders agree from time to time.

10 Pricing arrangements

[Drafting Note: This clause will be amended in drafting changes to give effect to the pricing framework set out at Appendix 7 of DBCTM's submission dated 30 May 2018.]

10.1 Application of Pricing Provisions

- (a) The Access Charges for each Terminal Component in respect of which the Access Holder has an entitlement to Access will be as agreed between DBCT Management and the Access Holder.
- (b) If DBCT Management and an Access Seeker are unable to agree Initial Access Charges to apply from the commencement of an Access Agreement or increased Access and one of them refers a Dispute relating to those Initial Access Charges for resolution in accordance with the dispute resolution process set out in Section 16 in accordance with Section 5.7(f) of this Framework, any determination by the Arbitrator of terms relating to Initial Access Charges in accordance with Section 16.4 of this Framework must be in accordance with Sections 10.3 to 10.5, except to the extent necessary to give effect to any matter agreed by the parties to the Arbitration.

- (c) If a Dispute concerning the Access Charges to apply under an Access Agreement, which contains pricing provisions that are substantively identical to those of the Standard Access Agreement applicable at the time of entry into that Access Agreement, for a Pricing Period that commences during the term of that Access Agreement (including the Initial Access Charges to apply from the start of the Pricing Period, the method of calculating, paying and reconciling the Access Charges to apply for the Pricing Period or any consequential changes in the drafting of the provisions of the Access Agreement) is referred by DBCT Management or the Access Holder for resolution in accordance with Section 16 of this Framework, in making any Arbitration determination in accordance with Section 16.4 of this Framework the Arbitrator must:
 - (1) determine the Initial Access Charges to apply from the start of the Pricing Period in accordance with Sections 10.3 to 10.5 of this Framework; and
 - (2) subject to paragraph (1) above, give effect to and make a determination that is consistent with the Standard Access Agreement in place under the Access Framework at the time of the Arbitrator's determination,

except to the extent necessary to give effect to any matter agreed by the parties to the Arbitration.
- (d) Section 10.6 applies to the review during a Pricing Period of the Access Charges applicable under an Access Agreement that contains pricing provisions that are substantively identical to those of the Standard Access Agreement applicable at the time of entry into the Access Agreement, and any determination by an Arbitrator of a Dispute concerning such a review that is referred for resolution by DBCT Management or the Access Holder in accordance with Section 16.4 of this Framework must be in accordance with Section 10.6, except to the extent necessary to give effect to any matter agreed by the parties to the Arbitration.
- (e) Sections 10.7 and 10.8 apply in accordance with their terms.

10.2 10.1 Interpretation of Pricing Provisions

- (a) In this ~~undertaking~~Framework, the following principles of interpretation shall apply:
 - (1) ~~(a)~~(Single meaning where only Socialisation applies) for so long as Access to the Terminal continues to be priced on a Socialised basis, ~~such that there is a single Annual Revenue Requirement for the entire Terminal, the Terms the terms~~ and definitions of this ~~Undertaking~~Framework relevant to pricing apply to all Access collectively; and
 - (2) ~~(b)~~(Alternative meanings where Differentiation applies) where, pursuant to Section ~~10.13~~10.8, Access to the Terminal is charged to one or more Access Holders on a ~~Differentiation basis, such that multiple Regulated Asset Bases, and Annual Revenue Requirements exist in respect of various Terminal Components~~Differentiated basis, the terms and definitions of this ~~Undertaking~~Framework relevant to pricing apply to each Terminal Component separately.

10.2 Pricing objectives

~~In developing Access Charges, DBCT Management's objectives are to:~~

- (a) ~~(Achieve ARR) achieve the ARR in each Financial Year in accordance with this Undertaking; by way of the Revenue Cap plus any applicable Additional Tonnage Amount;~~

- (b) ~~(Efficient utilisation) provide incentives for efficient utilisation of Terminal Capacity by Access Holders; To avoid doubt, if an Access Holder seeks and obtains increased Access in respect of a Terminal Component on one or more occasions, the Access Holder may have more than one Access Agreement and/or a different Terminal Infrastructure Charge for the Terminal Component may apply to each of the tranches of Access obtained by the Access Holder.~~
- (c) ~~(Equity) ensure equitable treatment of Access Holders and Access Seekers;~~
- (d) ~~(Efficient investment) encourage efficient future investment in the Terminal;~~
- (e) ~~(Recovery of Operating Costs) ensure full recovery (but not over recovery) from Access Holders of Terminal Operating Costs; and~~
- (f) ~~(Efficient Operating Costs) ensure efficient Terminal Operating Costs.~~

10.3 Access Charges

Access Charges for each Terminal Component will comprise two parts:

- (a) a Capital Terminal Infrastructure Charge, being:
 - (1) in respect of Reference Tonnage, the Reference Tariff;
 - (2) in respect of any Excess Tonnage, the Excess Charge;
 - (3) where applicable, the Year End Adjustment and the Provisional Increment Repayment; or
 - (4) in respect of Non-Reference Tonnage, such tariff as is agreed between DBCT Management and an Access Holder; and
- (b) an Operation & Maintenance Charge.

10.4 Reference Tariff Terminal Infrastructure Charge

- (a) ~~(TIC) The Access Agreement will impose a Terminal Infrastructure Charge (TIC) for each Terminal Component in respect of which the Access Holder has an entitlement to Access or increased Access, being an amount per tonne payable by the Access Holder at a relevant time, calculated (and adjusted as required) in accordance with this Section 10 and Schedule C, Sections 2 and 3.~~
- (b) ~~(a) (Applies to Reference Tonnage) A Reference Tariff will apply to all Reference Tonnage, or where Section 10.1(b) applies, a different Reference Tariff for the Reference Tonnage in respect of each Terminal Component. (Applies to Annual Contract Tonnage) The TIC will apply to all Annual Contract Tonnage, or where:~~
 - (b) ~~(Revenue Cap) Each Reference Tariff for each Terminal Component will be set such that, in each Financial Year, the Revenue Cap for that Terminal Component will be recovered by DBCT Management over the Aggregate Reference Tonnage for that Terminal Component.~~
 - (c) ~~(TIC) Each Reference Tariff will comprise a single component Terminal Infrastructure Charge (TIC), being an amount per tonne payable by a relevant Access Holder at a relevant time, calculated (and adjusted as required) in accordance with Schedule C.~~
 - (d) ~~(Reviews of Reference Tariff, etc) On each occasion referred to in Schedule C, DBCT Management will (and, on each occasion mentioned in Section 11.5(e), DBCT Management may, but is not obliged to) submit to the QCA a request for the QCA to approve an appropriate amendment of each relevant ARR, Revenue Cap and Reference Tariff, to the extent that they are affected by the occasion referred to in~~

~~Schedule C, or Section 11.5(o) (as the case may be), in accordance with Schedule C. They will be amended (effective from the relevant date in Schedule C) when that approval is given by the QCA.~~

- (e) ~~(ARR notified to Access Seekers) Where a Reference Tariff has been calculated from the ARR, that Reference Tariff will be an acceptable means by which DBCT Management provides Access Seekers with information about the matters listed in Sections 101(2)(a) to (c) of the QCA Act (as provided for in accordance with Section 101(4) of the QCA Act).~~

10.5 Excess Charge

- (a) ~~The Excess Charge will apply to all Excess Tonnage.~~
- (b) ~~The Excess Charge will be calculated in accordance with Schedule C~~

10.6 Year End Adjustment

- (a) ~~The Year End Adjustment (if any) will apply where any Excess Tonnage is Handled in a Financial Year.~~
- (b) ~~The Year End Adjustment will be calculated in accordance with Schedule C~~

10.7 Increment

~~DBCT Management is entitled to add an Increment to the Revenue Cap otherwise applying, in the circumstances outlined in Schedule C. It may retain a Provisional Increment pending the outcome of an application for the Increment. The Provisional Increment will be calculated in accordance with Schedule C.~~

10.8 Provisional Increment Repayment

~~The Provisional Increment Repayment (if any) will apply where DBCT Management has retained an amount in accordance with Schedule C (the Provisional Increment) but that amount must subsequently be repaid to relevant Access Holders pursuant to Schedule C, Sub-Section.~~

10.9 Payment and adjustment of Capital Charges

- (1) Section 10.2(a)(2) applies, a different TIC will apply to the Annual Contract Tonnage in respect of each Terminal Component for which the Access Holder has an entitlement to Access;
- (2) Section 10.2(b) applies, a different TIC may apply to the Annual Contract Tonnage in respect of each tranche of Access to which the Access Holder has obtained an entitlement.
- (c) ~~(a) (Interim payments) (Payment of TIC)~~ Each Access Holder will pay to DBCT Management in respect of its Reference Annual Contract Tonnage a payment in each Month of each Financial Year during the term of its Access Agreement (the **Monthly Payment**) calculated (and adjusted as required) in accordance with Schedule C.
- (d) ~~(b) (Financial Year end adjustments)~~ After the end of each Financial Year: Determination of Initial TIC Subject to paragraph (e), in any Arbitration of a kind referred to in Section 10.1(b) or 10.1(c), the Arbitrator must determine a TIC for a Terminal Component to apply under the Access Agreement from commencement of that Agreement, increased Access under that Agreement or the relevant Pricing Period (**Initial TIC**) that:

- (1) ~~each Access Holder will pay any Excess Charge applicable to it in respect of the Financial Year (or the balance of the Excess Charge if any prepayment has been made); reflects a TIC that would be agreed between a willing but not anxious buyer and a willing but not anxious seller of coal handling services for mines within a geographic boundary drawn so as to include all mines that have acquired, currently acquire or may acquire coal handling services supplied at the Port of Hay Point;~~
- (2) ~~DBCT Management will pay any Year End Adjustment in respect of the Financial Year, due to each Access Holder; and is no less than the Floor TIC calculated in accordance with Schedule C, Section 2(a); and~~
- (3) ~~DBCT Management will pay any Provisional Increment Repayment in respect of the Financial Year, due to each Access Holder is no greater than the Ceiling TIC calculated in accordance with Schedule C, Section 2(b) to (f).~~
- (e) **(Determination of Initial TIC if Arbitration already occurred in Pricing Period)** In any Arbitration of the kind referred to in Section 10.1(b), the Arbitrator must determine the Initial TIC to apply for the Terminal Component under the Access Agreement from commencement of that Access Agreement or increased Access under that Access Agreement as follows where an Arbitration determination on an Initial TIC for one or more Access Holders has previously been made under Section 16.4 of this Framework for the Pricing Period in which that Access Agreement or increased Access will commence:
 - (1) subject to paragraph (2), the Initial TIC to apply from commencement of the Access Agreement or increased Access under the Access Agreement must be equal to the Initial TIC for the Pricing Period determined in the first completed Arbitration for that Pricing Period adjusted:
 - (A) based on escalation for the annual change in the Consumer Price Index in accordance with Schedule C, Section 3(a) to (d); and
 - (B) for any Review Event that has occurred since the completion of the first completed Arbitration in accordance with Schedule C, Section 3(e) to (j);
 - (2) if the resultant Initial TIC for the Access Seeker is higher than the Ceiling TIC applicable at the time of Arbitration or lower than the Floor TIC applicable at that time, the Arbitrator must not apply any Review Event adjustment or adjustments under paragraph (1) to the Initial TIC determined in the first completed Arbitration for the Pricing Period to the extent that the Review Event adjustment or adjustments would otherwise result in an Initial TIC for the Access Seeker that is higher than the Ceiling TIC or lower than the Floor TIC.
- (f) **(Determination of Floor TIC following Terminal Capacity Expansion)** In any Arbitration of a kind referred to in Section 10.1(b) or 10.1(c) following the Completion and hand over to the Operator of a Terminal Capacity Expansion:
 - (1) any determination of the Floor TIC by the Arbitrator must be consistent with any Price Ruling by the Expansion Arbitrator in respect of that Terminal Capacity Expansion; and
 - (2) the Arbitrator must accept Capital Expenditure incurred in respect of that Terminal Capacity Expansion is prudent if the Expansion Arbitrator has determined under Section 11.5 that that Capital Expenditure is prudent and take

that prudent Capital Expenditure and any associated construction related financing costs determined in accordance with Section 11.6 into account in determining the Floor TIC.

Nothing in this paragraph precludes the Arbitrator from determining that any additional Capital Expenditure incurred in respect of the Terminal Capacity Expansion is also prudent and also taking that additional Capital Expenditure and any associated construction related financing costs determined in accordance with Section 11.6 into account in determining the Floor TIC.

- (g) (Determination of Ceiling TIC) Data from an independent third party data provider must be used in any determination of the Ceiling TIC in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) by an Arbitrator unless the Arbitrator is satisfied that the data from the provider is manifestly incorrect in one or more respects and the error or, if there is more than one error, the errors considered collectively, are 'material', where 'material' means that the error(s) have a material effect on the resultant Ceiling TIC. In that case, the Arbitrator may disregard the independent third party data provider's data and use alternative data but only to the extent that the Arbitrator is satisfied that the provider's data is manifestly incorrect.

10.5 10.10 Operation & Maintenance Charge

- (a) **(Terminal Operating Costs recovery)** Terminal Operating Costs will be recovered from each~~the~~ Access Holder through the Operation & Maintenance Charge. The Operation & Maintenance Charge for each~~the~~ Access Holder will be calculated on the basis outlined in the Standard Access Agreement and otherwise in accordance with the Operations & Maintenance Contract.
- (b) Where a Differentiated Expansion Component exists and Terminal Operating Costs are required to be allocated between different Terminal Components, then the Operation & Maintenance Charge for each Access Holder will be calculated in accordance with the following procedure:
 - (1) the quantum of Terminal Operating Costs, and the proposed allocation among Terminal Components, will be advised to DBCT Management by the Operator. The Operator will determine the allocation in accordance with Section 10.11~~10.7~~(a); and
 - (2) DBCT Management will review the quantum and allocation proposed by the Operator and ~~submit the proposed quantum and allocation to the QCA annually for approval, indicating~~, where relevant, make any variation it considers necessary to comply with Section 10.10~~10.5~~(c)(3); and
 - (3) DBCT Management will recover Terminal Operating Costs allocated to a Terminal Component from an Access Holder through the Operation & Maintenance Charge ~~from Access Holders~~determined in accordance with ~~the QCA's decision~~paragraph (a).
- (c) **(Notifications, payments and adjustments)** DBCT Management will:
 - (1) notify Access Holders of estimated Terminal Operating Costs annually in advance;
 - (2) recover such estimated costs monthly;

- (3) notify Access Holders of any applicable adjustment at the end of each Financial Year – to recover any shortfall or to reimburse Access Holders in the event of under-recovery or over-recovery of Terminal Operating Costs by DBCT Management; and
- (4) recover or reimburse at the end of each quarter and at the end of a Financial Year (as the case may be), such amount (if any) as referred to in Section 10.10.10.5(c)(3).

10.6 Review of TIC applicable under Access Agreements in form of the Standard Access Agreement

- (a) **(Reviews of TIC during a Pricing Period)** On each occasion referred to in Schedule C, Section 3(a) or 3(e) during a Pricing Period, DBCT Management will amend the TIC for a Terminal Component then applicable under an Access Agreement that contains pricing provisions that are substantively identical to those of the Standard Access Agreement applicable at the time of entry into the Access Agreement, to the extent that it is affected by the occasion, in accordance with Schedule C, Section 3. The TIC will be amended (effective from the relevant date in Schedule C, Section 3(c) or 3(i)) when DBCT Management gives notice to the relevant Access Holder of the amended TIC.
- (b) **(Arbitration of Dispute arising from reviews of TIC during a Pricing Period)** In any Arbitration of the kind referred to in Section 10.1(d) of this Framework, the Arbitrator:
 - (1) must apply Schedule C, Section 3 to determine an amended TIC;
 - (2) if the resultant amended TIC for the Access Holder is higher than the Ceiling TIC applicable at the time of Arbitration or lower than the Floor TIC applicable at that time, must not apply the amendment to the TIC that would otherwise result under paragraph (1) to the extent that that amendment would otherwise result in an amended TIC that is higher than the Ceiling TIC or lower than the Floor TIC;
 - (3) if the Dispute relates to a Review Event referred to in paragraph (b) of the definition of Review Event, must:
 - (A) make a determination in respect of the amended TIC to apply in accordance with Schedule C, Section 3(g) that is consistent with any Price Ruling by the Expansion Arbitrator in respect of the relevant Socialised Expansion; and
 - (B) accept that Capital Expenditure in respect of the relevant Socialised Expansion is prudent if the Expansion Arbitrator has determined under Section 11.5 that that Capital Expenditure is prudent and take that prudent Capital Expenditure and any associated construction related financing costs determined in accordance with Section 11.6 into account in determining the amended TIC.

Nothing in this paragraph precludes the Arbitrator from determining that any additional Capital Expenditure incurred in respect of the relevant Socialised Expansion is also prudent and also taking that additional Capital Expenditure and any associated construction related financing costs determined in accordance with Section 11.6 into account in determining the amended TIC to apply in accordance with Schedule C, Section 3(g); and

- (4) if the Dispute relates to a Review Event referred to in paragraph (c) of the definition of Review Event, must accept that NECAP is prudent and include it in the determination of the 'Adjustment amount' under Schedule C, Section 3(h) if required by Section 11.10(b) of this Framework and may otherwise accept that NECAP is prudent and include it in the determination of the 'Adjustment amount' under Schedule C, Section 3(h) having regard to the matters set out in Section 11.10(c) of this Framework.
- (c) **(Date amended TIC takes effect)** Until the amended TIC is determined as provided for in this Section 10.6 and Schedule C, Section 3, the TIC applicable immediately prior to the occasion referred to in Schedule C, Section 3(a) or 3(e) will remain in effect and continue to be due and payable. When DBCT Management gives notice or the Arbitrator communicates the determination of the amended TIC determined as provided for in this Section 10.6 and Schedule C, Section 3, the amended TIC will apply with effect from the relevant date in Schedule C, Section 3(c) or 3(i) (**Effective Date**) and DBCT Management will calculate the amount which would have been payable to it by way of Monthly Payments in the period since the Effective Date if that amended TIC had been in effect from that time and the relevant party must pay to the other party the difference between that amount and the amount actually received by DBCT Management by way of Monthly Payments between the Effective Date and the date DBCT Management gives notice or the Arbitrator communicates the determination of the amended TIC.

10.7 10.11 Cost Allocation

- (a) **(Cost allocation as per Cost Allocation Manual)** Where this ~~undertaking~~Framework provides for:
- (1) the allocation of Terminal Operating Costs among multiple Terminal Components; or
 - (2) the inclusion in ~~a Regulated~~the NECAP Asset Base of Capital Expenditure not related to a Terminal Capacity Expansion, and there are multiple Terminal Components,
- the cost in question is to be allocated in accordance with the Cost Allocation Manual or, if no Cost Allocation Manual exists, in accordance with the Cost Allocation Principles. Any ~~dispute~~Dispute as to the allocation of costs in accordance with the Cost Allocation Manual may be referred to dispute resolution under Section 16 of the Framework.
- (b) **(Request for Preparation of draft Cost Allocation Manual)** When the first Price Ruling is made, ~~the QCA shall request that~~ DBCT Management must prepare a draft Cost Allocation Manual ~~pursuant to section 159 of the QCA Act.~~
- (c) **(Preparation of draft Cost Allocation Manual)** ~~DBCT Management will prepare~~ and submit it to the ~~QCA~~Independent Expert for approval ~~a draft Cost Allocation Manual within 60 days of a request from the QCA to do so.~~
- (c) **(d) (Preparation of revised draft Cost Allocation Manual)** DBCT Management shall, if so requested by the ~~QCA~~Independent Expert, prepare and submit within 60 days of such request, a revised draft Cost Allocation Manual that satisfies the requirements of the ~~QCA~~Independent Expert.

- (d) ~~(e)~~ **(Consulting in good faith with the Operator)** DBCT Management shall consult in good faith with the Operator in preparing the Cost Allocation Manual and updating it, from time to time.
- (e) ~~(f)~~ **(Approval of Cost Allocation Manual)** ~~The QCA shall prepare As soon as practicable after the Independent Expert approves~~ the final Cost Allocation Manual ~~in accordance with section 159 of the QCA Act and, DBCT Management must publish the Cost Allocation Manual in accordance with section 160 of the QCA Act on its website.~~
- (f) ~~(g)~~ **(Cost Allocation Manual requirements)** The Cost Allocation Manual should:
- (1) provide a transparent basis for assigning costs to separate Terminal Components in different circumstances; and
 - (2) be consistent with the Cost Allocation Principles.
- (h) **(Cost Allocation Principles):**
- (1) ~~Where costs of a Terminal Capacity Expansion should be Socialised, other Non Expansion Costs should be included in the Existing Terminal's Regulated Asset Base.~~
- (g) ~~(2) Where costs of a Terminal Capacity Expansion should not be Socialised, other (Cost Allocation Principles):~~ Non-Expansion Costs should be allocated:
- (A) **(Identifiable cost)** if the cost is uniquely identified or directly incurred in relation to a particular Terminal Component, to that Terminal Component's ~~Regulated Asset Base~~;
 - (B) **(Attributable cost)** if the cost is not an identifiable cost, but there is a reasonable causal relationship between the cost and one or more Terminal Components, to ~~the Regulated Asset Bases for~~ those Terminal Components, in proportion to their reasonably estimated cost drivers; and
 - (C) **(Non-identifiable and non-attributable cost)** if the cost is neither identifiable nor attributable to a particular Terminal Component, on a reasonable basis between the ~~Regulated Asset Bases for the~~ Terminal Components.

10.12 Limits on price differentiation

- (a) ~~Subject to paragraph 10.12(b), DBCT Management will not differentiate Access Charges between Access Seekers or between Access Seekers and Access Holders of a Terminal Component, other than to reflect differences in costs (direct or indirect) or risks to DBCT Management of providing Access. Where DBCT Management proposes a Capital Charge that varies from the Capital Charge applied in respect of Reference Tonnage for that Terminal Component, it must demonstrate to the Access Seeker that the divergence is justified. In doing so, DBCT Management must provide sufficient information to adequately explain the reasons for the divergence.~~
- (b) ~~For the avoidance of doubt, DBCT Management may differentiate Access Charges applicable to a Differentiated Expansion Components in accordance with an applicable Price Ruling and associated draft amending access undertaking pursuant to Section 11.5(o) and 11.5(q).~~

10.8 10.13 Expansion Pricing Principles

- (a) In assessing whether or not Differentiation should apply in respect of a proposed Terminal Capacity Expansion, the following principles shall apply:

- (1) ~~(a)~~ where Socialisation of a Terminal Capacity Expansion would decrease the ~~Reference Tariff Floor TIC~~ for ~~users of~~ the Existing Terminal determined in accordance with Schedule C, Section 2(a), the Terminal Capacity Expansion should be treated as forming part of the Existing Terminal, ~~such that a single Reference Tariff and Annual Revenue Requirement shall apply to the Existing Terminal (including for the purpose of determining Access Charges in accordance with Sections 10.3 to 10.5 of this Framework and the Floor TIC for the Existing Terminal should be determined by reference to the sum of the costs of the Existing Terminal and the costs of the Terminal Capacity Expansion)~~ (a **Socialised Expansion**):
- (2) ~~(b)~~ where Socialisation of a Terminal Capacity Expansion would increase the ~~Reference Tariff Floor TIC~~ for ~~users of~~ the Existing Terminal determined in accordance with Schedule C, Section 2(a) (a **Cost Sensitive Expansion**), subject to Section ~~10.13~~^{(c)10.8(b)}, the Terminal Capacity Expansion should be treated as a separate Terminal Component, ~~with its own Regulated Asset Base, Reference Tariff and Annual Revenue Requirement and the Floor TIC for that Terminal Component determined by reference to the costs of the Terminal Capacity Expansion (and without reference to the costs of the Existing Terminal)~~ (a **Differentiated Expansion Component**).
- (b) ~~(c)~~ A Cost Sensitive Expansion may be treated as forming part of the Existing Terminal (and therefore, not treated as a Differentiated Expansion Component) where circumstances exist that justify Socialisation. In determining whether there are circumstances that warrant Socialisation, consideration ~~shall~~^{must} be given to:
- (1) the materiality of the increase in the Floor TIC for the Existing Terminal's Reference Tariff determined in accordance with Schedule C, Section 2(a) that would be affected by socialising the Cost Sensitive Expansion;
 - (2) the extent to which assets or infrastructure the subject of the Cost Sensitive Expansion will operate wholly or partly, in an integrated way with the Existing Terminal or as a stand-alone development;
 - (3) the extent to which the Cost Sensitive Expansion is likely to benefit users of the Existing Terminal (for example, such as through higher efficiency, reliability or flexibility of the Existing Terminal);
 - (4) any differences in the risks of providing Access to users of the Existing Terminal in respect of additional Terminal Capacity created by the Cost Sensitive Expansion;
 - (5) the financeability of any proposed expansion pricing arrangement, including by reason of the risk of Differentially Priced Access Holders switching between high and low priced Terminal Capacity that otherwise has identical functionality; and
 - (6) ~~(5)~~ any other factor that the QCA Expansion Arbitrator considers relevant.

It is acknowledged that there may be circumstances in which parts and not the whole of a Cost Sensitive Expansion may be Socialised.

11 Terminal Capacity Expansion

[Drafting Note: Amendments to this clause 11 will be required in drafting changes to give effect to the pricing framework set out at Appendix 7 of DBCTM's submission dated 30 May 2018]

11.1 Procedure for determining Terminal Capacity and System Capacity

- (a) DBCT Management will, at each time required in Section 11.1(k), either:
 - (1) (**Estimate capacities**) accept an estimation that has been accepted by the ~~expert~~Capacity Expert as provided for in Section 11.1(m)(3) of the maximum reasonably achievable capacity (measured in tonnes of coal per Financial Year) of:
 - (A) the Terminal (on a “name-plate capacity” basis) (**Terminal Capacity**), including separately identifying ~~the capacity of~~:
 - (i) the capacity of the Existing Terminal (on a “name-plate capacity” basis) (**Existing Terminal Capacity**); and
 - (ii) the capacity of each Expansion Component (on a “name-plate capacity” basis) (each an **Expansion Component Capacity**), which for clarity may constitute either Socialised Terminal Capacity or Differentially Priced Capacity depending upon the nature of the relevant Expansion Component; and
 - (B) the System (**System Capacity**);~~or~~
 - provided that the estimation was accepted by the Capacity Expert as provided for in Section 11.1(m)(3) in the immediately preceding 6 months and there has been no change in any of the factors to be taken into account in estimating the Terminal Capacity, the Expansion Component Capacity or the System Capacity since the estimation accepted by the Capacity Expert that is reasonably expected to materially affect the Terminal Capacity, the Expansion Component Capacity or the System Capacity; or
 - (2) (**Determine capacities after advice and consultation**) (to the extent that there is no estimation as provided for in Section 11.1(m)(3) ~~in that regard at the time~~) acting reasonably and after:
 - (A) taking advice from ~~an independent expert~~a Capacity Expert appointed by DBCT Management under this Section 11.1 (**Capacity Expert**); and
 - (B) consultation by DBCT Management and that ~~expert~~Capacity Expert with the Operator, Access Holders, any Expansion Parties, and other Service Providers or their respective nominees,

determine Terminal Capacity, Expansion Component Capacity and System Capacity (as applicable) in accordance with this Section 11.1, having regard to:

 - (C) ~~(i)~~ (**Terminal operating assumptions**) in respect of Terminal Capacity – the following Terminal operating assumptions:
 - (i) ~~a-~~DBCT Management’s obligations~~and~~and Access Holders’ entitlements under Access Agreements and Existing Users' entitlements under Existing User Agreements (including taking into account historical and reasonably estimated rates of utilisation of the Terminal~~s~~

~~capacity~~ Capacity, but also having regard to reasonably foreseeable future changes in capacity utilisation rates);

- (ii) ~~b.~~ DBCT Management's requirement to comply with Good Operating and Maintenance Practice;
- (iii) ~~c.~~ the Terminal Regulations;
- (iv) ~~d.~~ an objective of maximum reasonably achievable capacity for the Terminal without unduly increasing vessel waiting times as a result of the operation of the Terminal;
- (v) ~~e.~~ rail and vessel interfaces with the Terminal;
- (vi) ~~f.~~ the estimated additional capacity which it is anticipated will become available in a relevant Financial Year as a result of any proposed Terminal Capacity Expansion; and
- (vii) ~~g.~~ any other matter DBCT Management reasonably considers appropriate;

- (D) ~~(iii)~~ **(Terminal operating assumptions – Differentiated Expansion Component)** in respect of Expansion Component Capacity for a Differentiated Expansion Component – the Terminal operating assumptions set out at Section 11.1(a)(2)(~~B~~~~H~~~~C~~), to the extent applicable solely to the Differentiated Expansion Component; and
- (E) ~~(iii)~~ **(System operating assumptions)** in respect of System Capacity – the following System operating assumptions (to the extent that such information is available to DBCT Management):
- (i) ~~a.~~ operating modes of the System;
 - (ii) ~~b.~~ rail infrastructure characteristics (e.g. single track, double track, passing loops and speed restraints);
 - (iii) ~~c.~~ the tonnes to be loaded by or on behalf of an Access Holder or Existing User at each relevant train load out facility;
 - (iv) ~~d.~~ Terminal Capacity as assessed in accordance with Section 11.1(a)(2)(~~B~~~~H~~~~C~~) and the capacity and performance implications arising out of Terminal interfaces with rail unloading and vessel loading;
 - (v) ~~e.~~ quantity, configuration and performance characteristics of locomotives and rolling stock;
 - (vi) ~~f.~~ capacity and performance of mine loading facilities;
 - (vii) ~~g.~~ the System Master Plan; and
 - (viii) ~~h.~~ any other matter DBCT Management reasonably considers appropriate.

- (b) **(Additional assumptions)** For clarification, Terminal Capacity, Expansion Component Capacity and System Capacity are to be:

- (1) estimated making a projected allowance (as applicable to either Terminal Capacity and/or Expansion Component Capacity alone or to System Capacity) for interruptions or loss of capacity from maintenance, repairs, inclement weather,

- breakdowns, derailments, cancellations, loading and unloading issues (including sticky coal), vessel-types (based on a historical analysis);
- (2) estimated as at the date of estimation and for the Financial Year in which that date falls and for each of the following two Financial Years; and
 - (3) assumed to continue at no lesser rate indefinitely after the periods referred to in Section 11.1(b)(2), except to the extent that (at the time of making the estimation) DBCT Management or the ~~independent expert~~Capacity Expert are actually aware of a reasonably certain future material decrease in capacity (for example, where DBCT Management is aware of a decrease in capacity caused by a planned shutdown in another part of the System).
- (c) **(Disclosure of process and advice)** Subject to any confidentiality restrictions applying to DBCT Management, DBCT Management must disclose to the Access Holders, Access Seekers, Expansion Parties, the Operator and other Service Providers its decision making process in relation to its estimations of Terminal Capacity, Expansion Component Capacity and System Capacity and provide them with a copy of any ~~independent expert~~ report that DBCT Management receives from the Capacity Expert in relation to estimating those capacities. DBCT Management will not enter into any confidentiality restrictions which would prevent disclosure for the purposes of this Section 11.1(c) except as may be commercially reasonable and customary to avoid disclosure of commercially sensitive information.
- (d) **(Independent expert)** Any ~~independent expert~~Capacity Expert Any Capacity Expert to be appointed by DBCT Management under this Section 11.1 will be:
- (1) where a group of Access Holders whose combined Annual Contract Tonnage for the then current Financial Year is greater than 50% of the Aggregate Annual Contract Tonnage of all Access Holders for that Financial Year object (in accordance with Section 11.1(g)) to the ~~independent expert~~Capacity Expert nominated by DBCT Management, ~~an independent expert~~a Capacity Expert appointed in accordance with Section 11.1(g);
 - (2) where a majority of the group of Expansion Parties for an Expansion Component object (in accordance with Section 11.1(g)) to the ~~independent expert~~Capacity Expert nominated by DBCT Management, ~~an independent expert~~a Capacity Expert appointed in accordance with Section 11.1(g); or
 - (3) where Section 11.1(d)(1) and (2) do not apply ~~an independent expert, a Capacity Expert~~ nominated by DBCT Management.
- (e) **(Notice of proposed independent expert)** DBCT Management will advise all Access Holders (and, where relevant, Expansion Parties) as to the identity of any ~~independent expert~~Capacity Expert it proposes appointing pursuant to Section 11.1(a)(2) and request that any objection to that ~~independent expert~~Capacity Expert be given in writing to DBCT Management within 14 days after receipt of DBCT Management's notice.
- (f) **(Appointment if no objection)** If no ~~Access Holder (and, where relevant, if no Funding Access Seeker)~~group of Access Holders or Expansion Parties determined in accordance with Section 11.1(d) objects in writing to the ~~independent expert~~Capacity Expert nominated by DBCT Management within the 14 day period referred to in Section 11.1(e), DBCT Management will promptly appoint the ~~independent expert~~Capacity Expert nominated by it.

- (g) **(Procedure if objection to proposed ~~independent expert~~Capacity Expert)** If a group of Access Holders or Expansion Parties determined in accordance with- Section 11.1(d) objects within the 14 day period provided for in Section 11.1(e):
 - (1) DBCT Management will promptly request the Resolution Institute to nominate ~~an independent expert~~a Capacity Expert, and it will engage the ~~independent expert~~Capacity Expert so nominated; and
 - (2) the 6 month period referred to in Section 11.1(k)(1) will not commence until the ~~independent expert~~Capacity Expert has been nominated by the Resolution Institute.
- (h) **(Independent ~~expert~~Capacity Expert to consult)** DBCT Management must require its ~~independent expert~~Capacity Expert to consult (as far as is practicable, and to the extent that consultation has not already occurred in respect of a relevant estimation of Terminal Capacity, Expansion Component Capacity or System Capacity (as applicable)) with the Operator, Access Holders, any Access Seekers and other Service Providers, or their respective nominees with respect to the factors referred to in Sections 11.1(a)(2)(B)(iC), and 11.1(a)(2)(B)(iiiE).
- (i) **(Objection to estimation by ~~independent expert~~Capacity Expert)** Despite Section 16, DBCT Management's estimation of Terminal Capacity, Expansion Component Capacity and System Capacity under Section 11.1(a) may not be disputed or challenged (including under Section 16 of this Framework) or otherwise subject to review by or on behalf of Access Holders or Access Seekers:
 - (1) except on the basis that it has been determined in bad faith, in breach of the Framework or an Access Agreement, or on the basis of a manifest error;
 - (2) unless Access Holders whose combined Annual Contract Tonnage for the then current Financial Year is greater than 50% of the Aggregate Annual Contract Tonnage for all Access Holders for that Financial Year each object on the same or similar grounds; or
 - (3) unless Expansion Parties whose combined projected Annual Contract Tonnage would amount to greater than 50% of the projected Expansion Component Capacity, each object on the same or similar grounds.
- (j) **(Determination of Capacity conclusive)** The capacity of the Terminal, Differentiated Expansion Component and System Capacity estimated under Section 11.1(a) (or, if applicable, Section 16) will constitute Terminal Capacity, Expansion Component Capacity or System Capacity (as relevant) for the purposes of this Framework until it is next reassessed.
- (k) **(Times for re-determination of Capacity)** Terminal Capacity, Expansion Component Capacity and System Capacity will be assessed by DBCT Management in accordance with Section 11.1(a) and will be reassessed during the Term of this Framework:
 - (1) before entering into any new Access Agreement or otherwise increasing Aggregate Annual Contract Tonnage unless the Terminal Capacity, the Expansion Component Capacity and the System Capacity was assessed or reassessed in accordance with Section 11.1(a) in the immediately preceding 12 months and there has been no change in any of the factors to be taken into account in estimating the Terminal Capacity, the Expansion Component Capacity or the System Capacity since that time that is reasonably expected to materially

- affect the Terminal Capacity, the Expansion Component Capacity or the System Capacity;
- (2) ~~(1)~~ during each stage of a Feasibility Study being conducted by DBCT Management in accordance with Section 5.10;
- (3) ~~(2)~~ (subject to Section 11.1(g)(2)) not later than 6 months, or such time as otherwise agreed by the parties, after each of the following:
- (A) the Completion of each Terminal Capacity Expansion; and
- (B) the time at which DBCT Management becomes aware of the completion of each material and discrete expansion (such materiality to be determined by DBCT Management acting reasonably) of any other component of the System; or
- (4) ~~(3)~~ otherwise at DBCT Management's discretion.
- (l) **(Notification of assessments of Terminal Capacity, Expansion Component Capacity and System Capacity)** DBCT Management must promptly notify DBCT Holdings, each Access Holder and each Access Seeker of each capacity assessment undertaken in accordance with this Section 11.1.
- (m) **(Requirements for ~~expert~~Capacity Expert report process)** The following will apply to ~~an expert~~a Capacity Expert's report for the purposes of Section 11.1(a):
- (1) subject to confidentiality restrictions applying to DBCT Management, DBCT Management must provide to the ~~expert~~Capacity Expert all relevant information which DBCT Management has or to which it has access, to assist the ~~expert~~Capacity Expert to reach ~~their~~his or her estimation. DBCT Management will not enter into any confidentiality restrictions which would prevent disclosure for the purposes of this Section 11.1(m) except as may be commercially reasonable and customary to avoid disclosure of commercially sensitive information;
- (2) DBCT Management must, as far as practicable, use reasonable endeavours to work cooperatively with each other Service Provider (for example by regularly providing information relevant to System Capacity) and, as far as practicable, using reasonable endeavours to agree on the joint engagement of ~~experts~~Capacity Experts for the purposes of both this Framework and in respect of similar obligations by other Service Providers; and
- (3) if the ~~expert~~Capacity Expert reasonably considers that there is either agreement or broad consensus amongst stakeholders in the Dalrymple Bay Coal Chain as to ~~Existing~~Terminal Capacity, Expansion Component Capacity or System Capacity (such agreement or consensus having been reached having regard to ~~expert reports~~the Capacity Expert's report(s)), the ~~expert~~Capacity Expert must accept that agreement or broad consensus as evidence of ~~Existing~~Terminal Capacity, Expansion Component Capacity or System Capacity (as the case may be) except to the extent that the ~~expert~~Capacity Expert reasonably forms the opinion that there is compelling evidence to the contrary.
- (n) **(Tonnages under Access Agreements and Existing User Agreements must not exceed System Capacity)** DBCT Management must not enter into any Access Agreement if the Aggregate Annual Contract Tonnage would (after including the tonnage under the new Access Agreement) exceed the System Capacity (as determined for a relevant

time), unless otherwise required to do so by the Access Framework (including pursuant to Section 11.3), ~~statute law~~, or an agreement relating to its tenure of the Terminal including the Framework Agreement or the Port Services Agreement. For clarification:

- (1) **(Access Agreements can be conditional on capacity resulting from a Terminal Capacity Expansion)** this does not prohibit DBCT Management from entering into a Conditional Access Agreement as long as the terms of all such Conditional Access Agreements are such that the increase in Aggregate Annual Contract Tonnage consequent on the Completion of the relevant Terminal Capacity Expansion will nevertheless not cause Aggregate Annual Contract Tonnage to exceed System Capacity (based on the estimated System Capacity at the ~~completion~~Completion of the relevant ~~expansion~~Terminal Capacity Expansion); and
 - (2) **(Framework not breached if System Capacity exceeded after good faith reasonable efforts)** DBCT Management will not be in breach of this Framework if it has complied with this Framework (or made good faith and reasonable attempts to comply) but the re-determination of System Capacity in accordance with Section 11.1(k) reveals that System Capacity is less than the Aggregate Annual Contract Tonnage at that time.
- (o) **(Protection of DBCT Management)** Notwithstanding any other provision of this Framework, if DBCT Management complies (or makes a good faith and reasonable attempt to comply) with the provisions of this Section 11.1, DBCT Management will not have any liability (whether for loss, damage, cost, expense or other remedy) to any Access Seeker (and the Standard Access Agreement will provide that DBCT Management will not be liable to an Access Holder which executes it)~~for any~~:
- (1) ~~for any~~ breach of this Section 11.1;
 - (2) ~~for any~~ delay which arises as a result of the Aggregate Annual Contract Tonnage (which was expected not to exceed Terminal Capacity, Expansion Component Capacity or System Capacity) subsequently exceeding Terminal Capacity, Expansion Component Capacity or System Capacity for any reason;
 - (3) ~~if~~ one or more factors related to utilisation of capacity of the Terminal, or any other part of the System subsequently changes (for example, changes in service levels required pursuant to a right of Access Holders under a Standard Access Agreement, the nature of coal Handled, an Access Holder's use of the Terminal, vessel mix, railway infrastructure, rolling stock or locomotives, rail loading facilities of mines or any other relevant factor) ~~(provided that such factor is not a breach by DBCT Management of any other part of this Framework or an Access Agreement)~~; or
 - (4) ~~for~~ any defect, error or omission on the part of the ~~independent expert~~Capacity Expert appointed under Section 11.1.
- (p) **(Recovery of ~~independent expert~~Capacity Expert's costs)** The costs of ~~an independent expert~~a Capacity Expert appointed under Section 11.1(d):
- (1) following the Completion of and handover to the Operator of a Terminal Capacity Expansion will be borne by DBCT Management, and may be included in the ~~Regulated Asset Base (of the Existing)~~prudent Capital Expenditure for the

- Terminal ~~or Differentiated Capacity~~ Expansion ~~Component, as relevant~~ as an Other Cost in accordance with Section 11.5(a)(3)(B); and
- (2) in all circumstances other than as described in Section 11.1(p)(1), be borne by DBCT Management.
 - (q) **(Provisional allocation pending determination of Capacity)** Notwithstanding any other provision of this Framework, DBCT Management may, on a provisional basis, allocate after the Completion of a Terminal Capacity Expansion the anticipated increase in Terminal Capacity and Expansion Component Capacity (if relevant depending on the Terminal Capacity Expansion) until Terminal Capacity, Expansion Component Capacity (if relevant depending on the Terminal Capacity Expansion) and System Capacity is determined in accordance with Section 11.1(k).

11.2 Terminal Capacity Expansion consultation

- (a) **(Meeting agendas)** DBCT Management will hold meetings with Access Holders and, where they exist, Expansion Parties not less than twice per Financial Year to consult in good faith upon the following issues:
 - (1) current Terminal Capacity, Expansion Component Capacity and System Capacity;
 - (2) constraints on current Terminal Capacity, Expansion Component Capacity and System Capacity including the impact on vessel waiting times and Access Holder transport costs;
 - (3) future contracts/forecasts that may impact on Terminal Capacity, Expansion Component Capacity and System Capacity;
 - (4) significant issues relevant to Terminal Capacity, Expansion Component Capacity and System Capacity;
 - (5) the timing and nature of the next Terminal Capacity Expansion (if any) and the impact on current capacity requirements, pricing and the Terminal Master Plan and System Master Plan; and
 - (6) any proposed changes to the Terminal Regulations.
- (b) DBCT Management will also hold such meetings to consult in good faith upon these issues in respect of ~~Expansion Component Differentially Priced~~ Capacity with Differentially Priced Access Holders for the relevant Differential Expansion Component.
- (c) **(Meeting administration)** DBCT Management will distribute, in a timely manner, agendas, detailed briefing material and a copy of the minutes of each of these meetings to all Access Holders, Expansion Parties and DBCT Holdings.
- (d) **(Separate meetings with Expansion Parties)** For the avoidance of doubt, nothing in this Section 11.2 limits or restricts DBCT Management from meeting separately with Expansion Parties to the extent that the matters raised relate only to a Differentiated Expansion Component.

11.3 General obligation to undertake Terminal Capacity Expansions

- (a) Subject to Sections 11.7 and 11.8 of this Framework, DBCT Management will undertake Terminal Capacity Expansions as are necessary to:
 - (1) **(Accommodate growth)** accommodate the actual and reasonably anticipated future growth of demand (having regard to Access Applications received by

- DBCT Management and other relevant factors) for the use of the Terminal by Access Holders and Access Seekers;
- (2) **(Eliminate shortfalls in Terminal Capacity)** eliminate sustained shortfalls in actual Terminal Capacity below the aggregate of Annual Contract Tonnages of Access Holders and Existing Users, whatever the reason for such shortfalls;
 - (3) **(Good Operating and Maintenance Practices)** ensure that the Terminal complies with Good Operating and Maintenance Practice in respect of quality standards for such facilities, good environmental practice and applicable environmental standards; and
 - (4) **(Laws)** comply with Approvals and applicable laws,
- provided that DBCT Management will nevertheless have regard to the System Master Plan and the expected capacity of other components of the System, with the intention that the capacity of the Terminal will (as far as practicable and economic and can reasonably be anticipated) not significantly and disproportionately exceed System Capacity for more than 12 months after the Completion of a Terminal Capacity Expansion.
- (b) **(Factors to be taken into account)** It is recognised that:
 - (1) the name-plate capacity of each individual component of the System will, on a "stand alone" basis at all times, be likely to exceed the aggregate System Capacity to some extent; and
 - (2) DBCT Management does not have any control over any part of the System other than the Terminal, and DBCT Management's estimate of expected capacity of the other components of the System will have limited accuracy (for example, because of changes in or operation of the System or the operation of any upstream components of the System in relation to the Terminal, delays in expansions of other parts of the System (including in the circumstance in which another Service Provider delays an expansion which was provided for in a System Master Plan) and other differences to DBCT Management's assumptions).
 - (c) **(Protection of DBCT Management)** Accordingly DBCT Management will not have any liability to an Access Seeker (and the Standard Access Agreement will provide that DBCT Management will not be liable to an Access Holder who executes it) if DBCT Management makes a good faith and reasonable attempt to comply with this Section 11.3, even if it does not actually comply with this Section 11.3.

11.4 Accommodation of Capacity

- (a) **(General obligation to accommodate Access Applications)** Subject to Sections 5.4(j), 11.7 and 11.8 of this Framework, and the proviso in Section 11.3(a), DBCT Management will use best endeavours to ensure that, as soon as reasonably practical after DBCT Management receives from a reasonably creditworthy Access Seeker a bona fide offer to enter into an Access Agreement that will be unconditional and legally binding and require the Access Seeker to obtain Handling of coal at the Terminal for a period in excess of 5 years (or 10 years or more Handling of coal if acceptance of the offer would require a Capacity Expansion),
- (b) ~~DBCT Management will use its best endeavours to ensure that~~, the Terminal is able to Handle that coal without a material and sustained increase in:

- (1) vessel waiting times; or
- (2) the average net costs (after taking into account any discounts or rebates available to Access Holders) across all Access Holders of transporting coal from the rail loading points at mine sites to the Terminal for Handling, over any period of three consecutive months,

attributable to delays caused by the provision of Services in respect of the additional volume. DBCT Management will disclose to all Access Holders and Access Seekers its process for so calculating vessel waiting times and average net costs to Access Holders.

- (b) ~~(e)~~**(Bona fide offers and reasonably creditworthy Access Seekers)** Without limiting the circumstances in which DBCT Management may be taken to have received from a reasonably creditworthy Access Seeker a bona fide offer to enter into an Access Agreement, if:

- (1) DBCT Management receives an offer from an Access Seeker to enter into an Access Agreement on the terms of the Standard Access Agreement, or receives an offer from an Access Seeker to enter into an Access Agreement where any departure of the terms of that offer from the terms of a Standard Access Agreement is not likely to increase cost (direct or indirect) or risks to DBCT Management; and
- (2) the Access Seeker has satisfied DBCT Management (acting reasonably) in accordance with Section 5.9 that the Access Seeker (or any relevant Security provider) has the financial and other relevant resources to enable it to discharge its obligations under the relevant Access Agreement,

then for the purpose of this Section 11.4, DBCT Management will be taken to have received from a reasonably creditworthy Access Seeker a bona fide offer to enter into an Access Agreement.

11.5 Undertaking Terminal Capacity Expansions

- (a) **(Terminal Capacity Expansion application to be lodged with Arbitrator)** If DBCT Management proposes to expand the Terminal during the Term of the Framework (either because it is obliged to do so under this Framework or wishes to do so without being obliged to do so), then in respect of the particular expansion to the Terminal it will submit to an arbitrator appointed in accordance with Section 16.4 (**Expansion Arbitrator**), a Terminal Capacity Expansion application, which must include the following information:

- (1) details of the scope of the proposed Terminal Capacity Expansion, including:
 - (A) confirmation of Terminal operating assumptions and System operating assumptions in the FEL 3 Feasibility Study, including confirmation of the capacity of the Existing Terminal and System Capacity prior to the proposed Terminal Capacity Expansion and the proposed Expansion Component Capacity; and ~~either:~~
 - (B) either:
 - (i) confirmation that, and details of how, the Terminal Capacity Expansion complies with both the current Terminal Master Plan and System Master Plan; or

- (ii) a justification acceptable to the Expansion Arbitrator as to why it does not, and need not, comply with the Terminal Master Plan or System Master Plan, but will nevertheless be economically and operationally prudent;
 - (2) the terms and conditions of any Access Agreements that are conditional on the Terminal Capacity Expansion, ~~including:~~
 - (A) ~~confirmation that, and details of how, the Conditional Access Agreement complies with the Standard Access Agreement; and~~
 - (B) ~~a justification acceptable to the Expansion Arbitrator as to why the Conditional Access Agreement does not, and need not, comply with the Standard Access Agreement, but will nevertheless be economically and operationally prudent and result in DBCT Management achieving a regulated return that is commensurate with the cost and risks involved with the Terminal Capacity Expansion;~~
 - (3) the estimated cost of the proposed Terminal Capacity Expansion categorised into:
 - (A) works that are proposed to be managed under the Tender and Contract Management Process (**TCMP**) (**Contract Costs**); and
 - (B) work and costs which are not to be managed under the TCMP (**Other Costs**);
 - (4) the estimated timetable for the proposed Terminal Capacity Expansion;
 - (5) a high level project execution strategy, which will, among other things, identify risks and risk mitigation;
 - (6) either:
 - (A) evidence that the 60/60 Requirement has been complied with; or
 - (B) DBCT Management's justification for the Terminal Capacity Expansion without the 60/60 Requirement having been complied with;
 - (7) the process for the tendering and awarding of contracts, standard form contract terms, and the contract management process for the management of contracts post award (these processes together constitute the TCMP);
 - (8) the process by which costs will be expended, tracked and managed if they are not covered by the TCMP; and
 - (9) an application for a Price Ruling in respect of the Terminal Capacity Expansion, if one has not already been made.
- (b) **(Monthly reporting to Expansion Arbitrator)** DBCT Management will also submit to the Expansion Arbitrator (with a copy to each Access Holder) a monthly report setting out:
- (1) the status of each contract awarded under the TCMP, including the degree of completion and the anticipated final cost inclusive of actual and provisioned variations;
 - (2) the status of each element of the Other Costs, including the costs incurred, the degree of completion and the anticipated final costs; and

- (3) if anticipated final costs vary from the costs initially forecast, details of and the reasons for the variation.
- (c) **(Expansion Arbitrator to confirm Price Ruling following application for Expansion)**
Following receipt of an application under Section 5.12(a)(2) or 11.5(a)(9), the Expansion Arbitrator will provide to DBCT Management and each Expansion Party notice of, in respect of a relevant Expansion Component:
 - (1) where a Price Ruling has been made in accordance with Section 5.12(c), the content of the Expansion Arbitrator's ruling and details of any material changes apparent in the application which may require a new or varied ~~Price Ruling~~ to be made, including the extent to which the circumstances of the Expansion Component vary from the assumptions made in the original Price Ruling;
 - (2) where a Price Ruling has not been made in accordance with 5.12(c), but a Price Ruling Application has been made under Section 5.12(a)(2) or 11.5(a)(9), a copy of the Price Ruling Application and information on the Expansion Arbitrator's process for determining a Price Ruling for that Terminal Capacity Expansion.
- (d) **(DBCT Management to provide information to the Expansion Arbitrator)** DBCT Management will provide all information required by the Expansion Arbitrator or any advisor to the Expansion Arbitrator to enable the Expansion Arbitrator to assess the prudence of any proposed or actual Capital Expenditure ~~and Different Terms~~. Prior to disclosing any confidential information, DBCT Management must ensure that the Expansion Arbitrator (and any advisor to the Expansion Arbitrator) enters into a confidentiality deed with DBCT Management to the effect ~~that~~ that the Expansion Arbitrator (and any advisor to the Expansion Arbitrator) must keep the information confidential and only use that information for the purpose of its engagement under this Section 11.5.
- (e) **(Expansion Arbitrator's acceptance of prudence of contract costs)**
 - (1) The Expansion Arbitrator will accept that ~~Capital Expenditure~~ in respect of a proposed Expansion Component is prudent and ~~will include it into the Regulated Asset Base~~ ~~(any determination by an Arbitrator of a Floor TIC or amended TIC to apply in respect~~ of the Existing Terminal, or ~~a Floor TIC to apply in respect of the~~ Differentiated Expansion Component, ~~(as applicable)~~ following ~~the~~ Completion of the Terminal Capacity Expansion ~~should take that Capital Expenditure into account in accordance with Section 10.4(f) or 10.6(b)(3)~~ ~~(as applicable)~~ if DBCT Management can demonstrate and the Expansion Arbitrator is satisfied that:
 - (A) the scope of the works complies with Section 11.5(f) and the requirements of that Section have been met; and
 - (B) the standard and specifications of the works is appropriate, as provided for in Section 11.5(g) and the requirements of that Section have been met; and
 - (C) the works were undertaken in accordance with the approved TCMP or were otherwise reasonable, as provided for in Sections 11.5(i), 11.5(j), 11.5(k) and 11.5(l) and the requirements of those Sections have been met.
 - (2) In the event that the Expansion Arbitrator considers that any elements specified in Section 11.5(e)(1) are not satisfactorily met, the Expansion Arbitrator will

undertake an assessment of the prudence of the ~~capital expenditure~~Capital Expenditure as if the works were Other Costs, as provided for in Section 11.5(m). In undertaking this assessment, the Expansion Arbitrator will take into account the extent to which DBCT Management has achieved compliance with the expansion approval process outlined in this Section 11.5, including consistency with any assumptions associated with a Price Ruling.—

(f) **(Expansion Arbitrator's acceptance of scope of works)**

- (1) The Expansion Arbitrator will accept the scope of the proposed Terminal Capacity Expansion if it is satisfied that:
 - (A) the scope is consistent with the current Terminal Master Plan and System Master Plan and applicable laws;
 - (B) the 60/60 Requirement has been complied with; and
 - (C) (together with any other relevant expansions of one or more components of the System) the Terminal Capacity Expansion will result in an increase in System Capacity and will not be expected to result in Terminal Capacity significantly and disproportionately exceeding System Capacity for more than 12 months after Completion of a Terminal Capacity Expansion.
- (2) The Expansion Arbitrator will accept or not accept the scope within 20 Business Days of being provided with all of the information it requires to assess the proposed works and the criteria listed in Section 11.5(f)(1). If the Expansion Arbitrator does not accept the scope of the proposed works, it will give reasons in writing.

(g) **(Expansion Arbitrator's acceptance of standard and specifications of works)**

- (1) The Expansion Arbitrator will review the standard and specifications of works relating to a Terminal Capacity Expansion and all relevant contract terms to ensure that the works do not involve any unnecessary works or contain design standards that exceed those standards necessary to comply with Clause 12.1 of the Port Services Agreement, or, in the case of contract terms, are not likely to materially adversely impact on a prudent balance between price and risk.
- (2) The Expansion Arbitrator will accept or not accept on a contract by contract basis the standard, specifications, and contract terms for the works within 20 Business Days of receipt of the technical specifications, design drawings and contract terms for the works and any other information needed by the Expansion Arbitrator to review the standard, specifications and contract terms for the works. If the Expansion Arbitrator does not accept the standard, specifications and contract terms of the works, it will give reasons in writing.
- (3) If DBCT Management amends the submitted technical specifications and/or design drawings and/or material contract terms after an approval by the Expansion Arbitrator, DBCT Management will immediately advise the Expansion Arbitrator of the changes. The Expansion Arbitrator will accept or not accept the changes.

(h) **(60/60 Requirement)**

- (1) **(What is the 60/60 Requirement)** In this Section 11.5, the "60/60 Requirement" is satisfied when:

- (A) DBCT Management has executed Access Agreements from Access Holders, each of which provides for the Handling of coal for a period of at least 10 years duration, for at least 60% of the proposed Terminal Capacity increment.
 - (B) 60% of all Access Holders and Expansion Parties (as determined by their Annual Contract Tonnages reduced by the relevant exclusions set out in Section 11.5(h)(1)(C)) do not oppose the Terminal Capacity Expansion, having been given the information and notice in Section 11.5(h)(2) at least 15 Business Days before it is determined whether or not the 60/60 Requirement has been satisfied.
 - (C) The relevant exclusions are the tonnages of any Access Holder of existing capacity at the Terminal where the Access Holder is:
 - (i) legally and beneficially, the same entity as; or
 - (ii) a related body corporate of an Access Holder that is legally and beneficially, the same entity as,

an Expansion Party that is within Section 11.5(h)(1)(A). For clarification, where an Expansion Party or Access Holder is, or acts on behalf of, a joint venture, the Expansion Party or Access Holder will only be "legally and beneficially" the same, in respect of both an Access Agreement ~~(or Existing User Agreement)~~ and an Access Application or two or more Access Agreements ~~(or Existing User Agreements)~~ and Access Applications, where each of the entities comprising the joint venture relating to each relevant Access Agreement ~~(or Existing User Agreement)~~ and Access Application is the same (or a related body corporate of the same) entity in each context.
- (2) **(DBCT Management to provide information for 60/60 Requirement process)**
- DBCT Management will provide the Access Holders and Expansion Parties referred to in Section 11.5(h)(1)(B) relevant to a proposed Terminal Capacity Expansion with the following information, for the purposes of determining whether the 60/60 Requirement can be complied with in respect of a proposed Terminal Capacity Expansion:
- (A) outline details of the scope of the proposed Terminal Capacity Expansion works;
 - (B) details of how the Terminal Capacity Expansion complies with the current Terminal Master Plan and System Master Plan;
 - (C) without limitation to Section 5.10, provide a copy of the capacity assessment undertaken in accordance with Section 11.1 which separately identifies the capacity of the Existing Terminal and the proposed Expansion Component Capacity;
 - (D) cost estimates for the proposed Terminal Capacity Expansion and each element of the Terminal Capacity Expansion, including contingency, financing and escalation allowances;
 - (E) a schedule of each element of the proposed Terminal Capacity Expansion;
 - (F) the projected total Terminal Capacity and System Capacity following the Terminal Capacity Expansion;

- (G) a high level project execution strategy, which strategy will, among other things, identify risks and risk mitigation;
 - (H) a schedule of likely reductions in Terminal Capacity and System Capacity during construction;
 - (I) an outline of Existing User Agreement tonnages, Access Agreement tonnages, Conditional Access Agreement tonnages and Access Application tonnages and contract periods;
 - (J) an estimate of what effect the proposed Terminal Capacity Expansion will have on each Terminal Component's ~~Capital Terminal Infrastructure~~ Charges and Operation and Maintenance Charges;
 - (K) a notice that the above information is being expressly provided in contemplation of the 60/60 Requirement (even if the notice was given prior to the Commencement Date);
 - (L) where a Price Ruling has been made in respect of a relevant Terminal Capacity Expansion, the content of the Expansion Arbitrator's rulingPrice Ruling; and
 - (M) where a Price Ruling has not yet been made in respect of a relevant Terminal Capacity Expansion, the application for a Price Ruling filed with the Expansion Arbitrator under Section 11.5(a)(9).
- (3) **(60/60 Requirement conclusive)** Once evidence of compliance with the 60/60 Requirement has been provided and accepted by the Expansion Arbitrator it will not be subject to further review (provided that the evidence presented was not misleading or deceptive and there has been no dishonesty or manifest error).
- (4) **(60/60 Requirement determines deemed need for Terminal Capacity Expansion)** If Section 11.5(a)(6)(A) applies, the Expansion Arbitrator will confirm the sufficiency (or sufficiencies) of evidence of the 60/60 Requirement within 20 Business Days of receipt of the Terminal Capacity Expansion application. If the Expansion Arbitrator provides such confirmation, it will be deemed to have accepted the need for the Terminal Capacity Expansion.
- (5) **(Expansion Arbitrator review if 60/60 Requirement not met)** If Section 11.5(a)(6)(B) applies, the Expansion Arbitrator will, within 3 months of receipt of the Terminal Capacity Expansion application, review whether the Terminal should be expanded in the way proposed by DBCT Management. If the Expansion Arbitrator does not accept that the Terminal should be expanded in the way proposed by DBCT Management, it will give reasons in writing.
- (i) **(Tender and Contract Management Processes)**
- (1) **(General principles for Expansion Arbitrator approval)** The Expansion Arbitrator will approve DBCT Management's TCMP if it is satisfied that it is consistent with the following general principles, namely that the TCMP:
- (A) is in accordance with good industry practice;
 - (B) will generate an efficient and competitive outcome;
 - (C) will avoid conflict of interest or collusion amongst tenderers;

- (D) is prudent in the circumstances of the Terminal Capacity Expansion project; and
 - (E) will avoid unreasonable exposure to contract variation claims.
- (2) **(Detailed considerations for Expansion Arbitrator approval)** In particular, in considering whether or not to approve DBCT Management's TCMP, the Expansion Arbitrator will consider whether, (amongst other things):
- (A) there is a clear process for the calling of tenders, including having clear specifications for tenders, and processes for mitigating conflicts of interest (except when it is assessed that calling tenders is likely to be less advantageous than an alternative means of negotiating a contract);
 - (B) (where applicable) there is a tender assessment process which contains clear and appropriate processes for determining the successful tender, with any decisions to approve a tender that is not the lowest tender being appropriately justified and documented;
 - (C) the basis of payment for works is clearly specified and the basis for undertaking the works is in accordance with good commercial practice;
 - (D) there is a process for managing contracts before and after award that accords with good commercial practice for a project of the type and scale of the Terminal Capacity Expansion and provides appropriate guidance on the criteria that DBCT Management should apply to decisions regarding the management of the Terminal Capacity Expansion, including but not limited to:
 - (i) safety during construction and operation;
 - (ii) compliance with environmental requirements during construction and operation;
 - (iii) minimising disruption to operating capacity during construction;
 - (iv) accommodation of the reasonable requests of Access Holders and Expansion Parties to change the scope and sequence of construction to suit their needs;
 - (v) a prudent balance between:
 - (A) a higher price in return for more certainty as to final cost;
 - (B) a lower price accepting that final cost may be less certain; and
 - (C) costs, schedule and minimising disruption to operating capacity during construction;
 - (vi) minimising whole of asset life costs including future maintenance and operating costs; and
 - (vii) minimising total project cost which may at times not be consistent with minimisation of individual contract costs;
 - (E) there is a process for managing contract variations and/or escalation that occurs post award of a contract, requiring that reasonable consideration be given to managing the risk of contract variations and/or escalation and

the allocation of potential risks during the management of the contract and requiring the provision of clear documentary evidence regarding the nature and reasonableness of any variation and/or escalation; and

- (F) DBCT Management has engaged an auditor in accordance with Section 11.5(l) to monitor compliance with the TCMP.
- (3) **(Notification of TCMP decision by Expansion Arbitrator)** The Expansion Arbitrator will within 20 Business Days of the Expansion Arbitrator receiving all the information it requires to assess the TCMP give DBCT Management a notice in writing whether it will approve or not approve the TCMP, setting out:
- (A) reasons for its decision; and
 - (B) if requested, the way the TCMP should be amended.
- (4) **(Amendment of TCMP)** DBCT Management may at any time and from time to time request amendments to an approved TCMP by giving written notice to the Expansion Arbitrator. Promptly following receipt of a request to amend the TCMP the Expansion Arbitrator will approve or not approve the amendments. In considering such amendments the Expansion Arbitrator will apply Sections 11.5(i)(1), 11.5(i)(2) and 11.5(i)(3).
- (j) **(Indicators of prudent contract value)** The Expansion Arbitrator will accept that the value of a contract as awarded is prudent and will include it ~~into the relevant Regulated Asset Base~~in his or her determination of the prudent Capital Expenditure for the Terminal Capacity Expansion if:
- (1) the Expansion Arbitrator has approved DBCT Management's TCMP in accordance with Section 11.5(i);
 - (2) the Expansion Arbitrator is satisfied that contract provisions regarding contract variations and escalation accord with good commercial practice; and
 - (3) the auditor engaged in accordance with Section 11.5(l) certifies that the works have been conducted in accordance with the approved TCMP.
- (k) **(Indicators of prudent variations and escalations)** The Expansion Arbitrator will accept that contract variations and/or escalations post award of a contract are prudent and will include them ~~into the relevant Regulated Asset Base~~in his or her determination of the prudent Capital Expenditure for the Terminal Capacity Expansion if:
- (1) **(Compliance with TCMP)** a contract which has been accepted as prudent under Section 11.5(j) has been managed in accordance with the approved TCMP;
 - (2) **(Auditor certification)** the auditor engaged in accordance with Section 11.5(l) has certified that contract variations and/or escalations have been handled in a manner consistent with the relevant contract provisions; and
 - (3) **(Variations and escalations)** the Expansion Arbitrator is satisfied that the cost of contract variations and/or escalations is otherwise appropriate, having regard to the following:
 - (A) whether adequate consideration was given to properly managing the risk of contract variations and/or escalation or the allocation of potential risks during the awarding and management of the contract;

- (B) whether the contract has been appropriately managed when regard is had for matters outlined in Section 11.5(i)(2)(D);
 - (C) whether the contract variations and/or escalations are appropriately justified; and
 - (D) whether the contract has been managed with a regard to a prudent balance between costs, schedule and minimising disruption to operating capacity during construction.
- (II) **(Independent external audit)** As part of the implementation of the approved TCMP, DBCT Management will engage an independent external auditor to audit the compliance of DBCT Management's tender and contract management processes with the TCMP approved under this Section 11.5. The process in this regard will be as follows:
- (1) **(Appointment)** DBCT Management will appoint the auditor, subject to obtaining the Expansion Arbitrator's prior approval of the selection of the auditor and the Expansion Arbitrator's prior approval of the terms and conditions of the engagement of the auditor;
 - (2) **(Acknowledgement of duty)** the auditor will be required to acknowledge and accept that the auditor owes a separate contractual duty of care to the Expansion Arbitrator in the provision of the audit and, in the event of a conflict between the auditor's obligations to DBCT Management and its duty of care to the Expansion Arbitrator, the auditor's duty of care to the Expansion Arbitrator will take precedence;
 - (3) **(Audit process to be agreed and approved)** the auditor must agree the processes for conducting an audit with DBCT Management and obtain the Expansion Arbitrator's approval of the audit process. The audit process will consist of a proposed work program, including audit costs (which shall be payable by DBCT Management and included in the ~~Regulated Asset Base (of the Existing Terminal if Socialised, or Differentiated)prudent Capital Expenditure determined by the~~ Expansion Component if Differentiated)Arbitrator, for the execution of the audit;
 - (4) **(Provision of information to auditor)** DBCT Management will, within a nominated timeframe that is determined by the auditor to be reasonable after consultation with DBCT Management, provide any relevant information the auditor reasonably requires for the purpose of conducting the audit;
 - (5) **(Confidentiality deed)** if required by DBCT Management, the auditor will enter into a confidentiality deed with DBCT Management in relation to any information provided by DBCT Management to the effect that it must keep the information confidential and only use that information for the purpose of conducting the audit and completing the audit report detailed below;
 - (6) **(Audit reports)** the auditor will compile an audit report identifying whether DBCT Management has complied in all material respects with the approved TCMP including in relation to contract variations and/or escalation. If the auditor identifies that DBCT Management has not complied in all material respects with the approved TCMP, then the audit report is also to contain details on the relevant non-compliance, any reasons stated by DBCT Management for the

- relevant non-compliance, and whether the non-compliance was reasonable in the circumstances;
- (7) **(Progress reports)** the auditor will provide progress reports on the audit process every 6 months. The auditor will also provide a copy of the audit report to DBCT Management and the Expansion Arbitrator upon completion of the audit. The Expansion Arbitrator may have the audit report published on DBCT Management's website if it considers it appropriate; and
 - (8) **(Expansion Arbitrator may require additional detail)** if the Expansion Arbitrator forms the view that any of the auditor's reports (whether progress reports or a final report) are lacking in detail or otherwise deficient, the Expansion Arbitrator may direct DBCT Management to instruct the auditor to review ~~their~~the audit report and, in doing so, to address the concerns of the Expansion Arbitrator.
- (m) **(Prudence of Other Costs)**
- (1) **(Expansion Arbitrator to assess prudence)** The Expansion Arbitrator will undertake an assessment of the prudence of Other Costs, and costs to which Section 11.5(e)(2) applies, after the relevant costs have been expended.
 - (2) **(Considerations relating to prudence)** In assessing whether actual ~~capital expenditure~~Capital Expenditure is prudent, the Expansion Arbitrator will have regard ~~for~~to the scope of the works undertaken, the standard of the works undertaken and the reasonableness of the cost of works undertaken.
 - (3) **(Factors relevant to scope of work)** In assessing the scope of the works and any associated ancillary services undertaken, the Expansion Arbitrator will have regard to (amongst other things):
 - (A) the scope of the proposed Terminal Capacity Expansion;
 - (B) the current Terminal Master Plan and System Master Plan (or to the extent that there is no current System Master Plan, the considerations DBCT Management is required to have regard to under Section 14.2(c));
 - (C) the extent of current contracted demand, likely future demand and any spare capacity considered appropriate, and the need for capital works to accommodate that demand;
 - (D) the appropriateness of DBCT Management's processes to evaluate and select proposed capital works, including the extent to which alternatives are evaluated as part of the process;
 - (E) the extent to which capital projects that were undertaken were subjected to DBCT Management's evaluation and selection process; and
 - (F) the extent to which consultation has occurred with relevant stakeholders about the proposed capital works.
 - (4) **(Factors relevant to standard and specifications)** In assessing the standard and specifications of the works undertaken, the Expansion Arbitrator will ensure that the proposed works do not involve any unnecessary works or contain design standards that exceed those standards necessary to comply with Clause 12.1 of the Port Services Agreement and section 11, Schedule E of this Framework.

- (5) **(Factors relevant to reasonableness)** In assessing the reasonableness of the cost of works undertaken, the Expansion Arbitrator will have regard to, (among other things):
- (A) the level of such costs and risks relative to the scale, nature, cost and complexity of the project;
 - (B) the circumstances prevailing in the markets for engineering, equipment supply and construction;
 - (C) the manner in which the Terminal Capacity Expansion has been managed, including but not limited to the manner in which DBCT Management has balanced the needs of:
 - (i) safety during construction and operation;
 - (ii) compliance with environmental requirements during construction and operation;
 - (iii) minimising disruption to operating capacity during construction;
 - (iv) accommodating the reasonable requests of Access Holders to change the scope and sequence of the works undertaken to suit their needs;
 - (v) a prudent balance between:
 - (A) a higher price in return for more certainty as to final cost;
 - (B) a lower price, accepting that final cost may be less certain; and
 - (C) costs, schedule and minimising disruption to operating capacity during construction;
 - (vi) minimising whole of asset life costs including future maintenance and operating costs; and
 - (vii) minimising the total cost of the Terminal Capacity Expansion which may at times not be consistent with minimisation of individual costs.
- (6) **(Assessing capital expenditure)** In assessing the prudence of ~~capital expenditure~~Capital Expenditure undertaken, the Expansion Arbitrator will take advice as necessary from independent advisors using appropriate benchmarks and experience, and consult as necessary with relevant stakeholders (the cost of which advisers will be borne by DBCT Management at the discretion of the Expansion Arbitrator).
- (7) **(Audit costs)** The costs of the external auditor referred to in Section 11.5(l) and the advisers referred to in Section 11.5(m)(6) (where payable by DBCT Management) will form part of the Other Costs.
- (8) ~~(Inclusion in asset base) The Expansion Arbitrator will include all prudent capital expenditure into the Regulated Asset Base (of the Existing Terminal if Socialised, or Differentiated Expansion Component if Differentiated).~~
- (n) **(Preliminary assessment of Other Costs)** If requested by DBCT Management, the Expansion Arbitrator will undertake a preliminary assessment of the reasonableness of the Other Costs and shall advise DBCT Management of the results of such assessment. The Expansion Arbitrator will not be bound by this assessment when determining the

prudence of actual capital expenditure Capital Expenditure and whether the capital expenditure should be included in the Regulated Asset Base (of the Existing Terminal, or Differentiated Expansion Component as applicable) Capital Expenditure should be included in its determination of the prudent Capital Expenditure for the Terminal Expansion Component.

- (e) ~~(Interim Reference Tariffs determined before Completion of Terminal Capacity Expansion)~~ Prior to the Completion of a Terminal Capacity Expansion DBCT Management must submit a draft amending access undertaking in accordance with Schedule C to provide for:
 - (1) ~~an interim ARR, Revenue Cap and Reference Tariff (which interim ARR, Revenue Cap and Reference Tariff is based on forecast costs) to apply to the Expansion Component from the first day of the Month following the Month in which a Terminal Capacity Expansion is Completed and handed over to the Operator, until approval by the QCA of an amended ARR, Revenue Cap and Reference Tariff for the Expansion Component which are based on the actual costs of the Terminal Capacity Expansion; and~~
 - (2) ~~a mechanism for the adjustment of Access Charges for the Expansion Component (to the extent that they are affected by a Terminal Capacity Expansion) so as to reconcile the difference between Access Charges which are based on forecast costs and Access Charges which are based on actual costs, with the purpose that DBCT Management and Reference Tonnage Access Holders will be placed in the same position they would have been in had the Access Charges which were payable in respect of the Expansion Component were originally based on the actual costs of the Terminal Capacity Expansion and not the forecast costs.~~
- (f) ~~(Consistency of Interim Reference Tariff with earlier pricing reviews)~~ Where a draft amending access undertaking is submitted in accordance with Section 11.5(o)(1) above, the interim ARR, Revenue Cap, Reference Tariff and Access Charges to apply to the Expansion Component shall:
 - (1) ~~be calculated in accordance with Schedule C of the Framework;~~
 - (2) ~~include any information about queuing and how the relevant queue is to be managed; and~~
 - (3) ~~be consistent with any relevant Price Ruling.~~
- (g) ~~(Adjustment of Interim Reference Tariff etc following Completion and determination of actual costs)~~ Promptly following the Completion of a Terminal Capacity Expansion and the determination of the actual costs of that Capacity Expansion, DBCT Management must submit a draft amending access undertaking which shall:
 - (1) ~~be calculated in accordance with Schedule C of the Framework;~~
 - (2) ~~include any updated information as required by section 11.5(o);~~
 - (3) ~~be consistent with any applicable Price Ruling,~~
~~and which draft amending access undertaking may take the form of a variation to any draft submitted pursuant to Section 11.5(o) if it is not yet approved by the QCA.~~

11.6 ~~Return on capital applicable to Interest during construction for Terminal Capacity Expansions~~

- (a) ~~(WACC(2)) In the event of a Terminal Capacity Expansion costs incurred in the Terminal Capacity Expansion and approved by the Expansion Arbitrator pursuant to Section 11.5, including construction related financing costs, (which will include a return on capital over the construction period on the Terminal Capacity Expansion expenditure incurred, prudently incurred) will be included in the Expansion Component's Regulated Asset Base upon which the ARR and Reference Tariff are determinedprudent Capital Expenditure for the Terminal Capacity Expansion for the purposes of and taken into account in any determination of a Floor TIC or amended TIC to apply in respect of the Existing Terminal or a Floor TIC to apply in respect of a Differentiated Expansion Component (as the case may be) following Completion of the Terminal Capacity Expansion in accordance with Section 10.4(f) or 10.6(b)(3) (as applicable). The return on capital over the construction period to be included in the Regulated Asset Base (of the Existing Terminal if Socialised, or Differentiated Expansion Component if Differentiated)prudent Capital Expenditure for the Terminal Capacity Expansion and taken into account in determining the Floor TIC or amended TIC will be calculated at the WACC(21) Rate.~~
- (b) ~~(WACC(3)) The return on capital to apply to the Regulated Asset Base (of the Existing Terminal if Socialised, or Differentiated Expansion Component if Differentiated), when calculating the ARR and Reference Tariffs to apply from the first day of the Month following the Completion and handover to the Operator of the Terminal Capacity Expansion, will be calculated at the WACC(3) Rate.~~
- (c) ~~(WACC(1)) The return on capital to apply to other components of the Regulated Asset Base (of the Existing Terminal if Socialised, or Differentiated Expansion Component if Differentiated) will continue to be calculated at the WACC(1) Rate.~~

11.7 Unreasonable and uneconomic proposed Terminal Capacity Expansions

If, having regard to:

- (a) the actual or anticipated long-term demand for the Services;
- (b) the extent to which a Terminal Capacity Expansion under the relevant stage of the Terminal Master Plan would produce capacity in excess of demand;
- (c) the cost of the Terminal Capacity Expansion;
- (d) the extent to which DBCT Management can demonstrate on reasonable evidence that the costs of the Terminal Capacity Expansion would be unlikely to be accepted by ~~the QCA as forming part of the cost base~~an Expansion Arbitrator as prudent for the purposes of determining Access Charges in respect of that Terminal Capacity Expansion; and
- (e) the long-term nature of DBCT Management's investment in the Terminal, the cost to DBCT Management of complying with Sections 11.3, 11.4 and 11.5 would be unreasonable and uneconomic, DBCT Management may submit to DBCT Holdings a written proposal that:
- (f) provides details of the above matters; and
- (g) proposes a modification to or temporary delay in the Terminal Capacity Expansion that would otherwise be required to be undertaken under this Section 11, on terms

and conditions that are not inconsistent with the objectives in Clause 2.2 of the Port Services Agreement,

and DBCT Management and DBCT Holdings will consult with one another, the State, Access Holders and Access Seekers, in good faith in respect of the proposal. DBCT Holdings will not unreasonably withhold or delay its agreement to such modification or delay. DBCT Management will be relieved of its obligations under this Section 11 to the extent that DBCT Holdings agrees to modify or delay a Terminal Capacity Expansion (whether such agreement is given under the Framework or the Port Services Agreement).

11.8 Inability to proceed with a proposed Terminal Capacity Expansion

If DBCT Management would otherwise be required to proceed with a Terminal Capacity Expansion but, despite its best endeavours, is:

- (a) unable to procure a relevant tenure to or interest in land or seabed necessary for such Terminal Capacity Expansion;
- (b) unable to procure an approval in respect of the occupation or operation of the Terminal, that is required for DBCT Management to lawfully undertake any construction or development otherwise required by a Terminal Capacity Expansion under this Section 11; or
- (c) reasonably of the view that it is not possible to increase Terminal Capacity,

then the obligations of DBCT Management under this Section 11 will be suspended to the extent affected by that inability while that inability continues. DBCT Management will continue to use its best endeavours to (as applicable) procure that approval (including amending, resubmitting or substituting the application and amending the relevant design or work program for the construction or development to procure the approval), procure the interest or tenure, or identify a means of increasing Terminal Capacity.

11.9 Terminal Capacity Expansions to comply with Terminal Master Plan

If DBCT Management wishes to undertake a Terminal Capacity Expansion under this Section 11, it will do so by undertaking the next applicable stage or stages of development contemplated by the Terminal Master Plan (which is intended to be integrated with the System Master Plan) that are necessary to at least provide the necessary relevant additional Handling capacity.

11.10 Non-expansion Capital Expenditure

- (a) **(Good Operating and Maintenance Practice and Port Services Agreement)** DBCT Management will incur ~~Capital Expenditure which does not relate to a Capacity Expansion~~NECAP as is necessary to ensure:
 - (1) that the Terminal complies with Good Operating and Maintenance Practice; and
 - (2) that DBCT Management complies with its obligations under the Port Services Agreement.
- (b) **(Streamlined approval of Capital Expenditure)** ~~The QCA will be obliged to accept that Capital Expenditure (which does not relate to a Terminal Capacity Expansion)~~NECAP. For the purposes of Section 10.6(b), the Arbitrator must accept that NECAP is prudent and include it in the relevant Regulated Asset Base determination of the amended TIC:
 - (1) provided that DBCT Management confirms, to the reasonable satisfaction of the QCA Arbitrator, that the expenditure incurred falls within the definition of Capital Expenditure;

- (2) if:
 - (A) ~~the Capital Expenditure is prior to DBCT Management incurring the NECAP, the NECAP was~~ unanimously approved by all Access Holders whose ~~Reference Tariff is calculated~~~~TIC would be amended~~ by reference to ~~the relevant Regulated Asset Base(s)~~~~that NECAP~~; or
 - (B) no Access Holder ~~at the relevant time~~~~whose TIC would be amended by reference to that NECAP~~ objected to the ~~Capital Expenditure~~~~NECAP~~ within 20 Business Days after receiving written notice ~~of the estimated Capital Expenditure~~ from DBCT Management ~~of NECAP incurred by it~~ which expressly drew their attention to this Section; and
- (3) if the Operator has recommended in writing the incurring of the ~~Capital Expenditure~~~~NECAP~~.
- (c) (Inclusion of ~~Capital Expenditure~~~~NECAP~~ where specific criteria satisfied) ~~The QCA will accept into the relevant Regulated Asset Base Capital Expenditure which:~~
 - (1) ~~does not relate to a Terminal Capacity Expansion; and~~
 - (2) ~~For the purposes of Section 10.6(b), the Arbitrator may accept that NECAP which does not comply with all the conditions in Section 11.10(b), if the QCA forms the view that such expenditure is, is nonetheless~~ prudent having regard to (among other things):
 - (1) ~~(3)~~ the need for the work to be undertaken for the efficient operation and use of the Terminal having regard to demand, cost benefit and other relevant factors;
 - (2) ~~(4)~~ the scope of the work undertaken;
 - (3) ~~(5)~~ the standard of the work undertaken;
 - (4) ~~(6)~~ the circumstances prevailing in the markets for engineering, equipment supply and construction;
 - (5) ~~(7)~~ safety during construction and operation;
 - (6) ~~(8)~~ compliance with environmental requirements during construction and operation;
 - (7) ~~(9)~~ minimising whole of asset life costs; and
 - (8) ~~(10)~~ the advice of independent advisors using appropriate benchmarks and experience and which advisors are appointed (and paid for) by DBCT Management.

12 Terms and conditions of Access

12.1 Access Agreements

- (a) (Standard Access Agreement guide for all ~~access~~~~Access~~) The granting of Access will be underpinned by the Standard Access Agreement.
- (b) (Parties to Access Agreements) The parties to each Access Agreement will include DBCT Management, DBCT Trustee and the- relevant Access Holder.
- (c) (Consistency with Standard Access Agreement) If the Access Seeker so requires (although DBCT Management and the Access Seeker are able to agree otherwise), the

Access Agreement will, ~~in all material respects be consistent with~~ be substantively identical to the Standard Access Agreement.

- (d) **(Different terms)** DBCT Management or an Access Seeker may seek Access on terms which are different (Different Terms) from the Standard Access Agreement.
- (e) **(Standard Access Agreement is guide for access negotiations)** For Access required on terms other than the Standard Access Agreement, the terms of the Standard Access Agreement will provide guidance as to the terms and conditions that are to be included in the relevant Access Agreement.
- (f) **(Execution copies to be prepared)** Once an Access Seeker has notified DBCT Management that it is satisfied— with the terms and conditions of the Access Agreement as drafted, DBCT Management will, as soon as reasonably practicable, provide a final Access Agreement to the Access Seeker for execution.
- (g) **(Prompt execution)** The parties will use reasonable efforts to duly execute the final Access Agreement as soon as practicable after negotiations are finalised.

12.2 Minimum Term of Access Agreements

- (a) **(10 years where Terminal Capacity Expansion required)**
 - (1) An Access Agreement which will, if entered into by DBCT Management, require a Terminal Capacity Expansion, must:
 - (A) provide for the Handling of coal for a minimum term of 10 years; and
 - (B) not allow the Access Holder to voluntarily reduce the Annual Contract Tonnage earlier than the end of that 10 year period, except for any right of DBCT Management to terminate for default.
 - (2) A series of Access Agreements which will, if entered into by DBCT Management with an Access Seeker, require a Terminal Capacity Expansion must:
 - (A) provide for the Handling of coal for a minimum Weighted Average Term of 10 years; and
 - (B) not allow the Access Holder to voluntarily reduce the Annual Contract Tonnage under any Access Agreement in the series earlier than the tenth anniversary of commencement of the term of the latest-dated Access Agreement in the series, except for any right of DBCT Management to terminate for default.
- (b) **(Replacement Agreements for existing mines)** An Access Agreement in respect of an existing mine for which there is already an Access Agreement~~—or Existing User Agreement~~ may be for any term, but:
 - (1) if it is for less than 5 years that term and the relevant tonnages must correspond with the expected remaining life of that mine; and
 - (2) no option to extend the term may be granted under it if the term is for less than 10 years.
- (c) **(Constraints on term for new mine)** The term of an Access Agreement relating to a new mine (including a mine where production is being resumed after a full closure or a sustained period of dormancy),~~,~~ may be for any term, but:
 - (1) if it is for a term of less than 5 years, DBCT Management may reserve the right to terminate it on not less than 12 months' notice if:

- (A) DBCT Management executes an Access Agreement for a period in excess of 5 years, commencing during that term; and
 - (B) DBCT Management would have been unable to execute that new Access Agreement without a Terminal Capacity Expansion of the Terminal, had the first mentioned Access Agreement not been terminated at that time; and
- (2) no option to extend the term may be granted under it if the ~~agreement~~Access Agreement provides for the Handling of coal for a term of less than 10 years.
- (d) **(Increased Tonnage or term is deemed new Access Agreement)** For clarification, increasing the term of, or Annual Contract Tonnage under, an Access ~~Agreement or Existing User~~ Agreement will be taken to constitute a separate Access Agreement in respect of the increased term or tonnage for the purposes of this Section 12.2 ~~(except to the extent that an Access Holder under an Existing User Agreement has a contractual right to require the increase, on terms which are inconsistent with this paragraph)~~.
- (e) **(Clarification re options)** Reference to an Access Agreement in this Section 12.2 does not include an Access Agreement resulting from the exercise of an option to renew or extend the term under a previous ~~access agreement~~Access Agreement.

13 Whole of supply chain efficiency

13.1 Engagement in Dalrymple Bay Coal Chain efficiency improvement

DBCT Management will, on a “best endeavours” basis, engage with other stakeholders to develop and implement mechanisms to improve the overall efficiency of the Dalrymple Bay Coal Chain (including forums established pursuant to or arising out of a Memorandum of Understanding dated 1 April 2008 between stakeholders in the DBCT Coal Chain or any subsequent agreement or arrangement replacing or pursuant to that Memorandum of Understanding).

14 Master plans

14.1 Terminal Master Plan

- (a) **(What the Terminal Master Plan is)** The Terminal Master Plan is the framework and reasoning for the expansion of the Terminal in the most logical and efficient way. It is intended to be a part of, and integrated with, the System Master Plan (and to the extent that at any time there is no System Master Plan, having regard to DBCT Management’s knowledge of the System and System Capacity for the relevant period).
- (b) **(Schedule F)** Until changed pursuant to the Framework and the Port Services Agreement, the Terminal Master Plan is the Terminal Master Plan in Schedule F.
- (c) **(Annual review)** DBCT Management must review the Terminal Master Plan at least annually and otherwise in accordance with its obligations under the Port Services Agreement.
- (d) **(Consultation)** Without limiting Section 14.1(c) DBCT Management must consult with all other Service Providers, Access Holders, Access Seekers and the Operator in respect of any proposed amendment to the Terminal Master Plan.

- (e) **(DBCT Management to make copies available)** DBCT Management must make a copy of the Terminal Master Plan available to each other Service Provider and to each Access Holder and Access Seeker and the Operator (which may be by way of reference to a website) promptly after each amendment of the Terminal Master Plan.

14.2 System Master Plan

- (a) **(Participate in System Master Planning)** DBCT Management must use its reasonable endeavours to:
 - (1) (to the extent that it has not already occurred at the Commencement Date) reach agreement with each other Service Provider and DBCT Holdings (after consultation with those stakeholders and with all Access Holders and Access Seekers and the Operator) on a System Master Plan; and
 - (2) review (and if necessary revise) that System Master Plan by agreement with each other Service Provider, following ongoing consultation with all the above mentioned stakeholders.
- (b) **(Withdrawal from System Master Planning)** DBCT Management may at any time, acting reasonably, propose amendments to an existing or proposed System Master Plan. If after a reasonable time each other Service Provider does not agree to the amendments proposed by DBCT Management, DBCT Management may withdraw its agreement in respect of that System Master Plan in which case there will be assumed to be no System Master Plan for the purposes of this Framework. DBCT Management will publish on its website its reasons for withdrawing its agreement to a System Master Plan.
- (c) **(If no System Master Plan)** If at any time for any reason there is (or is deemed to be) no System Master Plan in force, where a provision of this Framework requires DBCT Management (or ~~an independent expert~~ Capacity Expert / an Independent Expert / an Arbitrator / Expansion Arbitrator (as relevant)) to have regard to a System Master Plan, DBCT Management (or ~~an independent expert~~ Capacity Expert / an Independent Expert / an Arbitrator / Expansion Arbitrator (as relevant)) will have regard to the Terminal Master Plan together with what it reasonably considers to be the present and likely future state of the other relevant components of the System and what DBCT Management (or ~~an independent expert~~ Capacity Expert / an Independent Expert / an Arbitrator / Expansion Arbitrator (as relevant)) reasonably understands to be generally accepted System operating assumptions.
- (d) **(Protection of DBCT Management)** DBCT Management will not be liable to an Access Seeker (and the Standard Access Agreement will provide that DBCT Management will not be liable to an Access Holder who executes it) if DBCT Management makes a good faith and reasonable attempt to comply with this Section 14.
- (e) **(DBCT Management's obligations in System Master Planning process)** The following apply to DBCT Management in relation to its endeavours to agree a System Master Plan pursuant to Section 14.2(a) and 14.2(b):
 - (1) DBCT Management must fully and promptly provide to all other relevant ~~Stakeholders~~Stakeholders all information (to the extent that it is available to DBCT Management) which might reasonably be considered to be relevant for the purpose of determining a System Master Plan (but this does not require DBCT Management to disclose any information which could reasonably be

considered to be commercially sensitive to it or any Access Holder or Access Seeker or any other person); and

- (2) DBCT Management must, as far as practicable, work cooperatively with each other Service Provider (for example by regularly providing information relevant to System Capacity and, as far as practicable, using reasonable endeavours to agree on the joint engagement of experts Capacity Experts for the purpose of the Framework and similar obligations by other Service Providers).
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15 Not Used

16 Governing Law and Dispute resolution

[Drafting Note: Consequential amendments to the dispute resolution provisions in this clause 16 may be required in drafting changes to give effect to the pricing framework set out at Appendix 7 of DBCTM's submission dated 30 May 2018]

15 Governing Law

This Framework is governed by the laws in force in the State of Queensland.

16 Dispute resolution

16.1 Disputes

- (a) **(Disputes under this Framework)** If any dispute or question arises under or in relation to this Framework or, including in relation to the negotiation of Access between an Access Seeker and DBCT Management (**Dispute**) then, unless otherwise expressly agreed by both parties in writing, such Dispute will be resolved in the manner specified in this Framework (where applicable) and in accordance with this Section. Either party may give to the other party to the Dispute notice in writing (**Dispute Notice**) specifying the Dispute and requiring that it be dealt with in the manner specified in this Framework (where applicable) and as set out in this Section 16. Without limitation to the forgoing, any dispute concerning:

- (1) the Access Charges to apply under an Access Agreement, which contains pricing provisions that are substantively identical to those of the Standard Access Agreement applicable at the time of entry into the Access Agreement, for a Pricing Period that commences during the term of that Access Agreement (including the Initial Access Charges to apply from the start of the Pricing Period, the method of calculating, paying and reconciling the Access Charges to apply for the Pricing Period or any consequential changes in the drafting of the provisions of the Access Agreement); or
- (2) the review during a Pricing Period of the Access Charges applicable under an Access Agreement that contains pricing provisions that are substantively identical to those of the Standard Access Agreement applicable at the time of entry into the Access Agreement in accordance with Section 10.6 of this Framework.

is a Dispute under this Framework and will be resolved in the manner specified in this Framework and in accordance with this Section.

- (b) **(Notice of Dispute)** Either party may give to the other party to the Dispute notice in writing (**Dispute Notice**) specifying the Dispute and requiring that it be dealt with in the manner specified in this Framework (where applicable) and as set out in this Section 16.
- (c) **(b)-(Disputes under Access Agreements)** Unless otherwise specified by this Framework or agreed by the parties, Disputes disputes under an Access Agreement ~~or Existing User Agreement~~ will be dealt with in accordance with the provisions of that Access-Agreement or Existing User Agreement and are not dealt with under this Framework.
- (d) **(e)-(Dispute under Deed Poll)** ~~The Subject to clause 9.2.3 of the Deed Poll, the~~ courts of Queensland have exclusive jurisdiction to determine any disputes arising under the Deed Poll.

16.2 Chief Executive resolution

- (a) **(Reference to CEOs)** Unless otherwise agreed by both parties or provided for in this Framework (including where the Framework provides that a Dispute or other matter is to be referred to or determined by an Independent Expert (or Expert Determination) or an Arbitrator (or Arbitration)), any Dispute will be referred in the first instance and in any event within 10 Business Days of the giving of the Dispute Notice to the Chief Executive of DBCT Management (or his or her nominee) and the Chief Executive of the Access Seeker or Access Holder (or his or her nominee) for resolution.
- (b) In the event that:
 - (1) resolution is not reached within 10 Business Days of referral; or
 - (2) either Chief Executive appoints a nominee in accordance with this Section 16 that is unacceptable to the other party,unless otherwise agreed by the parties, where this Framework provides that the Dispute is to be referred to Expert Determination (or determination by an Independent Expert), the Dispute will be referred to an Independent Expert in accordance with Section 16.3.16.3 unless otherwise agreed by the parties. All other Disputes will be referred to Arbitration in accordance with Section 16.4.

16.3 Expert Determination

Where a matter is referred to Expert Determination (or determination by an Independent Expert) in accordance with Section 16.2 or as otherwise specified in accordance with this Framework, then the following will apply:

- (a) **(Appointment)** An Independent Expert may be appointed by the parties, or where agreement cannot be reached by the parties within five Business Days, by the Resolution Institute.
- (b) **(Criteria for Independent Expert)** In any event the Independent Expert must:
 - (1) have appropriate qualifications and practical experience having regard to the nature of the Dispute;
 - (2) have no interest or duty which conflicts or may conflict with his or her function as Independent Expert, he or she being required to fully disclose any such interest or duty before his or her appointment; and

- (3) not be a current or immediate past employee of the Access Seeker or Access Holder, or DBCT Management or of a Related Body Corporate of either of them.
- (c) **(Acceptance of appointment)** The Independent Expert appointed pursuant to this Section 16.3 must not act until the Independent Expert has given written notice of the acceptance of his or her appointment to both parties.
- (d) **(Provision of information to Independent Expert)** The parties must upon request by the Independent Expert, provide or make available to the Independent Expert:
 - (1) all information in their possession or control (other than Confidential Information);
 - (2) all Confidential Information (subject to entry into arrangements to preserve confidentiality which are acceptable to all relevant parties, acting reasonably); and
 - (3) all other assistance, that the Independent Expert may reasonably require. Any such information or assistance must be provided as soon as reasonably practicable. Any determination made by an Independent Expert in relation to a Dispute must be consistent with the provisions of this Framework;
- (e) **(Determination to be given to each party)** The Independent Expert will provide both parties with a copy of the written determination in relation to the Dispute within a reasonable time after his or her appointment.
- (f) **(Confidentiality)** The Independent Expert appointed pursuant to this Section 16.3 is required to undertake to the parties in writing to keep confidential all matters coming to his or her knowledge by reason of this appointment and performance of his or her duties.
- (g) **(Not arbitration)** Any person nominated as an Independent Expert pursuant to this Section 16.3 is deemed to be and must act as an Independent Expert and not as an arbitrator. The law relating to arbitration including, without limitation, the *Commercial Arbitration Act 2013* (Qld) as it may be amended from time to time, does not apply to the Independent Expert or to the determination or to the procedures by which the Independent Expert may reach that determination.
- (h) **(Independent Expert's decision final)** In the absence of manifest error, the decision of the Independent Expert is final and binding upon the parties. If a party believes that there was a manifest error it may refer the matter to the Arbitrator for a determination in accordance with Section 16.4. If the Arbitrator determines that there was a manifest error, then the parties may agree to refer the Dispute to another Independent Expert in accordance with this Section 16.3, or failing such agreement, either party may refer the Dispute to the Arbitrator for resolution in accordance with Section 16.4.
- (i) **(Costs of Independent Expert)** The costs of the Independent Expert and the reasonable costs of the parties are to be borne by the parties in such proportions as determined by the Independent Expert. If two or more Access Seekers or Access Holders are parties to a Dispute involving substantially the same issues and there are no special circumstances making it necessary or desirable for them to be separately represented, it will only be reasonable for those Access Seekers and Access Holders in aggregate to recover the costs of being collectively represented in any Dispute.

16.4 Determination by Arbitration

- (a) All Disputes referred to Arbitration (or determination by an Arbitrator) under this Framework must be conducted in accordance with this Section 16.4.
- (b) The Dispute shall be submitted to Arbitration in accordance with, and subject to, the Resolution Institute Arbitration Rules.
- (c) The Arbitration must be effected by a single suitably qualified and experienced arbitrator who is either:
 - (1) agreed upon between the parties; or
 - (2) in default of such agreement within five Business Days after the Dispute is referred for Arbitration, nominated by the Resolution Institute.
- (d) Any party to the Arbitration may be represented before the Arbitrator by a member of the legal profession without the need for leave of the Arbitrator.
- (e) The proceeding, including any determination by the Arbitrator, will be kept confidential between the parties and the Arbitrator, with the exception that DBCT Management may disclose an Initial TIC for a Terminal Component and a Pricing Period determined by an Arbitrator in any Arbitration under this Section 16.4 to:
 - (1) an Access Seeker in subsequent negotiations with that Access Seeker concerning an Initial TIC for that Terminal Component and that Pricing Period to apply to the Access Seeker from the commencement of an Access Agreement or increased Access under an Access Agreement; or
 - (2) the Arbitrator in and the party or parties to any later Arbitration on an Access Dispute concerning an Initial TIC for that Terminal Component and that Pricing Period for the purpose of Section 10.4(e) of this Framework,
subject to the Access Seeker in subsequent negotiations and the party or parties to any later Arbitration first undertaking to maintain the confidentiality of the outcome of the first-mentioned Arbitration.
- (f) Subject to paragraph (g), in any Dispute relating to the terms and conditions of Access, the Arbitrator must determine on terms and conditions of Access that are substantively identical to the terms of the Standard Access Agreement, except to the extent necessary to give effect to any matter agreed by the parties to the Arbitration.
- (g) In any Dispute relating to Access Charges, the Arbitrator must determine on terms and conditions relating to Access Charges that are:
 - (1) in accordance with Section 10 of this Framework; and
 - (2) subject to paragraph (1), substantively identical to the terms of the Standard Access Agreement,
except to the extent necessary to give effect to any matter agreed by the parties to the Arbitration.
- (h) ~~(e)~~ In making a determination, the Arbitrator must have regard to the terms of the Framework and to the following matters:
 - (1) the Framework Objective;
 - (2) DBCT Management's binding legal obligations and obligations under law;
 - (3) DBCT Management's legitimate business interests and investment in the Terminal;

- (4) the legitimate business interests of persons who have, or may acquire, rights to use the Terminal;
- (5) the public interest, including the benefit to the public in having competitive markets;
- (6) the value of the service to:
 - (A) the Access Seeker or Access Holder;
 - (B) a class of Access Seekers or Access Holders;
- (7) the direct costs to DBCT Management of providing Access to the Terminal, including any costs of a Terminal Capacity Expansion, but not costs associated with losses arising from increased competition;
- (8) the economic value to DBCT Management of any Terminal Capacity Expansion, or other additional investment in the Terminal, that DBCT Management or an Access Seeker or an Access Holder has undertaken or agreed to undertake;
- (9) the quality of the Services;
- (10) the operational and technical requirements necessary for the safe and reliable operation of the Terminal;
- (11) the economically efficient operation of the Terminal;
- (12) any other matters to which the Arbitrator thinks it is appropriate to have regard.

(ii) ~~(f)~~ Any arbitration Subject to paragraph (j), any Arbitration commenced under this Framework may be consolidated with any other arbitration commenced under:

- (1) ~~(f)~~ this Framework ~~(or agreements referred to in the Framework)~~; and / or
- (2) ~~(f)~~ an Access Agreement or other agreement entered into as contemplated by the Framework,

~~regardless of the parties involved~~, provided that the issue(s) which each arbitrator has been asked to determine concern common questions of fact or law. Such consolidated arbitration shall be determined by the arbitrator appointed for the arbitration proceeding that was commenced first in time.

- (j) Any Arbitration concerning a Dispute about the Access Charges to apply under an Access Agreement, which contains pricing provisions that are substantively identical to those of the Standard Access Agreement applicable at the time of entry into the Access Agreement, for a Pricing Period that commences during the term of that Access Agreement (including the Initial Access Charges to apply from the start of the Pricing Period, the method of calculating, paying and reconciling the Access Charges to apply for the Pricing Period or any consequential changes in the drafting of the provisions of the Access Agreement) must be consolidated with any other Arbitration concerning a dispute of this kind in respect of the same Pricing Period so that there is a single Arbitration of such Disputes for a Pricing Period. Such consolidated Arbitration does not prevent an Arbitrator from making a specific determination that would apply to individual Access Holders or groups of Access Holders.
- (k) ~~(g)~~ The venue for any Arbitration will be Brisbane, Queensland.
- (l) ~~(h)~~ Unless otherwise determined by the Arbitrator, the costs of the Arbitration shall be paid by the unsuccessful party.

16.5 Urgent matters

Nothing in this Section 16 prevents a party from seeking urgent injunctive relief from a court.

17 Limitations to Losses and Damages

Subject to the terms of an Access Agreement, Funding Agreement, Underwriting Agreement or any other agreement entered into with DBCT Management as contemplated by this Framework, and notwithstanding any other Section of this Framework:

- (a) damages is not a remedy for any breach of this Framework;
 - (b) the only remedy available for any breach of this Framework is specific performance; and
 - (c) DBCT Management is not liable to Access Holders,~~, or~~ Access Seekers ~~or Rail Operators~~ for any indirect Loss or Consequential Loss arising in connection with this Framework.
-

18 Severability

- (a) Subject to Section 18(b), if a provision of this Framework is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this Framework.
- (b) Section 18(a) does not apply if severing the provision:
 - (1) materially alters the scope and nature of this Framework; or
 - (2) would be contrary to public policy.

Schedule A – Access Application Form and Renewal Application Form

Access Application Form

[Note: this form to be issued on Access Seeker's letterhead]

To: Chief Executive Officer
DBCT Management

DBCT Access Application

TAKE NOTICE that the Access Seeker named below applies for Access to the Services at Dalrymple Bay Coal Terminal pursuant to section 5.2 of the Access Framework .

Name of Access Seeker	
Origin of Coal (Mine Name)	
Street address	
Telephone	
Attention	
Email address	

The Access Seeker warrants that it has:

- (a) rights to below rail infrastructure; and/or
- (b) made or will promptly make an application to the relevant railway infrastructure service provider to obtain rights to rail infrastructure (which it reasonably expects will be granted if this Access Application is granted); and/or
- (c) otherwise made arrangements,

to ensure that rail access is sufficient to deliver to the Terminal the tonnages which are the subject of this Access Application.

Category of Access Application:	
A	A new Access Seeker (<i>please (1) complete Schedule A attached and (2) provide evidence of solvency or security offered to enable DBCT Management to assess creditworthiness</i>). <input type="checkbox"/>
B	An existing Access Holder seeking additional capacity (including an extension of the Term) pursuant to a mechanism in its Access Agreement (as contemplated by section 5.11 of the Access Framework). <input type="checkbox"/>
C	An existing Access Holder seeking additional capacity (including an extension of the Term) other than in the circumstances contemplated by Section 5.11 of the Access Framework. <input type="checkbox"/>
D	<u>An Existing User seeking additional capacity (including an extension of the Term).</u> <input type="checkbox"/> <i>For existing Access Holders making a category B or C application or Existing Users making a category D application, please complete the declaration below or Schedule A attached:</i> I confirm that all details required by Schedule A attached in relation to the Services required at DBCT the Terminal, and any Security required, will be as per our <u>Existing Access Agreement / Existing User Agreement</u> <u>strike through the inapplicable reference and</u> tick box at right]. <i>[Note: If box is not ticked, please complete Schedule A attached]</i>
Name	<i>DBCT Management use only</i> Received Date:
Position	
Signed	<i>Access Application Date:</i> <i>[per section 5.4(b) of the Access Framework]</i>
Date	

The Access Seeker unconditionally and irrevocably agrees:

- (a) to comply with the requirements, obligations and processes in:
 - a. the Framework relating to it or its Access Application; and

- b. the Deed Poll, including the conditions set out in clauses 8.4, 9, 10 and 11 of the Deed Poll; and
- (b) that the Access Application is governed by the laws in force in the State of Queensland.

Schedule A to the Access Application of [insert name]

(Note – where the Access Seeker is an Existingexisting Access Holder or Existing User and the details are relevantly the same as the Services being provided under the Access Agreement or Existing User Agreement respectively, state “as existing”. Cross reference to further sheets to be attached where there is insufficient room in the table below.

1	Name and contact details	As above
2	Stockpiling requirements	
3	Blending requirements	
4	Number of products	
5	Date of commencement of delivery of coal to the Terminal	
6	Description of each type of coal (including coal qualities such as moisture content, dust extinction moisture level, “stickiness”, and contamination levels and any special requirements the Access Seeker has in relation to its coal, including any special equipment or particular Handling processes) to be delivered to the Terminal	
7	Net tonnes of coal per annum requested for each Financial Year where access is requested	Year Mtpa
8	Proposed number of trains and wagons per train for each week from the proposed date of commencement of the delivery of coal to the Terminal to the end of the first full Financial Year:	
9	Proposed gross tonnes per wagon	
10	To the extent possible, the number, type and respective gross and deadweight tonnages of vessels, on a month by month basis, expected to ship the Access Seeker’s coal from the proposed date of the commencement of the delivery of coal to the Terminal to the end of the first full Financial Year, including details of the numbers of single and part vessel consignments.	
11	Requirements for trial shipments (if any)	
12	<ul style="list-style-type: none"> • A report prepared by a ‘competent person’ (as defined in the JORC Code) in accordance with the JORC Code and the Coal Guidelines which provides an estimate of Marketable Coal Reserves and Coal Resources as at the date the report is prepared (which must be within 12 months of the date of the Access Application)- which are to be allocated for shipment under the Access Seeker’s Access Agreement. The estimate must be calculated in accordance with the JORC Code and the Coal Guidelines. The report and the key documents used to develop the report must be verified by a ‘competent person’ (as defined in the JORC Code). • An explanation of how the estimate of Marketable Coal Reserves and Coal Resources in the report is consistent with having sufficient: <ul style="list-style-type: none"> • Marketable Coal Reserves for the net tonnes of coal per annum requested for each of the first 5 Financial Years in item 7 in- respect of which Access is applied for; and • Coal Resources, together with the Marketable Coal Reserves, for the net tonnes of coal per annum requested for each Financial Year in item 7. 	
13	<ul style="list-style-type: none"> • A description of the coal mine project that will be used as the source of coal to be delivered by the Access Seeker to the Terminal (Source Mine Project). • The project timeline (including key milestones) for the construction, commissioning and production phases of the Source Mine Project. • An explanation of how the Source Mine Project is currently tracking against the project timeline and a description of the current stage of the Source Mine Project. • An explanation of how the project timeline referred to above is consistent with the date for commencement of delivery of coal to the Terminal (as specified in item 5). • An assessment of the prospects of the Access Seeker obtaining any debt or equity finance required in order for the Source Mine Project to achieve the key milestones referred to in the project timeline including commencement of the production phase. • The Access Seeker’s progress in obtaining the necessary approvals for the Source Mine Project. 	

Name	Signed
Position	
Date	

Access Renewal Form

[Note: this form to be issued on Access Seeker's letterhead]

To: Chief Executive Officer
DBCT Management

DBCT Renewal Application

TAKE NOTICE that the Access Seeker named below applies to renew its Access Application for Access to the Services at Dalrymple Bay Coal Terminal pursuant to section 5.3A of the Access Framework .

Name of Access Seeker	
Origin of Coal (Mine Name)	
Street address	
Telephone	
Attention	
Email address	

The Access Seeker warrants that it has:

- (a) rights to below rail infrastructure; and/or
- (b) made or will promptly make an application to the relevant railway infrastructure service provider to obtain rights to rail infrastructure (which it reasonably expects will be granted if this Renewal Application is granted); and/or
- (c) otherwise made arrangements,

to ensure that rail access is sufficient to deliver to the Terminal the tonnages which are the subject of this Renewal Application.

Category of Renewal Application

A A renewal of an Access Application which was submitted by a new Access Seeker (*please complete the declaration below or (1) complete Schedule A attached and (2) provide evidence of solvency or security offered to enable DBCT Management to assess creditworthiness*).

I confirm that all details required by Schedule A attached in relation to the Services required at DBCT, and any Security required, will be as per our current Access Application [tick box at right]. [Note: If box is not ticked, please complete Schedule A attached]

B A renewal of an Access Application which was submitted by an existing Access Holder seeking additional capacity (including an extension of the Term) pursuant to a mechanism in its Access Agreement (as contemplated by section 5.11 of the Access Framework).

C A renewal of an Access Application which was submitted by an existing Access Holder seeking additional capacity (including an extension of the Term) other than in the circumstances contemplated by section 5.11 of the Access Framework-.

D A renewal of an Access Application which was submitted by an Existing User seeking additional capacity (including an extension of the Term).

For existing Access Holders making a category B or C Renewal Application or Existing Users making a category D Renewal Application, please complete the declaration below or Schedule A attached:

I confirm that all details required by Schedule A attached in relation to the Services required at DBCT~~the Terminal~~, and any Security required, will be as per our current Access Application and Existing Access Agreement ~~/ Existing User Agreement~~ [strike through the inapplicable reference and tick box at right].

[Note: If box is not ticked, please complete Schedule A attached]

Name	<i>DBCT Management use only Received Date:</i>
Position	
Signed	
Date	

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The Access Seeker unconditionally and irrevocably agrees ~~to~~:

- (a) to comply with the requirements, obligations and processes in:
- a. the Framework relating to it or its Access Application and Access Renewal Form; and
 - b. the Deed Poll, including the conditions set out in clauses 8.4, 9, 10 and 11 of the Deed Poll; and
- (b) ~~(a)~~the Access Application and Access Renewal Form are governed by the laws in force in the State of Queensland.

Schedule A to the Renewal Application of [insert name]

(Note – where the Access Seeker is an Existing~~existing~~ Access Holder or Existing User and the details are relevantly the same as the Services being provided under the Access Agreement or Existing User Agreement respectively, state “as existing”. Cross reference to further sheets to be attached where there is insufficient room in the table below.)

1	Name and contact details	As above
2	Stockpiling requirements	
3	Blending requirements	
4	Number of products	
5	Date of commencement of delivery of coal to the Terminal	
6	Description of each type of coal (including coal qualities such as moisture content, dust extinction moisture level, “stickiness”, and contamination levels and any special requirements the Access Seeker has in relation to its coal, including any special equipment or particular Handling processes) to be delivered to the Terminal	
7	Net tonnes of coal per annum requested for each Financial Year where access is requested	Year Mtpa
8	Proposed number of trains and wagons per train for each week from the proposed date of commencement of the delivery of coal to the Terminal to the end of the first full Financial Year	
9	Proposed gross tonnes per wagon	
10	To the extent possible, the number, type and respective gross and deadweight tonnages of vessels, on a month by month basis, expected to ship the Access Seeker’s coal from the proposed date of the commencement of the delivery of coal to the Terminal to the end of the first full Financial Year, including details of the numbers of single and part vessel consignments	
11	Requirements for trial shipments (if any)	
12	<ul style="list-style-type: none"> • A report prepared by a ‘competent person’ (as defined in the JORC Code) in accordance with the JORC Code and the Coal Guidelines which provides an estimate of Marketable Coal Reserves and Coal Resources as at the date the report is prepared (which must be within 12 months of the date of the Renewal Application) which are to be allocated for shipment under the Access Seeker’s Access Agreement. The estimate must be calculated in accordance with the JORC Code and the Coal Guidelines. The report and the key documents used to develop the report must be verified by a ‘competent person’ (as defined in the JORC Code). • An explanation of how the estimate of Coal Resources in the report is consistent with being able to economically extract the net tonnes of coal per annum requested for each Financial Year in item 7 by the relevant Financial Years (including the proportion which is 'Marketable Coal Reserves' as defined in the JORC Code, and the Access Seeker's approach to converting those Coal Resources to Marketable Coal Reserves). • An explanation of how the estimate of Marketable Coal Reserves and Coal Resources in the report is consistent with having sufficient: • Marketable Coal Reserves for the net tonnes of coal per annum requested for the first five Financial Year in item 7 in respect of which Access applied for; and • Coal Resources, together with the Marketable Coal Reserves, for the net tonnes of coal per annum requested for each Financial Year in item 7. 	
13	<ul style="list-style-type: none"> • A description of the coal mine project that will be used as the source of coal to be delivered by the Access Seeker to the Terminal (Source Mine Project). • The project timeline (including key milestones) for the construction, commissioning and production phases of the Source Mine Project. • An explanation of how the Source Mine Project is currently tracking against the project timeline and a description of the current stage of the Source Mine Project. • An explanation of how the project timeline referred to above is consistent with the date for commencement of delivery of coal to the Terminal (as specified in item 5). • An assessment of the prospects of the Access Seeker obtaining any debt or equity finance required in order for the Source Mine Project to achieve the key milestones referred to in the project timeline including commencement of the production phase. • The Access Seeker’s progress in obtaining the necessary approvals for the Source Mine Project. 	

<u>Name</u>	<u>Signed</u>
<u>Position</u>	
<u>Date</u>	

Name	Signed
Position	
Date	

Schedule B – Standard Access Agreement

[Standard Access Agreement attached separately]

Schedule C – The Terminal Infrastructure Charge

For the avoidance of doubt, the terms and provisions of this Schedule should be interpreted in accordance with Section 10.1(e) of the Framework.

Part A - Rules for calculating Initial Terminal Infrastructure Charge and Monthly Payment applicable in Arbitration on Initial Access Charges

1. Monthly Payment (MP)

Access Holder “u” (AH_u) must pay to DBCT Management a Monthly Payment in respect of its Annual Contract Tonnage in each Month “m” of each Financial Year (MP_{u,m}), calculated as follows:-

Schedule C – [Pricing Placeholder]

[Drafting Note: Please refer to Appendix 7 of DBCTM's submission, which sets out the pricing framework. Drafting to give effect to the pricing framework is being developed and this schedule will be updated to reflect the pricing framework] $MP_{u,m} = TIC \times MRT_{u,m}$

where:-

TIC is the Terminal Infrastructure Charge applicable to AH_u for a relevant Financial Year in respect of the Existing Terminal or Differentiated Expansion Component (as relevant), as amended or adjusted in accordance with Section 3 of this Schedule C; and

MRT_{u,m} is the number of tonnes which is the proportion of the Annual Contract Tonnage applicable to AH_u in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) attributable to each Month "m" of a Financial Year. Where the rate of the Annual Contract Tonnage for the Access Holder does not vary in a Financial Year and applies to the full Financial Year, the MRT_{u,m} for the AH_u will be one-twelfth of their Annual Contract Tonnage for the relevant Financial Year. Where the rate of the Annual Contract Tonnage for the AH_u varies during a Financial Year, the MRT_{u,m} will vary from Month to Month to reflect one-twelfth of the annualised rate of the Annual Contract Tonnage at that time.

The Monthly Payment will be adjusted during a Financial Year where the TIC is amended or adjusted in accordance with Schedule C, Section 3.

To avoid doubt, if an Access Holder has more than one TIC for a Terminal Component due to the Access Holder obtaining increased Access to the Terminal Component at a different TIC, the Monthly Payment formula above must be applied separately in relation to the TIC applicable to each tranche of Access to the Terminal Component obtained by the Access Holder, with the total Monthly Payment for the Access Holder being the sum of the Monthly Payments for each tranche of Access.

2. Initial Terminal Infrastructure Charge

The Floor TIC

- (a) The Floor TIC in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) is the TIC for that Terminal Component that would apply under a QCA administered pricing regime.

The Ceiling TIC

- (b) The Ceiling TIC in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) is the highest TIC for that Terminal Component at which coal volumes served by that Terminal Component would be the same as if the Floor TIC in respect of that Terminal Component applied.
- (c) The Ceiling TIC in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) is to be set equal to the lowest 'willingness to pay' (as defined in paragraph (d) below) to be served at the relevant Terminal Component of those mines expected to be served at the Terminal Component, where:
 - (1) mines are served at the Terminal Component in the order of their 'willingness to pay' to be served at that Terminal Component, with those with higher 'willingness to pay' served before those with lower 'willingness to pay'; and

- (2) the coal volumes to be served at the Terminal Component are the same as if the Floor TIC in respect of that Terminal Component applied and do not exceed the capacity of that Terminal Component to serve those coal volumes.
- (d) For the purpose of paragraph (c), a mine's 'willingness to pay' to be served at the Existing Terminal or Differentiated Expansion Component (as relevant) is:
- (1) expressed on a dollar per tonne basis;
 - (2) zero if:
 - (A) the mine's coal volumes are not technically capable of being delivered to the Terminal (in that the mine is not connected to the Terminal by rail);
 - (B) the mine's coal volumes are technically capable of being delivered to a coal terminal other than the Terminal (in that the mine is connected to that other coal terminal by rail) and its expected profit per tonne is greater when its coal volumes are served at that other coal terminal than when its coal volumes are served at the Terminal; or
 - (C) the mine's expected profit per tonne when its coal volumes are serviced at the relevant Terminal Component is less than zero; and
 - (3) otherwise calculated as:
 - (A) the Floor TIC for the relevant Terminal Component; plus
 - (B) the expected profit per tonne where the mine's coal volumes are served at the relevant Terminal Component at the Floor TIC for that Terminal Component; less
 - (C) either:
 - (i) the highest expected profit per tonne where the mine's coal volumes are served at a coal terminal other than the Terminal that is technically capable of taking delivery of those coal volumes (in that the mine is connected to that terminal by rail), if this expected profit per tonne is greater than zero; or
 - (ii) zero, if there is either no coal terminal other than the Terminal that is technically capable of taking delivery of the mine's coal volumes or no coal terminal other than the Terminal that provides an expected profit per tonne greater than zero.
- (e) For the purpose of assessing a mine's 'willingness to pay' for the purposes of paragraphs (d)(2) and (3) above, expected profit per tonne when its coal volumes are served at a coal terminal is calculated as:
 - (1) the FOB coal price;
less
 - (2) mine costs, being the sum of operating costs, royalty payments, depreciation and a reasonable return on the capital costs of developing and operating the mine;
 - (3) rail transport charges for delivering coal to the coal terminal; and
 - (4) applicable infrastructure and handling charges for using port infrastructure including the coal terminal;

on the basis that:

- (5) miners make terminal usage decisions without reference to any contractual limitations on coal volumes to be served at the Terminal or any other coal terminal; and
 - (6) the volumes of coal that miners prefer to deliver to any coal terminal other than the Terminal must not, when aggregated, exceed the capacity expected to be available at that other coal terminal to serve those coal volumes.
- (f) To avoid doubt, for the purpose of this paragraphs (c) to (e):
- (1) in deriving the Ceiling TIC for the Existing Terminal or a Differentiated Expansion Component (as relevant), any TIC applicable in respect of any other Terminal Component and mines' 'willingness to pay' to be served at any other Terminal Component should be disregarded; and
 - (2) Section 10.4(g) of the Framework applies to forecasting of the coal volumes of mines.

Part B - Review of the TIC during a Pricing Period under Access Agreements in form of Standard Access Agreement

3. Review of the TIC

Annual amendment of the TIC

- (a) A TIC in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) for AH_u will be amended annually on each 1 July after the Initial TIC for AH_u commenced to apply in accordance with paragraphs (b) to (d) of this Section 3.
- (b) A TIC in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) to apply to AH_u from each 1 July after the Initial TIC for AH_u commenced to apply must be escalated for the annual change in the Consumer Price Index by application of the following formula:

$$\text{TIC}_t = \text{TIC}_{t-1} \times (1 + \text{CPI}_t)$$

where:

TIC_t is the TIC in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) to apply with effect from 1 July in Financial Year t consequent upon the adjustment under this paragraph (b);

TIC_{t-1} is the TIC in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) applicable as at 30 June in Financial Year t-1 immediately prior to the occurrence of the adjustment under this paragraph (b); and

CPI_t is the annual percentage change in the Australian Bureau of Statistics CPI All Groups, Weighted Average of Eight Capital Cities from the March quarter in Financial Year t-2 to the March quarter in Financial Year t-1.

- (c) By each 15 May after the Initial TIC in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) for AH_u commenced to apply or as soon as practicable thereafter, DBCT Management will notify that AH_u of the CPI adjustment and resultant TIC to apply with effect from 1 July in the next Financial Year.

- (d) If a Review Event occurs in the period after DBCT Management has notified AH_{ii} of a TIC to apply with effect from 1 July in the next Financial Year under paragraph (c) above but before that 1 July that affects that TIC, DBCT Management will promptly notify that AH_{ii} of the amended TIC to apply with effect from 1 July of the next Financial Year in accordance with paragraphs (e) to (j) below.

Amendment of the TIC if a Review Event occurs

- (e) If a Review Event occurs, DBCT Management will give notice as soon as reasonably practicable of the amended TIC determined in accordance with paragraph (f), (g) or (h) below (as the case may be) to apply because of the Review Event.
- (f) In the case of a Review Event referred to in paragraph (a) of the definition of Review Event (relating to a change in Aggregate Annual Contract Tonnage), a TIC in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) then applicable for AH_{ii} will be amended by application of the following formula, unless the Review Event occurs as a consequence of a Review Event referred to in paragraph (b) of the definition of Review Event (relating to the Completion and hand over to the Operator of a Socialised Expansion), in which case the TIC will be amended in accordance with paragraph (g):

$$\text{TIC}_t = \text{UAF}_t \times \text{TIC}_{t-1}$$

where:

TIC_t is the TIC in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) applicable for AH_{ii} consequent upon the Review Event;

UAF_t is the utilisation adjustment factor, which is equal to TUR_t / TUR_{t-1};

TUR is the terminal utilisation ratio, calculated as follows:

(Existing Terminal Capacity or Differentially Priced Capacity (as relevant) / Aggregate Annual Contract Tonnage in respect of the Existing Terminal or Differentiated Expansion Component (as relevant));

TUR_{t-1} is the TUR immediately prior to the occurrence of the Review Event;

TUR_t is the TUR consequent upon the Review Event; and

TIC_{t-1} is the TIC in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) applicable for AH_{ii} immediately prior to the occurrence of the Review Event.

- (g) In the case of a Review Event referred to in paragraph (b) of the definition of Review Event (relating to a Socialised Expansion), a TIC in respect of the Existing Terminal then applicable for AH_{ii} will be adjusted to an amount calculated as follows:

$$\text{TIC}_t = \text{UAF}_t \times (\text{TIC}_{t-1} - \text{Floor TIC}_{t-1}) + \text{Floor TIC}_t$$

where:

TIC_t is the TIC in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) applicable for AH_{ii} consequent upon the Review Event;

UAF_t is the utilisation adjustment factor, which is equal to TUR_t/TUR_{t-1};

TUR is the terminal utilisation ratio, calculated as follows:

(Existing Terminal Capacity or Differentiated Expansion Component Capacity (as relevant) / Aggregate Annual Contract Tonnage in respect of the Existing Terminal or Differentiated Expansion Component (as relevant))

TUR_{t-1} is the TUR immediately prior to the occurrence of the Review Event;

TUR_t is the TUR consequent upon the Review Event;

TIC_{t-1} is the TIC in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) applicable for AH_t immediately prior to the occurrence of the Review Event;

Floor TIC_{t-1} is the Floor TIC in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) immediately prior to the occurrence of the Review Event; and

Floor TIC_t is the Floor TIC in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) consequent upon the Review Event.

- (h) In the case of a Review Event referred to in paragraph (c) of the definition of Review Event (relating to NECAP), the TIC in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) that would otherwise apply for AH_t in Financial Year t (after making all other adjustments required by paragraphs (c) and (e)) will be adjusted for that Financial Year t by an amount calculated as follows:

Adjustment amount_t = NECAP Allowance_t / Aggregate Annual Contract Tonnage_t
where:

NECAP Allowance_t is equal to the sum of the Return on NECAP_t and the Return of NECAP_t;

Return on NECAP_t is the product of the NECAP Asset Base_t and the WACC(2) Rate;

Return of NECAP_t is equal to the sum, for each 12 month period ending 31 March in which any program of NECAP included in NECAP Asset Base_t for the Existing Terminal or Differentiated Expansion Component (as relevant) was Completed and handed over to the Operator, of the total NECAP for any program of NECAP Completed and handed over to the Operator in the 12 month period divided by an asset life of 20 years;

NECAP Asset Base_t is the NECAP Asset Base for the Existing Terminal or Differentiated Expansion Component (as relevant) as at 1 July for Financial Year t and is derived by rolling forward the value of the NECAP Asset Base from the preceding Financial Year t-1 as follows:

$$\text{NECAP Asset Base}_t = \text{NECAP Asset Base}_{t-1} + \text{NECAP}_{t-1} - \text{Return of NECAP}_{t-1};$$

NECAP Asset Base_{t-1} is the value of the NECAP Asset Base at the start of Financial Year t-1 and is zero where Financial Year t is the Financial

Year in which the Initial TIC for the relevant Pricing Period commenced;

NECAP_{t-1}

is the value of the NECAP incurred in any prior period (including NECAP in any period preceding the Commencement Date) on any program of NECAP which was Completed and handed over to the Operator by DBCT Management in the twelve months ending 31 March in Financial Year t-1 and allocated to the Terminal Component or Differentiated Expansion Component (as relevant) in accordance with Section 10.7 of this Framework including NECAP referred to in Section 11.10(b) and NECAP referred to in Section 11.10(c);

Return of NECAP_{t-1}

is the Return of NECAP included in the NECAP Allowance_{t-1} in determining the Adjustment amount for Financial Year t-1 in accordance with this paragraph (h) and is zero where Financial Year t is the Financial Year in which the Initial TIC for the relevant Pricing Period commenced.

- (i) Any amendment made pursuant to paragraph (e) above will be effective from the first day of the Month following the Month in which the Review Event occurs, except for those Review Events of the kind described at paragraph (c) of the Review Event definition, which will be effective from the relevant 1 July.
- (j) For clarification, if a review under paragraph (c) above occurs simultaneously with a review under paragraph (e), they will be reviewed together and the amendments to the TIC under paragraph (c) and under paragraph (e) for each Review Event will be applied cumulatively and become effective on the relevant 1 July.
- (k) If DBCT Management or the Access Holder, acting reasonably, considers that an amended TIC determined in accordance with this Schedule C, Part B would be higher than the Ceiling TIC applicable at the time of determining the amended TIC or lower than the Floor TIC applicable at that time, they may raise a Dispute in accordance with Section 16 of this Framework and any determination by an Arbitrator must be in accordance with Section 10.6(b) of this Framework.

Schedule D – Confidentiality deed

This confidentiality deed

is made on between the following parties:

- 1. DBCT Management Pty Limited**
ACN 097 698 916
of Level 15, Waterfront Place, 1 Eagle Street, Brisbane QLD 4000
(DBCT Management)
 - 2. [insert name of receiving party]**
[insert ABN/ACN/ARBN]
of [insert address]
(Access Seeker)

Recitals

- A. DBCT Management and the Access Seeker wish to negotiate the terms of an Access Agreement under which DBCT Management will provide Access to the Services.
 - B. The parties have agreed to the disclosure of certain Confidential Information to each other in order to assist them to reach a negotiated outcome on the terms and conditions of Access to the Services.
 - C. The parties have agreed that any Confidential Information is provided on the terms of this deed and that they will not use or disclose the Confidential Information except as provided in this deed.

This deed witnesses

that in consideration of, among other things, the mutual promises contained in this deed, the parties agree:

1 Definitions and interpretation

1.1 Definitions

In this deed:

Access Framework means the Dalrymple Bay Coal Terminal Access Framework dated 9 September 2020 as varied or replaced from time to time;

Confidential Information means any information, data or other matter disclosed to a party by or on behalf of another party where:

- (a) the disclosure of the information, data or other matter by the Recipient might reasonably be expected to affect the commercial affairs of the owner of the information, data or other matter; or
 - (b) the information, data or other matter is marked or otherwise clearly identified as confidential by a party when disclosed,
provided that such information, data or other matter:
 - (c) is not already in the public domain;

- (d) does not become available to the public through means other than a breach of this confidentiality deed or of the confidentiality provisions of the Access Framework;
- (e) was not in the other party's lawful possession prior to such disclosure; or
- (f) is not received by the other party independently from a third party free to disclose such information, data or other matter,

and provided further that the information, data or other matter will cease to be Confidential Information if the information has ceased to retain its confidential nature, for example because:

- (g) the disclosure of the information, data or other matter by the Recipient would no longer reasonably be expected to affect the commercial affairs of the owner of the information, data or other matter;
- (h) the information, data or other matter is now in the public domain through means other than a breach of this confidentiality deed or of the confidentiality provisions of the Access Framework; or
- (i) the information, data or other matter has been received by the Recipient independently from a third party free to disclose the information, data or other matter.

Corporations Act means the *Corporations Act 2001* (Cth);

Discloser means a person who discloses Confidential Information to a Recipient pursuant to negotiations for Access under Part 5 of the Access Framework;

Document includes any note, memorandum, record, report, financial information, summary, analysis, calculation, strategic assessment, market survey, business plan, computer program, computer record, circuit, circuit layout, drawing, specification, material or any other means by which information may be stored or reproduced;

Express Purpose means to assist the Recipient to reach a negotiated outcome with the Discloser as to the terms and conditions of Access;

Recipient means a person who receives Confidential Information pursuant to negotiations for Access under Part 5 of the Access Framework; and

Specified Person means:

- (a) an officer or employee of a Recipient;
- (b) a professional adviser to a Recipient;
- (c) a financier of a Recipient;
- (d) a professional adviser to a financier of a Recipient;
- (e) an officer, employee, or a professional adviser to a related body corporate of a Recipient; or
- (f) an officer or employee of the Operator,

who has a specific need to have access to the Confidential Information for the Express Purpose.

1.2 Interpretation

- (a) Terms defined in the Access Framework- have the same meaning in this deed unless otherwise defined.
- (b) Headings are for convenience only and do not affect interpretation.

- (c) In this deed, unless the context otherwise requires:
- (1) words importing the singular include the plural and vice versa;
 - (2) a reference to any thing (including, but not limited to, any right) includes a part of that thing but nothing in this Clause 1.2(c)(2) implies that performance of part of an obligation constitutes performance of the obligation;
 - (3) the term “related body corporate” has the meaning given to that term under the Corporations Act;
 - (4) the term “associate” has the meaning given to that term in Section 15 of the Corporations Act;
 - (5) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency; and
 - (6) a reference to a person includes that person’s successors and legal personal representatives.
-

2 Confidentiality

The Recipient must:

- (a) hold the Confidential Information in strict confidence and not disclose, or cause or permit the disclosure of, the Confidential Information, except as permitted under this deed or with the prior written consent of the Discloser;
 - (b) not disclose, or cause or permit the disclosure to any person of, any opinion in respect of the Confidential Information or a Document created in accordance with Clause 3(c), except as permitted under this deed;
 - (c) keep the Confidential Information and any Documents created in accordance with Clause 3(c) in a way such that it is reasonably protected from any use, disclosure or access which is inconsistent with this deed;
 - (d) promptly notify the Discloser if it suspects, or becomes aware of, any unauthorised use, storage, copying or disclosure of the Confidential Information;
 - (e) do anything reasonably required by the Discloser to prevent or stop a breach or threatened breach of this deed or an infringement or threatened infringement of the Discloser’s rights arising out of this deed by any person, whether by court proceedings or otherwise; and
 - (f) maintain such procedures as are reasonably necessary to ensure compliance with this deed by the Recipient and each Specified Person and, upon request, provide the Discloser details of the procedures adopted.
-

3 Permitted use and disclosure

The Recipient may:

- (a) only use the Confidential Information for the Express Purpose;
- (b) not make use of the Confidential Information to the commercial, financial or competitive disadvantage of the Discloser (but this does not preclude the Recipient

from using the Confidential Information in negotiations with the Discloser or in any dispute proceedings);

- (c) create, or cause or permit to be created, a Document which reproduces, is based on, utilises or relates to Confidential Information only if that creation is solely for the Express Purpose; and
 - (d) only disclose Confidential Information (including as contained in a Document created in accordance with Clause 3(c)) to a Specified Person, and may only make such disclosure solely for the Express Purpose.
-

4 Return and destruction of information

- (a) If requested by the Discloser, the Recipient must promptly return to the Discloser, or destroy or delete as the Discloser directs, all original Documents and copies which:
 - (1) are or contain Confidential Information; and
 - (2) reproduce, are based on, utilise or relate to Confidential Information.
 - (b) If a Document or a copy referred to in Clause 4(a) contains information which is Confidential Information of the Recipient, then the Recipient is not required to return that Document but must destroy or delete the portion of the Document containing the Confidential Information of the Discloser.
 - (c) Nothing in this clause 4 requires the destruction or return of documentation contained in any board papers or information retained by a professional adviser in accordance with usual professional practice.
-

5 Operation of this deed

- (a) This deed continues without limitation in time but, subject to Clause 5(b), does not apply to any Confidential Information that:
 - (1) the Recipient or a Specified Person is required to disclose by any applicable law or legally binding order of any court, government, semi-government authority, administrative or judicial body, or a requirement of a stock exchange or regulator;
 - (2) is in the public domain other than as a result of a breach of this deed;
 - (3) was at the time of disclosure already in the lawful possession of the Recipient; or
 - (4) is received by the Recipient from a person (other than a Discloser or any employee, officer, agent or adviser of a Discloser) legally entitled to possess that information and provide it to the Recipient.
- (b) If the Recipient or a Specified Person must make a disclosure referred to in Clause 5(a)(1):
 - (1) the Recipient must only disclose, and must ensure that the Specified Person only discloses the minimum Confidential Information required to comply with the applicable law, order or requirement; and
 - (2) before making such disclosure, the Recipient must:

- (A) give the Discloser reasonable written notice of:
 - (i) the full circumstances of the required disclosure; and
 - (ii) the Confidential Information which it, or the Specified Person, proposes to disclose; and
 - (B) consult with the Discloser as to the form of the disclosure.
-

6 Acknowledgment

The Recipient acknowledges that:

- (a) the Confidential Information is secret and highly confidential to the Discloser;
 - (b) this deed does not convey any proprietary or other interest in the Confidential Information to the Recipient or any Specified Person;
 - (c) disclosure of Confidential Information in breach of this deed could cause considerable commercial and financial detriment to the Discloser;
 - (d) damages may be inadequate compensation for breach of this deed and, subject to the court's discretion, the Discloser may restrain by an injunction or similar remedy, any conduct or threatened conduct which is or would be a breach of this deed; and
 - (e) some or all of the Confidential Information may be relevant to the price or value of securities of the Discloser. The Recipient undertakes that it will not deal in those securities in breach of the insider trading provisions of the Corporations Act.
-

7 Recipient to ensure others comply

The Recipient must:

- (a) inform each Specified Person of the Recipient's obligations under this deed;
 - (b) procure that each Specified Person strictly observes all of the Recipient's obligations under this deed as if those obligations were imposed on that person; and
 - (c) generally ensure that no officer, employee, adviser or agent of the Recipient does anything which, if done by the Recipient, would be inconsistent with this deed.
-

8 Indemnity

The Recipient indemnifies the Discloser in respect of any claim, action, damage, loss, cost, charge, expense, outgoing or payment which the Discloser suffers, incurs or is liable for in respect of:

- (a) any breach of this deed by the Recipient;
- (b) any failure by the Recipient to ensure compliance by any Specified Person with the terms of this deed; or
- (c) any infringement of the Discloser's rights in respect of the Confidential Information by the Recipient or a Specified Person.

9 Disclaimer

- (a) Neither the Discloser, nor any of its related bodies corporate nor any of their respective officers, employees or advisers:
 - (1) makes any representation or warranty:
 - (A) as to the accuracy or completeness of the Confidential Information;
 - (B) that the Confidential Information has been audited, verified or prepared with reasonable care; or
 - (C) that the Confidential Information is the totality of the information that a prospective Access Seeker may require in order to negotiate an Access Agreement;
 - (2) accepts any responsibility for any interpretation, opinion or conclusion that the Recipient or a Specified Person may form as a result of examining the Confidential Information;
 - (3) accepts any responsibility to inform the Recipient of any matter arising or coming to the Discloser's notice which may affect or qualify any Confidential Information which the Discloser provides to the Recipient; and
 - (4) is liable, and the Recipient covenants not to make any claim or commence or pursue any proceedings against any of them, for any loss of any kind (including, without limitation, damages, costs, interest, loss of profits, or special loss or damage) arising from:
 - (A) an error, inaccuracy, incompleteness or similar defect in the Confidential Information; or
 - (B) any default, negligence or lack of care in relation to the preparation or provision of the Confidential Information.
 - (b) The Recipient acknowledges that it is making an independent assessment of the Confidential Information and that it will carry out, and rely solely on, its own investigation and analyses in relation to the Confidential Information.
 - (c) Any reliance by the Recipient, or any Specified Person, on any Confidential Information, or any use of any Confidential Information, is solely at its own risk.
-

10 Governing law and jurisdiction

- (a) This deed is governed by the laws of Queensland.
 - (b) Any dispute arising out of or in connection with this deed shall be resolved in accordance with the dispute resolution provisions contained in section 16 of the Access Framework.
-

11 Waivers

- (a) Waiver of any right, power, authority, discretion or remedy arising on default under this deed must be in writing and signed by the party granting the waiver.

- (b) A failure or delay in exercise, or partial exercise, of a right, power, authority, discretion or remedy created or arising on default under this deed does not result in a waiver of that right, power, authority, discretion or remedy.
-

12 Variation

Any variation of this deed must be in writing and signed by the parties.

13 Entire agreement

This deed is the entire agreement between the parties in respect of its subject matter.

Executed as a deed:

Signed sealed and delivered by
DBCT Management
by:

Director/Secretary

Director

Name (please print)

Name (please print)

Signed sealed and delivered by
[insert Access Seeker]
by:

Director/Secretary

Director

Name (please print) Name (please print)

Schedule E – Services

1 Train scheduling

DBCT Management must (subject to availability of trains and factors beyond its control) co-ordinate cargo assembly windows at the terminal to receive coal parcels and provide train operators and Access Holders with details of cargo receival windows suitable for terminal acceptance of trains and ensure sufficient unloading capacity is made available at the Terminal, to allow each Access Holder to ship its Annual Contract Tonnage of coal in each Financial Year.

2 Train unloading

If a train carrying an Access Holder's coal arrives at the Terminal within its designated cargo build window, DBCT Management must ensure that the train is unloaded at a rate (consistent with the type and condition of the coal) consistent with achieving Handling of the Annual Contract Tonnage of coal for an Access Holder.

3 Reclaiming and vessel loading

DBCT Management must:

- (a) make the Terminal available for berthing by vessels (which are satisfactory in all respects to receive coal) nominated by each Access Holder, such that not less than the Annual Contract Tonnage can be Handled by DBCT Management on behalf of that Access Holder in each Financial Year (as long as the vessel and/or cargo mix required by the Access Holder (or its customer) does not unreasonably impact on the efficiency of the Terminal). ~~It is agreed that historical vessel or cargo mixes prior to 30 June 2005 will be taken generally not to have unreasonably impacted on efficiency~~; and
- (b) load each Access Holder's coal into a vessel which is nominated by the Access Holder and is available for loading so as to achieve the objective in paragraph 3(a).

4 Incidental services

DBCT Management must provide the following services incidental to coal Handling (unless provided directly by the Operator):

- sampling and survey services;
- vessel monitoring;
- co-ordination with ships' agents, masters, customers and other relevant entities;
- crew disembarkation services; and
- wharfage and line services.

5 Miscellaneous services

If required by an Access Holder or any Approval or statutory authority notified to DBCT Management, DBCT Management must, in accordance with Good Operating and Maintenance Practice, provide the following miscellaneous services to the Access Holder:

- moisture adding;
- compacting;
- surfactant adding;

- dozing;
- blending (subject to Section 6(d) below); and
- any other services reasonably requested from time to time in writing by an Access Holder to DBCT Management, provided that such services will not unreasonably impact on the efficiency or capacity of the Terminal.

6 Stockpiling and blending

- (a) DBCT Management must provide to each Access Holder sufficient stockpile areas to allow cargo assembly (i.e. assembly of cargo for a nominated vessel with an appropriate arrival time) for vessels onto which the Access Holder's coal is to be loaded.
- (b) Remnant management areas will be determined by the Operator in areas of the Terminal which are not required for cargo assembly and which can be made available for dedicated stockpiling without materially affecting efficiency of the Terminal. DBCT Management must ensure that each Access Holder is offered the opportunity to use a proportion of that stockpiling area which accords with its proportion of the Aggregate Annual Contract Tonnage under all Access Agreements and Existing User Agreements.
- (c) The stockpiling rights in Section 6(a) and 6(b) are subject to any other obligation of DBCT Management under any ~~Access Agreement or~~ Existing User Agreement with ~~another Access Holder~~an Existing User entered into prior to 1 July 2004 (to the extent that such obligation has not been waived).
- (d) DBCT Management must blend coal if so requested, but subject to requirements in the Terminal Regulations from time to time, which may:
 - (1) require coal to be blended before it is received at the Terminal, where reasonably practicable;
 - (2) require coal to be blended into a stockpile where reasonably practicable (rather than being blended from stockpile); and
 - (3) limit the proportions in which coal may be blended (to limit the increase in consumption of capacity of the Terminal consumed because of blending).
- (e) DBCT Management must transfer each Access Holder's coal from the train unloading facility at the Terminal to the relevant stockpile area or a cargo assembly area and stockpile an Access Holder's coal in that area (except to the extent that a quality plan under the Terminal Regulations has been agreed to which provides for direct loading from train to vessel).

7 Prevention of contamination

DBCT Management must take all practicable measures to maintain the integrity of each Access Holder's coal at the Terminal, including (without limitation) by:

- (a) avoiding contamination of the Access Holder's coal, including (without limitation) contamination with other coal or waste material; and
- (b) minimising handling and associated degradation of the Access Holder's coal.

8 Data provision

DBCT Management must provide such information and access to systems as are reasonable to inform Access Holders of relevant data relating to handling of their coal.

9 Co-ordination

Subject to the Access Holder providing relevant information to DBCT Management within a reasonable time, DBCT Management must:

- (a) ensure, as far as practicable, that it discharges its obligations in this Schedule in accordance with the requirements of the Access Holder's reasonable quality plans, reasonable shipping programs and contracts as notified to DBCT Management and the Operator from time to time consistent with Terminal Regulations; and
- (b) (subject to the foregoing and having regard to equity amongst Access Holders and Existing Users) use its best endeavours to minimise the aggregate cost to the Access Holder arising out of Handling at the Terminal (including ~~demurrage costs~~Demurrage Costs and rail freight).

10 Terminal Regulations, Force Majeure, Laws and Operation & Maintenance Contract

The provision of each of the above Services by DBCT Management is subject to (and DBCT Management's obligations are modified to the extent of):

- (a) any relevant provisions of the Terminal Regulations in so far as they:
 - (1) require scheduling of Access Holders' and Existing Users' railing in and shipment of coal in ways which promote Terminal and System efficiency and endeavours to achieve the objective of even shipments by Access Holders and Existing Users;
 - (2) temporarily reduce the tonnage of coal which may be Handled or Services provided, during such periods as capacity of the Terminal or relevant Services becomes restricted, provided that such reductions and restrictions affect all Access Holders and Existing Users equitably (but this does not relieve the Access Holder or DBCT Management respectively from any liability which they might have in respect of causing capacity or Services to have become restricted);
 - (3) prescribe requirements for trains, unloading of trains, stockpiling and cargo assembly of vessels, arrival of vessels, loading of vessels, pre-loading requirements and order of loading and unloading and other matters where possible (including matters of the type dealt with in the Terminal Regulations as at the Commencement Date) which promotes the efficient, safe and equitable utilisations of Terminal Capacity and System Capacity and Terminal Services;
 - (4) require Access Holders to co-operate with the Operator and other Access Holders and Existing Users in relation to scheduling, loading, unloading, priorities and other matters relating to the operation of the Terminal; and
 - (5) allow the exercise of discretions on the part of the Operator in limited cases, where it is reasonable to do so, to optimise Terminal or System efficiency and the power is required to be exercised in good faith and in a non-discriminatory way;
- (b) in respect of an Access Holder, any specific provision of their Access Agreement or ~~Existing User~~ Agreement including any provisions relating to an event of force majeure;
- (c) DBCT Management:

- (1) being able to require the Operator under the Operation & Maintenance Contract to provide such services; and
- (2) without limiting Section 10(c) any specific provision in the Operation & Maintenance Contract including any provisions relating to an event of force majeure.

The provision of the above Services by DBCT Management must be carried out in accordance with Good Operating and Maintenance Practice and all applicable laws.

11 Standard for Services

- (a) The provision of the above Services by DBCT Management must be carried out with due skill, care and diligence in accordance with this Framework, the Terminal Regulations, Good Operating and Maintenance Practice and all applicable laws.
- (b) When providing the above Services, DBCT Management must take into account the following factors, where relevant:
 - (1) lowest total whole of life cost;
 - (2) reliability and economy of performance;
 - (3) maximising the effective life of the Terminal; and
 - (4) DBCT Management's non-discrimination obligations under this Framework.

Schedule F – Terminal Master Plan

[Terminal Master Plan attached separately]

[*Drafting Note: DBCTM's 2018 Master Plan is attached at Appendix 19 of DBCTM's submission dated 30 May 2018*]

Schedule G – Definitions and Interpretation

[Drafting Note: Amendments to this Schedule G will be required in drafting changes to give effect to the pricing framework set out at Appendix 7 of DBCTM's submission dated 30 May 2018. Shaded terms in particular are pricing related terms that will be reviewed. Consequential changes to other terms may also be required.]

1. Definitions

In this Framework:

2017 Access Undertaking means the Dalrymple Bay Coal Terminal Access Undertaking prepared in accordance with the requirements of the *Queensland Competition Authority Act 1997* (Qld) and approved on 16 February 2017.

60/60 Requirement has the meaning given in Section 11.5(h).

Access means access under an Access Agreement ~~or Existing User Agreement~~ to the Services to be provided by DBCT Management at the Terminal.

Access Agreement means an access agreement between DBCT Management and an Access Holder negotiated under Section 5 of this Framework (or otherwise entered into during the Term) ~~including an Existing User Agreement, and a Differentially Priced Access Agreement, as the context provides.~~

Access Applicant means a person who has submitted to DBCT Management a valid Access Application that has been confirmed by DBCT Management as compliant with Section 5.2 of this Framework and has not lapsed, expired or otherwise been validly rejected by DBCT Management.

Access Application means:

- (a) an application for Access made or deemed to have been made under Section 5.2 of this Framework;
- (b) for the purposes of Sections 5.3A, 5.4, 5.7, 5.8, 5.9, and Section 16 only – an Access Application which was duly submitted to DBCT Management prior to the Commencement Date under and in accordance with the 2017 Access Undertaking for the Terminal and which has not been dealt with on the Commencement Date. For clarification, the time of the submission of the Schedule A information (before or after the Commencement Date) will not affect the date on which the application is taken to have been received by DBCT Management; and
- (c) for the purposes of Section 5.4 only – an application of the kind referred to in Section 5.10(q)(9)(~~BE~~) which is made after the Commencement Date,

as renewed from time to time in accordance with this Framework.

Access Application Date means:

- (a) where paragraph (b) of this definition does not apply, the date that the Access Application was received by DBCT Management; or
- (b) the date that the Access Application was deemed to be made if the Access Application was substantially altered in accordance with Section 5.3A or 5.7.

Access Charges means amounts payable by an Access Holder under an Access Agreement ~~or Existing User Agreement~~ for the Services.

Access Holder means a party who has an entitlement to Access under an Access Agreement ~~or an Existing User Agreement~~.

Access Seeker means a party seeking Access, or increased Access, to the Services and includes a party to a Conditional Access Agreement.

Access Transfer has the meaning given in Section 5.13 of this Framework.

Additional Tonnage means, in respect of a relevant Financial Year, the aggregate of all Excess Tonnage of all Access Holders in that Financial Year which, because of Terminal Capacity, could not have been Handled unless there had been an Early Termination. For clarification, the Additional Tonnage cannot exceed the relevant annual tonnages the subject of Early Termination.

Additional Tonnage Amount or ATA has the meaning given in Schedule C.

Aggregate Annual Contract Tonnage means, in respect of a relevant Financial Year:

- (a) in respect of an Differentiated Expansion Component, the sum of the Annual Contract Tonnages for only the Differentially Priced Access Holders in respect of that Expansion Component; and
- (b) in respect of the BaseExisting Terminal, the sum of the Annual Contract Tonnages for all Existing Users and Access Holders other than Differentially Priced Access Holders in that Financial Year.

Aggregate Reference Tonnage means, in respect of a relevant Financial Year:

- (a) ~~in respect of an Expansion Component, the sum of the Reference Tonnages for only the Differentially Priced Access Holders in respect of that Expansion Component; and~~
- (b) ~~in respect of the Base Terminal, the sum of the Reference Tonnages for all Access Holders other than Differentially Priced Access Holders in that Financial Year.~~

Alternative Proposed Standard Funding/Underwriting Agreement means the alternative proposed Standard Funding Agreement or alternative proposed Standard Underwriting Agreement as specified under Section 5.10(q)(7).

Annual Contract Tonnage means, for an Access Holder in a relevant Financial Year, the number of Tonnes of coal in that Financial Year that the Access Holder is entitled to have Handled under its Access Agreement.

(a) Annual Contract Tonnage means, for an Access Holder or Existing User in a relevant Financial Year, the number of tonnes of coal in that Financial Year that the Access Holder or Existing User is entitled to have Handled under its Access Agreement or Existing User Agreement (as relevant), as amended from time to time, including tonnage which an Access Holder or Existing User is entitled to have Handled but which may not, at a practical level, be able to be Handled due to circumstances such as a force majeure event or relevant provisions of Terminal Regulations and any tonnage which an Access Holder or Existing User would be entitled to have Handled but for the suspension of the Access Holder's or Existing User's right to have the tonnage Handled under an Access Agreement; ~~but~~ or Existing User Agreement (as relevant).

(b) ~~excluding ad hoc over shipments which may be permitted subject to available capacity.~~

Annual Revenue Requirement or ARR means, in respect of a relevant Financial Year, the amount of revenue which the QCA determines that DBCT Management is entitled to earn in that Financial Year to fully recover the costs incurred in providing Access to the Services (including an adequate rate of return on the value of assets employed but excluding Terminal Operating Costs), assuming that the Aggregate Annual Contract Tonnage for that Financial Year was all contracted as Reference Tonnage.

Approval means any and all licences, approvals, consent or permits required from any Government Agency or third party for the construction, occupation, development or operation of the Terminal for the provision of the Services, performance of the Leases, or the Port Services Agreement, including but not limited to:

- (a) environmental approvals and licences;
- (b) planning and development approvals and licences; and
- (c) local government approvals and licences.

Arbitration means an arbitration commenced under section 16.4.

Arbitrator means an arbitrator appointed under Section 16.4.

Available System Capacity means, in respect of a relevant time, the amount of System Capacity at that time not contracted to be Handled. It is derived by subtracting the Aggregate Annual Contract Tonnage as at the relevant time from System Capacity at that time. Where that subtraction results in a negative number, it will be taken to be "nil". Where Available System Capacity is to be determined in respect of a future time DBCT Management will estimate it taking all relevant factors into account (including System Capacity expected to arise out of a System Capacity Expansion which has been or can reasonably be expected to be committed to at the time of the estimation).

Business Day means a day other than a Saturday, a Sunday, or a public holiday in Brisbane.

~~Capital Charge~~ means the components of Access Charges that are not an Operation & Maintenance Charge.

Capacity Expert has the meaning given in clause 11.1(a)(2)(A).

Capital Expenditure means expenditure (incurred by DBCT Management) which:

- (a) relates to replacement or expansion of any part of the Terminal;
- (b) relates to refurbishment or upgrade of any part of the Terminal which can reasonably be expected to extend the life of the relevant part beyond its original useful life or is undertaken for environmental or safety reasons;
- (c) otherwise relates to the refurbishment or upgrade of Terminal plant and/or infrastructure which is reasonably expected to improve whole of life cost, or is incurred with the agreement of the Operator; or
- (d) is ancillary or incidental to paragraphs (a), (b) or (c),

but not expenditure recovered through HCF or HCV (as those terms are defined in the Standard Access Agreement).

Ceiling TIC means the TIC calculated in accordance with Schedule C, Section 2(b)-(f).

Coal Guidelines means the 'Australian Guidelines for Estimating and Reporting of Inventory Coal, Coal Resources and Coal Reserves' published by the Coalfields Geology Council of New South Wales and the Queensland Resources Council or its successor document, as updated from time to time.

Coal Resources has the meaning given to it in the JORC Code.

Commencement Date means the day following the Expiry Date.

Completion means, in respect of relevant works comprising a Terminal Capacity Expansion or other Capital Expenditure program:

- (a) the works are electrically and mechanically complete; and

- (b) testing and commissioning has been satisfactorily completed (including load commissioning),

but where punchlist items (being items intended to be carried out after practical completion and commencement of full operation of the relevant items) are not necessarily complete, and **Complete** and **Completed** have corresponding meanings.

Conditional Access Agreement has the meaning given to it in Section 5.4(j) of this Framework.

Confidential Information means any information, data or other matter disclosed to a person by, or on behalf of, another person where:

- (a) the disclosure of the information, data or other matter by the recipient might reasonably be expected to affect the commercial affairs of the owner of the information, data or other matter; or
- (b) the information, data or other matter is marked or otherwise clearly identified as confidential by a party when disclosed;

provided that such information, data or other matter:

- (c) is not already in the public domain;
- (d) does not become available to the public through means other than a breach of the confidentiality provisions in this Framework or a breach of any confidentiality deed contemplated in Section 7 of this Framework;
- (e) was not in the other party's lawful possession prior to such disclosure; or
- (f) is not received by the other party independently from a third party free to disclose such information, data or other matter;

and provided further that the information, data or other matter will cease to be Confidential Information if the information, data or other matter has ceased to retain its confidential nature, for example because:

- (g) the disclosure of the information, data or other matter by the recipient would no longer reasonably be expected to affect the commercial affairs of the owner of the information, data or other matter;
- (h) the information, data or other matter has entered in the public domain through means other than a breach of the confidentiality provisions in this Framework or a breach of any confidentiality deed contemplated in Section 7 of this Framework; or
- (i) the information, data or other matter has been received by the recipient independently from a third party free to disclose the information, data or other matter.

Consequential Loss means any one or more of the following:

- (a) Loss of profits; or
- (b) Loss of opportunity to make profits; or
- (c) Loss of business opportunity; or
- (d) special exemplary or punitive damages; or
- (e) any Loss which does not directly and naturally flow in the normal course of events from the occurrence of the event giving rise to the liability for such Loss, whether or not such Loss was in the contemplation of the relevant party at the relevant time,

including any of the above types of Loss arising from an interruption to a business or activity.

Construction Period Risk Free Rate means the rate calculated by averaging the yield of the 10 year Commonwealth Government bond over the 20 Business Days preceding the earlier of:

- (a) the first draw down date on ~~floating rate~~ construction debt financing; or
- (b) the interest rate set date on ~~a fixed rate~~ construction debt financing;

effected by DBCT Management in respect of a relevant Terminal Capacity Expansion.

Control has the meaning given to that term in the *Corporations Act 2001* (Cth) and **Controlled** has a corresponding meaning.

Cost Allocation Principles has the meaning given in Section [10]10.7.

Cost Sensitive Expansion has the meaning given in Section [10]10.8(a)(2).

Dalrymple Bay Coal Chain means all infrastructure relating to railing and shipping of coal (from mine outloaders to Terminal shiploaders and adjacent infrastructure), excluding Hay Point, generally referred to as the *Dalrymple Bay Coal Chain*, (unless all relevant stakeholders otherwise agree).

DBCT Holdings means DBCT Holdings Pty Limited ACN 096 395 783 and its successors and assigns, including persons taking by way of novation.

DBCT Management means DBCT Management Pty Ltd ACN 097 698 916 and its successors and permitted assigns, including persons taking by way of novation.

DBCT Trustee means DBCT Investor Services Pty Ltd ACN 052 156 082 as trustee of the DBCT Trust.

Deed Poll means the irrevocable deed poll dated *[insert]* given by DBCT Management under which it covenants to comply with the Framework.

Demurrage Costs means the average cost across all Access Holders and Existing Users of demurrage in respect of the loading of Coal on vessels at the Terminal over any period of 3 consecutive months (as estimated by the Operator in accordance with its historical practice of estimating notional demurrage costs).

Different Terms has the meaning given in Section 12.1(d).

Differentiation, in respect of a Terminal Capacity Expansion, means the ~~exclusion of costs associated with an expansion from an existing Terminal Component's Regulated Asset Base, so as to create~~ Terminal Capacity Expansion should be treated as a separate ~~Regulated Asset Base, Annual Revenue Requirement and Reference Tariff for the purpose of calculating Capital Charges in respect~~ Terminal Component for the purpose of determining Access Charges in accordance with Sections 10.3 to 10.5 of this Framework, and the Floor TIC for that Terminal Component determined in accordance with Section 10.4(f) by reference to the costs of the Terminal Capacity Expansion. ~~Where expansion costs are differentiated, they are not shared by the users of existing Terminal Components (and without reference to the costs of the Existing Terminal),~~ and **Differentiated** has a corresponding meaning.

Differentiated Expansion Component has the meaning giving in Section [10]10.13(b)10.8(a)(2).

Differentially Priced Access Agreement means an Access Agreement under which the Access Charges are to be differentially priced and Services are to be provided by DBCT Management from capacity created by ~~an~~ **Differentiated** Expansion Component.

Differentially Priced Access Holder means an Access Holder who is party to a Differentially Priced Access Agreement.

Differentially Priced Capacity means capacity associated with a Differentiated Expansion Component.

Differentiated Queue has the meaning set out in Section 5.4(q).

Dispute has the meaning given to that term in Section 16.1.

Dispute Notice has the meaning given to that term in Section 16.1.

Early Termination means the termination of an Access Agreement or Existing User Agreement (**Terminated Agreement**) before its originally scheduled expiry date (but not where that occurred as a result of the exercise of a contractual right to terminate which was included in the Terminated Agreement when it was entered into, other than a right to do so for default in payment or insolvency of the Access Holder or Existing User, or default by DBCT Management. For the purpose of this definition, termination for default in payment or insolvency will be taken to have occurred if DBCT Management terminates the Terminated Agreement on other grounds but in circumstances where a default in payment or the insolvency of the Access Holder or Existing User could have been reasonably expected within a reasonably short time thereafter had that termination not occurred).

Effective Date has the meaning given in the Standard Access Agreement.

Excess Charge has the meaning given in Section [10].

Excess Tonnage means, in respect of an Access Holder, the number of tonnes of the Access Holder's coal (excluding Non-Reference Tonnage) Handled in a Financial Year which is more than the Access Holder's Reference Tonnage for that Financial Year.

Execution Date has the meaning given in the Standard Access Agreement.

Existing Terminal means the Terminal as it exists at the Commencement Date together with each Socialised Expansion of that existing Terminal.

Existing Terminal Capacity has the meaning given in Section 11.1(a)(1).

Existing User means a party who has an entitlement to have coal Handled through the Terminal as at the Commencement Date.

Existing User Agreement means an agreement which is in force as at the Commencement Date by which DBCT Management has granted an Access HolderExisting User an entitlement to have coal Handled through the Terminal.

Expansion Arbitrator has the meaning given in clause 11.5(a).

Expansion Component means in respect of a Terminal Capacity Expansion, the TerminalDifferentiated Expansion Component or that part of the Existing Terminal (as the case may be) that is the subject of the expansion, as determined in accordance with this Framework.

Expansion Component Capacity means, for an Expansion Component, the maximum reasonably achievable capacity of that Expansion Component (measured in tonnes per Financial Year) as estimated pursuant to Section 11.1.

Expansion Parties means, in respect of an Expansion Component, any Funding Access Seeker or any party to a Conditional Access Agreement associated with that Expansion Component.

Expansion Pricing Principles means the principles set out in Section [10]10.8.

Expert Determination means an expert determination process commenced under Section 16.3.

Expiry Date means 8 September 2020.

Feasibility Studies means in relation to a proposed Terminal Capacity Expansion, a FEL 1 Feasibility Study, FEL 2 Feasibility Study and FEL 3 Feasibility Study.

FEL 1 Feasibility Study means in respect of a proposed Terminal Capacity Expansion, a study that:

- (a) estimates Terminal Capacity and System Capacity in accordance with Section 11.1 of the Framework;
- (b) identifies possible Terminal Expansion Components that will create additional Terminal Capacity, including any potential system capacity expansions that may be required to create complementary additional System Capacity;
- (c) makes a preliminary assessment of the available Terminal capacity that will be created by the Terminal Expansion Components;
- (d) makes a preliminary assessment of the available Terminal capacity that will be created by the Terminal capacity expansion
- (e) unless otherwise agreed by DBCT Management and the relevant Funding Access Seeker, includes an indicative assessment of:
 - (1) project objectives in relation to the creation of additional Terminal Capacity; and
 - (2) the possible Terminal Expansion Components:
 - (A) a broad cost estimate with a +/- 50% accuracy (or such other accuracy where agreed with the Funding Access Seekers (acting reasonably));
 - (B) a preliminary financial analysis and risk assessment; and
 - (C) indicative timeframes for developing and completing the possible Terminal Components; and
 - (3) includes a proposed scope, budget, duration and deliverables for a FEL 2 Feasibility Study including the reasons for selecting the possible Terminal Components that will be considered during that FEL 2 Feasibility Study.

FEL 2 Feasibility Study means in respect of a proposed Terminal Capacity Expansion, a study that:

- (a) re-confirms Terminal operating assumptions and System operating assumptions undertaken in the FEL 1 Feasibility Study and, if they differ from the previous study, re-estimates Terminal Capacity and System Capacity in accordance with Section 11.1 of the Framework;
- (b) confirms the project objectives in relation to the creation of additional Terminal Capacity and the possible Terminal Expansion Components that will create the additional Terminal Capacity;
- (c) assesses each of the possible Terminal Components in respect of:
 - (1) the technical and operating requirements for that Terminal Capacity Expansion;
 - (2) an indicative assessment of the additional Capacity that might reasonably be expected by implementing that Terminal Capacity Expansion; and
 - (3) a preliminary risk assessment for that Terminal Capacity Expansion;
- (d) includes preliminary survey and geotechnical investigation to support the level of design and cost accuracy required for the study;
- (e) identifies the preferred Terminal Capacity Expansion to be studied under a FEL 3 Feasibility Study; and
- (f) provides:
 - (1) a high level engineering assessment of the preferred Terminal Capacity Expansion;

- (2) analysis of the technical and economic feasibility of the preferred Terminal Capacity Expansion and identifies why it is preferred;
- (3) a project budget, with a +/-20% level of accuracy (or such other accuracy where agreed with the Funding Access Seekers (acting reasonably));
- (4) an indicative design and construct schedule for the preferred Terminal Capacity Expansion that includes time tolerances; and
- (5) potential benefits (including additional Terminal Capacity, maintenance and operating benefits) of the preferred Terminal Capacity Expansion; and
- (g) includes a proposed scope, budget, duration and deliverables for a FEL 3 Feasibility Study,
- (h) includes an assessment of the available Terminal Capacity that will be created by the Terminal Capacity Expansion; and
- (i) includes an assessment of the available Terminal Capacity that will be created by the preferred Terminal Expansion Component.

FEL 3 Feasibility Study means in respect of a proposed Terminal Capacity Expansion, a study that, in relation to the preferred Terminal Capacity Expansion identified in a FEL 2 Feasibility Study :

- (a) re-confirms Terminal operating assumptions and System operating assumptions undertaken in the FEL 1 or FEL2 Feasibility Study and, if they differ from the previous studies, re-estimates Terminal Capacity and System Capacity in accordance with Section 11.1 of the Framework;
- (b) details the project objective for the preferred Terminal Capacity Expansion;
- (c) provides a detailed assessment of technical and operating requirements of the preferred Terminal Capacity Expansion;
- (d) includes survey and geotechnical investigations to support the level of design and cost accuracy;
- (e) provides a detailed design for the preferred Terminal Capacity Expansion;
- (f) provides the following details of the preferred Terminal Capacity Expansion's scope:
 - (1) an optimised project configuration that would provide the targeted additional Terminal Capacity to be created by the preferred Terminal Capacity Expansion;
 - (2) a detailed cost estimate with a +/-10% level of accuracy (or such other accuracy where agreed with the Funding Access Seekers (acting reasonably));
 - (3) a detailed design and construction project schedule;
 - (4) the basis on which the project contingency was determined;
 - (5) a financial evaluation, including (if applicable) the estimated impact on the relevant **Reference Tariff TICs**;
 - (6) a procurement methodology and report on any previous approaches to the construction market that are relevant to the preferred Terminal Capacity Expansion;
 - (7) a project management plan comprised of:
 - (A) resource management plan;
 - (B) cost management plan;
 - (C) design management plan

- (D) quality management plan;
 - (E) safety management plan;
 - (F) schedule management plan;
 - (G) risk management plan;
 - (H) project packaging and delivery strategy;
 - (I) procurement management plan;
 - (J) interface management plan;
 - (K) change management plan;
 - (L) environmental management plan;
 - (M) project phases, milestones and deliverables;
 - (N) project risk assessment report; and
 - (O) regulators notification, if needed, and
- (8) provides a detailed capacity assessment on the available Terminal Capacity to be created by the preferred Terminal Expansion Component and the associated impact, if any, on the capacity rating of the base Terminal,

and including the outcomes of any analysis and decisions made in relation to the above matters (with reasons, where applicable).

Financial Year means 1 July in a calendar year to 30 June in the next following calendar year. Where the context allows, it also includes a period shorter than 12 months – from the Commencement Date to the next 30 June, inclusive, and from the last 1 July during the Term to the Terminating Date inclusive - but where that period is less than 12 months, any provision of this Framework which, in respect of a Financial Year, assumes a full 12 months period, will be taken to be modified proportionately.

Floor TIC means the TIC calculated in accordance with Schedule C, Section 2(a).

Framework means this Access Framework (including its schedules) as amended from time to time.

Framework Agreement means the framework agreement between DBCT Holdings, the State, PCQ, DBCT Trustee, DBCT Management and others dated 31 August 2001.

Framework Objective has the meaning given in clause 1.31.3(a).

Funding Access Seeker means an Access Seeker that has entered into a Funding Agreement or Underwriting Agreement with DBCT Management.

Funding Agreement means an agreement on such terms as DBCT Management reasonably requires, including in relation to the provision of such security to DBCT Management as it reasonably requires, pursuant to which an Access Applicant must fund the reasonable and proper costs of:

- (a) a FEL 1 Feasibility Study; and
- (b) after a satisfactory outcome from a FEL 1 Feasibility Study, a FEL 2 Feasibility Study and a FEL 3 Feasibility Study, in respect of a proposed Terminal Capacity Expansion.

Good Operating and Maintenance Practice means adherence to a standard of practice which includes the exercise of that degree of skill, diligence, prudence and foresight which would reasonably be expected from a competent, experienced and qualified operator of a facility comparable with the Terminal.

Government Agency means a minister, government, government department or another government body, a governmental, semi-governmental or judicial person or a person (whether autonomous or not) charged with the administration of any applicable law.

Handle means the receiving by rail, unloading, stacking, storing, reclaiming and loading of vessels with coal and any other relevant Services required by the Access Holder or Existing User using any of the infrastructure at the Terminal.

~~Increment has the meaning given in [Schedule C]~~

Independent Expert means an independent expert appointed under Section 16.3.

Indicative Access Proposal has the meaning given to that term in Section 5.5.

Initial Access Charges means the Access Charges for a Terminal Component to apply under an Access Agreement from the commencement of that Agreement, the commencement of increased Access under that Agreement or the commencement of a Pricing Period under that Agreement.

Initial TIC means the TIC for a Terminal Component to apply under an Access Agreement from the commencement of that Agreement, the commencement of increased Access under that Agreement or the commencement of a Pricing Period under that Agreement.

Insolvent means, for an Access Seeker, where one of the following events has happened in relation to the Access Seeker:

- (a) it is unable to pay all its debts as and when they become due and payable or it has failed to comply with a statutory demand as provided in Section 459F(1) of the *Corporations Act 2001* (Cth);
- (b) a resolution is passed to place it in voluntary liquidation or to appoint an administrator;
- (c) an application is made to a court for it to be wound up and the application is not dismissed or withdrawn within 14 days;
- (d) the appointment of a controller (as defined in the *Corporations Act 2001* (Cth)) of any of its assets, if that appointment is made and not terminated within 14 days after it is made; or
- (e) it resolves to enter into or enters into any form of arrangement (formal or informal) with its creditors or any of them, including a deed of company arrangement.

~~Interim Reference Tariff Period has the meaning given in Schedule C.~~

JORC Code the ‘Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves’ prepared by the Joint Ore Reserves Committee of The Australasian Institute of Mining and Metallurgy, Australian Institute of Geoscientists and the Minerals Council of Australia, as updated from time to time.

Leases means the Primary Leases and the Secondary Leases.

Lease Term has the meaning ascribed to that term in the Framework Agreement.

Loss means any damage, loss (including loss of reputation), cost, expense, fine, penalty or liability incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Marketable Coal Reserves has the meaning given to it in the JORC Code.

Month means a calendar month.

Monthly Payment has the meaning given to it in Section ~~[10] 10.9(a) 10.4(c)~~.

NECAP Asset Base means, in respect of a Terminal Component, the NECAP Asset Base for that Terminal Component determined in accordance with Schedule C, Section 3(h).

NECAP Risk Free Rate means, in respect of any twelve month period ending 31 March, the rate calculated by averaging the yield of the 10 year Commonwealth Government bond over the 20 Business Days preceding that 31 March.

Negotiation Cessation Notice means a notice given in accordance with the provisions of Section 5.8.

Non-Expansion Capital Expenditure or NECAP means Capital Expenditure not related to the development of a Terminal Capacity Expansion.

Non-Expansion Costs means Terminal Operating Costs and Capital Expenditure not related to the development of a Terminal Capacity Expansion.

Non Reference Tonnage means, for an Access Holder, that portion of the Access Holder's Annual Contract Tonnage that is not Reference Tonnage.

Notice has the meaning given to that term in Section 5.4(e)(1).

Notified Access Seeker has the meaning given to that term in Section 5.4(e).

Notifying Access Seeker has the meaning given to that term in Section 5.4(e).

Notional Contracted Tonnage or NCT means, in respect of a Financial Year the Aggregate Annual Contract Tonnage.

Operation & Maintenance Charge means the component of Access Charges under which DBCT Management recovers ~~the~~ Terminal Operating Costs from Access Holders and is calculated in accordance with Section ~~10~~ [10.5](#).

Operation & Maintenance Contract or OMC means the contract between DBCT Management, the DBCT Trustee and the Operator under which the Operator is engaged by DBCT Management to operate and maintain the Terminal on a day to day basis. The terms of the OMC are summarised for convenience in Schedule H.

Operator means Dalrymple Bay Coal Terminal Pty Limited ACN 010 268 167.

Other Costs has the meaning given in Section 11.5(a)(3)(B).

Over-shipment has the meaning given in Schedule C.

PCQ means Ports Corporation of Queensland Limited ACN 126 302 994.

Port Services Agreement has the meaning ascribed to that term in the Framework Agreement.

Price Ruling has the meaning given in Section 5.12(a). **Price Ruling** means a ruling by an Expansion Arbitrator in respect of a Terminal Capacity Expansion on the Pricing Method and the prudent Capital Expenditure (including the need) for the Terminal Capacity Expansion made following receipt of an application from DBCT Management under Section 5.12(a) or 11.5(a) of this Framework.

Pricing Method means the method of pricing Access created by a Terminal Capacity Expansion, being either Socialised or Differential.

Pricing Period means the period commencing on the Commencement Date and ending on 30 June 2026 and each subsequent 5 year period during the Term.

Primary Leases has the meaning ascribed to that term in the Framework Agreement.

Proposed Standard Funding/Underwriting Agreement means the proposed Standard Funding Agreement or proposed Standard Underwriting Agreement (as applicable) by DBCT Management under Section 5.10(q)(1).

Provisional Increment has the meaning given in Schedule C.

Provisional Increment Repayment has the meaning given in Schedule C.

Publicly Report means to upload information onto DBCT Management's website so that it is publicly accessible.

QCA means the Queensland Competition Authority, a statutory authority established under the QCA Act.

QCA Act means the Queensland Competition Authority Act 1997 (Qld).

Queue has the meaning given in Section 5.4(a).

Rail Operator means an entity that:

- (a) provides above rail services to an Access Holder for the purpose of transporting coal to the Terminal; or
- (b) is nominated by an Access Seeker as likely to provide above rail services to that Access Seeker for the purpose of transporting coal to the Terminal.

Reference Tariff means each reference tariff approved by the QCA for the purposes of this Framework, as amended from time to time, in accordance with this Framework.

Reference Terms means terms and conditions which are in all material respects the same as the terms and conditions in the Standard Access Agreement relating to the calculation of charges. (For clarification, it is expected that Reference Terms will usually only apply under an Access Agreement where the terms of that Access Agreement are, in respect of the risk profile and costs (direct and indirect) to DBCT Management, the same as the terms of the Standard Access Agreement).

Reference Tonnage means:

- (a) for an Access Holder under an Existing User Agreement, that portion of the Access Holder's Annual Contract Tonnage that is charged on the basis of terms that in all material respects align with the Reference Terms; and
- (b) for an Access Holder under an Access Agreement, that portion of the Access Holder's Annual Contract Tonnage which is charged in accordance with the Reference Terms.

Reference Tonnage Access Holder or RTAH means an Access Holder to the extent that its Annual Contract Tonnage is Reference Tonnage.

Related Body Corporate has the meaning given to that term in the Corporations Act 2001 (Cth).

Related Entity has the meaning given to that term in the Corporations Act 2001 (Cth).

Regulated Asset Base means, as relevant in respect of the any Terminal Component:

- (a) in respect of a Differentiated Expansion Component, the Regulated Asset Base for that Differentiated Expansion Component as approved by the QCA in accordance with this Framework; and
- (b) in respect of the Existing Terminal, the Regulated Asset Base for the Existing Terminal (which at the Commencement Date is the only Regulated Asset Base) as approved by the QCA in accordance with this Framework.)

Renewal Application has the meaning given in Section 5.3A.

Revenue Cap is the amount DBCT Management is entitled to earn from Reference Tonnage and is calculated in accordance with Schedule C.

Review Event means, for any Terminal Component, any one or more of the following events:

- (a) ~~a change in Reference Tonnage; a change in the Aggregate Annual Contract Tonnage in respect of the Existing Terminal or Differentiated Expansion Component (as relevant), including (without limitation) a change in Aggregate Annual Contract Tonnage occurring as a consequence of the Early Termination of any Access Agreement or Existing User Agreement;~~
- ~~(b) a change in Non Reference Tonnage;~~
- ~~(b) (e) in respect of the Existing Terminal, Completion and handover to the Operator of the whole of a discrete phase of a Terminal Capacity Socialised Expansion; and~~
- ~~(d) receipt of insurance proceeds, damages or other compensation for loss, damage or destruction of an asset comprised in the Terminal Component, to the extent that those moneys are not applied in repair, reinstatement or replacement; and~~
- ~~(c) (e) each 1 July in a Pricing Period, in respect of any Terminal Component, provided any program of NECAP was:~~
- (1) ~~Capital Expenditure incurred in any prior period (including Capital Expenditure in any period preceding the Commencement Date provided such Capital Expenditure has not already been included in the relevant Regulated Asset Base) which does not relate to a Terminal Capacity Expansion and is paid by DBCT Management after Completion and handover of the relevant works, including Completed and handed over to the Operator by DBCT Management in the twelve month period ending on 31 March occurring immediately prior to that 1 July and allocated to that Terminal Component in accordance with Section 10.7 of this Framework, including:~~
- (A) ~~Capital Expenditure~~NECAP referred to in Section 11.10(b); and
- (B) ~~Capital Expenditure~~NECAP referred to in Section 11.10(c); or
- (2) ~~sale of assets comprised in the Terminal Component during the preceding 12 months;~~
- (2) ~~(3) the prudent cost of a FEL 3 Feasibility Study to the extent not included in Capital Expenditure the subject of a Capacity Expansion; included in the NECAP Asset Base for any previous Financial Year of the Pricing Period.~~
- (4) ~~the cost of a Feasibility Study referred to in Section 5.10(m)(1) or 5.10(m)(2), to the extent not funded by Access Seekers; and~~
- (5) ~~the prudent cost of a Feasibility Study referred to in Section 5.10(o), to the extent not funded by Access Seekers (but limited to 20% of the prudent cost of the Feasibility Study if the proposed Terminal Capacity Expansion does not proceed).~~

Secondary Leases has the meaning ascribed to that term in the Framework Agreement.

Security means any form of security or guarantee required to be provided by an Access Seeker or Access Holder to DBCT Management pursuant to Section 5.9.

Service Provider means:

- (a) DBCT Management, as the provider of Services at the Terminal;
- (b) each provider at a relevant time of railway infrastructure ("below rail") for any part of the System;
- (c) each provider at a relevant time of railway freight services ("above rail") for any part of the System.

Services means the services set out in Schedule E of this Framework.

Socialisation, in respect of a Terminal Capacity Expansion, means the ~~inclusion of costs associated with the expansion in an existing Terminal Component's Regulated Asset Base (as determined by the QCA), so as to avoid the creation of a separate Regulated Asset Base, Annual Revenue Requirement and Reference Tariff in respect of the expansion. Where expansion costs are socialised, they are shared by existing users of the Terminal Component into which the costs are socialised and Terminal Capacity Expansion should be treated as forming part of the Existing Terminal for the purpose of determining Access Charges in accordance with Sections 10.3 to 10.5 of this Framework, and the Floor TIC for the Existing Terminal determined in accordance with Section 10.4(f) by reference to the sum of the costs of the Existing Terminal and the costs of the Terminal Capacity, and Socialised has a corresponding meaning.~~

Socialised Expansion has the meaning given in Section 10.8(a)(1).

Socialised Terminal Capacity means capacity associated with a Socialised Expansion.

Socialised Expansion has the meaning given in Section [10].

Standard Funding Agreement means the standard Funding Agreement ~~[~~ approved in accordance with Section 5.10(q)~~]~~.

Standard Underwriting Agreement means the standard Underwriting Agreement approved in ~~in~~ accordance with Section 5.10(q). ~~+~~

Standard Access Agreement means the standard access agreement set out in Schedule B of this Framework.

State means the State of Queensland.

Supply Chain Business means an entity (or group of entities) which:-

- (a) provides, or proposes to provide, above rail services in Queensland which access the Terminal;
- (b) owns or holds an interest in, or proposes to acquire such an interest in, coal-producing mines in Queensland that export coal via the Terminal;
- (c) purchases coal that has been produced in Australia and exports that coal via the Terminal;
- (d) provides shipping services from the Terminal; or
- (e) trades in capacity at the Terminal.

System means, in respect of the Dalrymple Bay Coal Chain, the following components of infrastructure relating to the transport of coal from mines whose coal is Handled by the Terminal:

- (a) rail loading facility of mines whose coal is Handled by the Terminal;
- (b) railway infrastructure in the Dalrymple Bay Coal Chain;
- (c) railway locomotives and rolling stock used in the Dalrymple Bay Coal Chain; and
- (d) Terminal unloading, stacking, loading and other Handling facilities,

and all interfaces between such components.

System Capacity means at a relevant time, the maximum reasonably achievable estimated capacity of the System (measured in tonnes per financial year) as determined pursuant to Section 11.1 in respect of that time. Where System Capacity is required to be estimated in respect of a future time (for example, for the purposes of Section 5.4) DBCT Management will estimate it taking all relevant factors into account (including System Capacity expected to arise out of a System Capacity Expansion which has been or can reasonably be expected to be committed to at the time of the estimation).

System Capacity Expansion means the construction, upgrade, refinement, purchase, installation and/or erection of new works or items or modifications to existing works or items intended to materially increase the System Capacity.

System Master Plan means, at a relevant time, the master plan (if any) determined pursuant to Section 14.

TCMP has the meaning given in Section 11.5(a)(7).

Term means the period between (and including each of) the Commencement Date and the Terminating Date.

Terminal means the land and port infrastructure located at the Port of Hay Point which is owned by DBCT Holdings or the State and leased to DBCT Trustee and/or DBCT Management, and known as the Dalrymple Bay Coal Terminal, and includes the following:

- (a) loading and unloading equipment;
- (b) stacking, reclaiming, conveying and other handling equipment;
- (c) wharves and piers;
- (d) deepwater berths; and
- (e) shiploaders,

and for the avoidance of doubt, includes the Existing Terminal and any Differentiated Expansion Component.

Terminal Capacity means the maximum reasonably achievable capacity of the Terminal (measured in tonnes per Financial Year) as estimated pursuant to Section 11.1.

Terminal Capacity Expansion means the construction, upgrade, refinement, purchase, installation and/or erection of new works or items or modifications to existing works or items intended to materially increase the **Terminal Capacity**.

Terminal Capacity Expansion Risk Free Rate means the rate calculated by averaging the yield of the 10 year Commonwealth Government bond over the 20 Business Days preceding the date of Completion and handover to the Operator of the relevant Terminal Capacity Expansion.

Terminal Component means each of:

- (a) the Existing Terminal; and
- (b) the Differentiated Expansion Component,

which shall each have their own Annual Revenue Requirement.

Terminal Infrastructure Charge or **TIC** has the meaning given in Section [10]10.4.

Terminal Master Plan (a copy of the version which was current at the Commencement Date is attached at Schedule F) means the master plan approved by DBCT Holdings under the Port Services Agreement, and related engineering and other reports, as amended from time to time with the approval of DBCT Holdings under the Port Services Agreement.

Terminal Operating Costs means any amounts:

- (a) reasonably incurred or charged by the Operator (including any margin payable to the Operator under the Operation & Maintenance Contract);
- (b) in the nature of an operating expense for the Terminal and reasonably incurred or charged by DBCT Management with the express written consent of not less than 66% of Access Holders and Existing Users by contract tonnage; and

- (c) reasonably incurred by DBCT Management in exercising its rights under the Operation & Maintenance Contract to step in or take work out of the hands of the Operator (as a result of a default by the Operator),

but excluding Capital Expenditure other than minor ~~capital expenditure~~[Capital Expenditure](#) not exceeding \$3 million per Financial Year.

Terminal Regulations means regulations in force from time to time governing procedures for the operation of the Terminal and provision of the Services under an Access Agreement ~~or Existing User Agreement~~.

Terminating Date means the earlier of:

- (a) the date which is 10 years from the Commencement Date; and
- (b) the date on which use of the Terminal is taken to be a service declared under Part 5, Division 2 of the *Queensland Competition Authority Act 1997* (Qld).

Tonnage means the volume of Access supplied under an Access Agreement [or access supplied under an Existing User Agreement \(as the context requires\)](#), determined by reference to the volume of coal Handled or contracted to be Handled.

Underwriting Agreement means an agreement on such terms as DBCT Management reasonably requires, including in relation to the provision of such security to DBCT Management as it reasonably requires, which gives DBCT Management the right to call for, and requires an Access Applicant to fund in response to such call, the reasonable and proper costs of:

- (a) a FEL 1 Feasibility Study; and
- (b) after a satisfactory outcome from a FEL 1 Feasibility Study, a FEL 2 Feasibility Study, in respect of a proposed Terminal Capacity Expansion, if the proposed Terminal Capacity Expansion does not proceed.

WACC(1) Rate means ~~5.82%, being the weighted average cost of capital set by the QCA in its final decision on this Undertaking.~~ **WACC(2) Rate** means a rate equivalent to the Construction Period Risk Free Rate plus 4.00%.

WACC(3) Rate means a rate equivalent to the Terminal Capacity Expansion Risk Free Rate plus 4.00%. **WACC(2) Rate** means, in respect of Financial Year t, the weighted average of the rates equivalent to the NECAP Risk Free Rate plus 5.00% for each twelve month period ending 31 March in which any program of NECAP included in the NECAP Asset Base for Financial Year t for the Existing Terminal or Differentiated Expansion Component (as relevant) was Completed and handed over to the Operator, where the weights are equal to the proportion of the value of the NECAP Asset Base for Financial Year t referable to the program(s) of NECAP Completed and handed over to the Operator in the twelve month period.

Year End Adjustment or **YEA** has the meaning given in Section [10].

2. Interpretation

In this Framework unless the context otherwise requires:

- (a) reference to any statute or statutory provision includes any modification or re-enactment of, or any legislative provisions substituted for, and all legislation and statutory instruments issued under such legislation or such provision;
- (b) words denoting the singular include the plural and vice versa;
- (c) words denoting persons or individuals include corporations, associations, trustees, instrumentalities and partnerships and vice versa;

- (d) words denoting any gender include all genders;
- (e) references to parties, Parts, Sections, Annexures and Schedules are references to parties, Parts, Sections, Annexures and Schedules to this Framework as modified or varied from time to time;
- (f) references to any document, deed or agreement include references to such document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (g) references to any party to this Framework or any other document, deed or agreement include its successors, permitted assigns, or permitted subcontractors and the obligations of any party extends to those persons;
- (h) all references to dates and times are to Brisbane time;
- (i) all references to "\$" and "dollars" are to the lawful currency of Australia;
- (j) a reference to "including" shall be construed as "including, but not limited to," and "include" and "includes" shall be construed similarly;
- (k) where a provision provides that a party "may" do something, "may" shall be construed as discretionary and without obligation;
- (l) where any word or phrase is given a defined meaning, any other grammatical form of that word or phrase has a corresponding meaning;
- (m) where there is a requirement under this Framework to consider whether Access Holders are being treated or will be affected equitably, the party so considering must have regard to (amongst other things) the Access Holders' respective Annual Contract Tonnages and the extent to which (if at all) Differential Pricing applies to the Annual Contract Tonnages the subject of each Access Agreement; -
- (n) where measurement of coal "Handled" is being made in respect of a period, the tonnage loaded into vessels will be taken to be the tonnage Handled in that period; and
- (o) headings are for convenience only and do not affect interpretation of this Framework.

Schedule H – Terms of Operation and Maintenance Contract

Parties	<p>DBCT Management Pty Ltd (DBCTM), DBCT Investor Services Pty Limited as trustee of the DBCT Trust (DBCT Trustee) and the operator, Dalrymple Bay Coal Terminal Pty Limited (Operator).</p> <p>The Operation and Maintenance Contract (Contract) defines the relationships between the parties and their rights and obligations.</p>
Term	<p>The Contract will expire on [date] unless terminated earlier. Other than for default of DBCTM (refer further below), the Operator cannot terminate the Contract before this date.</p> <p>If DBCTM wishes to terminate the Contract other than for the Operator's default, DBCTM must give 5 years' prior notice of termination; and</p> <p>If an access undertaking is in place and the Operator wishes to terminate other than for DBCTM's default, the Operator can terminate by giving not less than two years notice to DBCTM. If the period of notice given will expire during the term of an access undertaking, the notice period will be extended and take on the from earlier of expiry of the access undertaking or 5 years after the date that a notice of termination is given.</p>
Intentions of the parties	<p>The parties' intentions include (among other things):</p> <p>The Operator will be responsible for day-to-day operation and maintenance of the Terminal;</p> <p>The Operator must ensure that its performance of services is coordinated in accordance with the relevant access undertaking in force at the time to the extent that no act or omission by the Operator would cause DBCTM to be in breach of a provision of the access undertaking; and</p> <p>Subject to DBCTM's rights under the Contract (for example in relation to default by the Operator), DBCTM will not intervene in the day-to-day operation and maintenance of the Terminal.</p>
Operator's engagement	DBCTM has engaged the Operator to perform the services. The Operator is an independent contractor and not an agent of DBCTM. The services include all things necessary for the operation, maintenance and management of the Terminal.
Operational Services to be performed by the Operator	<p>Operation of the Terminal specifically includes the following services:</p> <ul style="list-style-type: none"> coordinate the ordering and scheduling of trains; train unloading; coal stockpile management, reclamation and handling; coal blending if required by users of the Terminal; vessel ordering; and the loading of ships in accordance with the Terminal Regulations. In the absence of other applicable provisions in the Terminal Regulations, the Operator must normally load ships in order of arrival (subject to there being relevant coal at the Terminal and all prerequisites to loading having been complied with). <p>These services must be provided in accordance with the approved access undertaking and user agreements and are to be further detailed in an Appendix to the specification included in the Contract.</p>
Maintenance Services to be performed by the Operator	<p>The Operator must maintain the Terminal and each component of the Terminal at its operating capacity as specified in the Contract. This specifically includes:</p> <ul style="list-style-type: none"> planned maintenance and repair in accordance with an annual operation, maintenance and capital plan (prepared by the Operator); unplanned maintenance and repair as required (for example following equipment breakdown); condition monitoring and maintenance management; and upkeep of the Terminal, including activities such as maintenance of access roads and dust suppression.

Standard of Operator's performance	<p>The Operator must operate and maintain the Terminal in order to ensure it is capable of operating:</p> <ul style="list-style-type: none"> at its rated design capacity; in accordance with good operating and maintenance practice; and in good and substantial repair. <p>The Operator must ensure that the Terminal is maintained and operated so as to achieve, as far as practical, the best and most cost effective outcome, taking account, as appropriate, of:</p> <ul style="list-style-type: none"> lowest total whole of life cost; reliability and economy of performance; maximising the effective life of the Terminal; good operating and maintenance practice; in the case of competing interests between users, fairness; and the obligations of DBCT Management under the access undertaking and any user agreements. These obligations are subject to DBCTM having expended appropriate capital if relevant. <p>The Operator must provide everything that is necessary for performance of the services, other than any things specified in the Contract as to be provided by DBCTM. The Operator's supply obligations include the supply of water and power to the Terminal. The Operator is also required to supply and maintain spares for the Terminal.</p> <p>The Operator can subcontract parts of the Services without DBCTM's consent, however remains liable for the standard of performance. The Operator is specifically required to supervise the execution of all Services.</p>
Annual operation, maintenance and capital plan	<p>The Operator must, in consultation with DBCTM, prepare and submit an annual operation, maintenance and capital plan by 15 May. The plan will identify the proposed budget for the next financial year and will foreshadow the likely plan and budget for the subsequent two years (i.e. provide a three year budget snapshot).</p>
Payments to the Operator	<p>DBCTM pays the Operator all reasonably incurred costs of performing the services (that is, operating and maintaining the Terminal in accordance with the Contract) plus a margin.</p> <p>The Operator is also entitled to be paid:</p> <ul style="list-style-type: none"> reimbursement of capital expended by the Operator, subject to certain conditions (outlined below in capital works); consulting fees in respect of capital works (refer further below in relation to capital works); and a project management commission if the Operator project manages a non-expansion capital project. <p>The Contract acknowledges that it is intended that amounts paid to the Operator will be recovered by DBCTM from users under their user agreements. The Operator has obligations to assist DBCTM to facilitate this pass through.</p>
Terminal Regulations	<p>Both the Operator and DBCTM are required to comply with the Terminal Regulations.</p> <p>The Operator may propose amendments to the Terminal Regulations for DBCTM's consent, which DBCTM must not unreasonably withhold but which will be subject to the requirements of the access undertaking in relation to such amendments.</p> <p>DBCTM must require each Terminal user pursuant to their user agreement(s) to comply with the Terminal regulations as applicable from time to time.</p>
Access to the Terminal	<p>DBCTM has granted the Operator a licence to use, occupy and control the Terminal as is necessary to perform the services in accordance with the Contract.</p> <p>The Operator must give DBCTM and its personnel such access to the Terminal as they reasonably require from time to time. However, such access is subject to compliance with the Operator's applicable procedures (including safety requirements). DBCTM must also take reasonable measures not to impede the Operator's performance of the services.</p>
Care of and risk	The Operator has care of the Terminal and assumes the risk of damage to the Terminal and all

in the Terminal	things located at it (including coal). The Operator must insure the Terminal in accordance with the insurance program detailed in the Contract.
Safety and environmental compliance	<p>The Operator has primary responsibility for the management of safety at the Terminal and for compliance with legal requirements with respect to safety at the Terminal.</p> <p>The Operator also has primary responsibility for the compliance of the Terminal with all relevant environmental laws and requirements. Among other things, the Operator is required to obtain and maintain all required approvals from authorities with respect to the performance of the services.</p>
Records and audits	<p>The Operator must maintain records (including financial records) relating to the services.</p> <p>From time to time, DBCTM may appoint a suitably qualified person to conduct an audit of the records maintained by the Operator and/or of the Operator's relevant systems and procedures.</p> <p>The Operator must work with DBCTM to ensure that DBCTM is able to comply with its reporting obligations under the approved access undertaking.</p>
Continuous improvement	The Operator must work with DBCTM in undertaking reviews to identify and develop options for improved efficiency of the Terminal as well as of the coal transport chain. The parties have coordination obligations in relation to the implementation of the findings of such reviews.
Capital works	<p>Either the Operator or DBCTM can propose that capital works are undertaken. The Operator has obligations to participate in planning for proposed capital works. The Operator is entitled to be paid consulting fees (which are separate and additional to its usual monthly payments) for this participation.</p> <p>If capital works are to proceed, DBCTM and the Operator may agree that the capital works will be implemented by the Operator, DBCTM or another contractor.</p> <p>There is a handover process which applies once capital works have been completed. From the time of handover, the capital works become part of the Terminal and the Operator's obligations to provide the services extend to include that part of the Terminal.</p>
Force majeure	The Contract defines events of force majeure. If a party is affected by such an event, it may be granted relief from performance of its affected obligations under the Contract, subject to compliance with certain requirements.
Dispute resolution	<p>The Contract specifies a dispute resolution procedure which includes the following provisions:</p> <p>If a dispute between DBCTM and the Operator arises out of or in connection with the Contract, then either party may give the other party a notice of dispute.</p> <p>Neither party may commence any court proceedings or arbitration in respect of any dispute which is the subject of a notice of dispute until the party has complied with the dispute resolution procedure specified in the Contract.</p> <p>Within 14 days after service of a notice of dispute, the senior executives of each party must confer at least once to attempt to resolve the dispute and failing resolution, to consider and, if possible, agree on methods of resolving the dispute by other means.</p> <p>If the dispute cannot be resolved by the senior executives after a further period of 14 days or if at any time either party considers that the other party is not making reasonable efforts to resolve the dispute, either party may refer the dispute to conciliation.</p> <p>If the dispute is not resolved by conciliation within a period of 14 days after nomination of the conciliator, the parties may agree to refer the dispute to arbitration or either party may pursue any other means of dispute resolution including litigation.</p> <p>The Contract will specify procedures with respect to conciliation and arbitration.</p> <p>The dispute resolution procedure does not prevent any party from seeking urgent interlocutory or declaratory relief from a court of competent jurisdiction where, in that party's reasonable opinion, that action is necessary to protect its rights.</p>
Change in control of the Operator	<p>There is a deemed assignment of the Contract if:</p> <ul style="list-style-type: none"> a person who is not a user or its related body corporate acquires an interest in the Operator; or a user or its related body corporate acquires an interest in the Operator which exceeds its

	<p>proportionate usage of the Terminal.</p> <p>The Contract may not be assigned without DBCTM's approval.</p>
Termination for default by either party	Each party has termination rights if the other defaults under the Contract. The rights differ between the parties, but allow the non-defaulting party to require rectification or require the defaulting party to show cause, before the non-defaulting party may terminate the Contract.

USER AGREEMENT [2020] Access Framework

Date:

DBCT MANAGEMENT PTY LIMITED

("DBCT Management")

DBCT INVESTOR SERVICES PTY LTD as trustee of the DBCT Trust

("DBCT Guarantor")

[Insert User name]

("User")

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This Agreement is made on the Execution Date

BETWEEN **DBCT MANAGEMENT PTY LIMITED ABN 16 097 698 916**
 ("DBCT Management")
AND **THE USER DESCRIBED IN SCHEDULE 1 ("User")**
AND **DBCT INVESTOR SERVICES PTY LTD ABN 11 052 156 082, as**
 trustee of the DBCT TRUST ("DBCT Guarantor")

RECITALS

- A. DBCT Management is the lessee of the Terminal under long term leases.
- B. The Operator operates and maintains the Terminal on behalf of DBCT Management.
- C. The User wishes to use the Terminal to Ship its Coal.
- D. DBCT Management has agreed to grant Access to the User on the terms and conditions contained in this Agreement.

IT IS AGREED

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

Unless the subject or context is inconsistent, each of the capitalised terms used in this Agreement has the meaning assigned to it in Schedule 9.

1.2 Interpretation

The rules set out in Schedule 9 apply to and govern the interpretation of this Agreement.

2. TERM

[Subject to clause 29.1], this Agreement commences on the Effective Date and continues in force until the end of the Term specified in Item 6 of Schedule 1 (unless terminated earlier pursuant to clause 14.2 or clause 14.3).

3. HANDLING OF COAL

3.1 Agreement to provide Access

- (a) DBCT Management:
 - (i) grants Access to the User on the terms of this Agreement; and
 - (ii) unconditionally and irrevocably agrees to comply with the requirements, obligations and processes in the Access Framework.

- (b) The User unconditionally and irrevocably agrees to comply with the requirements, obligations and processes in:
 - (i) the Access Framework; and
 - (ii) the Deed Poll, including the conditions set out in clauses 8.4, 9, 10 and 11 of the Deed Poll.

3.2 Provision and operation of the Terminal

In granting to the User the Access referred to in clause 3.1, DBCT Management must, subject to this Agreement:

- (a) make the Terminal available and operate it to enable the Annual Contract Tonnage (subject to delivery to the Terminal and the availability of vessels) to be Handled at the Terminal in each Financial Year; and
- (b) provide Services as required by the User.

3.3 Delivery by rail

The User must ensure that its Coal is delivered to the Terminal by rail utilising rolling stock which is compatible with and (as far as it is practicable for the User to control) efficiently utilises the unloading facilities at the Terminal.

3.4 User to use reasonable endeavours to Ship its Annual Contract Tonnage

The User must use all reasonable endeavours to Ship its Annual Contract Tonnage through the Terminal in each Financial Year.

3.5 Even Shipments

The User must work towards, and must use all reasonable endeavours to achieve, the Shipping of its Coal through the Terminal at an even rate throughout each Financial Year (and, where Item 7 in Schedule 1 provides for a specific tonnage in respect of a nominated shorter period at some time during the Term, then at an even rate throughout that shorter period). The parties recognise that vessel arrival times, rail scheduling, maintenance and other factors can result in some short-term, routine unevenness to an even rate of Shipping.

3.6 Terminal Regulations

- (a) DBCT Management must comply with, and will use its best endeavours to ensure that the Operator complies with, the Terminal Regulations in force from time to time.
- (b) The User must observe the Terminal Regulations, in force from time to time, as a condition of Access to and the right to have its Coal Handled at the Terminal.
- (c) The User acknowledges that Terminal Regulations may include terms which:
 - (i) require scheduling of Access Holders' and Existing Users' railing in and Handling of Coal in ways which promote Terminal efficiency and endeavour to achieve the objective set out in clause 3.5;
 - (ii) temporarily reduce the tonnage of Coal which may be Handled or Services provided under this Agreement, during such periods as capacity of the Terminal or relevant Services becomes restricted, provided that such reductions and restrictions affect all Access Holders and Existing Users equitably (but this does not relieve the User or DBCT Management respectively from any liability which they might have in respect of the capacity or Services having become restricted);

- (iii) prescribe requirements for cargo building windows, unloading of trains, stockpiling and cargo assembly, vessels, arrival of vessels, loading of vessels, pre-loading requirements, order of loading and unloading and other matters where possible (including matters of the type dealt with in the Terminal Regulations at the Effective Date) which promote the efficient, safe and equitable utilisation of capacity at the Terminal and Terminal Services;
 - (iv) require Access Holders to co-operate with the Operator and other Access Holders and Existing Users in relation to scheduling, loading, unloading, priorities and other matters relating to the operation of the Terminal; and
 - (v) allow the exercise of discretions on the part of the Operator in limited cases, where it is reasonable to do so, to optimise Terminal efficiency (such power to be exercised in good faith and in a non-discriminatory way).
- (d) The User acknowledges and agrees that the Operator may, from time to time, by written notice to DBCT Management, propose amendments to the Terminal Regulations regarding operational issues.
- (e) If the Operator submits to DBCT Management a proposed amendment to the Terminal Regulations DBCT Management must:
- (i) promptly notify the User of any proposed amendments to Terminal Regulations;
 - (ii) provide the User with a copy of such proposed amendments to the Terminal Regulations (which may be by displaying it on DBCT Management's website);
 - (iii) conduct reasonable consultation with the User in relation to the proposed amendment; and
 - (iv) following the completion of such reasonable consultation, notify the User:
 - (A) of the wording of the proposed amendment;
 - (B) whether it has given its consent to the proposed amendment;
 - (C) of the detailed reasons for its decision to give (or not give) consent to the proposed amendment; and
 - (D) that there is a 30 day period for notifying DBCT Management of any objections to the decision to consent or not consent (as applicable) to the amendment.
- (f) A proposed amendment to the Terminal Regulations will not be implemented unless:
- (i) DBCT Management has conducted reasonable consultation with Access Holders, Access Seekers, Expansion Parties and Rail Operators in accordance with the Access Framework; and
 - (ii) one of the following has occurred:
 - (A) DBCT Management has consented to the proposed amendment to the Terminal Regulations and no Access Holder, Access Seeker or Expansion Party has given notice to DBCT Management objecting to consent being provided to the proposed amendments within 30 days of being notified of the amendments by DBCT Management;

- (B) DBCT Management has consented to the proposed amendments to the Terminal Regulations and while an Access Holder, Access Seeker or Expansion Party has given notice to DBCT Management objecting to consent being provided to the proposed amendments within 30 days of being notified of the amendments by DBCT Management, the Independent Expert appointed to hear the objection (in accordance with clause 3.6(j) and/or Section 6.2(f) of the Access Framework) has rejected that objection; or
 - (C) DBCT Management has not consented to the proposed amendments to the Terminal Regulations, but an Access Holder, Access Seeker or Expansion Party has given notice to DBCT Management objecting to consent not being provided, and the Independent Expert appointed to hear the objection (in accordance with clause 3.6(l) and/or Section 6.2(g) of the Access Framework) has upheld that objection.
- (g) DBCT Management will only give its consent to a proposed amendment to the Terminal Regulations under clauses 3.6(f)(ii)(A) or 3.6(f)(ii)(B) if it has conducted reasonable consultation with Access Holders, Access Seekers, Expansion Parties and Rail Operators in accordance with the Access Framework and, taking into account the results of such consultation, it reasonably considers that:
- (i) the amendments relate to operational issues;
 - (ii) the amended Terminal Regulations, as a whole, will operate equitably amongst Existing Users, Access Holders, Access Seekers (should they become Access Holders) and Expansion Parties (should they become Access Holders) and, where the relevant amendments affect Rail Operators, amongst affected Rail Operators;
 - (iii) the amendments are consistent with the Access Framework, and any Access Agreements; and
 - (iv) the amendments are reasonably necessary for the operation of the Terminal in accordance with applicable laws and regulatory standards, Approvals, Good Operating and Maintenance Practice or any costs or obligations imposed are justified by the efficiency benefits arising from those costs or obligations.
- (h) If DBCT Management does not provide its consent to a proposed amendment to the Terminal Regulations, the User may object to DBCT Management's refusal to provide consent if it reasonably considers that:
- (i) the amendments relate to operational issues;
 - (ii) the amended Terminal Regulations, as a whole, will operate equitably amongst Existing Users, Access Holders, Access Seekers (should they become Access Holders) and Expansion Parties (should they become Access Holders) and, where the relevant amendments affect Rail Operators, amongst affected Rail Operators;
 - (iii) the amendments are consistent with the Access Framework and this Agreement; and
 - (iv) the amendments are reasonably necessary for the operation of the Terminal in accordance with applicable laws and regulatory standards, Approvals, Good Operating and Maintenance Practice or any costs or obligations imposed are justified by the efficiency benefits arising from those costs or obligations.

- (i) DBCT Management must notify all Access Holders, Access Seekers, Expansion Parties and Rail Operators of any amendments to the Terminal Regulations that have been approved and must provide a copy of the amended Terminal Regulations to these parties (which may be by way of reference to the website on which the amended Terminal Regulations are available in accordance with 3.6(o)).
- (j) If:
 - (i) DBCT Management has given its consent to a proposed amendment to the Terminal Regulations; and
 - (ii) the User objects to the proposed amendment on the basis that it reasonably considers that the criteria specified in clauses 3.6(g)(i) to 3.6(g)(iv) are not satisfied,
 then the User may, within 30 days after being notified of DBCT Management's consent, notify DBCT Management of its objection to the consent to the proposed amendment, such objection to be determined by an Independent Expert.
- (k) If, in response to an objection notified to the Independent Expert by the User under clause 3.6(j), the Independent Expert determines that the criteria specified in clauses 3.6(g)(i) to 3.6(g)(iv) are not satisfied, then:
 - (i) the proposed amendment and DBCT Management's consent to the proposed amendment will be taken to have been withdrawn; and
 - (ii) the proposed amendment will not be made.
- (l) If:
 - (i) DBCT Management has refused to give its consent to a proposed amendment to the Terminal Regulations; and
 - (ii) the User objects to DBCT Management not providing consent to the proposed amendment on the basis that it reasonably considers that the criteria specified in clauses 3.6(g)(i) to 3.6(g)(iv) are satisfied,
 then the User may, within 30 days of being notified of the amendments by DBCT Management, notify DBCT Management of its objection to DBCT Management not providing consent for the proposed amendment, such objection to be determined by an Independent Expert.
- (m) If, in response to an objection notified to the Independent Expert by the User under clause 3.6(l), the Independent Expert determines that the criteria in clauses 3.6(g)(i) to 3.6(g)(iv) are satisfied, then:
 - (i) DBCT Management's consent to the proposed amendment will be deemed to have been given; and
 - (ii) the proposed amendment will be made.
- (n) Subject to DBCT Management complying with clause 3.6(f), DBCT Management will not be liable to the User on any basis whatsoever as a result of DBCT Management consenting to an amendment to the Terminal Regulations or the due implementation and observance of an amendment to the Terminal Regulations, as long as DBCT Management had in all respects acted reasonably and in good faith and (acting reasonably and in good faith) had formed the opinion required by clause 3.6(g). For clarification, this does not affect DBCT Management's obligation to do anything required on its part to cause the termination or consequential amendment of a Terminal Regulation after any determination that the Terminal Regulation breaches this Agreement or the Access Framework.

- (o) DBCT Management must make a copy of the Terminal Regulations available to the User (which may be by displaying it on DBCT Management's website).

3.7 Addressing disproportionate use of Terminal capacity and risk minimisation

- (a) If at any time DBCT Management, acting reasonably and on the recommendation of the Operator, considers that:
 - (i) the User is disproportionately consuming the capacity of the Terminal (when compared with other Access Holders or Existing Users on a per tonne basis) and other Access Holders are materially adversely affected as a result; or
 - (ii) the provision of the User's Coal to the Terminal or Handling of that Coal at the Terminal creates a disproportionate risk to the Terminal (when compared with Coal of other Access Holders or Existing Users),
 and that it is reasonably practicable for the User to reduce that disproportionate consumption of capacity or disproportionate risk, DBCT Management may give written notice to the User to that effect.
- (b) If DBCT Management gives notice to the User pursuant to clause 3.7(a) the User must:
 - (i) meet with DBCT Management (or with the Operator if DBCT Management gives notice that the Operator is authorised to act as its nominee) to attempt to agree on an appropriate action plan; and
 - (ii) promptly, and in any event, within 60 days of the meeting referred to in clause 3.7(a)(i), develop and implement an action plan agreed between the parties or (if there is no agreement, but it is consistent with clause 3.7(c)) an action plan required by DBCT Management.

- (c) DBCT Management is not entitled to require anything in an action plan which would be:
 - (i) unreasonable or uneconomic for the User in all the circumstances; or
 - (ii) inconsistent with what is generally accepted as good operating practice in the prevailing circumstances.
- (d) A dispute between DBCT Management (or the Operator) and the User in respect of this clause 3.7 may be referred to dispute resolution in accordance with clause 15.

4. PAYMENT OF CHARGES AND ADJUSTMENTS

4.1 Interpretation of Pricing Provisions

In this Agreement, the following principles of interpretation shall apply:

- (a) for so long as there is a single Terminal Component, the terms and definitions of this Agreement relevant to pricing apply to all Access collectively; and
- (b) where there are multiple Terminal Components, the terms and definitions of this Agreement relevant to pricing apply to each Terminal Component separately.

For the avoidance of doubt, the Access contracted under this Agreement relates to [the Existing Terminal / a Differentiated Expansion Component].

4.2 Charges payable regardless of remedies

The charges payable pursuant to this clause 4 must be paid by the User promptly when due, regardless of any remedies which might be available to the User pursuant to clause 13 or otherwise:

- (a) except to the extent that clause 5.3 applies;
- (b) unless and until, and to the extent that, it is determined through dispute resolution or agreed that the charges are not payable pursuant to clause 13.4(b); and
- (c) unless a relevant Delay is caused by Wilful Default by DBCT Management (clause 13.5).

4.3 Access Charges

Access Charges for each Terminal Component will comprise two parts:

- (a) a TIC; and
- (b) a charge to recoup the costs of operation and maintenance of the Terminal, being:
 - (i) the Handling Charge – Fixed;
 - (ii) the Handling Charge – Variable; and
 - (iii) where applicable, charges for Miscellaneous Services.

4.4 User to pay TIC

The User must pay the TIC to DBCT Management for each tonne of Annual Contract Tonnage by monthly instalments (each a Monthly Payment) in accordance with clause 5.1(b).

4.5 User to pay Handling Charge - Fixed

- (a) The User must pay HCF to DBCT Management, calculated in accordance with clause 6.2.
- (b) On an interim basis (subject to end-of-Financial Year reconciliations and adjustments pursuant to clause 5.1(d)) the User must pay DBCT Management monthly instalments each equal to one-twelfth of the annual HCF reasonably estimated by DBCT Management at the commencement of the relevant Financial Year.

4.6 User to pay Handling Charges - Variable

- (a) The User must pay HCV to DBCT Management, calculated in accordance with clause 6.3.
- (b) On an interim basis (subject to end-of-Financial Year reconciliations and adjustments pursuant to clause 5.1(d)) the User must pay DBCT Management monthly instalments each equal to one-twelfth of the annual HCV reasonably estimated by DBCT Management at the commencement of the relevant Financial Year.

4.7 User to pay Miscellaneous Services charges

The User must pay DBCT Management for Miscellaneous Services provided at the Terminal where such services are charged separately from HCF and HCV, at the rates applicable pursuant to clause 6.4.

4.8 DBCT Management's business interruption insurance

Any insurance premium which relates to business interruption cover for DBCT Management will not form part of any HCV, HCF or Miscellaneous Charge. (For clarification, this is because of the obligation of Access Holders whose Access Agreement is on the terms of the Standard Access Agreement to continue paying Access Charges whilst an event of Force Majeure continues - clause 13.3(b)).

5. ACCOUNTS

5.1 Calculation, rendering and payment of tax invoices

- (a) DBCT Management and the User must give each other appropriate tax invoices or adjustment notes for any charge payable by the User to DBCT Management or any amounts payable by DBCT Management to the User under clause 4.
- (b) With respect to the Monthly Payment, HCF, HCV and charges for Miscellaneous Services, the User must pay each tax invoice duly given to it by DBCT Management by no later than that date (the "Due Date") which is 30 days after the date of receipt of that tax invoice.
- (c) Tax invoices may only be rendered by DBCT Management monthly in arrears for the Monthly Payment, and monthly instalments of HCF, HCV and charges for Miscellaneous Services.
- (d) With respect to the annual reconciliation and adjustment of HCF and HCV:
 - (i) DBCT Management must calculate and notify the User of any adjustment required against interim amounts paid in respect of HCF and HCV within one month from the end of the Financial Year to which it relates.
 - (ii) DBCT Management or the User (as applicable) must then give the other an appropriate tax invoice reflecting the payment to be made pursuant to any adjustment under clause 5.1(d)(i) on or before the date 14 days after the amount of the adjustment is notified to the User by DBCT Management (or, if later, within 14 days after the resolution of any dispute over the calculations of adjustments, including any dispute referred to in clause 5.1(d)(iv)).
 - (iii) The parties must pay the adjustment relevant under this clause 5.1(d) within 14 days after the receipt of a relevant tax invoice pursuant to clause 5.1(d)(ii).
 - (iv) If the adjustment contemplated under this clause 5.1(d) is wholly or partially impacted by a dispute (as between two or more of the User, another Access Holder, an Existing User and DBCT Management), no amount need be paid in respect of that disputed amount until that dispute has been resolved but, as far as it is practicable, undisputed amounts must be promptly paid (with tax invoices being given accordingly, but the giving of a tax invoice in respect of the undisputed part of a payment will not prejudice the dispute). DBCT Management and the User must use reasonable endeavours to attempt to expeditiously resolve any such dispute to which they are a party.

5.2 Interest on late payments

- (a) If the User does not pay a tax invoice by the Due Date, DBCT Management, without prejudice to its other rights under this Agreement, may charge interest to the User on the amount owed computed from the Due Date to the actual date of payment at the Default Interest Rate, and unpaid interest may be compounded and itself incur interest, on a monthly basis until payment at a rate equal to 1/12th of the Default Interest Rate.
- (b) If DBCT Management does not make a payment to the User on the date due for such payment or does not notify the User of the amount of an adjustment to be paid by DBCT Management by the required date to do so, the User, without prejudice to its rights under this Agreement, may charge interest to DBCT Management on the amount owed computed from the date due for such payment (or the date on which payment would have become due had the adjustment been duly notified) to the actual date of payment at the Default Interest Rate, and unpaid interest may be compounded and itself

incur interest on a monthly basis until payment at a rate equal to 1/12th of the Default Interest Rate.

5.3 Disputes over accounts

- (a) Subject to clause 5.1(d)(iv) if the User disputes the amount of a tax invoice from DBCT Management on the basis that it contains a manifest administrative error or is incorrectly calculated, then the User must pay:
 - (i) the whole of the undisputed part of the tax invoice by the Due Date; and
 - (ii) 50% of the disputed portion, pending resolution of that dispute (and the User will not be in default for non-payment, if it does so).
- (b) Payment in accordance with clause 5.3(a) will not prejudice the User's rights under clause 15.
- (c) If following the resolution of a dispute, DBCT Management refunds that portion of the disputed tax invoice which has been paid or the User pays the unpaid portion of a disputed tax invoice, then DBCT Management or the User shall pay interest at the No Fault Interest Rate on the refunded amount (in the case of DBCT Management) or the paid amount (in the case of the User) computed from the date on which the disputed amount was originally due to the date the adjustment is paid.

6. HANDLING CHARGES

6.1 Utilisation Advice

- (a) As soon as practicable after the Execution Date, the User must give a Utilisation Advice to each of DBCT Management and the Operator relating to the balance of the then current Financial Year (on a monthly basis) and the next 3 full Financial Years of the Term (on an annual basis).
- (b) By no later than 15 February in each Financial Year, the User must give a Utilisation Advice to each of DBCT Management and the Operator relating to the next full Financial Year (on a monthly basis) and the 3 full Financial Years of the Term following that next Financial Year (on an annual basis).
- (c) In the five Business Days preceding each 1 July, 1 October, 1 January and 1 April in each Financial Year, the User must update DBCT Management and the Operator with a revised Utilisation Advice relating to that Financial Year, together with projections of similar information for the 12 month period commencing on the date of that update.
- (d) The User will be under no liability to DBCT Management if the actual number, types or tonnages of vessels or the amount of Coal is or are greater or fewer than the number, types, tonnages or amounts estimated in this clause or estimated in any advice given pursuant to this clause 6.1.

6.2 HCF

- (a) HCF for each Financial Year in respect of the Terminal Component is calculated as follows:-

$$HCF = [OFC + DC + MC] \times \frac{ACT}{TACT}$$

Where:-

OFC is the aggregate of all Fixed Operating Costs for the Financial Year in respect of the relevant Terminal Component;

DC is other expenditure (not being Capital Expenditure) incurred by the Operator for the operation and maintenance of the relevant Terminal Component (including any Operator's margin) for that Financial Year and reimbursable by DBCT Management pursuant to the Operation & Maintenance Contract;

MC is the minor Capital Expenditure for the relevant Terminal Component (not included in DC) in the relevant Financial Year, to a maximum of \$3 million;

ACT is the User's Annual Contract Tonnage in respect of the relevant Terminal Component; and

TAUT is the total of the annual contract tonnages (or if an Existing User's actual tonnage Shipped is greater than its annual contract tonnage, the actual tonnage Shipped) of all Access Holders and Existing Users for each relevant Financial Year in respect of the relevant Terminal Component.

- (b) As soon as practicable after each 31 May, having consulted with the Operator, DBCT Management must advise the User in writing of the estimated HCF payable by the User during the forthcoming Financial Year in respect of the relevant Terminal Component.

6.3 HCV

- (a) HCV for each Financial Year in respect of the Terminal Component is calculated as follows:-

$$HCV = \frac{OVC}{TTCS} \times \text{the actual number of tonnes of Coal Shipped by the User pursuant to this Agreement in the relevant Financial Year in respect of the relevant Terminal Component.}$$

Where:-

OVC is the aggregate of all Variable Operating Costs in respect of the Handling of all Coal through the relevant Terminal Component for a Financial Year; and

TTCS is the total number of tonnes of Coal Shipped through the relevant Terminal Component during that Financial Year.

- (b) As soon as practicable after each 31 May, and having consulted with the Operator, DBCT Management must advise the User in writing of the estimated HCV payable by the User during the forthcoming Financial Year in respect of the relevant Terminal Component.

6.4 Miscellaneous Services

- (a) Charges for Miscellaneous Services must be an amount which the Operator reasonably estimates as:-

- (i) relevant reasonable additional costs to be incurred by the Operator as a result of the Miscellaneous Services including the Operator's profit margin; and
- (ii) any other additional costs likely to be incurred by other Access Holders and Existing Users (for example, additional demurrage) as a result of the delays in Handling other Coal, arising out of the Miscellaneous Services.

- (b) Any charges recovered under this clause 6.4 or an equivalent clause in another Access Agreement or Existing User Agreement must be deducted from operating costs and the Operator's margin in respect of those operating costs for the purposes of calculating HCF and HCV.

- (c) The parties recognise that the Operator has historically charged Access Holders and Existing Users directly for some services provided at the Terminal, and nothing in this Agreement precludes that practice from continuing.

7. REVIEW OF ACCESS CHARGES

7.1 Amendments to TIC

Subject to clause 7.2, the TIC will be amended from time to time throughout the Term in accordance with Schedule 2.

7.2 5 year review of charges

- (a) At the request of either party by notice to the other party no later than 18 months prior to the start of a Pricing Period, all charges under this Agreement and the method of calculating, paying and reconciling them (including the terms of Schedule 2) and any consequential changes in drafting of provisions will be reviewed in their entirety, effective from the start of each Pricing Period, in accordance with the following provisions of this clause 7.2.
- (b) Each review pursuant to clause 7.2(a) will determine the types, calculation, payment and reconciliation of charges payable by the User pursuant to this Agreement, and may have regard to the terms of the Access Framework effective at the time of the review.
- (c) DBCT Management and the User must commence each review pursuant to clause 7.2(a) no later than 18 months prior to the start of a Pricing Period, and:
 - (i) the parties must endeavour to agree as early as it is practicable to do so (if possible, by no later than the start of the relevant Pricing Period) on the basis and amount of new charges to apply from the start of that Pricing Period;
 - (ii) if the parties do not reach agreement by the date 6 months prior to the start of the relevant Pricing Period, either party may refer the determination of the issues to arbitration in accordance with the Access Framework;
 - (iii) if there is no agreement or determination by the start of the Pricing Period then:
 - (A) the charges (and method of paying and reconciling them) applying prior to that Pricing Period will continue to apply until otherwise agreed or determined; and
 - (B) any determination or agreement will (unless the parties otherwise agree) operate retrospectively from the start of the relevant Pricing Period and, as soon as practicable after the determination or agreement, an adjustment will be paid by the relevant party (based on the amounts which have been paid to that date on an interim basis and the amounts which are agreed or determined to be payable from the start of the relevant Pricing Period to the date the adjustment is paid) together with interest on the amount of the adjustment at the No Fault Interest Rate. The amount of interest will be determined by reconciling the amounts and timings of payments made on an interim basis with amounts payable and timing of those payments which would have applied in accordance with the agreement or determination.
- (d) If a matter is referred to arbitration under clause 7.2(c)(ii), the arbitration must be conducted in accordance with the Access Framework.

- (e) If a party requests a review under clause 7.2(a), the parties will, at the request of either party and in addition to reviewing the charges under this clause 7.2, meet together in good faith to negotiate any amendments to this Agreement which they consider to be relevant as a result of the changed circumstances following the start of the relevant Pricing Period. Neither party will have any obligation to reach agreement on any revised terms.

8. SET-OFF

8.1 DBCT Management may set-off

Unless otherwise stated, DBCT Management may set-off against any amount payable to the User under this Agreement any amount which is due and payable by the User to DBCT Management under this Agreement.

8.2 Amount set-off deemed to have been paid

Any amount set-off by DBCT Management is deemed to have been paid by the User and the amount against which the set-off has been effected is deemed to have been paid by DBCT Management to the User.

8.3 User may set-off

Unless otherwise stated, the User may set-off against any amount payable to DBCT Management under this Agreement any amount which is due and payable by DBCT Management to the User under this Agreement.

8.4 Amount set-off deemed to have been paid

Any amount set-off by the User is deemed to have been paid by DBCT Management and the amount against which the set-off has been effected is deemed to have been paid by the User to DBCT Management.

9. DETERMINATION OF TONNAGE

9.1 Certificate of weight and Cargo Manifest

The User must:

- (a) commission an independent surveyor to issue a certificate of weight of each cargo of the User's Coal loaded on a vessel at the Terminal, based on vessel draught measurements at the Port, or otherwise cause the weight of each cargo to be determined and certified in another way which is independent and acceptable to DBCT Management (acting reasonably) and (if DBCT Management so requires) adopted by all Access Holders and Existing Users;
- (b) send the Cargo Manifest (which must include a statement as to the weight so certified under clause 9.1(a)) to DBCT Management (with a copy to the Operator) upon completion of the loading of each vessel with a cargo of the User's Coal; and
- (c) ensure that a Product Shipment Notice is attached to each Cargo Manifest.

9.2 Basis of calculation

DBCT Management must use the information contained in each Cargo Manifest and Product Shipment Notice as the basis of calculating charges payable under this Agreement.

9.3 Further account

- (a) If at any time:-
 - (i) DBCT Management can demonstrate that an account previously sent to the User was incorrectly calculated, or based on incorrect information, so that DBCT Management was paid less than it was entitled to, DBCT Management may calculate and send to the User a further tax invoice for the difference owed to DBCT Management; and
 - (ii) the User can demonstrate that an account previously sent to the User was incorrectly calculated, or based on incorrect information, so that DBCT Management was paid more than it was entitled to, DBCT Management must upon request by the User and delivery of a tax invoice or adjustment note, either pay to the User the difference owed to the User or issue a credit note to the User for the difference owed to the User.
- (b) In addition to payment of the amount referred to under 9.3(a) ("Applicable Amount"), DBCT Management (in the case of clause 9.3(a)(i)) or the User (in the case of clause 9.3(a)(ii)) shall be entitled to interest on the Applicable Amount calculated at the No Fault Interest Rate and calculated from the date on which the incorrectly calculated invoice was paid to the date on which the Applicable Amount was actually paid.

10. EXPANSION OF TERMINAL

10.1 Actions preliminary to decision to expand the Terminal

Before making any decision to expand the Terminal, DBCT Management must:

- (a) advise the User of the reasons for, extent, timing and estimated cost of any Expansion Component under consideration;
- (b) consult the User as to whether changes in the User's Annual Contract Tonnage or the method of operation of the Terminal, including the User's arrangements for Shipping its Coal, would avoid or delay the need for the Expansion Component or reduce the extent or estimated cost of the Expansion Component; and
- (c) consider how to maximise the utilisation of the Terminal.

Nothing in this clause 10.1 limits any provision of the Access Framework.

10.2 Minimisation of interference

DBCT Management must use all reasonable endeavours to carry out any Terminal Capacity Expansion of or other work at the Terminal and any infrastructure connected to the Terminal so as to minimise interference with the Handling of the User's Coal.

10.3 Terminal and System Capacity

- (a) DBCT Management will from time to time estimate Terminal Capacity (and Expansion Component Capacity, including Socialised Terminal Capacity or Differentially Priced Capacity for each Expansion Component, as applicable) and System Capacity in accordance with the Access Framework (or if there is no provision for doing so in an Access Framework at a relevant time, in accordance with the process applying under the last access undertaking or framework in which such a process was provided for).
- (b) DBCT Management must reassess Terminal Capacity, each relevant Expansion Component Capacity and System Capacity before entering into any new Access Agreement or otherwise increasing the aggregate tonnage of Coal contracted to be Handled through the Terminal, unless it considers that none of the factors to be taken

- into account in determining Terminal Capacity, any relevant Expansion Component Capacity and System Capacity have materially changed since the most recent determination of Terminal Capacity, any relevant Expansion Component Capacity and System Capacity and that determination was made less than 12 months previously.
- (c) DBCT Management must not enter into any Access Agreement if the Aggregate Annual Contract Tonnage would (after including the tonnage under the new Access Agreement if it was entered into) exceed the System Capacity (as determined for the relevant time), unless otherwise required or permitted to do so by the Access Framework, law or an agreement relating to its tenure of the Terminal (including the Framework Agreement and the Port Services Agreement). For clarification:
- (i) without limiting clause 19, this does not prohibit DBCT Management from entering into a Conditional Access Agreement, as long as the terms of all such Conditional Access Agreements are such that the increase in Aggregate Annual Contract Tonnage consequent on such Terminal Capacity Expansion occurring will nevertheless not cause Aggregate Annual Contract Tonnage to exceed System Capacity (based on the estimated System Capacity at the completion of the relevant Terminal Capacity Expansion); and
 - (ii) DBCT Management will not be in breach of this Agreement if it has complied with the Access Framework (or made good faith and reasonable attempts to comply) but an assessment of System Capacity (after the assessment required by the Access Framework following the completion of a relevant Terminal Capacity Expansion) reveals that System Capacity is less than the Aggregate Annual Contract Tonnage at that time.
- (d) Notwithstanding any other provisions of this Agreement, if DBCT Management complies (or makes a good faith and reasonable attempt to comply) with the provisions of this clause 10.3 and Section 11.1 of the Access Framework, DBCT Management will not have any liability (whether for loss, damage, cost, expense or other remedy) nor will it be liable to the User:
- (i) for any breach of this clause 10.3 or Section 11.1 of the Access Framework;
 - (ii) for any delay which arises as a result of the Aggregate Annual Contract Tonnage (which was expected not to exceed Terminal Capacity Expansion Component Capacity or System Capacity) subsequently exceeding Terminal Capacity, Expansion Component Capacity or System Capacity for any reason;
 - (iii) if one or more factors related to utilisation of capacity of the Terminal or any other part of the System which subsequently changes (for example, changes in service levels required pursuant to a right of Access Holders under an Access Agreement, the nature of coal Handled, an Access Holder's use of the Terminal, vessel mix, railway infrastructure, rolling stock or locomotives, rail loading facilities of mines or any other relevant factor) provided that such factor is not a breach by DBCT Management of any other part of the Access Framework, this Agreement or any other Access Agreement; or
 - (iv) for any defect, error or omission on the part of the independent expert appointed under the Access Framework to assist with the assessment of Terminal Capacity, each relevant Expansion Component Capacity (including Socialised Terminal Capacity and Differentially Priced Capacity) and System Capacity.
- (e) Subject to the provisions of this Agreement and to the requirements and provisions of the Access Framework, any statute and any agreement in respect of the tenure of the Terminal (including the Framework Agreement and the Port Services Agreement),

DBCT Management agrees with the User that any request by the User for an increase in Annual Contract Tonnage pursuant to clause 11.1 will be agreed to, to the extent that it does not cause System Capacity to be exceeded and in accordance with the provisions relating to Access Seekers seeking increased Access under Section 5 of the Access Framework.

11. CHANGES TO ANNUAL CONTRACT TONNAGE

11.1 Adjustments at User's request

- (a) The User may only adjust its Annual Contract Tonnage pursuant to this clause 11.1 or clause 12.2.
- (b) [From the date 5 years after the commencement of the Shipment (or increased rate of Shipment) of Coal arising out of the Current Expansion - *add these words for an Access Agreement under which Coal is Shipped for 10 years or more and which necessitated an Expansion*] The User may without penalty reduce the Annual Contract Tonnage by giving not less than five years notice to DBCT Management of the extent and the period of the reduction required.
- (c) If the User wishes to increase the Annual Contract Tonnage (for all or any part of the remainder of the Term), either:-
 - (i) from the Annual Contract Tonnage at the Effective Date; or
 - (ii) from a lesser or greater Annual Contract Tonnage previously adjusted under this clause 11.1,
 then the User may so notify DBCT Management, which may:-
 - (iii) subject to the availability of unallocated Terminal Capacity and System Capacity and the provisions of clauses 10.3 and 29.3, the Access Framework, any statute, and any agreement in respect of the tenure of the Terminal as it existed at 1 July 2005 (including the Port Services Agreement and the Framework Agreement), allow the User to increase the Annual Contract Tonnage (wholly or partially) to the respective amounts and periods requested in accordance with the provisions relating to Access Seekers seeking increased Access under Section 5 of the Access Framework; or
 - (iv) advise the User that no increase can occur, because it would cause Terminal Capacity or System Capacity to be exceeded.
- (d) Nothing in this clause limits any other rights which the User may have as an Access Seeker under the Access Framework or in clause 12.3.

11.2 Shipping Coal in excess of Annual Contract Tonnage

The User must not Ship Coal in excess of its Annual Contract Tonnage. If the User wishes to Ship Coal in excess of its Annual Contract Tonnage, the User may seek from another Access Holder the assignment of additional annual contract tonnage under clause 12.2. In accordance with clause 12.3, DBCT Management will not unreasonably refuse to consent to such a proposed assignment.

11.3 User not using Annual Contract Tonnage

If, in the reasonable opinion of DBCT Management, a User has not Shipped and is unlikely to Ship its Annual Contract Tonnage over a sustained period and such failure is not due to a Force Majeure event at the Terminal or a failure by DBCT Management to Ship the User's Coal, then the following will apply:-

- (a) DBCT Management may notify the User that DBCT Management has formed the opinion that the User has not Shipped and is unlikely to Ship its Annual Contract Tonnage over a sustained period and that there is a reasonable expectation of demand from other Access Holders or Access Seekers for the User's underutilised tonnage;
- (b) the User must make submissions as to whether the User has not Shipped and is unlikely to Ship its Annual Contract Tonnage over a sustained period within 21 days of receiving the notice from DBCT Management;
- (c) if the User fails to produce reasonable evidence that demonstrates that it is likely in future to substantially Ship the whole of its Annual Contract Tonnage, then DBCT Management may notify the User that it intends to appropriately reduce the User's Annual Contract Tonnage;
- (d) if the User considers that DBCT Management has not complied with the requirements of this clause in reducing the User's Annual Contract Tonnage, then the User may, within 21 days of receiving notice under clause 11.3(c), refer the matter to dispute resolution in accordance with clause 15; and
- (e) DBCT Management must not implement a reduction in Annual Contract Tonnage until the expiration of the period for resolution of a dispute referred to in clause 11.3(d).

11.4 Capacity to be taken into account only once

If the User notifies DBCT Management that the User is unable to, and forgoes its right to, Ship all or part of its Annual Contract Tonnage (the "**Notified Tonnage**") through the Terminal for any period (the "**Notified Period**"), then, for the purpose of charges otherwise payable by the User for the Notified Period, the User's Annual Contract Tonnage will be taken to be reduced by such part of the Notified Tonnage in respect of which DBCT Management grants additional annual contract tonnage to another Access Holder (for the same or comparable charges to those reduced under this clause) and which DBCT Management would not have been able to grant (due to lack of capacity) but for the User foregoing its right to Ship the Notified Tonnage through the Terminal.

11.5 Reduction in tonnes Handled where User fails to obtain rail access

- (a) Before the User is entitled to have coal Handled pursuant to this Agreement, it must produce evidence reasonably satisfactory to DBCT Management that the Annual Contract Tonnage under this Agreement is matched by an entitlement held by the User (or a person on its behalf) to railway track access relating to the coal the subject of this User Agreement:
 - (i) for the whole of the Term; or
 - (ii) for any relevant shorter period.
- (b) If the User only produces such evidence of access to railway track entitlement pursuant to clause 11.5(a)(ii) for a period shorter than the entire Term, it must continue to provide evidence of such access before the commencement of each successive period during the Term for which such evidence has not previously been produced, and the provisions of clause 11.5(c) will apply in respect of each of the first and each successive such period during the Term.
- (c) To the extent the tonnage in respect of which the User is able to demonstrate an entitlement to railway track access for a relevant period is less than the Annual Contract Tonnage for that period, the Annual Contract Tonnage will (despite any other provisions of this Agreement):
 - (i) be deemed to be reduced to that lesser tonnage, for all purposes relevant to the entitlement to have coal Handled at the Terminal pursuant to this Agreement during such period; but

- (ii) will remain unchanged for all other purposes pursuant to this Agreement, and specifically for the purposes of the liability of the User to pay Access Charges and any other amount payable pursuant to this Agreement based on the actual Annual Contract Tonnage.
- (d) DBCT Management will in good faith make an assessment of the tonnage of coal able to be railed to the Terminal pursuant to an entitlement to railway track access (which would normally be expressed as a number of train paths for any relevant period) and (subject to clause 15) the tonnage so determined shall be the tonnage which is adopted for the purpose of comparison with the Annual Contract Tonnage for a period for the purposes of this clause 11.5.
- (e) Where a relevant period is not a whole Financial Year or not two or more whole Financial Years, references in this clause to Annual Contract Tonnage over that period will mean that part of the Annual Contract Tonnage which accrues over that period, assuming it accrues throughout each Financial Year in equal increments.

12. ASSIGNMENT

12.1 DBCT Management may assign

After consultation with the User, DBCT Management may assign all or any part of its benefits under this Agreement to any person who is responsible and has the expertise and financial capacity needed to operate and maintain the Terminal and comply with the obligations of DBCT Management under this Agreement.

12.2 User may assign

With the prior consent of DBCT Management, which consent will not be unreasonably withheld, a User may assign all or part of its rights or entitlements under this Agreement (including, in particular, all or part of its Annual Contract Tonnage) permanently or temporarily on the following basis:

- (a) the assignment will not be effective unless:- the assignee enters into a deed (prepared by DBCT Management at the expense of such assignee) with DBCT Management substantially in the form contained in Schedule 6 by which DBCT Management and the assignee agree to be bound by the terms, conditions and obligations of this Agreement or the assignee's Access Agreement (as DBCT Management, acting reasonably, determines) in respect of the assigned rights or entitlements as if the assignee were the User in respect of those assigned rights and entitlements;
- (b) when the assignment takes effect, the User will be discharged from all terms, conditions and obligations of this Agreement (except to the extent that they accrued prior to the assignment) in respect of the rights and entitlements assigned; and
- (c) if the User assigns only part of its rights or entitlements to another person, this Agreement will be treated from that time as if it were only an Agreement in respect of the unassigned rights or entitlements.

For clarification, "assign" and "assignment" includes novation or variation to the parties' respective Access Agreements.

12.3 Response to requests for consent to assignment by User

- (a) DBCT Management must consent to a proposed assignment of rights or entitlements under clause 12.2 (whether by way of assignment or novation) unless DBCT Management (acting reasonably) is satisfied that:
 - (i) the assignor is in material breach of this Agreement; or

- (ii) the assignee:
 - (A) is not of good financial standing, creditworthy and able to fully discharge the financial obligations of the Access Holder under the relevant Access Agreement and does not otherwise provide security in a form acceptable to DBCT Management (acting reasonably) for the performance of the obligations under this Agreement in respect of the transferred rights or entitlements;
 - (B) is incapable of performing the obligations of the Access Holder under the Access Agreement in respect of the transferred rights or entitlements, including complying with the Terminal Regulations; or
 - (C) is unable to reasonably demonstrate that the rights or entitlements to be transferred under the relevant Access Agreement are matched by an entitlement to railway track access held by the assignee or a person on its behalf.
- (b) The assignor must provide all information reasonably required by DBCT Management to assess the criteria specified in clause 12.3(a) to DBCT Management in a timely manner.
- (c) DBCT Management must take all steps necessary to assess and respond to any request for a transfer as soon as reasonably practicable.
- (d) The User or the assignee may refer as a dispute to arbitration under clause 15 of this Agreement:
 - (i) any refusal by DBCT Management to consent to a transfer;
 - (ii) any failure to agree the reasonable terms governing an Access Agreement which is the subject of a transfer; and
 - (iii) any failure by DBCT Management in assessing or responding to a request for transfer in a timely manner.

12.4 Change of control of User

- (a) The User must obtain DBCT Management's consent (not to be unreasonably withheld or delayed) to any Change of Control in the User. DBCT Management's consent may be subject to reasonable conditions (including the provision of reasonable security) and the User must comply with any conditions.
- (b) Any dispute in respect of the reasonableness of any refusal by DBCT to consent to a Change of Control, or of any conditions sought by DBCT Management under this clause 12.4, may be referred as a dispute under clause 15.

12.5 Permission to third party to Ship

With the prior consent of DBCT Management (which will not be unreasonably refused, particularly if the third party is another Access Holder), the User may permit a third party to Ship Coal through the Terminal treating that cargo as part of the User's Annual Contract Tonnage, without complying with clause 12.2. In such case:

- (a) the User will remain liable for the performance of its obligations under this Agreement in respect of all Coal so Handled, and for all purposes that Coal will be taken to be the Coal of the User Handled pursuant to this Agreement;
- (b) the User must give DBCT Management and the Operator a notice in the form of Schedule 7 (which will constitute a request for DBCT Management's consent) not less

than 14 days prior to the scheduled departure of the relevant vessel, but DBCT Management must accept such shorter period of notice as causes no unreasonable adverse consequences to it, the Operator, Existing Users or other Access Holders;

- (c) the cargo must be made in accordance with the notice provided under clause 12.5(b) (provided that DBCT Management and the Operator do not refuse consent to the request made); and
- (d) the Product Shipment Notice attached to the Cargo Manifest provided by the User under clause 9.1 must disclose the name or names of any third party so using the User's Annual Contract Tonnage, and the tonnages of Coal so Handled for that third party.

13. REMEDIES

13.1 DBCT Management's remedies in the event of Delay

- (a) To the extent that the User is responsible for a Delay, or a Delay arises from events external to the Terminal, DBCT Management's remedies will be limited to its entitlement to payment of the charges provided for in clause 4 of this Agreement.
- (b) Nothing in this clause 13.1 precludes DBCT Management from applying for an injunction, declaration or specific performance in respect of the User's obligations under this Agreement.

13.2 User's remedies in the event of Delay

To the extent that the User is not responsible for a Delay and to the extent that a Delay does not arise from events external to the Terminal, the User's remedies against DBCT Management in respect of the Delay are limited as set out below:

- (a) If the Delay is a Permissible Delay, DBCT Management will have no liability to the User in respect of any Claim for Loss arising from the Delay;
- (b) If the Delay arises from Force Majeure affecting DBCT Management's ability to comply with its obligations, clause 13.3 applies;
- (c) If the Delay arises from Wilful Default by DBCT Management, clause 13.5 applies; and
- (d) In all other circumstances, and without prejudice to its right to dispute responsibility for the Delay, the User must continue to meet its payment obligations under clause 4 unless and until the adjudication of an arbitrator, order of the Court or agreement between the parties, determines responsibility for the Delay, in which case clause 13.4 applies.

Nothing in this clause 13.2 precludes the User from applying for an injunction, declaration or specific performance in respect of DBCT Management's obligations under this Agreement.

13.3 Force Majeure

- (a) If DBCT Management is affected by an event of Force Majeure, such that it will be unable to fulfil all or part of its obligations under the Agreement (the "**Affected Obligations**"), and anticipates Delays exceeding 48 hours, it must notify the User within 7 days after the occurrence of the event, providing full details of:
 - (i) the Affected Obligations and Delays expected;
 - (ii) the action that DBCT Management has taken and proposes to take to remedy the situation; and
 - (iii) DBCT Management's estimate of the time during which it will be unable to carry out the Affected Obligations due to the event of Force Majeure.

- (b) DBCT Management's Affected Obligations under this Agreement shall be suspended (without it being in default) to the extent of and for the period that the performance of such obligations are affected by an event of Force Majeure, provided that it complies with clause 13.3(c). However, the User's obligations to pay the Charges in clause 4 will not abate during a period where DBCT Management is affected by an event of Force Majeure.
- (c) DBCT Management must:
 - (i) use all reasonable efforts (including the expenditure of reasonable sums of money) to mitigate the effect of the event of Force Majeure upon its performance of this Agreement; and
 - (ii) keep the User informed (not less than fortnightly) of the steps being taken to mitigate the effect upon the performance of this Agreement, including an estimate of the continued duration of the Delay.

13.4 User's rights for Delays attributable to other circumstances

In the circumstances in clause 13.2(d), DBCT Management's liability to the User is limited to:

- (a) the Third Party Amount; plus
- (b) if the adjudication of an arbitrator, order of a court or agreement between the parties determines that the Delay was at least 66% DBCT Management's Personal Responsibility, and to the extent that there is any shortfall in the recovery by the User of its Direct Loss from the Third Party Amount - the User's Direct Loss in respect of the Delay, but not exceeding the percentage of the User's Direct Loss equivalent to the percentage of DBCT Management's Personal Responsibility.

13.5 Wilful Default by DBCT Management

If a Delay is caused by Wilful Default by DBCT Management, the User:

- (a) is relieved to that extent of any corresponding payment obligations under clause 4;
- (b) may terminate this Agreement pursuant to clause 14.3; and
- (c) may sue DBCT Management for damages for breach of contract.

13.6 Long Term Delays

- (a) This clause 13.6 sets out certain rights and obligations of the parties in respect of Delays, including Long Term Delays. This clause 13.6 is:
 - (i) in addition to, and does not limit any other provision of this Agreement; and
 - (ii) does not limit or affect any other right which a party may have against another party in respect of an act or omission of the other party.
- (b) If Loss, damage or destruction occurs in respect of the Terminal, DBCT Management must promptly claim and thereafter promptly apply all relevant available insurance proceeds towards reinstatement of the damaged property, unless (having regard to factors such as the reasonably foreseeable ongoing needs for Handling at the Terminal) DBCT Management considers that reinstatement is not in the interests of stakeholders and no less than 60% of Access Holders and Existing Users (by tonnage) and DBCT Holdings all agree that reinstatement should not occur.
- (c) If Long-Term Delays occur, such that the capacity of the Terminal (as demonstrated by its performance) on a sustained on-going basis is less than 95% of the Aggregate Annual Contract Tonnage at that time (the difference being referred to as the "Shortfall"), then DBCT Management must undertake a Terminal Capacity Expansion

sufficient to eliminate the Shortfall if (and on the same basis as) DBCT Management would have been obliged under the terms of the Access Framework (in particular considering sections 11.3, 11.4, 11.7, and 11.8 of the Access Framework) to undertake a Terminal Capacity Expansion had the amount of the Shortfall been the annual contract tonnage sought by new Access Seekers whose offers to enter into Access Agreements *prima facie* triggered the requirement for a Terminal Capacity Expansion. For clarification, DBCT Management will not be obliged to undertake a Terminal Capacity Expansion under this Agreement:

- (i) if such Terminal Capacity Expansion is unreasonable and uneconomic pursuant to section 11.7 of the Access Framework; or
 - (ii) if section 11.8 of the Access Framework applies.
- (d) If at any time:
- (i) the capacity of the Terminal on a sustained ongoing basis is reduced to the order of 10%, or less, of the Aggregate Annual Contract Tonnage of all Access Holders and Existing Users at the time;
 - (ii) the reduction of capacity referred to in clause 13.6(d)(i) above, is not attributable to an act or omission of the User; and
 - (iii) DBCT Management does not, within a reasonable time after a written request by the User to do so ("reasonable" being assessed according to the extent of works needed to redress the situation), commence and expeditiously proceed with the works necessary to reinstate the Terminal to a capacity sufficient to meet the reasonably expected sustained ongoing demand for Handling of Coal (whether or not DBCT Management has an obligation to undertake such works),

the User may terminate this Agreement, on giving not less than 30 days' notice to DBCT Management to that effect in writing. Neither party will be liable to the other arising from such a termination (other than a liability which arises prior to the date of termination).

13.7 Limitation period for notice of Claims by User

- (a) The User shall not be entitled to make any Claim against DBCT Management in respect of any Delay unless written notice of the Claim specifically reserving the User's rights under clause 13.2 has been given to DBCT Management by the date 4 months after the end of the Financial Year in which the Delay first occurred (or, if a material fact of a decisive character relating to the right to Claim against DBCT Management was not within the means of knowledge of the User until after that time, within 2 months of the date on which the User first becomes aware of that material fact). Any subsequent Loss arising directly or indirectly from the cause of the first occurrence may be included in the Claim without further notice being given, but a separate notice must be given for each different and unrelated cause from which it is alleged a Claim arises.
- (b) This clause 13.7 does not apply to a Claim to the extent that it is made under clause 13.6.

14. TERMINATION

14.1 Suspension

If the User is in default in the due and punctual performance of an obligation under this Agreement and:

- (a) in respect of the User's default of an obligation to pay money or to provide any Security required pursuant to clause 29, such default has not been remedied within 30 days after DBCT Management has given written notice to the User of the default; or
- (b) in respect of the User's default of a material obligation (other than an obligation to pay money or provide Security), such default has not been remedied, or the User has not expeditiously commenced to remedy it, within 60 days after DBCT Management has given written notice to the User of the default,

then, without prejudice to DBCT Management's other rights under this Agreement, DBCT Management may (by written notice to the User pursuant to this clause) suspend the User's rights to have its Coal Handled under this Agreement until payment (including interest under clause 5.2) is made, Security is provided or the other relevant default is remedied or commenced to be expeditiously remedied. If such suspension occurs, the User's obligations based on its Annual Contract Tonnage (for example charges based on those amounts) will be unchanged, but DBCT Management's obligations to Handle those amounts for the relevant Financial Year will be reduced proportionately.

14.2 Termination by DBCT Management

Subject to clause 14.5, if DBCT Management has duly given notice that it has suspended the User's rights to have its Coal Handled (but not the User's obligations) under this Agreement pursuant to clause 14.1 and if the default still has not been remedied after a further period of 14 days from the notice of suspension, DBCT Management may terminate this Agreement forthwith by further notice to the User pursuant to this clause.

14.3 Termination by User

Subject to clause 14.5, the User may terminate this Agreement by written notice to DBCT Management as follows:-

- (a) if DBCT Management is in default in the due and punctual performance of an obligation to pay money under this Agreement and such default has not been remedied for a period of 30 days after the User has given to DBCT Management written notice specifying the default and requiring the default to be remedied; or
- (b) if DBCT Management is in default in the due and punctual performance of a material obligation under this Agreement (not being an obligation to pay money or a Delay) and such default has not been remedied or DBCT Management has not expeditiously commenced to remedy such default within a period of 60 days after the User has given to DBCT Management written notice specifying the default and requiring the default to be remedied.

14.4 Abandonment of Coal on termination

The User must remove any of its Coal remaining in the Terminal within three months from the termination of this Agreement, whether by expiry or otherwise, failing which the Coal will be deemed abandoned.

14.5 Disputes about defaults

If an event or circumstance is alleged to constitute a default referred to in clause 14.2 or clause 14.3 and is the subject of a dispute under clause 15, then DBCT Management or the User (as applicable) shall not exercise any right to suspend or terminate this Agreement unless and until the default has not been rectified within a reasonable time (being not less than 14 days) after the end of the resolution process in clause 15.

15. GOVERNING LAW AND DISPUTE RESOLUTION

15.1 Governing law

This Agreement is governed by the laws in force in the State of Queensland.

15.2 Disputes

- (a) **(Disputes under this Agreement)** If a dispute between DBCT Management and the User arises out of or in connection with this Agreement, then, unless otherwise specified by the Access Framework or agreed by the parties in writing, such dispute will be resolved in accordance with this clause 15. Either party may give to the other party a notice of dispute in writing identifying and providing details of the dispute.
- (b) **(Disputes under the Access Framework)** If any dispute or question arises under or in relation to the Access Framework, including (without limitation) a dispute in relation to the negotiation of Access between an Access Seeker or Access Holder and DBCT Management, such dispute will be resolved in the manner specified in the Access Framework.
- (c) **(Dispute under Deed Poll)** Subject to clause 9.2.3 of the Deed Poll, the courts of Queensland have exclusive jurisdiction to determine any dispute arising under the Deed Poll.

15.3 Further steps required before arbitration

- (a) Subject to clause 15.5, no party may commence arbitration in respect of any dispute notified or notifiable under this clause 15 until that party has complied with the requirements of this clause 15.3.
- (b) Within 14 days after service of a notice of dispute, the senior executives of DBCT Management and the User (or people for the time being acting in that role) must confer at least once to attempt to resolve the dispute, and failing resolution of the dispute to consider and if possible agree on methods of resolving the dispute by other means.
- (c) If the dispute cannot be so resolved after a further period of 14 days or if at any time either DBCT Management or the User considers that the other party is not making reasonable efforts to resolve the dispute, either party may refer such dispute to arbitration in accordance with clause 15.4.

15.4 Arbitration procedure

- (a) Any disputes that are not otherwise resolved in accordance with this clause 15 or the Access Framework will be submitted to arbitration in accordance with, and subject to, the Resolution Institute Arbitration Rules (**Rules**).
- (b) The arbitration must be effected by a single suitably qualified and experienced arbitrator who is either:
 - (i) agreed upon between the parties; or
 - (ii) in default of such agreement within 10 days after the dispute is referred to arbitration, nominated by the Resolution Institute.
- (c) Any party to the arbitration may be represented before the arbitrator by a member of the legal profession without the need for leave of the arbitrator.
- (d) Any arbitration commenced under this Agreement may be consolidated with any other arbitration commenced under:
 - (i) this Agreement; and / or

- (ii) the Access Framework (or any agreement entered into in accordance with the Access Framework), provided that the issue(s) which each arbitrator has been asked to determine concern common questions of fact or law. Such consolidated arbitration shall be determined by the arbitrator appointed for the arbitration proceeding that was commenced first in time.
- (e) The venue for any arbitration will be Brisbane, Queensland.
- (f) Unless otherwise determined by the arbitrator, the costs of the arbitration shall be paid by the unsuccessful party.

15.5 Interlocutory relief

This clause 15 does not prevent any party from seeking urgent interlocutory or declaratory relief from a court of competent jurisdiction.

15.6 Dispute not to affect performance of obligations

The parties are not relieved from performing their obligations under this Agreement because of the existence of a dispute.

16. WARRANTIES

16.1 Warranties by DBCT Management

DBCT Management agrees and acknowledges that:

- (a) Subject to:
 - (i) an event of Force Majeure;
 - (ii) Maintenance Work; and
 - (iii) any decision to cease or reduce Maintenance Work for a component of the Terminal on the basis that it is more cost-efficient to replace it and it is to be replaced,
 each Terminal Component will be maintained to be available to operate to at least its rated design capacity;
- (b) it will ensure that the Terminal is maintained in accordance with Good Operating and Maintenance Practice;
- (c) it will consult with the User in relation to the appointment of any replacement Operator of the Terminal and will promptly on request negotiate amendments to this Agreement to reflect the terms of any new Access Framework, from the time (should it occur) that Dalrymple Bay Coal Terminal Pty Ltd ceases to be the Operator;
- (d) the User will (at no charge, but at its own cost) be granted reasonable access to the Terminal for reasonable purposes, including customer goodwill inspections, performance of shipping agent functions, Coal sampling and User inspections of Operations, provided that on each occasion the User complies with the Operator's site rules, DBCT Management's reasonable visitor notification requirements and the User is accompanied by an authorised person at such times while on the Terminal site as DBCT Management or the Operator reasonably requires (provided that they make such a representative available, having been given reasonable notice by the User).

16.2 Warranties by the parties

Each party warrants to the others that it has the requisite power to enter into this Agreement from the Execution Date.

17. USER COMMITTEE AND IMPROVEMENT PROGRAM

17.1 Participation in User Committee

DBCT Management and the User agree to participate in a committee consisting of one representative of each of DBCT Management, the Operator and each Access Holder and Existing User (the "User Committee").

17.2 Terms of reference of User Committee

The User Committee is established for the following purposes:

- (a) to provide a forum for consultation between all participants on matters relating to the operation and performance of the Terminal, including (without limitation) any factors relating to any participant which may impact on the future performance or efficiency of the Terminal;
- (b) to enable consultation between all participants on current and planned Terminal facilities, including all proposals for any enhancement of the Terminal; and
- (c) to consult on matters relating to the Terminal Regulations, including (without limitation) any proposed changes to the Terminal Regulations.

17.3 Frequency of meetings

DBCT Management and the User acknowledge that it is intended that the User Committee meet on a Quarterly basis and at such further times as participants in the User Committee agree.

17.4 Representation

DBCT Management and the User will each appoint, and acknowledge that each other prospective member of the User Committee is entitled to appoint, a person to represent its respective interests on the User Committee (each a "Representative"). If a Representative is not available to attend a meeting of the User Committee, the relevant member of the User Committee may nominate an alternate person to represent its interests at the User Committee.

17.5 Chairperson

The User agrees that the Representative appointed by DBCT Management will act as chairman of the User Committee.

17.6 Role of the Operator

DBCT Management must, as far as the Operation & Maintenance Contract allows, procure that the Operator provides appropriate support to the User Committee, including the provision of any relevant operational reports, as the User Committee may reasonably request the Operator to provide from time to time.

18. NOT USED

19. EXPANSION TONNES

[A Conditional Access Agreement in which all or part of the Annual Contract Tonnage does not apply until a Terminal Capacity Expansion (the 'Current Expansion') has occurred, in

circumstances where that Terminal Capacity Expansion will form part of the Terminal under this Agreement once completed, will include a clause, an outline of terms of which are as follows:]

- (a) Subject to clause 19(e), the Annual Contract Tonnage will be [increased by] [**insert**] Mtpa for the period commencing on the first day of the Month following completion and successful commissioning of the Current Expansion until the end of that Financial Year, and thereafter in each subsequent Financial Year. The target date for this to occur is [**insert**].
- (b) DBCT Management must provide at least monthly progress reports to the User in relation to the Current Expansion and such further progress reports as may reasonably be required as the Current Expansion nears completion.
- (c) DBCT Management's obligation to commence Handling, and the User's obligation to commence paying charges, in respect of the additional Annual Contract Tonnage arising out of the Current Expansion or any part thereof (as applicable) only begins on the first day of the Month following the date that DBCT Management gives the User a notice that the User is:
 - (i) awarded the additional Annual Contract Tonnage or any part thereof (as applicable); and
 - (ii) entitled to have the additional Annual Contract Tonnage or any part thereof (as applicable) handled at the Terminal.
- (d) DBCT Management must use reasonable endeavours to have the Current Expansion completed as close as practicable to the target date referred to in clause 19(a), but it will not be required to expend additional amounts to overcome delays caused by third parties or otherwise beyond the reasonable control of DBCT Management.
- (e) DBCT Management will proportionately reduce the Annual Contract Tonnage under this Agreement and the annual contract tonnages under all other Access Agreements entered into with the intention of utilising additional capacity arising out of the Current Expansion, if the actual Terminal Capacity following completion of the Current Expansion is less than the estimate of (expanded) Terminal Capacity made at the time this Agreement was entered into. That reduction will be by the proportion which the additional Terminal Capacity resulting from the Current Expansion as estimated at the time this Agreement was entered into bears to the actual additional Terminal Capacity arising from the Current Expansion. In relation to:
 - (i) Socialised Terminal Capacity, the allocation of proportionately reduced capacity will occur after first deducting any capacity required from the Current Expansion to "make up" any shortfall between already existing aggregate annual contract tonnages and actual Terminal Capacity which existed prior to the Current Expansion; and
 - (ii) Differentially Priced Capacity resulting from the Current Expansion will be allocated to meet the full entitlements under this Agreement and any other Access Agreements associated with the Differentially Priced Capacity.

20. OPTIONS

If the period during which Coal is to be Shipped during the Term is 10 years or more, the following clauses apply:

- (a) The User has an option to extend the Term for 5 years or more (or a lesser period, if it coincides with an expected end-of-mine-life), as nominated by the User at the time of exercise, exercisable at any time up to 12 months prior to the end of the Term (including

- the Term as already extended by the exercise of an option under this clause 20(a) for 5 years or more).
- (b) If DBCT Management receives an Access Application for additional capacity which cannot be met without a Terminal Capacity Expansion if the option in clause 20(a) and other relevant options are exercised, it may notify the User, requiring it to respond within 90 days, either exercising the option in clause 20(a) in respect of all or part of an extended Term and/or tonnage the subject of the option, or waiving it.
 - (c) DBCT Management must give notices under clause 20(b) and any equivalent provision of another Access Agreement or Existing User Agreement to relevant Access Holders or Existing Users with options, in order of the earliest expiring Access Agreement or Existing User Agreement, for the purposes of deciding which option date is to be accelerated first. Where an Access Holder/s or Existing User/s with the earliest expiring date exercise/s its/their option by the accelerated date, DBCT Management may then go to the next Access Holder/s or Existing User/s in order of expiring agreements until there has been a waiver of sufficient options to ensure that the bona fide request can be accepted without the necessity for a Terminal Capacity Expansion. Access Holders or Existing Users whose terms expire within 6 months of each other will, for the purposes of this clause 20, be deemed to have terms which expire on the same date, and must be given notices at the same time.
 - (d) Where more than one Access Holder or Existing User has tonnages which expire (or which are deemed to expire) on the same date, those Access Holders/Existing Users which do not exercise their accelerated option will lose the amount of tonnes the subject of the option proportionately with their respective annual contract tonnages immediately prior to the end of the current term. (For example, if a bona fide request for 5 Mtpa is received and Access Holders/Existing Users with 10, 5, 2 and 3 Mtpa of contracted tonnages do not exercise their options, then the options for those Access Holders/Existing Users will be reduced by 2.5, 1.25, 0.5 and 0.75 Mtpa respectively).
 - (e) If the Access Application referred to in clause 20(b) is not converted into an Access Agreement within 3 months after the above process is completed, the status quo existing before notice from DBCT Management will be re-instated (i.e. options will not be taken to have been forfeited merely because the accelerated date for exercise has not been complied with, and any accelerated exercise of an option will be taken not to have occurred).

21. GST

- (a) Any reference in this clause to a term defined or used in the A New Tax System (Goods and Services Tax) Act 1999 is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Unless expressly included, the consideration for any supply made under or in connection with this Agreement does not include an amount on account of GST in respect of the supply ("**GST Exclusive Consideration**") except as provided under this clause.
- (c) Any amount referred to in this Agreement (other than an amount referred to in clause 21(f)) which is relevant in determining a payment to be made by one of the parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST exclusive basis.
- (d) To the extent that GST is payable in respect of any supply made by a party ("**Supplier**") under or in connection with this Agreement, the consideration to be provided under this Agreement for that supply (unless it is expressly stated to include GST) is increased by

an amount equal to the GST Exclusive Consideration (or its GST exclusive market value if applicable) multiplied by the rate at which GST is imposed in respect of the supply.

- (e) The recipient must pay the additional amount payable under clause 21(d) to the Supplier at the same time as the GST Exclusive Consideration is otherwise required to be provided.
- (f) Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with this Agreement the Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid under clause 21(d), the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
- (g) If one of the parties to this Agreement is entitled to be reimbursed or indemnified for a Loss, cost, expense or outgoing incurred in connection with this Agreement, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the party being reimbursed or indemnified (or its representative member) is entitled in relation to that Loss, cost, expense or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with clause 21(f).

22. NOTICES

22.1 Notices and other communications

All notices and other communications provided for or permitted under this Agreement must be in writing and must be given by mail, or facsimile transmission as follows:-

- (a) if to DBCT Management, to:-

Address:	Level 15, 1 Eagle Street, Brisbane, Qld 4000
Attention:	Chief Executive Officer
Fax No.:	07 3002 3101
Email:	anthony.timbrell@dbctm.com.au
- (b) if to the User, to it at the address set out in Schedule 1,
or to such other address or person as either party may specify by notice in writing to the other.

22.2 Deemed to have been given or made

All such notices or communications are deemed to have been duly given or made:-

- (a) on the date upon which the notice or communication would, in the ordinary course of the post, have been delivered to the address to which it was posted;
- (b) when delivered; or
- (c) if sent by facsimile transmission, at the conclusion of an apparently successful transmission,

but if the delivery or facsimile is effected on a day that is not a Business Day or after 5pm in the place of receipt on a Business Day, it will be taken to have been given or made on the next Business Day.

23. SURVIVAL OF REMEDIES

The remedies of the parties arising by law, by the terms of this Agreement or otherwise are cumulative and will survive the termination of this Agreement by effluxion of time or otherwise.

24. WAIVER

A waiver by either party of any default in the strict and literal performance of or compliance with any provision of this Agreement will not be deemed to be a waiver of strict and literal performance of and compliance with any other provision of this Agreement nor to be a waiver of, or in any manner release the other party from, strict compliance with any provision, in the future nor will any delay or omission of either party to exercise any right under this Agreement in any manner impair the exercise of any such right accruing to it thereafter.

25. COSTS

Whether or not any of the transactions contemplated by this Agreement are consummated, each party must pay its own fees and expenses of and incidental to the negotiation, preparation and execution of this Agreement. The User will pay on demand any stamp duty payable on this Agreement.

26. ENTIRE AGREEMENT

26.1 Full and Complete Understanding

This Agreement constitutes the full and complete understanding between the parties with respect to the subject matter of this Agreement. There is no other oral understanding, agreement, warranty or representation whether express or implied in any way extending, defining or otherwise relating to the provisions of this Agreement or binding on the parties with respect to any of the matters to which this Agreement relates.

26.2 No inducement

Each of the parties covenants and irrevocably acknowledges that it has not been induced to enter into this Agreement by any statement, warranty, representation, understanding, act, omission, fact, matter, thing or conduct by or on behalf of any person including the other party, other than as expressly recorded in this Agreement.

26.3 Provision is to remain in full force and effect

The provisions of this clause 26 will operate and remain in full force and effect. No other fact, matter or circumstance, including breach of the provisions of the *Competition and Consumer Act 2010* (Cth) by a party to this Agreement, will interfere with or in any way derogate from the operation and effect of this clause.

27. SEVERANCE

If any term of this Agreement is for any reason acknowledged by the parties, or adjudged by a court of competent jurisdiction or held by any competent government authority to be invalid, illegal or unenforceable, such term or provision will be severed from the remainder of the provisions of this Agreement and will be deemed never to have been part of this Agreement and the remainder of the provisions of this Agreement will subsist and remain in full force and effect, unless a basic purpose or purposes of this Agreement would thereby be defeated.

28. JOINT VENTURE LIABILITY

[insert as relevant]

28.1 Definitions

In this clause:

- (a) “**Financial Obligation**” means an obligation of a party under or arising out of this Agreement to pay or cause to be paid an amount of money, including a liability for damages for a breach of a Performance Obligation;
- (b) “**Joint Venture**” means the joint venture between the Joint Venturers, details of which are set out in Item 3 of Schedule 1;
- (c) “**Joint Venture Percentage**” means the respective percentage interest of each Joint Venturer in the Joint Venture, as set out in Item 3 of Schedule 1;
- (d) “**Joint Venturers**” means each of the entities set out in Item 3 of Schedule 1 as holding a Joint Venture Percentage.
- (e) “**Performance Obligation**” means any obligation of a party arising under this Agreement, other than a Financial Obligation.

28.2 User agent for Joint Venturers

- (a) The User enters into this Agreement as agent for and on behalf of the Joint Venturers, and the User warrants that it is duly authorised to do so.
- (b) The User will not be personally liable under this Agreement in its capacity as agent for the Joint Venturers.

OR

[Joint Venturers comprise a single party]

The Joint Venturers comprising the User will be a single party to this Agreement, but their respective rights against and liabilities to DBCT Management and DBCT Guarantor will be determined in accordance with this clause 28.]

28.3 Financial Obligations of Joint Venturers are several

Subject to clauses 28.4 and 28.5 (and any other provision of this Agreement which may expressly provide otherwise), the liability of each Joint Venturer in respect of each Financial Obligation of the User is several, and each Joint Venturer will only be liable for an amount owing by the User equivalent to its Joint Venture Percentage of that amount.

28.4 Rights and Performance Obligations of Joint Venturers are joint

- (a) Each right of the User under this Agreement can only be exercised by the User or by **[delete highlighted words where the Joint Venturers are all signatories in their own right]** the Joint Venturers jointly.
- (b) Each Joint Venturer will be jointly liable in respect of each Performance Obligation of the User (other than any Performance Obligation expressed to be imposed on an individual Joint Venturer).

28.5 Individual Joint Venturer default

- (a) If:
 - (i) a Joint Venturer defaults in respect of the performance of a Financial Obligation of the User;

- (ii) the other Joint Venturers are not in default in respect of that Financial Obligation; and
- (iii) [where there is a single User, as agent for the Joint Venturers] the User gives a notice to DBCT Management, copied to the defaulting Joint Venturer, identifying the defaulting Joint Venturer and its default,

OR

- (iv) [where the Joint Venturers are all signatories in their own right] the other Joint Venturers give a notice to DBCT Management, copied to the defaulting Joint Venturer, identifying the defaulting Joint Venturer and its default,

then that defaulting Joint Venturer (unless it disputes the default in writing to DBCT Management within 7 days of receiving a copy of the notice) will be solely liable, to the extent of the default, in the performance of that Financial Obligation.

- (b) Any notice given pursuant to clause 28.5(a)(iii) and not disputed by the defaulting Joint Venturer within the time prescribed is conclusive evidence that the defaulting Joint Venturer specified in the notice is in default to the extent stated and the notice binds all parties unless and until revoked or amended by the User.
- (c) If more than one (but not all) Joint Venturers default and are subject to a notice under clause 28.5(a)(iii), they will be severally liable in proportion to their respective relevant Joint Venture Percentages.
- (d) Nothing in this clause 28 affects DBCT Management's rights under clauses 14.1 and 14.2 of this Agreement.

28.6 Clarifications

For clarification:

- (a) any assignment by a Joint Venturer of any part of its Joint Venture Percentage in respect of this Agreement will be an assignment to which clause 12.2 applies, but in such a case references in that clause to the "User" and "assignee" respectively will be taken to refer only to the relevant Joint Venturer and the intended assignee from it;
- (b) any assignment by the User which is merely the substitution of a new agent for the Joint Venture (where there is no change in the Joint Venturers or the Joint Venture Percentages) will be consented to by DBCT Management unless it has reasonable grounds to object to the proposed new agent (for example, it is insolvent or has a history of default).

29. GUARANTEES OF USER

29.1 User to provide Security [insert if provision of security is a condition precedent]

[Notwithstanding clause 2], it is a condition precedent to this Agreement that the User must provide to DBCT Management, the Security in Schedule 8, effective not later than the Effective Date, to secure the obligations of the User to DBCT Management under this Agreement.

29.2 Failure to provide Security [insert if relevant]

If the User does not provide the Security referred to in clause 29.1, then this Agreement will have no force or effect.

29.3 Guarantee if User does not remain in good financial standing

- (a) If after the Execution Date:

- (i) the User applies to DBCT Management to increase the Annual Contract Tonnage;
- (ii) in the reasonable opinion of DBCT Management, there is a likelihood that the User (or, if applicable, a provider of Security) may have ceased or will cease to be reputable or of good financial standing; or
- (iii) a Security previously given in connection with this Agreement is due to expire within 90 days,

the User must provide such information to DBCT Management as may be reasonably requested by DBCT Management by notice to establish that the User (or, as applicable, a provider of Security) is reputable and of good financial standing. DBCT Management must keep any such information in the strictest confidence, except that DBCT Management may disclose such information on a confidential basis to its financiers and consultants who require such information to assess the solvency and creditworthiness of the User or provider of Security.

- (b) If, after the Execution Date, in the reasonable opinion of DBCT Management:
 - (i) the User (or, as applicable, a provider of Security) has ceased to be reputable or of good financial standing with the capability to fulfil all of its obligations under (or in respect of) this Agreement; or
 - (ii) [where this Agreement concerns Access to a Differentiated Expansion Component] there is a materially increased risk that the circumstances in 29.3(b)(i) will occur prior to the earlier of the Terminating Date and the end of the Term,
- then the User must provide, within 20 Business Days after written notice from DBCT Management, to DBCT Management, a Security which:-
- (iii) secures (to an extent reasonable in the circumstances) the obligations under this Agreement of the User to DBCT Management;
 - (iv) is from an entity which, in the reasonable opinion of DBCT Management, is reputable and of good financial standing and with the capability to fulfil or cause the fulfilment of all of the financial obligations of the User under this Agreement; and
 - (v) is in a form, and for an amount and period, satisfactory to DBCT Management (acting reasonably).

- (c) If the User does not provide such Security within 20 Business Days of receiving such written notice from DBCT Management, then the User will be in breach of a material obligation under this Agreement.
- (d) The User is entitled to dispute a conclusion by DBCT Management on which a notice under clauses 29.3(a) or 29.3(b) is based.

29.4 Request to remove or reduce Security

- (a) If the User has provided a Security pursuant to this clause 29 and considers that its financial circumstances have improved or any other relevant circumstances have changed since the provision of the Security, it may request DBCT Management to release or reduce the Security.
- (b) The User must provide to DBCT Management such evidence of its financial circumstances, or other relevant circumstances, as DBCT Management reasonably requests, before DBCT Management is obliged to consider the request.

- (c) DBCT Management must not unreasonably refuse any such request, but it may have regard to (amongst other things) the circumstances in which the Security was originally provided, changes in circumstances since that time, and any reasonable custom and practice of DBCT Management in respect of requiring security from new Access Holders.

30. GUARANTEE OF DBCT MANAGEMENT'S OBLIGATIONS

30.1 Guarantee

DBCT Guarantor irrevocably and unconditionally guarantees to the User on demand payment of all amounts payable by DBCT Management under or arising out of this Agreement (including all amounts for which DBCT Management may become liable in respect of any breach of this Agreement).

30.2 Unconditional nature of guarantee

DBCT Guarantor agrees that DBCT Guarantor's obligations under this Agreement are unconditional (irrespective of the validity, regularity or enforceability of any provision of this Agreement or the absence of any action to enforce the same or the waiver or the consent of the User in respect of any provision of this Agreement or the recovery of any judgment against DBCT Management or any action to enforce the same or any variation of the terms of this Agreement or any other dealings, transactions or arrangements between the User and DBCT Management or other circumstances which might otherwise constitute a legal or equitable discharge of or defence to a surety). This guarantee shall be a continuing guarantee which shall not be discharged except by a complete performance of all obligations of DBCT Management under this Agreement.

30.3 Guarantee not affected by changed circumstances

The liability of DBCT Guarantor under this Agreement will not be lessened, affected or impaired by any time or indulgence granted to DBCT Management by the User or any dealings or transactions between the User and DBCT Management (whether or not DBCT Guarantor is a party or cognisant of the same) or by the dissolution of DBCT Management or any change in the status, functions, control or ownership of DBCT Management or any consolidation, merger, conveyance or transfer by DBCT Management or any waiver, variation or novation of this Agreement or other dealings, transactions or arrangements between the User and DBCT Management which might otherwise constitute a discharge to a surety.

30.4 Capacity of DBCT Guarantor

- (a) DBCT Guarantor enters into this Agreement as trustee of the DBCT Trust and in no other capacity.
- (b) Any liability of DBCT Guarantor arising from this Agreement can be enforced against DBCT Guarantor only to the extent to which it can be satisfied out of the property of the DBCT Trust and out of which the DBCT Guarantor is actually indemnified for the liability. This provision applies despite any other provision of this Agreement.
- (c) A person entitled to the benefit of this Agreement may not sue DBCT Guarantor personally or seek the appointment of a liquidator, administrator, receiver or similar person to DBCT Guarantor personally or prove any liquidation, administration or arrangement of or affecting DBCT Guarantor personally.
- (d) The provisions of this clause 30.4 do not apply to any obligation or liability of DBCT Guarantor to the extent that it is not satisfied because under its constitution or deed of trust or by operation of law there is a reduction in the extent of DBCT Guarantor's

indemnification over the assets of the DBCT Trust, as a result of DBCT Guarantor's fraud, negligence, breach of trust or breach of duty.

- (e) All of the provisions of this clause 30 are subject to this clause 30.4.

31. LIMITATIONS TO LOSSES AND DAMAGES

31.1 No indirect Loss or Consequential Loss

Notwithstanding any other provision of this Agreement, DBCT Management is not liable to the User for any indirect Loss or Consequential Loss.

SCHEDULE 1 - REFERENCE SCHEDULE

Item	Reference	Definition/Details
1	DBCT Management	DBCT Management Pty Limited ABN 16 097 698 916
2	DBCT Guarantor	DBCT Investor Services Pty Ltd ABN 11 052 156 082 as trustee for the DBCT Trust
3	User	<i>[Insert name, address for notices and contact details]</i>
4	Execution Date	
5	Effective Date	
6	Term	[] years* (* note: if this Agreement provides for the Shipping of Coal for 10 years or more the Option and rolling 12 month extension process in Clause 20 applies)
7	Annual Contract Tonnage	Year Tonnage 20xx AAA 20yy BBB 20zz etc CCC
8	Terminal Component	<i>[For an Agreement which is entered by an Expansion Party in respect of one or more Expansion Component(s) only, insert details of the Expansion Component(s)]</i> <i>[For an Agreement which is entered in respect of the Existing Terminal (excluding Expansion Components), identify the Existing Terminal excluding any Expansion Components]</i>

SCHEDULE 2 - CALCULATION OF TERMINAL INFRASTRUCTURE CHARGE AND MONTHLY PAYMENT

1. Monthly Payment (MP)

For each Terminal Component the User must pay to DBCT Management a Monthly Payment in each Month "m" of each Financial Year (**MP_{u,m}**), calculated as follows:-

$$MP_{u,m} = TIC \times MRT_{u,m}$$

where:-

TIC is the Terminal Infrastructure Charge per tonne of Annual Contract Tonnage applicable for a relevant Financial Year to the Terminal Component as specified under Schedule 2, Section 2, and amended or adjusted in accordance with Schedule 2, Section 3; and

MRT_{u,m} is the number of tonnes which is the proportion of the Annual Contract Tonnage attributable to each Month "m" of a Financial Year in respect of the Terminal Component. Where the rate of the Annual Contract Tonnage for the User does not vary during a Financial Year and applies to the full Financial Year, the **MRT_{u,m}** for the User will be one-twelfth of the Annual Contract Tonnage for the relevant Financial Year. Where the rate of the Annual Contract Tonnage for the User varies during a Financial Year, the **MRT_{u,m}** will vary from Month to Month to reflect one-twelfth of the annualised rate of the Annual Contract Tonnage at that time.

The Monthly Payment will be adjusted during a Financial Year where the TIC is amended or adjusted in accordance with Schedule 2, Section 3.

2. Terminal Infrastructure Charge (TIC)

The Initial TIC for the Terminal Component for the Financial Year commencing on the Effective Date, being a charge per tonne of Annual Contract Tonnage for the Terminal Component, is \$[insert amount agreed between DBCTM and User or determined by the arbitrator in the event the Initial TIC is referred to arbitration under the Access Framework].

3. Amendment of the TIC

- (a) The TIC will be amended and adjusted annually and on the occurrence of a Review Event in accordance with section 10 and Schedule C of the Access Framework.
- (b) DBCT Management will notify the User of any amendment or adjustment to the TIC in accordance with Schedule C of the Access Framework.
- (c) Any amendment to the TIC will be effective from the date specified in the Access Framework.

SCHEDULE 3 - SERVICES

1. Train scheduling

DBCT Management must (subject to availability of trains and factors beyond its control) co-ordinate cargo assembly windows at the terminal to receive Coal parcels and provide train operators and Access Holders with details of cargo receival windows suitable for terminal acceptance of trains and ensure sufficient unloading capacity is made available at the Terminal, to allow each Access Holder to ship its Annual Contract Tonnage of Coal in each Financial Year.

2. Train unloading

If a train carrying an Access Holder's Coal arrives at the Terminal within its designated cargo build window, DBCT Management must ensure that the train is unloaded at a rate (consistent with the type and condition of the Coal) consistent with achieving Handling of the Annual Contract Tonnage of Coal for an Access Holder.

3. Reclaiming and vessel loading

DBCT Management must:

- (a) make the Terminal available for berthing by vessels (which are satisfactory in all respects to receive Coal) nominated by the User, such that not less than the Annual Contract Tonnage can be Handled by DBCT Management in each Financial Year (as long as the vessel and/or cargo mix required by the User or its customer does not unreasonably impact on the efficiency of the Terminal); and
- (b) load the User's Coal into a vessel which is nominated by the User and is available for loading so as to achieve the objective in section 3(a).

4. Incidental services

DBCT Management must provide the following services, incidental to Coal handling (unless provided directly by the Operator):

- sampling and survey services;
- vessel monitoring;
- co-ordination with ships' agents, masters, customers and other relevant entities;
- crew disembarkation services; and
- wharfage and line services.

5. Miscellaneous services

If required by the User or any Approval or statutory authority notified to DBCT Management, DBCT Management must provide the following Miscellaneous Services to the User:

- moisture adding;
- compacting;
- surfactant adding;

- dozing;
- blending (subject to section 6(d) below); and
- any other services reasonably requested from time to time in writing by the User to DBCT Management, provided that such services will not unreasonably impact on the efficiency or capacity of the Terminal.

6. Stockpiling and blending

- (a) DBCT Management must provide to the User sufficient stockpile areas to allow cargo assembly (i.e. assembly of cargo for a nominated vessel with an appropriate arrival time) for vessels onto which the User's Coal is to be loaded.
- (b) Remnant management areas will be determined by the Operator in areas of the Terminal which are not required for cargo assembly and which can be made available for dedicated stockpiling without materially affecting efficiency of the Terminal. DBCT Management must ensure that the User is offered the opportunity to use a proportion of that stockpiling area which accords with its proportion of the total annual contract tonnage under all Access Agreements and Existing User Agreements.
- (c) The stockpiling rights in sections 6(a) and 6(b) are subject to any other obligation of DBCT Management under any Existing User Agreement with an Existing User entered into prior to 1 July 2004 (to the extent that such obligation has not been waived).
- (d) DBCT Management must blend Coal if so requested, but subject to requirements in the Terminal Regulations from time to time, which may:
 - (i) require Coal to be blended before it is received at the Terminal, where reasonably practicable;
 - (ii) require Coal to be blended into a stockpile where reasonably practicable (rather than being blended from stockpile); and
 - (iii) limit the proportions in which Coal may be blended (to limit the increase in consumption of capacity of the Terminal consumed because of blending).
- (e) DBCT Management must transfer the User's Coal from the train unloading facility at the Terminal to the relevant stockpile area or a cargo assembly area and stockpile the User's Coal in that area (except to the extent that a quality plan under the Terminal Regulations has been agreed to which provides for direct loading from train to vessel).

7. Prevention of contamination

DBCT Management must take all practicable measures to maintain the integrity of the User's Coal at the Terminal, including (without limitation) by:

- (a) avoiding contamination of the User's Coal, including (without limitation) contamination with other Coal or waste material; and
- (b) minimising handling and associated degradation of the User's Coal.

8. Data provision

DBCT Management must provide such information and access to systems as are reasonable to inform Access Holders of relevant data relating to handling of their Coal.

9. Co-ordination

Subject to the User providing relevant information to DBCT Management within a reasonable time, DBCT Management must:

- (a) ensure, as far as practicable, that it discharges its obligations in this Schedule in accordance with the requirements of the User's reasonable quality plans, reasonable shipping programs and contracts as notified to DBCT Management and the Operator from time to time consistent with Terminal Regulations, and
- (b) (subject to the foregoing and having regard to equity amongst Access Holders and Existing Users) use its best endeavours to minimise the aggregate cost to the User arising out of Handling at the Terminal (including Demurrage Costs and rail freight).

10. Terminal Regulations, Force Majeure, Laws and Operation & Maintenance Contract

The provision of each of the above services by DBCT Management is subject to (and DBCT Management's obligations are modified to the extent of):

- (a) any relevant provisions of the Terminal Regulations;
- (b) any specific provision of this Agreement including any provisions relating to an event of Force Majeure;
- (c) the ability of DBCT Management to require the Operator under the Operation & Maintenance Contract to provide the Services; and
- (d) without limiting section 10(c) any specific provision in the Operation & Maintenance Contract including any provisions relating to an event of force majeure.

11. Standard for Services

- (a) The provision of the above Services by DBCT Management must be carried out in accordance with due skill, care and diligence in accordance with the Access Framework, the Terminal Regulations, Good Operating and Maintenance Practice and all applicable Laws.
- (b) When providing the above Services, DBCT Management must take into account the following factors, where relevant:
 - (i) lowest total whole of life cost;
 - (ii) reliability and economy of performance;
 - (iii) maximising the effective life of the Terminal; and
 - (iv) DBCT Management's non-discrimination obligations under the Access Framework.

SCHEDULE 4 – UTILISATION ADVICE**(clause 6.1)**

Calendar Year:															
Mine:															
	Annual Forecast	Updated Forecast				Additional Information									
		1 Jul	1 Oct	1 Jan	1 Apr	Planned Mine Outages	Rail Ent.*	Ship Mix**							Comments / Exceptions
Forecast Due Date	15-Feb	'000t	'0005	'000t	'000t	'000t	days	'000t	Handi	S-Pan.	M-Pan.	S-Cape.	M-Cape.	Unk	(Include comments on any special requirements, or exceptions from existing practice for the period)
Units															
Apr	---	---	---	---	---	---									
May	---	---	---	---	---	---									
Jun	---	---	---	---	---	---									
Jul	---	---	---	---	---	---									
Aug	---	---	---	---	---	---									
Sep	---	---	---	---	---	---									
Oct	---	---	---	---	---	---									
Nov	---	---	---	---	---	---									
Dec	---	---	---	---	---	---									
Jan	---	---	---	---	---	---									
Feb	---	---	---	---	---	---									
Mar	---	---	---	---	---	---									
Apr	---	---	---	---	---	---									
May	---	---	---	---	---	---									
Jun	---	---	---	---	---	---									
Jul	---	---	---	---	---	---									
Aug	---	---	---	---	---	---									
Sep	---	---	---	---	---	---									

* This Utilisation Advice will satisfy the User's obligations under Clause 6.1 of the User Agreement and DBCT Management acknowledges that the User will be under no liability to DBCT Management if the actual number, types or tonnages of vessels or the amount of Coal is greater or fewer than the number, types, tonnages or amounts estimated in this Utilisation Advice.

+ Annual railing capacity is to be provided subject to the consent of the contractor providing rail haulage services to the User (which the User will endeavour to obtain)

++ Handi = Handimax, S-Pan = single parcel Panamax, M-Pan = multi-parcel Panamax, S-Cape = single parcel Capes & VLC, M-Cape = multi-parcel Cape & VLC, Unk. = Unknown (or same as historic if all tonnage included in this column)

SCHEDULE 5 - PRODUCT SHIPMENT NOTICE**(clause 9.1)**

TO	:	North Queensland Bulk Ports Corporation Limited (Fax:)
		DBCT Management Pty Ltd (Fax: 07 3002 3101)
FROM	:	<i>[User shipping coal]</i>
SUBJECT	:	Product Shipment Notice – DBCT
DATE	:	
PAGE	:	1 (including this cover page)

Ship Name:	
Date Departed:	
Shipping Number:	
Mine Name:	
User Agreement Name:	
Party liable for User Agreement charges:	
Total Number of Tonnes:	

(This total **MUST** agree with Manifest. If the Manifest covers multiple cargoes, separate Product Shipment Notices for each cargo must be completed)

Does Manifest include more than one cargo?

No
Yes

User: _____ Date: _____

**SCHEDULE 6 - TEMPLATE FOR ASSIGNMENT OF ANNUAL CONTRACT
TONNAGE**

(clause 12.2)

Deed of Variation

DBCT Management Pty Limited

[User 1 full name]

and

[Assignee full name]

This Deed of Variation

is made on between the following parties:

- 1 **DBCT Management Pty Limited**
ACN 097 698 916)
of Level 15, 1 Eagle Street, Brisbane, Queensland
(DBCT Management)
 - 2 **The User named in item 1 of the Schedule**
([User 1])
 - 3 **The person named in item 3 of the Schedule**
([Assignee])

Recitals [Option 1 – Select this option where the Assignee **is not** an existing User.]

- A. DBCT Management is the owner of a long term lease of the Terminal.
 - B. [User 1] is a party to a User Agreement with DBCT Management, and under the User Agreement DBCT Management grants [User 1] a right to have an Annual Contract Tonnage of Coal Handled at the Terminal.
 - C. [User 1]'s entitlement to Ship Coal through the Terminal in the Swap Period under [User 1]'s User Agreement exceeds its requirements by the Swap Contract Tonnage.
 - D. [Assignee] wishes to Ship Coal through the Terminal in the Swap Period under a User Agreement.
 - E. [User 1] wishes to vary the Annual Contract Tonnage in its User Agreement so that [Assignee] is entitled to Ship the Swap Contract Tonnage through the Terminal in the Swap Period, and [User 1]'s entitlement to Ship Coal under [User 1]'s User Agreement is reduced accordingly.
 - F. [Assignee] wishes to enter into a User Agreement with DBCT Management to Ship the Swap Contract Tonnage through the Terminal in the Swap Period.
 - G. DBCT Management has agreed to consent to the variation to [User 1]'s User Agreement to achieve that objective, on the terms of this deed.

Recitals [Option 2 – Select this option where the Assignee is an existing User.]

- A. DBCT Management is the owner of a long term lease of the Terminal.

- B. [User 1] and [Assignee] are each a party to a User Agreement with DBCT Management, and under each User Agreement DBCT Management grants them a right to have an Annual Contract Tonnage of Coal Handled at the Terminal.
- C. [User 1]'s entitlement to Ship Coal through the Terminal in the Swap Period under [User 1]'s User Agreement exceeds its requirements by the Swap Contract Tonnage.
- D. [Assignee] wishes to Ship more Coal through the Terminal in the Swap Period than its entitlement under [Assignee]'s User Agreement.
- E. [User 1] and [Assignee] wish to vary the Annual Contract Tonnages in their respective User Agreements so that [Assignee] is entitled to Ship the Swap Contract Tonnage through the Terminal in the Swap Period (in addition to its existing Annual Contract Tonnage), and [User 1]'s entitlement to Ship Coal under [User 1]'s User Agreement is reduced accordingly.
- F. DBCT Management has agreed to consent to the variations to the User Agreements to achieve that objective, on the terms of this deed.

The deed witnesses

that in consideration of, among other things, the mutual promises contained in this deed, the parties agree:

1 Definitions and interpretation

1.1 Definitions

Effective Date means the date set out in item 7 of the Schedule.

Swap Contract Tonnage means the absolute tonnages (or respective tonnages for respective periods) set out in item 6 of the Schedule. Where the Swap Period relates to part, but not all, of a Financial Year, the Swap Contract Tonnage in respect of that period is expressed as an annualised rate for that period - for the purposes of calculating the Monthly Charges for the Swap Period under the User Agreement and determining the rate at which Shipping is permitted in that period.

Swap Period means the period set out in item 5 of the Schedule.

[User 1]'s User Agreement means an agreement between DBCT Management and [User 1] bearing the date set out in item 2 of the Schedule.

[Assignee]'s User Agreement means an agreement between DBCT Management and [Assignee] bearing the date set out in item 4 of the Schedule and DBCT Management.] *[Drafting Note: Select this option if the Assignee is an existing User.]*

[[Assignee]]'s User Agreement means a User Agreement to be entered into between DBCT Management and [Assignee]. *[Drafting Note: Select this option if the Assignee is not an existing User.]*

User Agreement means one or more of [User 1]'s User Agreement and [Assignee]'s User Agreement as the context requires.

1.2 Interpretation

- (a) Terms which are defined in the User Agreement/s or Terminal Regulations have the same meaning in this deed (except where the context otherwise requires).
- (b) The interpretation provisions of the User Agreement/s apply in respect of the interpretation of this deed, as if set out in this deed.

2 Variations to User Agreement/s

2.1 [User 1]'s User Agreement

As of the Effective Date, the Annual Contract Tonnage in [User 1]'s User Agreement is reduced by the Swap Contract Tonnage for the Swap Period.

2.2 [Assignee]'s User Agreement

As of the Effective Date, the Annual Contract Tonnage in [Assignee]'s User Agreement will be the Swap Contract Tonnage for the Swap Period. *[Drafting Note: Delete this paragraph if the Assignee is an existing User.]*

As of the Effective Date, the Annual Contract Tonnage in the [Assignee]'s User Agreement is increased by the Swap Contract Tonnage for the Swap Period. *[Drafting Note: Delete this paragraph if the Assignee is not an existing User.]*

2.3 Revised Consolidated Annual Contract Tonnages

DBCT Management will provide to [User 1] and [Assignee] respectively a revised, consolidated table of Annual Contract Tonnages for the Term of their User Agreement, to reflect the amendments [and new entitlements] pursuant to this deed. In the absence of manifest error, that table will be taken to replace the table of Annual Contract Tonnages previously applicable under the relevant User Agreement (if applicable). *[Drafting Note: Delete words in square brackets if the Assignee is an existing User.]*

2.4 Calculation of Entitlement under the Terminal Regulations

For the avoidance of any doubt, it is intended that [Assignee] will become entitled to the "Entitlement" under the Queue Management Procedures currently in place under the Terminal Regulations which [User 1] would (but for this deed) have previously been entitled to in relation to the Swap Contract Tonnage for the Swap Period, but that neither parties' Entitlements outside the Swap Period (if any) will be affected. *[Note: only*

[required if Terminal Regulations include a Queue Management System at the time this deed is entered into]

2.5 Transitional

- (a) The parties recognise that certain determinations (for example, the annualised amount of HCF and HCV) may have been made to date in respect of a current Financial Year before the variations in this deed were agreed.
- (b) DBCT Management shall, as soon as practicable, cause appropriate adjustments to be made in respect to the amounts charged under [[User 1]]'s User Agreement/the respective User Agreements], to reflect the variations arising out of this deed. *[Drafting Note: Select the relevant option depending in whether the Assignee is an existing User.]*
- (c) Nothing in this deed requires DBCT Management or the Operator to pay or repay amounts other than adjustments of the kind already contemplated by [[User 1]]'s User Agreement/the User Agreements]. In particular, DBCT Management is not as a result of the variations effected by this deed required to accelerate a payment, or to make a payment to either of the other parties which, in aggregate, is more than it would have otherwise have been required to make but for this deed. *[Drafting Note: Select the relevant option depending in whether the Assignee is an existing User.]*

2.6 User Agreements still in force

Except as set out in clauses 2.1 and 2.2 of this deed, the parties agree and acknowledge that all other provisions of [User 1]'s User Agreement/the User Agreements] remain in full force and effect. *[Drafting Note: Select the relevant option depending in whether the Assignee is an existing User.]*

3 Costs and stamp duty etc

- (a) [User 1] and [Assignee] will each bear their own costs and expenses in respect of the negotiation, preparation and execution of this deed.
- (b) [Assignee] will be liable for the costs and expenses (including legal costs) of DBCT Management in respect of the negotiation, preparation and execution of this deed, and any stamp duty and other duties, taxes or other amounts payable as a result of this deed.

4 Governing law

This deed is governed by the laws of Queensland.

5 Counterparts

This deed may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one instrument.

Schedule to Deed of Variation

(clause 12.2 Standard Access Agreement)

Item

1.	User reducing Annual Contract Tonnage	[insert User 1 full name]
2.	[User 1]'s User Agreement (date)	[insert date]
3.	User [increasing / acquiring] Annual Contract Tonnage [Drafting Note: Select the relevant option depending on whether the Assignee is an existing User.]	[insert Assignee's full name] [insert date]
4.	[Assignee]'s User Agreement (date)	[insert date] [Drafting Note: Insert 'Not applicable' if the Assignee is not an existing User.]
5.	Swap Period	[insert start and end dates of Swap Period]
6.	Swap Contract Tonnage	[insert absolute no. of tonnes swapped for each relevant period and annualised rate for each period] Mt (Annualised rate*: [_____] Mtpa)
7.	Effective Date	[insert date of agreement to swap]

* Annualised rate = (Swap Contract Tonnage / No. of days in Swap Period) x 365

Executed as a deed:

**Signed sealed and delivered by
DBCT Management Pty Limited:**

Secretary/Director

Director

Name (please print)

Name (please print)

**Signed sealed and delivered by
[User 1 full name]:**

Secretary/Director

Director

Name (please print)

Name (please print)

**Signed sealed and delivered by
[Assignee full name]:**

Secretary/Director

Director

Name (please print)

Name (please print)

SCHEDULE 7 - TEMPLATE REQUEST FOR THIRD PARTY PERMISSION TO SHIP

(clause 12.5)

TO : Dalrymple Bay Coal Terminal Pty Ltd (Fax: 07 4956 3353)
 DBCT Management Pty Ltd (Fax: 07 3002 3101)

FROM : *[Principal's name]*
[Beneficiary's name]

SUBJECT : Request for Permission for Third Party to Ship Coal

DATE :

User offering the Capacity (Principal):	
Company accepting the Capacity (Beneficiary):	
Period pertaining to the swap:	
Total Number of Tonnes:	
Nominated Vessel (where known):	
Is this a: (a) Transfer (i.e. a one-way transaction) that will not be repaid; or (b) Swap (i.e. a two-way transaction) that will be repaid?	<input type="checkbox"/> <input type="checkbox"/> Repayment date: / / When is repayment expected?

Acceptance of this request is subject to receipt of separate Product Shipment Notice (PSN) for all cargos. Invoicing will be in strict accordance with User Agreement terms (i.e. all charges will be to the Principal).

Principal

Date of Request:

Beneficiary

Date of Request:

Request Approved:

DBCT Management Pty Ltd

Date of Approval:

SCHEDULE 8 - SECURITY

(clause 29)

[Insert details, if applicable]

[eg The User must provide the following Security from an entity which, in the reasonable opinion of DBCT Management, is reputable and of good financial standing, with the capability to fulfil all of the obligations of the User under this Agreement.]

SCHEDULE 9 - DEFINITIONS AND INTERPRETATION

Definitions

"Access" has the meaning given in the Access Framework.

"Access Agreement" has the meaning given in the Access Framework.

"Access Application" has the meaning given in the Access Framework.

"Access Charges" has the meaning given in the Access Framework.

"Access Holder" has the meaning given in the Access Framework.

"Access Seekers" has the meaning given in the Access Framework.

"Access Framework" means the access framework (including its schedules) applying to DBCT Management from time to time relating to provision of the Services by it, as implemented under the Deed Poll.

"Aggregate Annual Contract Tonnage" has the meaning given in the Access Framework.

"Agreement" means this agreement, including all schedules attached to it.

"Annual Contract Tonnage" means the maximum quantity of Coal that the User is entitled to deliver to and have Handled through the Terminal in a relevant Financial Year under this Agreement in accordance with Item 7 of Schedule 1 (as amended from time to time pursuant to this Agreement) including tonnage which the User is entitled to have Handled but which may not, at a practical level, be able to be Handled due to circumstances such as a force majeure event or relevant provisions of Terminal Regulations and any tonnage which the User would be entitled to have Handled but for the suspension of the User's right to have the tonnage Handled under this Agreement.

For clarification, where a Financial Year or any relevant period is less than twelve months, or the annualised rate of Annual Contract Tonnage varies during a Financial Year, the Annual Contract Tonnage will be expressed as the relevant annualised rate at a point in time for the purposes of calculating the charges payable each Month, but will nevertheless be the absolute amount of tonnes which the User is entitled to have Handled over the entire Financial Year for purposes such as any annual reconciliation of HCF and the tonnages included in the Aggregate Annual Contract Tonnage.

"Approval" has the meaning given in the Access Framework.

"Business Day" means any day other than a Saturday, a Sunday, or a public holiday in Brisbane.

"Capital Expenditure" means expenditure which:

- (a) relates to replacement or expansion of any part of the Terminal;
- (b) relates to the refurbishment or upgrade of any part of the Terminal which can reasonably be expected to extend the life of the relevant part beyond its original useful life; or
- (c) otherwise relates to the refurbishment or upgrade of Terminal plant and/or infrastructure which is reasonably expected to improve whole of life cost or is incurred with the agreement of the Operator,

but not expenditure recovered through HCF or HCV.

"Cargo Manifest" means the manifest referred to in clause 9.

"Cash Rate Target" means, at a relevant time, the cash rate target then prevailing and published by the Reserve Bank of Australia on its website (www.rba.gov.au) at that time.

"Change of Control" will occur in the User if at any time during the term of this Agreement, any person obtains, or ceases to hold, directly or indirectly:

- (a) beneficial ownership of 50% or more (in aggregate) of the voting shares in the corporation; or
- (b) effective control of the board of directors of the corporation, other than as a result of the transfer of securities in a corporation listed on any recognised stock exchange.

"Claim" means any action, proceeding, allegation, demand or claim in any form for relief or compensation of any nature.

"Coal" means coal, coke, and other like materials as are approved by DBCT Management.

"Commencement Date" has the meaning given in the Access Framework.

"Conditional Access Agreement" has the meaning given in the Access Framework.

"Consequential Loss" means any one or more of the following:

- (a) Loss of profits; or
- (b) Loss of opportunity to make profits; or
- (c) Loss of business opportunity; or
- (d) special exemplary or punitive damages; or
- (e) any Loss which does not directly and naturally flow in the normal course of events from the occurrence of the event giving rise to the liability for such Loss, whether or not such Loss was in the contemplation of the parties at the time of entry into this agreement,

including any of the above types of Loss arising from an interruption to a business or activity.

["Current Expansion" means *(to be inserted as applicable)*].

"Deed Poll" means the irrevocable deed poll dated [*insert*] given by DBCT Management under which it covenants to comply with the Access Framework.

"Default Interest Rate" means, at a relevant time, the rate per annum equal to the Cash Rate Target at that time plus 3.5%.

"DBCT Management's Personal Responsibility" means DBCT Management's personal liability as a result of its own acts or omissions, independently of and excluding any liability which it might have directly or indirectly arising from the acts or omissions of the Operator or third parties (including contractors and subcontractors of DBCT Management).

"Delay" means any delay, inability or failure (for any reason, including breach of this Agreement or negligence) to Ship or Handle Coal in the tonnages and at the rates contemplated in this Agreement. For the User, this includes a failure to deliver Coal to the Terminal or an inability to schedule vessels to load Coal. For DBCT Management, this includes the inability to provide Services at the Terminal (in whole or part) for any reason when Coal would otherwise have been made available by the User.

"Demurrage Costs" means the average cost across all Access Holders and Existing Users of demurrage in respect of the loading of Coal on vessels at the Terminal over any period of 3 consecutive months (as estimated by the Operator in accordance with its historical practice of estimating notional demurrage costs).

"Differentially Priced Capacity" has the meaning given in the Access Framework.

"Differentiated Expansion Component" has the meaning given in the Access Framework.

"Direct Loss" means charges actually paid pursuant to this Agreement in respect of the period of the Delay. For the purposes of clause 13.4, the User's Losses arising out of a Delay will be taken to include the amount of the relevant Direct Losses.

"Due Date" has the meaning given in clause 5.1.

"Effective Date" means,[subject to prior satisfaction of the condition precedent in clause 29.1,] the date set out as such in Schedule 1.

"Execution Date" is the date described as such in Schedule 1 and will be completed as the day this Agreement is executed by the last of the parties to execute it.

"Existing Terminal" has the meaning given in the Access Framework.

"Existing User" means a party who has an entitlement to have coal Handled through the Terminal as at the Commencement Date.

"Existing User Agreement" means an agreement which is in force as at the Commencement Date by which DBCT Management has granted an Existing User an entitlement to have coal handled through the Terminal.

"Expansion Component" has the meaning given in the Access Framework.

"Expansion Component Capacity" has the meaning given in the Access Framework.

"Expansion Party" has the meaning given in the Access Framework.

"Financial Year" means:-

- (a) the First Financial Year; and
- (b) each 12-month period from July 1 of one calendar year to June 30 of the next ensuing calendar year; and
- (c) any period from the last July 1 in the Term until the end of the Term.

"First Financial Year" means the period from the Effective Date to the next following 30 June.

"Fixed Operating Costs" means the aggregate of all amounts:

- (a) reasonably incurred or charged by the Operator (including any margin payable to the Operator under the Operation & Maintenance Contract);
- (b) reasonably incurred or charged by DBCT Management with the express written consent of not less than two thirds of Access Holders and Existing Users by contract tonnage; and
- (c) reasonably incurred by DBCT Management in exercising its rights under the Operation & Maintenance Contract to step in or take work out of the hands of the Operator (as a result of a default by the Operator),

to the extent that they represent a fixed cost of operating the Terminal.

"Force Majeure" means any event or circumstance not within the control of DBCT Management, and which, by the exercise of a reasonable standard of care and diligence, DBCT Management could not have overcome. Any act or omission of the Operator will be assumed to be beyond the control of DBCT Management, unless it has been specifically directed by DBCT Management and carried out by the Operator in the manner in which it can reasonably be inferred that DBCT Management intended.

"Framework Agreement" means the framework agreement between DBCT Holdings Pty Ltd, the State of Queensland, DBCT Management and others dated 31 August 2001.

"Good Operating and Maintenance Practice" means, in the performance of any obligation under this Agreement, adherence to a standard of practice which includes the exercise of that degree of skill, diligence, prudence and foresight which would reasonably be expected from a competent, experienced and qualified operator of a facility comparable with the Terminal.

"GST Exclusive Consideration" has meaning given to it in clause 21(b).

"Handle" means the receiving by rail, unloading, stacking, storing, reclaiming and loading of vessels with Coal, including any other relevant Services required by the User using infrastructure at the Terminal.

"HCF" or **"Handling Charge - Fixed"** means the charge determined under clause 6.2.

"HCV" or **"Handling Charge - Variable"** means the charge determined under clause 6.3.

"Independent Expert" means an independent expert appointed under section 16.3 of the Access Framework.

"Initial TIC" means the TIC for the Terminal Component to apply under this Agreement from the Effective Date or the commencement of a Pricing Period. The Initial TIC for the Terminal Component for the Financial Year commencing on the Effective Date is the amount specified in Schedule 2, clause 2.

"Law" means any law, statute, by-law, regulation, rule, order, ordinance, proclamation, or delegated or subordinated legislation of the Commonwealth or of any State or Territory of Australia or of any local government.

"Long Term Delays" means ongoing, sustained Delays that arise out of physical loss, destruction or damage at the Terminal.

"Loss" means any damage, loss (including loss of reputation), cost, expense, fine, penalty or liability incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

"Maintenance Work" means any work involving maintenance of or repairs to (including repair by replacement) any part of the Terminal, including any inspections or investigations required by Good Operating and Maintenance Practice.

"Miscellaneous Services" means:

- (a) services requested by the User from time to time which services are nominated in Schedule 3 as Miscellaneous Services; or
- (b) services to the extent that they are materially different (in nature, extent or cost) to the Services provided to other Access Holders and Existing Users at the Terminal including as a result of the nature of the User's Coal (or any contaminants in it) or requirements in respect of its handling, storage, blending, unloading or loading which result in materially additional costs or delays.

"Month" means a calendar month.

"Monthly Payment" means the monthly instalment of the TIC payable pursuant to clause 4.4, calculated (and adjusted as required) in accordance with Schedule 2.

"Mtpa" means million tonnes per annum.

"No Fault Interest Rate" means, at a relevant time, the rate per annum equal to the Cash Rate Target at that time plus 0.2%.

"Notified Period" has the meaning given in clause 11.4.

"Notified Tonnage" has the meaning given in clause 11.4.

"Notional Contracted Tonnage" means, in respect of a Financial Year the Aggregate Annual Contract Tonnage.

"Operation & Maintenance Contract" means the agreement under which the Operator agrees to operate and maintain the Terminal on a day to day basis, and includes any other agreement in substitution for it under which DBCT Management agrees with a person to operate the Terminal.

"Operator" means Dalrymple Bay Coal Terminal Pty Ltd ACN 010 268 167 or such other contractor engaged by DBCT Management under the Operation & Maintenance Contract.

"Permissible Delay" means:

- (a) any Delay from which DBCT Management is released from liability pursuant to clauses 3.6(l) or 10.3; or
- (b) any Delay which is imposed by DBCT Management, acting reasonably:
 - (i) because it considers it necessary for the safety of any person or to prevent material damage to property (except where the threat to the person or property arises out of Wilful Default or reckless neglect on the part of DBCT Management); or
 - (ii) to facilitate the performance of Maintenance Work (other than Maintenance Work to the extent it is necessitated by Wilful Default or reckless neglect on the part of DBCT Management) or of a Terminal Capacity Expansion in accordance with clause 10.2.

"Port" means both the harbour of Hay Point proclaimed by the Governor-in-Council by Order-in-Council dated 30 October 1983, and all real property held by DBCT Management as part of or relating to that Port.

"Port Services Agreement" has the meaning given in the Framework Agreement.

"Pricing Period" means the period ending on 30 June 2026 and each subsequent 5 year period during the Term.

"Product Shipment Notice" means a notice in the form of Schedule 5.

"Quarter" means:

- (a) each 3 month period commencing on 1 July, 1 October, 1 January and 1 April; and
- (b) in respect of the first quarter, commencing on the Effective Date and ending on the day before the commencement of the next quarter.

"Rail Operator" has the meaning given in the Access Framework.

"Representative" has the meaning given to it in clause 17.4.

"Review Event" has the meaning given to it in the Access Framework.

"Rules" has the meaning given in clause 15.4(a).

"Security" means any form of security or guarantee required to be provided or in fact provided pursuant to clause 29.

"Services" means the services described in Schedule 3.

"Ship" means the delivery of Coal to the Terminal by rail and the arrangement of vessels by the User such that DBCT Management is able to Handle the User's Annual Contract Tonnage.

"Socialised Terminal Capacity" has the meaning given in the Access Framework.

"Standard Access Agreement" has the meaning given in the Access Framework.

"Supplier" has the meaning given to it in clause 21(d).

"System" has the meaning given in the Access Framework.

"System Capacity" has the meaning given in the Access Framework.

"Term" means the term of this Agreement as specified in Item 6 of Schedule 1, as extended in accordance with this Agreement.

"Terminal" means the Terminal Component of the land and port infrastructure located at the Port of Hay Point which is owned by DBCT Holdings Pty Ltd or the State of Queensland and leased to DBCT Guarantor and/or DBCT Management, and known as the Dalrymple Bay Coal Terminal, and includes the following which form part of the Terminal Component:

- (a) loading and unloading equipment;
- (b) stacking, reclaiming, conveying and other handling equipment;
- (c) wharves and piers;
- (d) deepwater berths; and
- (e) shiploaders.

"Terminal Capacity" has the meaning given in the Access Framework.

"Terminal Capacity Expansion" has the meaning given in the Access Framework.

"Terminal Component" means the part of the Terminal as specified in Item 8 of Schedule 1.

"Terminal Infrastructure Charge" or **"TIC"** means the amount (per tonne) payable on the Annual Contract Tonnage specified in Schedule 2, as adjusted in accordance with Schedule 2 and the Access Framework.

"Terminal Regulations" means regulations in force and available on DBCT Management's website governing procedures for the operation of the Terminal existing as at the commencement of this Agreement as amended from time to time in accordance with the Access Framework.

"Terminating Date" has the meaning given in the Access Framework.

"Third Party Amount" means the amount for which DBCT Management is actually indemnified by the Operator and/or another third party (including a liability insurer) in respect of liability for any Claim made by the User, less DBCT Management's costs of recovery of that amount. For clarification, if a Delay affects more than one Access Holder or Existing User, then the aggregate amount of any payment received by DBCT Management which related to a common Third Party Amount claimed by such affected Access Holders or Existing Users will be distributed to them in the proportions of their respective annual contracted tonnages.

"User" means the person specified in item 3 of Schedule 1.

"User Committee" has the meaning given to it in clause 17.1.

"Utilisation Advice" means a notice in the form in Schedule 4 given by the User to DBCT Management under clause 6.1.

"Variable Operating Costs" means the aggregate of all amounts:

- (a) reasonably incurred or charged by the Operator (including any margin payable to the Operator under the Operation & Maintenance Contract);
- (b) reasonably incurred or charged by DBCT Management with the express written consent of not less than two thirds of Access Holders and Existing Users by contract tonnage; and
- (c) reasonably incurred by DBCT Management in exercising its rights under the Operation & Maintenance Contract to step in or take work out of the hands of the Operator (as a result of a default by the Operator),

to the extent that they represent a variable cost of operating the Terminal.

"Vessel Nomination" means a vessel nomination notice given by the User under the Terminal Regulations for the purpose of finalising the relevant nominated parcel and vessel details for a proposed shipment.

"Wilful Default" means a deliberate act or omission which will result in (and can reasonably be expected to have been intended to result in) a breach of this Agreement and which, as soon as practicable, but in any event within 30 days after written notice (particularising the alleged breach) is given to the party alleged to be in default, is not either:

- (a) acknowledged by the defaulting party and rectified; or
- (b) disputed by the party allegedly in default and referred to dispute resolution in accordance with clause 15, but if the notice of default is ultimately determined by arbitration or order of a court or agreement to have been justified, then rectified as soon as practicable but in any event within 30 days of the adjudication or agreement.

For the purposes of this definition, rectification will be taken to have occurred within the time period stated above, even if not actually completed within that time period, if rectification is reasonably practicable and commences within the stated period and proceeds at all times expeditiously.

Interpretation

1. In this Agreement headings are for convenience only and do not affect its interpretation.
2. Except to the extent that the context otherwise requires:
 - (a) reference to any statute or statutory provision includes any modification or re-enactment of, or any legislative provisions substituted for, and all legislation and statutory instruments issued under such legislation or such provision;
 - (b) words denoting the singular include the plural and vice versa;
 - (c) words denoting persons or individuals include corporations, associations, trustees, instrumentalities and partnerships and vice versa;
 - (d) words denoting any gender include all genders;
 - (e) references to parties, clauses and Schedules are references to parties, clauses and Schedules to this Agreement as modified or varied from time to time;
 - (f) references to any document, deed or agreement include references to such document or agreement as amended, novated, supplemented, varied or replaced from time to time;
 - (g) references to any party to this Agreement or any other document, deed or agreement include its successors or permitted assigns;
 - (h) all references to dates and times are to Brisbane time;
 - (i) all references to "\$" and "dollars" are to the lawful currency of Australia;
 - (j) a reference to "including" shall be construed as "including, but not limited to," and "include" and "includes" shall be construed similarly;
 - (k) where a provision provides that a party "may" do something, "may" shall be construed as discretionary and without obligation;
 - (l) where any word or phrase is given a defined meaning, any other grammatical form of that word or phrase has a corresponding meaning;

- (m) where a provision provides that a party will act reasonably or prudently, that shall (where the context permits) be construed in the context of DBCT Management's obligation to act in accordance with Good Operating and Maintenance Practice;
- (n) where there is a requirement under this Agreement to consider whether the User or Access Holders are being treated or will be affected equitably, the party so considering must have regard to (amongst other things) the Access Holder's respective annual contract tonnage; and
- (o) where measurement of Coal "Handled" (or in the context of the User, "Shipped") is being made in respect of a period, the tonnage loaded into vessels as determined in accordance with clause 9 will be taken to be the tonnage Handled (or, as the context requires, Shipped) in that period.

3. Payments on Business Days

Where the day on which any payment of money under this Agreement is to be made is not a Business Day, the payment may be made on the next Business Day.

EXECUTION

Executed as an agreement

Signed for
DBCT
Management Pty Limited
by its representative
in the presence of:

Witness

Director

Name (please print)

Name (please print)

Signed for
DBCT Investor Services Pty Ltd
as trustee for the DBCT Trust
by its representative
in the presence of:

Witness

Director

Name (please print)

Name (please print)

Signed for
[Insert User name]:
by its representative
in the presence of:

Witness

Representative

Name (please print)

Name (please print)

USER AGREEMENT [2020] Access Framework

Date:

[Note: The DBCT Access Framework and Standard Access Agreement (SAA) provided with DBCTM's submission dated 30 May 2018 should be read in conjunction with Appendix 7 of DBCTM's submission, which sets out the pricing framework that will apply under the DBCT Access Framework and SAA. Drafting to give effect to the pricing framework is being developed. Placeholders are included in this version of the SAA for the drafting to give effect to the pricing framework. Further consequential changes may also be required (such as to the defined terms in this version of the SAA) in drafting changes to give effect to the pricing framework.]

DBCT MANAGEMENT PTY LIMITED

("DBCT Management")

DBCT INVESTOR SERVICES PTY LTD as trustee of the DBCT Trust

("DBCT Guarantor")

[Insert User name]

("User")

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This Agreement is made on the Execution Date

BETWEEN **DBCT MANAGEMENT PTY LIMITED ABN 16 097 698 916**
 ("DBCT Management")
AND **THE USER DESCRIBED IN SCHEDULE 1 ("User")**
AND **DBCT INVESTOR SERVICES PTY LTD ABN 11 052 156 082, as**
 trustee of the DBCT TRUST ("DBCT Guarantor")

RECITALS

- A. DBCT Management is the lessee of the Terminal under long term leases.
- B. The Operator operates and maintains the Terminal on behalf of DBCT Management.
- C. The User wishes to use the Terminal to Ship its Coal.
- D. DBCT Management has agreed to grant Access to the User on the terms and conditions contained in this Agreement.

IT IS AGREED

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

Unless the subject or context is inconsistent, each of the capitalised terms used in this Agreement has the meaning assigned to it in Schedule 9.

1.2 Interpretation

The rules set out in Schedule 9 apply to and govern the interpretation of this Agreement.

2. TERM

Subject to clause 29.1, this Agreement commences on the Effective Date and continues in force until the end of the Term specified in Item 6 of Schedule 1 (unless terminated earlier pursuant to clause 14.2 or clause 14.3).

3. HANDLING OF COAL

3.1 Agreement to provide Access

(a) DBCT Management:

- (i)** **(a) DBCT Management** grants Access to the User on the terms of this Agreement; and
- (ii)** **unconditionally and irrevocably agrees to comply with the requirements, obligations and processes in the Access Framework.**

- (b) The User unconditionally and irrevocably agrees to comply with the requirements, obligations and processes in:
 - (i) the Access Framework; and
 - (ii) the Deed Poll, including the conditions set out in clauses 8.4, 9, 10 and 11 of the Deed Poll.

3.2 Provision and operation of the Terminal

In granting to the User the Access referred to in clause 3.1, DBCT Management must, subject to this Agreement:

- (a) make the Terminal available and operate it to enable the Annual Contract Tonnage (subject to delivery to the Terminal and the availability of vessels) to be Handled at the Terminal in each Financial Year; and
- (b) provide Services as required by the User.

3.3 Delivery by rail

The User must ensure that its Coal is delivered to the Terminal by rail utilising rolling stock which is compatible with and (as far as it is practicable for the User to control) efficiently utilises the unloading facilities at the Terminal.

3.4 User to use reasonable endeavours to Ship its Annual Contract Tonnage

The User must use all reasonable endeavours to Ship its Annual Contract Tonnage through the Terminal in each Financial Year.

3.5 Even Shipments

The User must work towards, and must use all reasonable endeavours to achieve, the Shipping of its Coal through the Terminal at an even rate throughout each Financial Year (and, where Item 7 in Schedule 1 provides for a specific tonnage in respect of a nominated shorter period at some time during the Term, then at an even rate throughout that shorter period). The parties recognise that vessel arrival times, rail scheduling, maintenance and other factors can result in some short-term, routine unevenness to an even rate of Shipping.

3.6 Terminal Regulations

- (a) DBCT Management must comply with, and will use its best endeavours to ensure that the Operator complies with, the Terminal Regulations in force from time to time.
- (b) The User must observe the Terminal Regulations, in force from time to time, as a condition of ~~access~~Access to and the right to have its Coal Handled at the Terminal.
- (c) The User acknowledges that Terminal Regulations may include terms which:
 - (i) require scheduling of Access Holders'and Existing Users' railing in and Handling of Coal in ways which promote Terminal efficiency and endeavour to achieve the objective set out in clause 3.5;
 - (ii) temporarily reduce the tonnage of Coal which may be Handled or Services provided under this Agreement, during such periods as capacity of the Terminal or relevant Services becomes restricted, provided that such reductions and restrictions affect all Access Holders'and Existing Users' equitably (but this does not relieve the User or DBCT Management respectively from any liability which they might have in respect of the capacity or Services having become restricted);

- (iii) prescribe requirements for cargo building windows, unloading of trains, stockpiling and cargo assembly, vessels, arrival of vessels, loading of vessels, pre-loading requirements, order of loading and unloading and other matters where possible (including matters of the type dealt with in the Terminal Regulations at the Effective Date) which promote the efficient, safe and equitable utilisation of capacity at the Terminal and Terminal Services;
 - (iv) require Access Holders to co-operate with the Operator and other Access Holders and Existing Users in relation to scheduling, loading, unloading, priorities and other matters relating to the operation of the Terminal; and
 - (v) allow the exercise of discretions on the part of the Operator in limited cases, where it is reasonable to do so, to optimise Terminal efficiency (such power to be exercised in good faith and in a non-discriminatory way).
- (d) The User acknowledges and agrees that the Operator may, from time to time, by written notice to DBCT Management, propose amendments to the Terminal Regulations regarding operational issues.
- (e) If the Operator submits to DBCT Management a proposed amendment to the Terminal Regulations DBCT Management must:
- (i) promptly notify the User of any proposed amendments to Terminal Regulations;
 - (ii) provide the User with a copy of such proposed amendments to the Terminal Regulations (which may be by displaying it on DBCT Management's website);
 - (iii) conduct reasonable consultation with the User in relation to the proposed amendment; and
 - (iv) following the completion of such reasonable consultation, notify the User ~~or~~:
 - (A) ofthe wording of the proposed amendment;
 - (B) whether it has given its consent to the proposed amendment;
 - (C) ofthe detailed reasons for its decision to give (or not give) consent to the proposed amendment; and
 - (D) that there is a 30 day period for notifying DBCT Management of any objections to the decision to consent or not consent (as applicable) to the amendment.
- (f) A proposed amendment to the Terminal Regulations will not be implemented unless:
- (i) DBCT Management has conducted reasonable consultation with Access Holders, Access Seekers, Expansion Parties and Rail Operators in accordance with the Access Framework; and
 - (ii) one of the following has occurred:
 - (A) DBCT Management has consented to the proposed amendment to the Terminal Regulations and no Access Holder, Access Seeker or Expansion Party has given notice to DBCT Management objecting to consent being provided to the proposed amendments within 30 days of being notified of the amendments by DBCT Management;

- (B) DBCT Management has consented to the proposed amendments to the Terminal Regulations and while an Access Holder, Access Seeker or Expansion Party has given notice to DBCT Management objecting to consent being provided to the proposed amendments within 30 days of being notified of the amendments by DBCT Management, ~~and~~ the Independent Expert appointed to hear the objection (in accordance with clause 3.6(j) and/or Section 6.2(f) of the Access Framework) has rejected that objection; or
 - (C) DBCT Management has not consented to the proposed amendments to the Terminal Regulations, but an Access Holder, Access Seeker or Expansion Party has given notice to DBCT Management objecting to consent not being provided, and the Independent Expert appointed to hear the objection (in accordance with clause 3.6(l) and/or Section 6.2(g) of the Access Framework) has upheld that objection.
- (g) DBCT Management will only give its consent to a proposed amendment to the Terminal Regulations under clauses 3.6(f)(ii)(A) or 3.6(f)(ii)(B) if it has conducted reasonable consultation with Access Holders, Access Seekers, Expansion Parties and Rail Operators in accordance with the Access Framework and, taking into account the results of such consultation, it reasonably considers that:
- (i) the amendments relate to operational issues;
 - (ii) the amended Terminal Regulations, as a whole, will operate equitably amongst Existing Users, Access Holders, Access Seekers (should they become Access Holders) and Expansion Parties (should they become Access Holders) and, where the relevant amendments affect Rail Operators, amongst affected Rail Operators;
 - (iii) the amendments are consistent with the Access Framework, and any Access Agreements; and
 - (iv) the amendments are reasonably necessary for the operation of the Terminal in accordance with applicable laws and regulatory standards, Approvals, Good Operating and Maintenance Practice or any costs or obligations imposed are justified by the efficiency benefits arising from those costs or obligations.
- (h) If DBCT Management does not provide its consent to a proposed amendment to the Terminal Regulations, the User may object to DBCT Management's refusal to provide consent if it reasonably considers that:
- (i) the amendments relate to operational issues;
 - (ii) the amended Terminal Regulations, as a whole, will operate equitably amongst Existing Users, Access Holders, Access Seekers (should they become Access Holders) and Expansion Parties (should they become Access Holders) and, where the relevant amendments affect Rail Operators, amongst affected Rail Operators;
 - (iii) the amendments are consistent with the Access Framework and this Agreement; and
 - (iv) the amendments are reasonably necessary for the operation of the Terminal in accordance with applicable laws and regulatory standards, Approvals, Good Operating and Maintenance Practice or any costs or obligations imposed are justified by the efficiency benefits arising from those costs or obligations.

- (i) DBCT Management must notify all Access Holders, Access Seekers, Expansion Parties and Rail Operators of any amendments to the Terminal Regulations that have been approved and must provide a copy of the amended Terminal Regulations to these parties (which may be by way of reference to the website on which the amended Terminal Regulations are available in accordance with 3.6(o)).
- (j) If:
 - (i) DBCT Management has given its consent to a proposed amendment to the Terminal Regulations; and
 - (ii) the User objects to the proposed amendment on the basis that it reasonably considers that the criteria specified in clauses 3.6(g)(i) to 3.6(g)(iv) are not satisfied,

then the User may, within 30 days after being notified of DBCT Management's consent, notify DBCT Management of its objection to the consent to the proposed amendment, such objection to be determined by an Independent Expert.
- (k) If, in response to an objection notified to the Independent Expert by the User under clause 3.6(j), the Independent Expert determines that the criteria specified in clauses 3.6(g)(i) to 3.6(g)(iv) are not satisfied, then:
 - (i) the proposed amendment and DBCT Management's consent to the proposed amendment will be taken to have been withdrawn; and
 - (ii) the proposed amendment will not be made.
- (l) If:
 - (i) DBCT Management has refused to give its consent to a proposed amendment to the Terminal Regulations; and
 - (ii) the User objects to DBCT Management not providing consent to the proposed amendment on the basis that it reasonably considers that the criteria specified in clauses 3.6(g)(i) to 3.6(g)(iv) are satisfied,

then the User may, within 30 days of being notified of the amendments by DBCT Management, notify DBCT Management of its objection to DBCT Management not providing consent for the proposed amendment, such objection to be determined by an Independent Expert.
- (m) If, in response to an objection notified to the Independent Expert- by the User under clause 3.6(l), the Independent Expert determines that the criteria in in clauses 3.6(g)(i) to 3.6(g)(iv) are satisfied, then:
 - (i) DBCT Management's consent to the proposed amendment will be deemed to have been given; and
 - (ii) the proposed amendment will be made.
- (n) Subject to DBCT Management complying with clause 3.6(f), DBCT Management will not be liable to the User on any basis whatsoever as a result of DBCT Management consenting to an amendment to the Terminal Regulations or the due implementation and observance of an amendment to the Terminal Regulations, as long as DBCT Management had in all respects acted reasonably and in good faith and (acting reasonably and in good faith) had formed the opinion required by clause 3.6(g). For clarification, this does not affect DBCT Management's obligation to do anything required on its part to cause the termination or consequential amendment of a Terminal Regulation after any determination that the Terminal Regulation breaches this Agreement or the Access Framework.

- (o) DBCT Management must make a copy of the Terminal Regulations available to the User (which may be by displaying it on DBCT Management's website).

3.7 Addressing disproportionate use of Terminal capacity and risk minimisation

- (a) If at any time DBCT Management, acting reasonably and on the recommendation of the Operator, considers that:
 - (i) the User is disproportionately consuming the capacity of the Terminal (when compared with other Access Holders or Existing Users on a per tonne basis) and other Access Holders are materially adversely affected as a result; or
 - (ii) the provision of the User's Coal to the Terminal or Handling of that Coal at the Terminal creates a disproportionate risk to the Terminal (when compared with Coal of other Access Holders or Existing Users),
 and that it is reasonably practicable for the User to reduce that disproportionate consumption of capacity or disproportionate risk, DBCT Management may give written notice to the User to that effect.
- (b) If DBCT Management gives notice to the User pursuant to clause 3.7(a) the User must:
 - (i) meet with DBCT Management (or with the Operator if DBCT Management gives notice that the Operator is authorised to act as its nominee) to attempt to agree on an appropriate action plan; and
 - (ii) promptly, and in any event, within 60 days of the meeting referred to in clause 3.7(a)(i), develop and implement an action plan agreed between the parties or (if there is no agreement, but it is consistent with clause 3.7(c)) an action plan required by DBCT Management.
- (c) DBCT Management is not entitled to require anything in an action plan which would be:
 - (i) unreasonable or uneconomic for the User in all the circumstances; or
 - (ii) inconsistent with what is generally accepted as good operating practice in the prevailing circumstances.
- (d) A dispute between DBCT Management (or the Operator) and the User in respect of this clause 3.7 may be referred to dispute resolution in accordance with clause 15.

4. PAYMENT OF CHARGES AND ADJUSTMENTS

[Drafting Note: This clause will be amended in drafting changes to give effect to the pricing framework set out at Appendix 7 of DBCTM's submission dated 30 May 2018.]

4.1 Interpretation of Pricing Provisions

In this Agreement, the following principles of interpretation shall apply:

- (a) for so long as there is a single Terminal Component, the terms and definitions of this Agreement relevant to pricing apply to all Access collectively; and
- (b) where there are multiple Terminal Components, the terms and definitions of this Agreement relevant to pricing apply to each Terminal Component separately.

For the avoidance of doubt, the Access contracted under this Agreement relates to [the Existing Terminal / a Differentiated Expansion Component]._

4.2 Charges payable regardless of remedies

The charges payable pursuant to this clause 4 must be paid by the User promptly when due, regardless of any remedies which might be available to the User pursuant to clause 13 or otherwise:

- (a) except to the extent that clause 5.3 applies;
- (b) unless and until, and to the extent that, it is determined through dispute resolution or agreed that the charges are not payable pursuant to clause 13.4(b); and
- (c) unless a relevant Delay is caused by Wilful Default by DBCT Management (clause 13.5).

4.3 Access Charges

Access Charges for each Terminal Component will comprise two parts:

- (a) ~~a Capital Charge, being:~~
 - (i) ~~in respect of Reference Tonnage, the TIC;~~
 - (ii) ~~in respect of Excess Tonnage, the Excess Charge; and~~
 - (iii) ~~where applicable, the Year End Adjustment and the Provisional Increment Repayment; and a TIC; and~~
- (b) a charge to recoup the costs of operation and maintenance of the Terminal, being:
 - (i) the Handling Charge – Fixed;
 - (ii) the Handling Charge – Variable; and
 - (iii) where applicable, charges for Miscellaneous Services.

4.4 User to pay TIC

The User must pay the TIC to DBCT Management for each tonne of Annual Contract Tonnage by monthly instalments (each a Monthly Payment) in accordance with clause 5.1(b).

4.5 User to Pay Excess Charge

- (a) ~~Subject to clause 4.5(b) the User must pay to DBCT Management the Excess Charge applied to Excess Tonnage (if any) Handled by DBCT Management during the Financial Year annually in arrears in accordance with clause 5.1(b).~~
- (b) ~~If required by DBCT Management, the User must pay to DBCT Management (in addition to the Monthly Payment) an amount equal to the TIC, for each tonne of Excess Tonnage Handled by DBCT Management during a relevant Financial Year, as a prepayment against the Excess Charge payable annually in arrears pursuant to clause 4.5(a). Any such prepayment will be payable in arrears, after invoice, in accordance with clause 5.1(b).~~

4.6 DBCT Management to pay Year End Adjustment

~~If any one or more of the Access Holders (including the User) Ship Excess Tonnage in a Financial Year, DBCT Management must pay the User (and other Access Holders) the Year End Adjustment in accordance with clause 5.1(e).~~

4.7 DBCT Management to pay Provisional Increment Repayment

~~DBCT Management must pay the User (and other Access Holders) the Provisional Increment Repayment (if any) in accordance with clause 5.1(f).~~

4.8 User to pay Handling Charge - Fixed

- (a) The User must pay HCF to DBCT Management, calculated in accordance with clause 6.2.
- (b) On an interim basis (subject to end-of-Financial Year reconciliations and adjustments pursuant to clause 5.1(d)) the User must pay DBCT Management monthly instalments each equal to one-twelfth of the annual HCF reasonably estimated by DBCT Management at the commencement of the relevant Financial Year.

4.9 User to pay Handling Charges - Variable

- (a) The User must pay HCV to DBCT Management, calculated in accordance with clause 6.3.
- (b) On an interim basis (subject to end-of-Financial Year reconciliations and adjustments pursuant to ~~clauses 5.1(e)(iii) and clause 5.1(d)~~) the User must pay DBCT Management monthly instalments each equal to one-twelfth of the annual HCV reasonably estimated by DBCT Management at the commencement of the relevant Financial Year.

4.10 User to pay Miscellaneous Services charges

The User must pay DBCT Management for Miscellaneous Services provided at the Terminal where such services are charged separately from HCF and HCV, at the rates applicable pursuant to clause 6.4.

4.11 DBCT Management's business interruption insurance

Any insurance premium which relates to business interruption cover for DBCT Management will not form part of any HCV, HCF or Miscellaneous Charge. (For clarification, this is because of the obligation of Access Holders whose Access Agreement is on ~~Reference Terms~~the terms of the Standard Access Agreement to continue paying Access Charges whilst an event of Force Majeure continues - clause 13.3(b)).

5. ACCOUNTS

[Drafting Note: This clause will be amended in drafting changes to give effect to the pricing framework set out at Appendix 7 of DBCTM's submission dated 30 May 2018.]

5.1 Calculation, rendering and payment of tax invoices

- (a) DBCT Management and the User must give each other appropriate tax invoices or adjustment notes for any charge payable by the User to DBCT Management or any amounts payable by DBCT Management to the User under clause 4.
- (b) With respect to the Monthly Payment, HCF, HCV, ~~and~~ charges for Miscellaneous Services ~~and the Excess Charge~~, the User must pay each tax invoice duly given to it by DBCT Management by no later than that date (the "Due Date") which is 30 days after the date of receipt of that tax invoice.
- (c) ~~Tax invoices may only be rendered by DBCT Management as follows:~~

- (c) (i) ~~Tax invoices may only be rendered by DBCT Management monthly in arrears for the Monthly Payment, and monthly instalments of HCF, HCV and charges for Miscellaneous Services; and~~
- (ii) ~~in arrears at any time after the departure of a vessel loaded with Excess Tonnage, in respect of any prepayment relating to that Excess Tonnage and required pursuant to clause 4.5(b); and~~
- (iii) ~~annually in arrears in respect of any part of the Excess Charge not prepaid under clause 5.1(c)(ii).~~
- (d) With respect to the annual reconciliation and adjustment of HCF and HCV:
- (i) DBCT Management must calculate and notify the User of any adjustment required against interim amounts paid in respect of HCF and HCV within one month from the end of the Financial Year to which it relates.
- (ii) DBCT Management or the User (as applicable) must then give the other an appropriate tax invoice reflecting the payment to be made pursuant to any adjustment under clause 5.1(d)(i) on or before the date 14 days after the amount of the adjustment is notified to the User by DBCT Management (or, if later, within 14 days after the resolution of any dispute over the calculations of adjustments, including any dispute referred to in clause 5.1(d)(iv)).
- (iii) The parties must pay the adjustment relevant under this clause 5.1(d) within 14 days after the receipt of a relevant tax invoice pursuant to clause 5.1(d)(ii).
- (iv) If the adjustment contemplated under this clause 5.1(d) is wholly or partially impacted by a dispute (as between two or more of the User, another Access Holder, an Existing User and DBCT Management), no amount need be paid in respect of that disputed amount until that dispute has been resolved but, as far as it is practicable, undisputed amounts must be promptly paid (with tax invoices being given accordingly, but the giving of a tax invoice in respect of the undisputed part of a payment will not prejudice the dispute). DBCT Management and the User must use reasonable endeavours to attempt to expeditiously resolve any such dispute to which they are a party.
- (e) ~~With respect to the Year End Adjustment:~~
- (i) ~~DBCT Management must calculate and notify the User of any Year End Adjustment within one month from the end of the Financial Year to which it relates.~~
- (ii) ~~The User must render the appropriate tax invoice reflecting the payment to be made (if any) pursuant to the Year End Adjustment on or before the date 14 days after the amount (if any) of the Year End Adjustment is notified to the User by DBCT Management (or, if later, within 14 days after the resolution of any dispute over the calculation of adjustments, including any dispute referred to in clause 5.1(e)(iv)).~~
- (iii) ~~DBCT Management must pay the amount (if any) of the Year End Adjustment within 14 days after receipt of a relevant tax invoice pursuant to clause 5.1(e)(ii).~~
- (iv) ~~If the Year End Adjustment is wholly or partially impacted by a dispute (as between two or more of the User, another Access Holder and DBCT Management), no amount need be paid in respect of that disputed amount until that dispute has been resolved but, as far as it is practicable, undisputed amounts must be promptly paid (with tax invoices being given accordingly, but the giving of a tax invoice in respect of the undisputed part of a payment~~

~~will not prejudice the dispute). DBCT Management and the User must use reasonable endeavours to attempt to expeditiously resolve any such dispute to which they are a party.~~

(f)

~~With respect to the Provisional Increment Repayment, if DBCT Management has applied to the QCA to retain the Provisional Increment in respect of any Financial Year and the QCA subsequently determines that DBCT Management is entitled to an Increment for that Financial Year which is a lesser amount than the Provisional Increment or is not entitled to an Increment for that Financial Year, then DBCT Management must promptly notify the User of the Provisional Increment Repayment payable to the User, and pay that amount to the User within 7 days after receiving a tax invoice from the User for that amount.~~

5.2 Interest on late payments

- (a) If the User does not pay a tax invoice by the Due Date, DBCT Management, without prejudice to its other rights under this Agreement, may charge interest to the User on the amount owed computed from the Due Date to the actual date of payment at the Default Interest Rate, and unpaid interest may be compounded and itself incur interest, on a monthly basis until payment at a rate equal to 1/12th of the Default Interest Rate.
- (b) If DBCT Management does not make a payment to the User on the date due for such payment or does not notify the User of the amount of an adjustment to be paid by DBCT Management by the required date to do so, the User, without prejudice to its rights under this Agreement, may charge interest to DBCT Management on the amount owed computed from the date due for such payment (or the date on which payment would have become due had the adjustment been duly notified) to the actual date of payment at the Default Interest Rate, and unpaid interest may be compounded and itself incur interest on a monthly basis until payment at a rate equal to 1/12th of the Default Interest Rate.

5.3 Disputes over accounts

- (a) Subject to ~~clauses clause~~ 5.1(d)(iv) and 5.1(e)(iv) if the User disputes the amount of a tax invoice from DBCT Management on the basis that it contains a manifest administrative error or is incorrectly calculated, then the User must pay:
 - (i) the whole of the undisputed part of the tax invoice by the Due Date; and
 - (ii) 50% of the disputed portion, pending resolution of that dispute (and the User will not be in default for non-payment, if it does so).
- (b) Payment in accordance with clause 5.3(a) will not prejudice the User's rights under clause 15.
- (c) If following the resolution of a dispute, DBCT Management refunds that portion of the disputed tax invoice which has been paid or the User pays the unpaid portion of a disputed tax invoice, then DBCT Management or the User shall pay interest at the No Fault Interest Rate on the refunded amount (in the case of DBCT Management) or the paid amount (in the case of the User) computed from the date on which the disputed amount was originally due to the date the adjustment is paid.

6. HANDLING CHARGES

[Drafting Note: Consequential amendments to this clause 6 may be required in drafting changes to give effect to the pricing framework set out at Appendix 7 of DBCTM's submission dated 30 May 2018.]

6.1 Utilisation Advice

- (a) As soon as practicable after the Execution Date, the User must give a Utilisation Advice to each of DBCT Management and the Operator relating to the balance of the then current Financial Year (on a monthly basis) and the next 3 full Financial Years of the Term (on an annual basis).
- (b) By no later than 15 February in each Financial Year, the User must give a Utilisation Advice to each of DBCT Management and the Operator relating to the next full Financial Year (on a monthly basis) and the 3 full Financial Years of the Term following that next Financial Year (on an annual basis).
- (c) In the five Business Days preceding each 1 July, 1 October, 1 January and 1 April in each Financial Year, the User must update DBCT Management and the Operator with a revised Utilisation Advice relating to that Financial Year, together with projections of similar information for the 12 month period commencing on the date of that update.
- (d) The User will be under no liability to DBCT Management if the actual number, types or tonnages of vessels or the amount of Coal is or are greater or fewer than the number, types, tonnages or amounts estimated in this clause- or estimated in any advice given pursuant to this clause 6.1.

6.2 HCF

- (a) HCF for each Financial Year in respect of the Terminal Component is calculated as follows:-

$$HCF = [OFC + DC + MC] \times \frac{ACT}{TACT}$$

Where:-

OFC is the aggregate of all Fixed Operating Costs for the Financial Year in respect of the relevant Terminal Component;

DC is other expenditure (not being Capital Expenditure) incurred by the Operator for the operation and maintenance of the relevant Terminal Component (including any Operator's margin) for that Financial Year and reimbursable by DBCT Management pursuant to the Operation & Maintenance Contract;

MC is the minor Capital Expenditure for the relevant Terminal Component (not included in DC) in the relevant Financial Year, to a maximum of \$3 million;

ACT is the higher of the User's Annual Contract Tonnage or the tonnage of Coal actually Shipped by it in respect of the relevant Financial Year Terminal Component; and

TACT is the total of the annual contract tonnages (or if an Access Holder Existing User's actual tonnage Shipped is greater than its annual contract tonnage, the actual tonnage Shipped) of all Access Holders and Existing Users for each relevant Financial Year in respect of the relevant Terminal Component.

For clarification, tonnages referred to in this clause include Reference Tonnages and Non-Reference Tonnages.

- (b) As soon as practicable after each 31 May, having consulted with the Operator, DBCT Management must advise the User in writing of the estimated HCF payable by the User during the forthcoming Financial Year in respect of the relevant Terminal Component.

6.3 HCV

- (a) HCV for each Financial Year in respect of the Terminal Component is calculated as follows:-

$$HCV = \frac{OVC}{TTCS} \times \text{the actual number of tonnes of Coal Shipped by the User pursuant to this Agreement in the relevant Financial Year in respect of the relevant Terminal Component.}$$

Where:-

OVC is the aggregate of all Variable Operating Costs in respect of the Handling of all Coal through the relevant Terminal Component for a Financial Year; and

TTCS is the total number of tonnes of Coal Shipped through the relevant Terminal Component during that Financial Year.

~~For clarification, tonnages referred to in this clause include Reference Tonnages and Non-Reference Tonnages.~~

- (b) As soon as practicable after each 31 May, and having consulted with the Operator, DBCT Management must advise the User in writing of the estimated HCV payable by the User during the forthcoming Financial Year in respect of the relevant Terminal Component.

6.4 Miscellaneous Services

- (a) Charges for Miscellaneous Services must be an amount which the Operator reasonably estimates as:-
- (i) relevant reasonable additional costs to be incurred by the Operator as a result of the Miscellaneous Services including the Operator's profit margin; and
 - (ii) any other additional costs likely to be incurred by other Access Holders and Existing Users (for example, additional demurrage) as a result of the delays in Handling other Coal, arising out of the Miscellaneous Services.
- (b) Any charges recovered under this clause 6.4 or an equivalent clause in another Access Agreement or Existing User Agreement must be deducted from operating costs and the Operator's margin in respect of those operating costs for the purposes of calculating HCF and HCV.
- (c) The parties recognise that the Operator has historically charged Access Holders and Existing Users directly for some services provided at the Terminal, and nothing in this Agreement precludes that practice from continuing.

7. REVIEW OF ~~CAPITAL ACCESS CHARGES~~

~~[Drafting Note: This clause will be amended in drafting changes to give effect to the pricing framework set out at Appendix 7 of DBCTM's submission dated 30 May 2018.]~~

7.1 ~~Reviews annually and when a Review Event occurs~~ Amendments to TIC

Subject to ~~clauses~~ clause 7.2 ~~and~~ 7.3, the ~~Capital Charge~~ TIC will be amended from time to time throughout the Term in accordance with Schedule 2.

7.2**Reviews on Agreement Revision Dates****5 year review of charges**

- (a) ~~All~~ At the request of either party by notice to the other party no later than 18 months prior to the start of a Pricing Period, all charges under this Agreement and the method of calculating, paying and reconciling them (including the terms of Schedule 2) and any consequential changes in drafting of provisions will be reviewed in their entirety, effective from ~~each Agreement Revision Date~~ the start of each Pricing Period, in accordance with the following provisions of this clause 7.2.
- (b) Each review pursuant to clause 7.2(a) will determine the types, calculation, payment and reconciliation of charges payable by the User pursuant to this Agreement, and may have regard to ~~(amongst other things)~~ the terms of the Access Framework effective at the time of the review.
- (i) ~~the terms of the Access Undertaking (if any) effective from the relevant Agreement Revision Date;~~
 - (ii) ~~the relevant Reference Tariff (if any) effective from the relevant Agreement Revision Date; and~~
 - (iii) ~~if relevant, the differences in risk profile and cost to DBCT Management (direct and indirect) between the terms and conditions of this Agreement and the terms and conditions of the Standard Access Agreement at the relevant Agreement Revision Date;~~
- ~~and is intended to be undertaken at the same time, in conjunction with, and on the same basis as reviews under other User Agreements which are in terms similar to this Agreement where a similar review is due at the same time.~~
- (c) DBCT Management and the User must commence each review pursuant to clause 7.2(a) no later than 18 months prior to the ~~scheduled relevant Agreement Revision Date~~ start of a Pricing Period, and:
- (i) the parties must endeavour to agree as early as it is practicable to do so (if possible, by no later than the ~~Agreement Revision Date~~ start of the relevant Pricing Period) on the basis and amount of new charges to apply from the ~~relevant Agreement Revision Date~~ start of that Pricing Period;
 - (ii) if the parties do not reach agreement by the date 6 months prior to the ~~scheduled Agreement Revision Date~~ start of the relevant Pricing Period, either party may refer the determination of the issues to arbitration in accordance with ~~this clause 7.2, and if the arbitrator is the QCA, the parties must request the arbitrator to progress the arbitration in conjunction with the process at that time for development of a new Access Undertaking (with the intention that reviewed charges will be determined no later than the commencement of the new Access Undertaking) the Access Framework;~~
 - (iii) if there is no agreement or determination by the ~~relevant Agreement Revision Date~~ start of the Pricing Period then:
 - (A) the charges (and method of paying and reconciling them) applying prior to that ~~Agreement Revision Date~~ Pricing Period will continue to apply until otherwise agreed or determined; and
 - (B) any determination or agreement will (unless the parties otherwise agree) operate retrospectively from the ~~start of the~~ relevant ~~Agreement Revision Date~~ Pricing Period and, as soon as practicable after the determination or agreement, an adjustment will be paid by the relevant

party (based on the amounts which have been paid to that date on an interim basis and the amounts which are agreed or determined to be payable from the Agreement Revision Datestart of the relevant Pricing Period to the date the adjustment is paid) together with interest on the amount of the adjustment at the No Fault Interest Rate. The amount of interest will be determined by reconciling the amounts and timings of payments made on an interim basis with amounts payable and timing of those payments which would have applied in accordance with the agreement or determination.

- (d) If the matter is referred under clause 7.2(c)(ii) to arbitration, then arbitration must be effected as follows:
 - (i) by the QCA in such manner as it sees fit, after consultation with the parties; or
 - (ii) if the QCA is unwilling or unable to act, by a single arbitrator agreed upon between the parties; or
 - (iii) in default of agreement under clause 7.2(c)(ii) within 10 days after the matter is referred to arbitration, by a single arbitrator selected by the Chair of the Queensland Chapter of the Institute of Arbitrators and Mediators, Australia.
- (d) If a matter is referred to arbitration under clause 7.2(d)(ii) or clause 7.2(d)(iii), then the arbitrator must have regard to the following matters, the arbitration must be conducted in accordance with the Access Framework.
 - (i) an appropriate asset valuation of the Terminal and the relevant Terminal Component;
 - (ii) an appropriate rate of return for DBCT Management;
 - (iii) the terms of this Agreement;
 - (iv) the expected future tonnages of Coal anticipated to be Handled through the Terminal and the relevant Terminal Component;
 - (v) any other matter agreed to by the User and DBCT Management and notified by them in writing to the arbitrator;
 - (vi) any other matter which is submitted by either the User or DBCT Management and accepted by the arbitrator as being relevant; and
 - (vii) the then current approach of the QCA in respect of appropriate charges for services comparable to the Services (with the intent that the arbitration should produce an outcome similar to that which might have been expected had the QCA determined it).
- (e) Apart from an arbitration conducted under clause 7.2(d)(i) (which will be conducted in accordance with the rules and procedures required by the QCA), the arbitration must be conducted in accordance with clause 15.4.
- (e) If an Agreement Revision Date occurs a party requests a review under clause 7.2(a), the parties will, at the request of either party and in addition to reviewing the charges under this clause 7.2, meet together in good faith to negotiate any amendments to this Agreement which they consider to be relevant as a result of the changed circumstances following that Agreement Revision Date the start of the relevant Pricing Period. Neither party will have any obligation to reach agreement on any revised terms.

7.3 Review to "user-pays" model

If:

- (a) all (or all but one) of the Access Holders who have Reference Tonnage in respect of the Terminal Component ("Reference Tonnage Access Holders") at the time agree to a revised methodology for calculating the relevant TIC (including any consequential changes to any other charges and to provisions in this Agreement in respect of the determination of charges) (the "Formula"); and
- (b) the Formula has no adverse impact on:
 - (i) DBCT Management's risk;
 - (ii) the pricing of Non Reference Tonnage in respect of the Terminal Component;
 - (iii) the pricing of Tonnage in respect of each other Terminal Component; and
 - (iv) the net amount which DBCT Management would be entitled to earn and retain under this Agreement and other User Agreements,
- (c) had the provisions in Schedule 2 remained unchanged; and
- (d) the Formula is broadly in line (with further refinements) with the principles outlined in the submission by the DBCT User Group to the QCA in their submission dated 5 September 2003 for a "user-pays" model of charging TIC; and
- (e) the application of the Formula at the time it is introduced is not expected to result in differences of more than 20% from the average amount of the relevant TIC, in amounts payable as TIC by either relevant Reference Tonnage Access Holders with good performance or Reference Tonnage Access Holders with poor performance; and
- (f) either:
 - (i) no relevant Reference Tonnage Access Holder (including, if applicable, the User) who has been notified of the proposal to adopt the Formula has within 30 days after the Formula is formally agreed to by the Reference Tonnage Access Holders referred to in clause 7.3(a) and that agreement is notified to all relevant Reference Tonnage Access Holders, made a submission to the QCA that the Formula does not comply with the foregoing principles in this clause 7.3; or
 - (ii) if such a submission has been made within the period in clause 7.3(e)(i), the QCA has notified DBCT Management and the User that it considers (on the basis of the material supplied to it) the Formula does substantially comply with the foregoing principles in this clause 7.3,
- (g) then (unless DBCT Management does not agree, which it must not do without good cause) from the commencement of the next Financial Year, the relevant TIC and other relevant charges will be determined in accordance with the Formula and Schedule 2 (and any other relevant provisions in this Agreement) will be deemed to be amended accordingly.

8. SET-OFF

8.1 DBCT Management may set-off

Unless otherwise stated, DBCT Management may set-off against any amount payable to the User under this Agreement any amount which is due and payable by the User to DBCT Management under this Agreement.

8.2 Amount set-off deemed to have been paid

Any amount set-off by DBCT Management is deemed to have been paid by the User and the amount against which the set-off has been effected is deemed to have been paid by DBCT Management to the User.

8.3 User may set-off

Unless otherwise stated, the User may set-off against any amount payable to DBCT Management under this Agreement any amount which is due and payable by DBCT Management to the User under this Agreement.

8.4 Amount set-off deemed to have been paid

Any amount set-off by the User is deemed to have been paid by DBCT Management and the amount against which the set-off has been effected is deemed to have been paid by the User to DBCT Management.

9. DETERMINATION OF TONNAGE

9.1 Certificate of weight and Cargo Manifest

The User must:

- (a) commission an independent surveyor to issue a certificate of weight of each cargo of the User's Coal loaded on a vessel at the Terminal, based on vessel draught measurements at the Port, or otherwise cause the weight of each cargo to be determined and certified in another way which is independent and acceptable to DBCT Management (acting reasonably) and (if DBCT Management so requires) adopted by all Access Holders and Existing Users;
- (b) send the Cargo Manifest (which must include a statement as to the weight so certified under clause 9.1(a)) to DBCT Management (with a copy to the Operator) upon completion of the loading of each vessel with a cargo of the User's Coal; and
- (c) ensure that a Product Shipment Notice is attached to each Cargo Manifest.

9.2 Basis of calculation

DBCT Management must use the information contained in each Cargo Manifest and Product Shipment Notice as the basis of calculating charges payable under this Agreement.

9.3 Further account

- (a) If at any time:-
 - (i) DBCT Management can demonstrate that an account previously sent to the User was incorrectly calculated, or based on incorrect information, so that DBCT Management was paid less than it was entitled to, DBCT Management may calculate and send to the User a further tax invoice for the difference owed to DBCT Management; and
 - (ii) the User can demonstrate that an account previously sent to the User was incorrectly calculated, or based on incorrect information, so that DBCT Management was paid more than it was entitled to, DBCT Management must upon request by the User and delivery of a tax invoice or adjustment note, either pay to the User the difference owed to the User or issue a credit note to the User for the difference owed to the User.

- (b) In addition to payment of the amount referred to under 9.3(a) ("Applicable Amount"), DBCT Management (in the case of clause 9.3(a)(i)) or the User (in the case of clause 9.3(a)(ii)) shall be entitled to interest on the Applicable Amount calculated at the No Fault Interest Rate and calculated from the date on which the incorrectly calculated invoice was paid to the date on which the Applicable Amount was actually paid.

10. EXPANSION OF TERMINAL

10.1 Actions preliminary to decision to expand the Terminal

Before making any decision to ~~Expand~~expand the Terminal, DBCT Management must:

- (a) advise the User of the reasons for, extent, timing and estimated cost of any Expansion Component under consideration;
- (b) consult the User as to whether changes in the User's Annual Contract Tonnage or the method of operation of the Terminal, including the User's arrangements for Shipping its Coal, would avoid or delay the need for the Expansion Component or reduce the extent or estimated cost of the Expansion Component; and
- (c) consider how to maximise the utilisation of the Terminal.

Nothing in this clause 10.1 limits any provision of the Access Framework.

10.2 Minimisation of interference

DBCT Management must use all reasonable endeavours to carry out any Terminal Capacity Expansion of or other work at the Terminal and any infrastructure connected to the Terminal so as to minimise interference with the Handling of the User's Coal.

10.3 Terminal and System Capacity

- (a) DBCT Management will from time to time estimate Terminal Capacity (and Expansion Component Capacity, including Socialised Terminal Capacity or Differentially Priced Capacity for each Expansion Component, as applicable) and System Capacity in accordance with the Access Framework (or if there is no provision for doing so in an Access Framework at a relevant time, in accordance with the process applying under the last access undertaking or framework in which such a process was provided for).
- (b) DBCT Management must reassess Terminal Capacity, each relevant Expansion Component Capacity and System Capacity before entering into any new UserAccess Agreement or otherwise increasing the aggregate tonnage of Coal contracted to be Handled through the Terminal, unless it considers that none of the factors to be taken into account in determining Terminal Capacity, any relevant Expansion Component Capacity and System Capacity have materially changed since the most recent determination of Terminal Capacity, any relevant Expansion Component Capacity and System Capacity and that determination was made less than 12 months previously.
- (c) DBCT Management must not enter into any UserAccess Agreement if the Aggregate Annual Contract Tonnage would (after including the tonnage under the new UserAccess Agreement if it was entered into) exceed the System Capacity (as determined for the relevant time), unless otherwise required or permitted to do so by the Access Framework, law or an agreement relating to its tenure of the Terminal (including the Framework Agreement and the Port Services Agreement). For clarification:
 - (i) without limiting clause 19, this does not prohibit DBCT Management from entering into a Conditional Access Agreement, as long as the terms of all such

- Conditional Access Agreements are such that the increase in Aggregate Annual Contract Tonnage consequent on such Terminal Capacity Expansion occurring will nevertheless not cause Aggregate Annual Contract Tonnage to exceed System Capacity (based on the estimated System Capacity at the completion of the relevant ~~expansion~~Terminal Capacity Expansion); and
- (ii) DBCT Management will not be in breach of this Agreement if it has complied with the Access Framework (or made good faith and reasonable attempts to comply) but an assessment of System Capacity (after the assessment required by the Access Framework following the completion of a relevant Terminal Capacity Expansion) reveals that System Capacity is less than the Aggregate Annual Contract Tonnage at that time.
- (d) Notwithstanding any other provisions of this Agreement, if DBCT Management complies (or makes a good faith and reasonable attempt to comply) with the provisions of this clause 10.3 and Section 11.1 of the Access Framework, DBCT Management will not have any liability (whether for loss, damage, cost, expense or other remedy) nor will it be liable to the User ~~for any~~:
- (i) for any breach of this clause 10.3 or Section 11.1 of the Access Framework;
 - (ii) for any delay which arises as a result of the Aggregate Annual Contract Tonnage (which was expected not to exceed Terminal Capacity Expansion Component Capacity or System Capacity) subsequently exceeding Terminal Capacity, Expansion Component Capacity or System Capacity for any reason;
 - (iii) if one or more factors related to utilisation of capacity of the Terminal or any other part of the System which subsequently changes (for example, changes in service levels required pursuant to a right of Access Holders under ~~a~~ Standardan Access Agreement, the nature of coal Handled, an Access Holder's use of the Terminal, vessel mix, railway infrastructure, rolling stock or locomotives, rail loading facilities of mines or any other relevant factor) provided that such factor is not a breach by DBCT Management of any other part of the Access Framework, this Agreement or any other User Access Agreement; or
 - (iv) for any defect, error or omission on the part of the independent expert appointed under the Access Framework to assist with the assessment of Terminal Capacity, each relevant Expansion Component Capacity (including Socialised Terminal Capacity and Differentially Priced Capacity) and System Capacity.
- (e) Subject to the provisions of this Agreement and to the requirements and provisions of the Access Framework, any statute and any agreement in respect of the tenure of the Terminal (including the Framework Agreement and the Port Services Agreement), DBCT Management agrees with the User that any request by the User for an increase in Annual Contract Tonnage pursuant to clause 11.1 will be agreed to, to the extent that it does not cause System Capacity to be exceeded and in accordance with the provisions relating to Access Seekers seeking increased Access under Section 5 of the Access Framework.

11. CHANGES TO ANNUAL CONTRACT TONNAGE

~~Drafting Note: Consequential amendments to this clause 11 will be required in drafting changes to give effect to the pricing framework set out at Appendix 7 of DBCTM's submission dated 30 May 2018~~

11.1 Adjustments at User's request

- (a) The User may only adjust its Annual Contract Tonnage pursuant to this clause 11.1 or clause 12.2.
- (b) [From the date 5 years after the commencement of the Shipment (or increased rate of Shipment) of Coal arising out of the Current Expansion - *add these words for a User an Access Agreement under which Coal is Shipped for 10 years or more and which necessitated an Expansion*] The User may without penalty reduce the Annual Contract Tonnage by giving not less than five years notice to DBCT Management of the extent and the period of the reduction required.
- (c) If the User wishes to increase the Annual Contract Tonnage (for all or any part of the remainder of the Term), either:-
 - (i) from the Annual Contract Tonnage at the Effective Date; or
 - (ii) from a lesser or greater Annual Contract Tonnage previously adjusted under this clause 11.1,
 then the User may so notify DBCT Management, which may:-
 - (iii) subject to the availability of unallocated Terminal Capacity and System Capacity and the provisions of clauses 10.3 and 29.3, the Access Framework, any statute, and any agreement in respect of the tenure of the Terminal as it existed at 1 July 2005 (including the Port Services Agreement and the Framework Agreement), allow the User to increase the Annual Contract Tonnage (wholly or partially) to the respective amounts and periods requested;~~or in accordance with the provisions relating to Access Seekers seeking increased Access under Section 5 of the Access Framework; or~~
 - (iv) advise the User that no increase can occur, because it would cause Terminal Capacity or System Capacity to be exceeded.
- (d) Nothing in this clause limits any other rights which the User may have as an Access Seeker under the Access Framework or in clause ~~11.2 or clause~~ 12.3.

11.2 Shipping Coal in excess of Annual Contract Tonnage

The User ~~may from time to time (subject to the availability of unused capacity)~~ must not Ship Coal in excess of its Annual Contract Tonnage, ~~provided that:~~

- (a) ~~this does not cause any additional expense or unreasonable interference to another Access Holder;~~
- (b) ~~the User pays the Excess Charge in respect of each tonne of Coal so Handled; and~~
- (c) ~~the User pays an adjusted handling charge having regard to the increased tonnes of Coal so Handled. If the User is entitled wishes to Ship Reference Tonnage and Non-Reference Coal in excess of its Annual Contract Tonnage, the User may seek from another Access Holder the assignment of additional Coal Handled annual contract tonnage under this clause 11.2 will be Handled as Excess Tonnage clause 12.2. In accordance with clause 12.3, DBCT Management will not unreasonably refuse to consent to such a proposed assignment.~~

11.3 User not using Annual Contract Tonnage

If, in the reasonable opinion of DBCT Management, a User has not Shipped and is unlikely to Ship its Annual Contract Tonnage over a sustained period and such failure is not due to a Force

Majeure event at the Terminal or a failure by DBCT Management to Ship the User's Coal, then the following will apply:-

- (a) DBCT Management may notify the User that DBCT Management has formed the opinion that the User has not Shipped and is unlikely to Ship its Annual Contract Tonnage over a sustained period and that there is a reasonable expectation of demand from other Access Holders or Access Seekers for the User's underutilised tonnage;
- (b) the User must make submissions as to whether the User has not Shipped and is unlikely to Ship its Annual Contract Tonnage over a sustained period within 21 days of receiving the notice from DBCT Management;
- (c) if the User fails to produce reasonable evidence that demonstrates that it is likely in future to substantially Ship the whole of its Annual Contract Tonnage, then DBCT Management may notify the User that it intends to appropriately reduce the User's Annual Contract Tonnage;
- (d) if the User considers that DBCT Management has not complied with the requirements of this clause in reducing the User's Annual Contract Tonnage, then the User may, within 21 days of receiving notice under clause 11.3(c), refer the matter to dispute resolution in accordance with clause 15; and
- (e) DBCT Management must not implement a reduction in Annual Contract Tonnage until the expiration of the period for resolution of a dispute referred to in clause 11.3(d); and
- (f) ~~if DBCT Management reduces the Annual Contract Tonnage under this clause 11.3 and the User has Non Reference Tonnage and Reference Tonnage, the reduction must first be applied to the Non Reference Tonnage.~~

11.4 Capacity to be taken into account only once

If the User notifies DBCT Management that the User is unable to, and forgoes its right to, Ship all or part of its Annual Contract Tonnage (the "**Notified Tonnage**") through the Terminal for any period (the "**Notified Period**"), then, for the purpose of charges otherwise payable by the User for the Notified Period, the User's Annual Contract Tonnage will be taken to be reduced by such part of the Notified Tonnage in respect of which DBCT Management grants additional annual contract tonnage to another Access Holder (for the same or comparable charges to those reduced under this clause) and which DBCT Management would not have been able to grant (due to lack of capacity) but for the User foregoing its right to Ship the Notified Tonnage through the Terminal.

11.5 Reduction in tonnes Handled where User fails to obtain rail access

- (a) Before the User is entitled to have coal Handled pursuant to this Agreement, it must produce evidence reasonably satisfactory to DBCT Management that the Annual Contract Tonnage under this Agreement is matched by an entitlement held by the User (or a person on its behalf) to railway track access relating to the coal the subject of this User Agreement:
 - (i) for the whole of the Term; or
 - (ii) for any relevant shorter period.
- (b) If the User only produces such evidence of access to railway track entitlement pursuant to clause 11.5(a)(ii) for a period shorter than the entire Term, it must continue to provide evidence of such access before the commencement of each successive period during the Term for which such evidence has not previously been produced, and the provisions of clause 11.5(c) will apply in respect of each of the first and each successive such period during the Term.

- (c) To the extent the tonnage in respect of which the User is able to demonstrate an entitlement to railway track access for a relevant period is less than the Annual Contract Tonnage for that period, the Annual Contract Tonnage will (despite any other provisions of this Agreement):
 - (i) be deemed to be reduced to that lesser tonnage, for all purposes relevant to the entitlement to have coal Handled at the Terminal pursuant to this Agreement during such period; but
 - (ii) will remain unchanged for all other purposes pursuant to this Agreement, and specifically for the purposes of the liability of the User to pay Access Charges and any other amount payable pursuant to this Agreement based on the actual Annual Contract Tonnage.
- (d) DBCT Management will in good faith make an assessment of the tonnage of coal able to be railed to the Terminal pursuant to an entitlement to railway track access (which would normally be expressed as a number of train paths for any relevant period) and (subject to clause 15) the tonnage so determined shall be the tonnage which is adopted for the purpose of comparison with the Annual Contract Tonnage for a period for the purposes of this clause 11.5.
- (e) Where a relevant period is not a whole Financial Year or not two or more whole Financial Years, references in this clause to Annual Contract Tonnage over that period will mean that part of the Annual Contract Tonnage which accrues over that period, assuming it accrues throughout each Financial Year in equal increments.

12. ASSIGNMENT

12.1 DBCT Management may assign

After consultation with the User, DBCT Management may assign all or any part of its benefits under this Agreement to any person who is responsible and has the expertise and financial capacity needed to operate and maintain the Terminal and comply with the obligations of DBCT Management under this Agreement.

12.2 User may assign

With the prior consent of DBCT Management, which consent will not be unreasonably withheld, a User may assign all or part of its rights or entitlements under this Agreement (including, in particular, all or part of its Annual Contract Tonnage) permanently or temporarily on the following basis:

- (a) the assignment will not be effective unless:- the assignee enters into a deed (prepared by DBCT Management at the expense of such assignee) with DBCT Management substantially in the form contained in Schedule 6 by which DBCT Management and the assignee agree to be bound by the terms, conditions and obligations of this Agreement or the assignee's [UserAccess](#) Agreement (as DBCT Management, acting reasonably, determines) in respect of the assigned rights or entitlements as if the assignee were the User in respect of those assigned rights and entitlements;
- (b) when the assignment takes effect, the User will be discharged from all terms, conditions and obligations of this Agreement (except to the extent that they accrued prior to the assignment) in respect of the rights and entitlements assigned; and
- (c) if the User assigns only part of its rights or entitlements to another person, this Agreement will be treated from that time as if it were only an Agreement in respect of the unassigned rights or entitlements.

For clarification, "assign" and "assignment" includes novation or variation to the parties' respective ~~UserAccess~~ Agreements.

12.3 Response to requests for consent to assignment by User

- (a) DBCT Management ~~will not be required to~~must consent to a proposed assignment of rights or entitlements under ~~clause~~ 12.2 (whether by way of assignment or novation),~~– but DBCT Management must consent to any such proposed transfer~~ unless DBCT Management (acting reasonably) is satisfied that:
 - (i) the assignor is in material breach of this Agreement; or
 - (ii) the assignee:
 - (A) is not of good financial standing, creditworthy and able to fully discharge the financial obligations of the Access Holder under the relevant Access Agreement ~~or the assignee and does not~~ otherwise ~~provides~~provide security in a form acceptable to DBCT Management (acting reasonably) for the performance of the obligations under this Agreement in respect of the transferred rights or entitlements;
 - (B) is incapable of performing the obligations of the Access Holder under the Access Agreement in respect of the transferred rights or entitlements, including complying with the Terminal Regulations; or
 - (C) is unable to reasonably demonstrate that the rights or entitlements to be transferred under the relevant Access Agreement are matched by an entitlement to railway track access held by the assignee or a person on its behalf.
- (b) The assignor must provide all information reasonably required by DBCT Management to assess the criteria specified in clause 12.3(a) to DBCT Management in a timely manner.
- (c) DBCT Management must take all steps necessary to assess and respond to any request for a transfer as soon as reasonably practicable.
- (d) ~~An Access Holder or an Access Seeker~~The User or the assignee may refer as a dispute to arbitration under clause 15 of this Agreement:
 - (i) ~~(A)~~any refusal by DBCT Management to consent to a transfer;
 - (ii) ~~(B)~~any failure to agree the reasonable terms governing an Access Agreement which is the subject of a transfer; and
 - (iii) ~~(C)~~any failure by DBCT Management in assessing or responding to a request for transfer in a timely manner.

12.4 Change of control of User

- (a) The User must obtain DBCT Management's consent (not to be unreasonably withheld or delayed) to any Change of Control in the User. DBCT Management's consent may be subject to reasonable conditions (including the provision of reasonable security) and the User must comply with any conditions.
- (b) Any dispute in respect of the reasonableness of any refusal by DBCT to consent to a Change of Control, or of any conditions sought by DBCT Management under this clause 12.4, may be referred as a dispute under clause 15.

12.5 Permission to third party to Ship

With the prior consent of DBCT Management (which will not be unreasonably refused, particularly if the third party is another Access Holder), the User may permit a third party to Ship Coal through the Terminal treating that cargo as part of the User's Annual Contract Tonnage, without complying with clause 12.2. In such case:

- (a) the User will remain liable for the performance of its obligations under this Agreement in respect of all Coal so Handled, and for all purposes that Coal will be taken to be the Coal of the User Handled pursuant to this Agreement;
- (b) the User must give DBCT Management and the Operator a notice in the form of Schedule 7 (which will constitute a request for DBCT Management's consent) not less than 14 days prior to the scheduled departure of the relevant vessel, but DBCT Management must accept such shorter period of notice as causes no unreasonable adverse consequences to it, the Operator, [Existing Users](#) or other Access Holders;
- (c) the cargo must be made in accordance with the notice provided under clause 12.5(b) (provided that DBCT Management and the Operator do not refuse consent to the request made); and
- (d) the Product Shipment Notice attached to the Cargo Manifest provided by the User under clause 9.1 must disclose the name or names of any third party so using the User's Annual Contract Tonnage, and the tonnages of Coal so Handled for that third party.

13. REMEDIES

13.1 DBCT Management's remedies in the event of Delay

- (a) To the extent that the User is responsible for a Delay, or a Delay arises from events external to the Terminal, DBCT Management's remedies will be limited to its entitlement to payment of the charges provided for in clause 4 of this Agreement.
- (b) Nothing in this clause 13.1 precludes DBCT Management from applying for an injunction, declaration or specific performance in respect of the User's obligations under this Agreement.

13.2 User's remedies in the event of Delay

To the extent that the User is not responsible for a Delay and to the extent that a Delay does not arise from events external to the Terminal, the User's remedies against DBCT Management in respect of the Delay are limited as set out below:

- (a) If the Delay is a Permissible Delay, DBCT Management will have no liability to the User in respect of any Claim for Loss arising from the Delay;
- (b) If the Delay arises from Force Majeure affecting DBCT Management's ability to comply with its obligations, clause 13.3 applies;
- (c) If the Delay arises from Wilful Default by DBCT Management, clause 13.5 applies; and
- (d) In all other circumstances, and without prejudice to its right to dispute responsibility for the Delay, the User must continue to meet its payment obligations under clause 4 unless and until the adjudication of an arbitrator, order of the Court or agreement between the parties, determines responsibility for the Delay, in which case clause 13.4 applies.

Nothing in this clause 13.2 precludes the User from applying for an injunction, declaration or specific performance in respect of DBCT Management's obligations under this Agreement.

13.3 Force Majeure

- (a) If DBCT Management is affected by an event of Force Majeure, such that it will be unable to fulfil all or part of its obligations under the Agreement (the "**Affected Obligations**"), and anticipates Delays exceeding 48 hours, it must notify the User within 7 days after the occurrence of the event, providing full details of:
 - (i) the Affected Obligations and Delays expected;
 - (ii) the action that DBCT Management has taken and proposes to take to remedy the situation; and
 - (iii) DBCT Management's estimate of the time during which it will be unable to carry out the ~~affected obligations~~Affected Obligations due to the event of Force Majeure.
- (b) DBCT Management's Affected Obligations under this Agreement shall be suspended (without it being in default) to the extent of and for the period that the performance of such obligations are affected by an event of Force Majeure, provided that it complies with clause 13.3(c). However, the User's obligations to pay the Charges in clause 4 will not abate during a period where DBCT Management is affected by an event of Force Majeure.
- (c) DBCT Management must:
 - (i) use all reasonable efforts (including the expenditure of reasonable sums of money) to mitigate the effect of the event of Force Majeure upon its performance of this Agreement; and
 - (ii) keep the User informed (not less than fortnightly) of the steps being taken to mitigate the effect upon the performance of this Agreement, including an estimate of the continued duration of the Delay.

13.4 User's rights for Delays attributable to other circumstances

In the circumstances in clause 13.2(d), DBCT Management's liability to the User is limited to:

- (a) the Third Party Amount; plus
- (b) if the adjudication of an arbitrator, order of a court or agreement between the parties determines that the Delay was at least 66% DBCT Management's Personal Responsibility, and to the extent that there is any shortfall in the recovery by the User of its Direct Loss from the Third Party Amount - the User's Direct Loss in respect of the Delay, but not exceeding the percentage of the User's Direct Loss equivalent to the percentage of DBCT Management's Personal Responsibility.

13.5 Wilful Default by DBCT Management

If a Delay is caused by Wilful Default by DBCT Management, the User:

- (a) is relieved to that extent of any corresponding payment obligations under clause 4;
- (b) may terminate this Agreement pursuant to clause 14.3; and
- (c) may sue DBCT Management for damages for breach of contract.

13.6 Long Term Delays

- (a) This clause 13.6 sets out certain rights and obligations of the parties in respect of Delays, including Long Term Delays. This clause 13.6 is:
 - (i) in addition to, and does not limit any other provision of this Agreement; and

- (ii) does not limit or affect any other right which a party may have against another party in respect of an act or omission of the other party.
- (b) If Loss, damage or destruction occurs in respect of the Terminal, DBCT Management must promptly claim and thereafter promptly apply all relevant available insurance proceeds towards reinstatement of the damaged property, unless (having regard to factors such as the reasonably foreseeable ongoing needs for Handling at the Terminal) DBCT Management considers that reinstatement is not in the interests of stakeholders and no less than 60% of Access Holders and Existing Users (by tonnage) and DBCT Holdings all agree that reinstatement should not occur.
- (c) If Long-Term Delays occur, such that the capacity of the Terminal (as demonstrated by its performance) on a sustained on-going basis is less than 95% of the Aggregate Annual Contract Tonnage at that time (the difference being referred to as the "**Shortfall**"), then DBCT Management must undertake an a Terminal Capacity Expansion ~~of the Terminal~~ sufficient to eliminate the Shortfall if (and on the same basis as) DBCT Management would have been obliged under the terms of the Access Framework (in particular considering sections 11.3, 11.4, 11.7, and 11.8 of the Access Framework) to undertake an a Terminal Capacity Expansion had the amount of the Shortfall been the annual contract tonnage sought by new Access Seekers whose offers to enter into UserAccess Agreements prima facie triggered the requirement for an a Terminal Capacity Expansion. For clarification, DBCT Management will not be obliged to undertake an a Terminal Capacity Expansion under this Agreement:
 - (i) if such Terminal Capacity Expansion is unreasonable and uneconomic pursuant to section 11.7 of the Access Framework; or
 - (ii) if section 11.8 of the Access Framework applies.
- (d) If at any time:
 - (i) the capacity of the Terminal on a sustained ongoing basis is reduced to the order of 10%, or less, of the Aggregate Annual Contract Tonnage of all Access Holders and Existing Users at the time;
 - (ii) the reduction of capacity referred to in clause 13.6(d)(i) above, is not attributable to an act or omission of the User; and
 - (iii) DBCT Management does not, within a reasonable time after a written request by the User to do so ("reasonable" being assessed according to the extent of works needed to redress the situation), commence and expeditiously proceed with the works necessary to reinstate the Terminal to a capacity sufficient to meet the reasonably expected sustained ongoing demand for Handling of Coal (whether or not DBCT Management has an obligation to undertake such works),

the User may terminate this Agreement, on giving not less than 30 days' notice to DBCT Management to that effect in writing. Neither party will be liable to the other arising from such a termination (other than a liability which arises prior to the date of termination).

13.7 Limitation period for notice of Claims by User

- (a) The User shall not be entitled to make any Claim against DBCT Management in respect of any Delay unless written notice of the Claim specifically reserving the User's rights under clause 13.2 has been given to DBCT Management by the date 4 months after the end of the Financial Year in which the Delay first occurred (or, if a material fact of a decisive character relating to the right to Claim against DBCT Management was not within the means of knowledge of the User until after that time, within 2 months of the

date on which the User first becomes aware of that material fact). Any subsequent Loss arising directly or indirectly from the cause of the first occurrence may be included in the Claim without further notice being given, but a separate notice must be given for each different and unrelated cause from which it is alleged a Claim arises.

- (b) This clause 13.7 does not apply to a Claim to the extent that it is made under clause 13.6.

14. TERMINATION

14.1 Suspension

If the User is in default in the due and punctual performance of an obligation under this Agreement and:

- (a) in respect of the User's default of an obligation to pay money or to provide any Security required pursuant to clause 29, such default has not been remedied within 30 days after DBCT Management has given written notice to the User of the default; or
- (b) in respect of the User's default of a material obligation (other than an obligation to pay money or provide Security), such default has not been remedied, or the User has not expeditiously commenced to remedy it, within 60 days after DBCT Management has given written notice to the User of the default,

then, without prejudice to DBCT Management's other rights under this Agreement, DBCT Management may (by written notice to the User pursuant to this clause) suspend the User's rights to have its Coal Handled under this Agreement until payment (including interest under clause 5.2) is made, Security is provided or the other relevant default is remedied or commenced to be expeditiously remedied. If such suspension occurs, the User's obligations based on its Annual Contract Tonnage (for example charges based on those amounts) will be unchanged, but DBCT Management's obligations to Handle those amounts for the relevant Financial Year will be reduced proportionately.

14.2 Termination by DBCT Management

Subject to clause 14.5, if DBCT Management has duly given notice that it has suspended the User's rights to have its Coal Handled (but not the User's obligations) under this Agreement pursuant to clause 14.1 and if the default still has not been remedied after a further period of 14 days from the notice of suspension, DBCT Management may terminate this Agreement forthwith by further notice to the User pursuant to this clause.

14.3 Termination by User

Subject to clause 14.5, the User may terminate this Agreement by written notice to DBCT Management as follows:-

- (a) if DBCT Management is in default in the due and punctual performance of an obligation to pay money under this Agreement and such default has not been remedied for a period of 30 days after the User has given to DBCT Management written notice specifying the default and requiring the default to be remedied; or
- (b) if DBCT Management is in default in the due and punctual performance of a material obligation under this Agreement (not being an obligation to pay money or a Delay) and such default has not been remedied or DBCT Management has not expeditiously commenced to remedy such default within a period of 60 days after the User has given to DBCT Management written notice specifying the default and requiring the default to be remedied.

14.4 Abandonment of Coal on termination

The User must remove any of its Coal remaining in the Terminal within three months from the termination of this Agreement, whether by expiry or otherwise, failing which the Coal will be deemed abandoned.

14.5 Disputes about defaults

If an event or circumstance is alleged to constitute a default referred to in clause 14.2 or clause 14.3 and is the subject of a dispute under clause 15, then DBCT Management or the User (as applicable) shall not exercise any right to suspend or terminate this Agreement unless and until the default has not been rectified within a reasonable time (being not less than 14 days) after the end of the resolution process in clause 15.

15. GOVERNING LAW AND DISPUTE RESOLUTION

[Drafting Note: Consequential amendments to the dispute resolution provisions in this clause 15 may be required in drafting changes to give effect to the pricing framework set out at Appendix 7 of DBCTM's submission dated 30 May 2018]

15.1 Governing law

This Agreement is governed by the laws in force in the State of Queensland.

15.2 Disputes

- (a) **(Disputes under this Agreement)** If a dispute between DBCT Management and the User arises out of or in connection with this Agreement, then, unless otherwise specified by the Access Framework or agreed by the parties in writing, such dispute will be resolved in accordance with this clause 15. Either party may give to the other party a notice of dispute in writing identifying and providing details of the dispute.
- (b) **(Disputes under the Access Framework)** If any dispute or question arises under or in relation to the Access Framework, or including (without limitation) a dispute in relation to the negotiation of Access between an Access Seeker or Access Holder and DBCT Management, such dispute will be resolved in the manner specified in the Access Framework.
- (c) **(Dispute under Deed Poll)** The Subject to clause 9.2.3 of the Deed Poll, the courts of Queensland have exclusive jurisdiction to determine any dispute arising under the Deed Poll.

15.3 Further steps required before arbitration

- (a) Subject to clause 15.5, no party may commence arbitration in respect of any dispute notified or notifiable under this clause 15 until that party has complied with the requirements of this clause 15.3.
- (b) Within 14 days after service of a notice of dispute, the senior executives of DBCT Management and the User (or people for the time being acting in that role) must confer at least once to attempt to resolve the dispute, and failing resolution of the dispute to consider and if possible agree on methods of resolving the dispute by other means.
- (c) If the dispute cannot be so resolved after a further period of 14 days or if at any time either DBCT Management or the User considers that the other party is not making reasonable efforts to resolve the dispute, either party may refer such dispute to arbitration in accordance with clause 15.4.

15.4 Arbitration procedure

- (a) Any disputes that are not otherwise resolved in accordance with this clause 15 or the Access Framework will be submitted to arbitration in accordance with, and subject to, the Resolution Institute Arbitration Rules (**Rules**).
- (b) The arbitration must be effected by a single suitably qualified and experienced arbitrator who is either:
 - (i) agreed upon between the parties; or
 - (ii) in default of such agreement within 10 days after the dispute is referred to arbitration, nominated by the Resolution Institute.
- (c) Any party to the arbitration may be represented before the arbitrator by a member of the legal profession without the need for leave of the arbitrator.
- (d) Any arbitration commenced under this Agreement may be consolidated with any other arbitration commenced under:
 - (i) this Agreement; and / or
 - (ii) the Access Framework (or any agreement ~~referred to~~entered into in accordance with the Access Framework),

~~regardless of the parties involved~~, provided that the issue(s) which each arbitrator has been asked to determine concern common questions of fact or law. Such consolidated arbitration shall be determined by the arbitrator appointed for the arbitration proceeding that was commenced first in time.
- (e) The venue for any arbitration will be Brisbane, Queensland.
- (f) Unless otherwise determined by the arbitrator, the costs of the arbitration shall be paid by the unsuccessful party.

15.5 Interlocutory relief

This clause 15 does not prevent any party from seeking urgent interlocutory or declaratory relief from a court of competent jurisdiction.

15.6 Dispute not to affect performance of obligations

The parties are not relieved from performing their obligations under this ~~agreement~~Agreement because of the existence of a dispute.

16. WARRANTIES

[Drafting Note: Consequential amendments to this clause 16 will be required in drafting changes to give effect to the pricing framework set out at Appendix 7 of DBCTM's submission dated 30 May 2018]

16.1 Warranties by DBCT Management

DBCT Management agrees and acknowledges that:

- (a) Subject to:
 - (i) an event of Force Majeure;
 - (ii) Maintenance Work; and

- (iii) any decision to cease or reduce Maintenance Work for a component of the Terminal on the basis that it is more cost-efficient to replace it and it is to be replaced,
- each Terminal Component will be maintained to be available to operate to at least its rated design capacity;
- (b) it will ensure that the Terminal is maintained in accordance with Good Operating and Maintenance Practice;
- (c) it will consult with the User in relation to the appointment of any replacement Operator of the Terminal and will promptly on request negotiate amendments to this Agreement to reflect the terms of any new Access Framework, from the time (should it occur) that Dalrymple Bay Coal Terminal Pty Ltd ceases to be the Operator;
- ~~(d) DBCT Management will not differentiate Access Charges between Access Holders or between Access Holders and Access Seekers, other than:~~
 - ~~(i) to reflect differences in cost (direct or indirect) or risks to DBCT Management of providing access to Services; or~~
 - ~~(ii) as otherwise permitted or required by the Access Framework (including for the avoidance of doubt, Differentiation based pricing);~~
- (d) ~~(e)~~ the User will (at no charge, but at its own cost) be granted reasonable access to the Terminal for reasonable purposes, including customer goodwill inspections, performance of shipping agent functions, Coal sampling and User inspections of Operations, provided that on each occasion the User complies with the Operator's site rules, DBCT Management's reasonable visitor notification requirements and the User is accompanied by an authorised person at such times while on the Terminal site as DBCT Management or the Operator reasonably requires (provided that they make such a representative available, having been given reasonable notice by the User).

16.2 Warranties by the parties

Each party warrants to the others that it has the requisite power to enter into this Agreement from the Execution Date.

17. USER COMMITTEE AND IMPROVEMENT PROGRAM

17.1 Participation in User Committee

DBCT Management and the User agree to participate in a committee consisting of one representative of each of DBCT Management, the Operator and each Access Holder and Existing User (the "User Committee").

17.2 Terms of reference of User Committee

The User Committee is established for the following purposes:

- (a) to provide a forum for consultation between all participants on matters relating to the operation and performance of the Terminal, including (without limitation) any factors relating to any participant which may impact on the future performance or efficiency of the Terminal;
- (b) to enable consultation between all participants on current and planned Terminal facilities, including all proposals for any enhancement of the Terminal; and
- (c) to consult on matters relating to the Terminal Regulations, including (without limitation) any proposed changes to the Terminal Regulations.

17.3 Frequency of meetings

DBCT Management and the User acknowledge that it is intended that the User Committee meet on a Quarterly basis and at such further times as participants in the User Committee agree.

17.4 Representation

DBCT Management and the User will each appoint, and acknowledge that each other prospective member of the User Committee is entitled to appoint, a person to represent its respective interests on the User Committee (each a "**Representative**"). If a Representative is not available to attend a meeting of the User Committee, the relevant member of the User Committee may nominate an alternate person to represent its interests at the User Committee.

17.5 Chairperson

The User agrees that the Representative appointed by DBCT Management will act as chairman of the User Committee.

17.6 Role of the Operator

DBCT Management must, as far as the Operation & Maintenance Contract allows, procure that the Operator provides appropriate support to the User Committee, including the provision of any relevant operational reports, as the User Committee may reasonably request the Operator to provide from time to time.

18. NOT USED

19. EXPANSION TONNES

[A Conditional Access Agreement in which all or part of the Annual Contract Tonnage does not apply until ~~an~~a Terminal Capacity Expansion (the 'Current Expansion') has occurred, in circumstances where that Terminal Capacity Expansion will form part of the Terminal under this Agreement once completed, will include a clause, an outline of terms of which are as follows:]

- (a) Subject to clause 19(e), the Annual Contract Tonnage will be [increased by] [insert] Mtpa for the period commencing on the first day of the Month following completion and successful commissioning of the Current Expansion until the end of that Financial Year, and thereafter in each subsequent Financial Year. The target date for this to occur is [insert].
- (b) DBCT Management must provide at least monthly progress reports to the User in relation to the Current Expansion and such further progress reports as may reasonably be required as the Current Expansion nears completion.
- (c) DBCT Management's obligation to commence Handling, and the User's obligation to commence paying charges, in respect of the additional Annual Contract Tonnage arising out of the Current Expansion or any part thereof (as applicable) only begins on the first day of the Month following the date that DBCT Management gives the User a notice that the User is:
 - (i) awarded the additional Annual Contract Tonnage or any part thereof (as applicable); and
 - (ii) entitled to have the additional Annual Contract Tonnage or any part thereof (as applicable) handled at the Terminal.

- (d) DBCT Management must use reasonable endeavours to have the Current Expansion completed as close as practicable to the target date referred to in clause 19(a), but it will not be required to expend additional amounts to overcome delays caused by third parties or otherwise beyond the reasonable control of DBCT Management.
- (e) DBCT Management will proportionately reduce the Annual Contract Tonnage under this Agreement and the annual contract tonnages under all other UserAccess Agreements entered into with the intention of utilising additional capacity arising out of the Current Expansion, if the actual Terminal Capacity following completion of the Current Expansion is less than the estimate of (expanded) Terminal Capacity made at the time this Agreement was entered into. That reduction will be by the proportion which the additional Terminal Capacity resulting from the Current Expansion as estimated at the time this Agreement was entered into bears to the actual additional Terminal Capacity arising from the Current Expansion. In relation to:
 - (i) Socialised Terminal Capacity, the allocation of proportionately reduced capacity will occur after first deducting any capacity required from the Current Expansion to "make up" any shortfall between already existing aggregate annual contract tonnages and actual Terminal Capacity which existed prior to the Current Expansion; and
 - (ii) Differentially Priced Capacity resulting from the Current Expansion will be allocated to meet the full entitlements under this Agreement and any other UserAccess Agreements associated with the Differentially Priced Capacity.

20. OPTIONS

If the period during which Coal is to be Shipped during the Term is 10 years or more, the following clauses apply:

- (a) The User has an option to extend the Term for 5 years or more (or a lesser period, if it coincides with an expected end-of-mine-life), as nominated by the User at the time of exercise, exercisable at any time up to 12 months prior to the end of the Term (including the Term as already extended by the exercise of an option under this clause 20(a) for 5 years or more).
- (b) If DBCT Management receives an Access Application for additional capacity which cannot be met without a Terminal Capacity Expansion if the option in clause 20(a) and other relevant options are exercised, it may notify the User, requiring it to respond within 90 days, either exercising the option in clause 20(a) in respect of all or part of an extended Term and/or tonnage the subject of the option, or waiving it.
- (c) DBCT Management must give notices under clause 20(b) and any equivalent provision of another Access Agreement or Existing User Agreement to relevant Access Holders or Existing Users with options, in order of the earliest expiring Access Agreement or Existing User Agreement, for the purposes of deciding which option date is to be accelerated first. Where an Access Holder/s or Existing User/s with the earliest expiring date exercise/s its/their option by the accelerated date, DBCT Management may then go to the next Access Holder/s or Existing User/s in order of expiring agreements until there has been a waiver of sufficient options to ensure that the bona fide request can be accepted without the necessity for a Terminal Capacity Expansion. Access Holders or Existing Users whose terms expire within 6 months of each other will, for the purposes of this clause 20, be deemed to have terms which expire on the same date, and must be given notices at the same time.
- (d) Where more than one Access Holder or Existing User has tonnages which expire (or which are deemed to expire) on the same date, those Access Holders/Existing Users

which do not exercise their accelerated option will lose the amount of tonnes the subject of the option proportionately with their respective annual contract tonnages immediately prior to the end of the current term. (For example, if a bona fide request for 5 Mtpa is received and Access Holders/[Existing Users](#) with 10, 5, 2 and 3 Mtpa of contracted tonnages do not exercise their options, then the options for those Access Holders/[Existing Users](#) will be reduced by 2.5, 1.25, 0.5 and 0.75 Mtpa respectively).

- (e) If the Access Application referred to in clause 20(b) is not converted into [a User an Access Agreement](#) within 3 months after the above process is completed, the status quo existing before notice from DBCT Management will be re-instated (i.e. options will not be taken to have been forfeited merely because the accelerated date for exercise has not been complied with, and any accelerated exercise of an option will be taken not to have occurred).

21. GST

- (a) Any reference in this clause to a term defined or used in the A New Tax System (Goods and Services Tax) Act 1999 is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Unless expressly included, the consideration for any supply made under or in connection with this Agreement does not include an amount on account of GST in respect of the supply ("**GST Exclusive Consideration**") except as provided under this clause.
- (c) Any amount referred to in this Agreement (other than an amount referred to in clause 21(f)) which is relevant in determining a payment to be made by one of the parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST exclusive basis.
- (d) To the extent that GST is payable in respect of any supply made by a party ("**Supplier**") under or in connection with this Agreement, the consideration to be provided under this Agreement for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the GST Exclusive Consideration (or its GST exclusive market value if applicable) multiplied by the rate at which GST is imposed in respect of the supply.
- (e) The recipient must pay the additional amount payable under clause 21(d) to the Supplier at the same time as the GST Exclusive Consideration is otherwise required to be provided.
- (f) Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with this Agreement the Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid under clause 21(d), the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
- (g) If one of the parties to this Agreement is entitled to be reimbursed or indemnified for a Loss, cost, expense or outgoing incurred in connection with this Agreement, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the party being reimbursed or indemnified (or its representative member) is entitled in relation to that Loss, cost, expense or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with clause 21(f).

22. NOTICES

22.1 Notices and other communications

All notices and other communications provided for or permitted under this Agreement must be in writing and must be given by mail, or facsimile transmission as follows:-

- (a) if to DBCT Management, to:-

Address: Level 15, 1 Eagle Street, Brisbane, Qld 4000
Attention: Chief Executive Officer
Fax No.: 07 3002 3101
Email: anthony.timbrell@dbctm.com.au

- (b) if to the User, to it at the address set out in Schedule 1,

or to such other address or person as either party may specify by notice in writing to the other.

22.2 Deemed to have been given or made

All such notices or communications are deemed to have been duly given or made:-

- (a) on the date upon which the notice or communication would, in the ordinary course of the post, have been delivered to the address to which it was posted;
(b) when delivered; or
(c) if sent by facsimile transmission, at the conclusion of an apparently successful transmission,

but if the delivery or facsimile is effected on a day that is not a Business Day or after 5pm in the place of receipt on a Business Day, it will be taken to have been given or made on the next Business Day.

23. SURVIVAL OF REMEDIES

The remedies of the parties arising by law, by the terms of this Agreement or otherwise are cumulative and will survive the termination of this Agreement by effluxion of time or otherwise.

24. WAIVER

A waiver by either party of any default in the strict and literal performance of or compliance with any provision of this Agreement will not be deemed to be a waiver of strict and literal performance of and compliance with any other provision of this Agreement nor to be a waiver of, or in any manner release the other party from, strict compliance with any provision, in the future nor will any delay or omission of either party to exercise any right under this Agreement in any manner impair the exercise of any such right accruing to it thereafter.

25. COSTS

Whether or not any of the transactions contemplated by this Agreement are consummated, each party must pay its own fees and expenses of and incidental to the negotiation, preparation and execution of this Agreement. The User will pay on demand any stamp duty payable on this Agreement.

26. ENTIRE AGREEMENT

26.1 Full and Complete Understanding

This Agreement constitutes the full and complete understanding between the parties with respect to the subject matter of this Agreement. There is no other oral understanding, agreement, warranty or representation whether express or implied in any way extending, defining or otherwise relating to the provisions of this Agreement or binding on the parties with respect to any of the matters to which this Agreement relates.

26.2 No inducement

Each of the parties covenants and irrevocably acknowledges that it has not been induced to enter into this Agreement by any statement, warranty, representation, understanding, act, omission, fact, matter, thing or conduct by or on behalf of any person including the other party, other than as expressly recorded in this Agreement.

26.3 Provision is to remain in full force and effect

The provisions of this clause 26 will operate and remain in full force and effect. No other fact, matter or circumstance, including breach of the provisions of the *Competition and Consumer Act 2010* (Cth) by a party to this Agreement, will interfere with or in any way derogate from the operation and effect of this clause.

27. SEVERANCE

If any term of this Agreement is for any reason acknowledged by the parties, or adjudged by a court of competent jurisdiction or held by any competent government authority to be invalid, illegal or unenforceable, such term or provision will be severed from the remainder of the provisions of this Agreement and will be deemed never to have been part of this Agreement and the remainder of the provisions of this Agreement will subsist and remain in full force and effect, unless a basic purpose or purposes of this Agreement would thereby be defeated.

28. JOINT VENTURE LIABILITY

[insert as relevant]

28.1 Definitions

In this clause:

- (a) “**Financial Obligation**” means an obligation of a party under or arising out of this Agreement to pay or cause to be paid an amount of money, including a liability for damages for a breach of a Performance Obligation;
- (b) “**Joint Venture**” means the joint venture between the Joint Venturers, details of which are set out in Item 3 of Schedule 1;
- (c) “**Joint Venture Percentage**” means the respective percentage interest of each Joint Venturer in the Joint Venture, as set out in Item 3 of Schedule 1;
- (d) “**Joint Venturers**” means each of the entities set out in Item 3 of Schedule 1 as holding a Joint Venture Percentage.
- (e) “**Performance Obligation**” means any obligation of a party arising under this Agreement, other than a Financial Obligation.

28.2 User agent for Joint Venturers

- (a) The User enters into this Agreement as agent for and on behalf of the Joint Venturers, and the User warrants that it is duly authorised to do so.
- (b) The User will not be personally liable under this Agreement in its capacity as agent for the Joint Venturers.

OR

[Joint Venturers comprise a single party]

The Joint Venturers comprising the User will be a single party to this Agreement, but their respective rights against and liabilities to DBCT Management and DBCT Guarantor will be determined in accordance with this clause 28.]

28.3 Financial Obligations of Joint Venturers are several

Subject to clauses 28.4 and 28.5 (and any other provision of this Agreement which may expressly provide otherwise), the liability of each Joint Venturer in respect of each Financial Obligation of the User is several, and each Joint Venturer will only be liable for an amount owing by the User equivalent to its Joint Venture Percentage of that amount.

28.4 Rights and Performance Obligations of Joint Venturers are joint

- (a) Each right of the User under this Agreement can only be exercised by the User or by [delete highlighted words where the Joint Venturers are all signatories in their own right] the Joint Venturers jointly.
- (b) Each Joint Venturer will be jointly liable in respect of each Performance Obligation of the User (other than any Performance Obligation expressed to be imposed on an individual Joint Venturer).

28.5 Individual Joint Venturer default

- (a) If:
 - (i) a Joint Venturer defaults in respect of the performance of a Financial Obligation of the User;
 - (ii) the other Joint Venturers are not in default in respect of that Financial Obligation; and
 - (iii) [where there is a single User, as agent for the Joint Venturers] the User gives a notice to DBCT Management, copied to the defaulting Joint Venturer, identifying the defaulting Joint Venturer and its default,

OR

- (iv) [where the Joint Venturers are all signatories in their own right] the other Joint Venturers give a notice to DBCT Management, copied to the defaulting Joint Venturer, identifying the defaulting Joint Venturer and its default,

then that defaulting Joint Venturer (unless it disputes the default in writing to DBCT Management within 7 days of receiving a copy of the notice) will be solely liable, to the extent of the default, in the performance of that Financial Obligation.

- (b) Any notice given pursuant to clause 28.5(a)(iii) and not disputed by the defaulting Joint Venturer within the time prescribed is conclusive evidence that the defaulting Joint Venturer specified in the notice is in default to the extent stated and the notice binds all parties unless and until revoked or amended by the User.

- (c) If more than one (but not all) Joint Venturers default and are subject to a notice under clause 28.5(a)(iii), they will be severally liable in proportion to their respective relevant Joint Venture Percentages.
- (d) Nothing in this clause 28 affects DBCT Management's rights under clauses 14.1 and 14.2 of this Agreement.

28.6 Clarifications

For clarification:

- (a) any assignment by a Joint Venturer of any part of its Joint Venture Percentage in respect of this Agreement will be an assignment to which clause 12.2 applies, but in such a case references in that clause to the "User" and "assignee" respectively will be taken to refer only to the relevant Joint Venturer and the intended assignee from it;
- (b) any assignment by the User which is merely the substitution of a new agent for the Joint Venture (where there is no change in the Joint Venturers or the Joint Venture Percentages) will be consented to by DBCT Management unless it has reasonable grounds to object to the proposed new agent (for example, it is insolvent or has a history of default).

29. GUARANTEES OF USER

29.1 User to provide Security [insert if provision of security is a condition precedent]

[Notwithstanding clause 2], it is a condition precedent to this Agreement that the User must provide to DBCT Management, the Security in Schedule 8, effective not later than the Effective Date, to secure the obligations of the User to DBCT Management under this Agreement.

29.2 Failure to provide Security [insert if relevant]

If the User does not provide the Security referred to in clause 29.1, then this Agreement will have no force or effect.

29.3 Guarantee if User does not remain in good financial standing

- (a) If after the Execution Date:
 - (i) the User applies to DBCT Management to increase the Annual Contract Tonnage;
 - (ii) in the reasonable opinion of DBCT Management, there is a likelihood that the User (or, if applicable, a provider of Security) may have ceased or will cease to be reputable or of good financial standing; or
 - (iii) a Security previously given in connection with this Agreement is due to expire within 90 days,

the User must provide such information to DBCT Management as may be reasonably requested by DBCT Management by notice to establish that the User (or, as applicable, a provider of Security) is reputable and of good financial standing. DBCT Management must keep any such information in the strictest confidence, except that DBCT Management may disclose such information on a confidential basis to its financiers and consultants who require such information to assess the solvency and creditworthiness of the User or provider of Security.
- (b) If, after the Execution Date, in the reasonable opinion of DBCT Management:

(i) the User (or, as applicable, a provider of Security) has ceased to be reputable or of good financial standing with the capability to fulfil all of its obligations under (or in respect of) this Agreement; or

(ii) [where this Agreement concerns Access to a Differentiated Expansion Component] there is a materially increased risk that the circumstances in 29.3(b)(i) will occur prior to the earlier of the Terminating Date and the end of the Term,

then the User must provide, within 20 Business Days after written notice from DBCT Management, to DBCT Management, a Security which:-

(iii) secures (to an extent reasonable in the circumstances) the obligations under this Agreement of the User to DBCT Management;

(iv) is from an entity which, in the reasonable opinion of DBCT Management, is reputable and of good financial standing and with the capability to fulfil or cause the fulfilment of all of the financial obligations of the User under this Agreement; and

(v) is in a form, and for an amount and period, satisfactory to DBCT Management (acting reasonably).

(c) If the User does not provide such Security within 20 Business Days of receiving such written notice from DBCT Management, then the User will be in breach of a material obligation under this Agreement.

(d) The User is entitled to dispute a conclusion by DBCT Management on which a notice under clauses 29.3(a) or 29.3(b) is based.

29.4 Request to remove or reduce Security

(a) If the User has provided a Security pursuant to this clause 29 and considers that its financial circumstances have improved or any other relevant circumstances have changed since the provision of the Security, it may request DBCT Management to release or reduce the Security.

(b) The User must provide to DBCT Management such evidence of its financial circumstances, or other relevant circumstances, as DBCT Management reasonably requests, before DBCT Management is obliged to consider the request.

(c) DBCT Management must not unreasonably refuse any such request, but it may have regard to (amongst other things) the circumstances in which the Security was originally provided, changes in circumstances since that time, and any reasonable custom and practice of DBCT Management in respect of requiring security from new Access Holders.

30. GUARANTEE OF DBCT MANAGEMENT'S OBLIGATIONS

30.1 Guarantee

DBCT Guarantor irrevocably and unconditionally guarantees to the User on demand payment of all amounts payable by DBCT Management under or arising out of this Agreement (including all amounts for which DBCT Management may become liable in respect of any breach of this Agreement).

30.2 Unconditional nature of guarantee

DBCT Guarantor agrees that DBCT Guarantor's obligations under this Agreement are unconditional (irrespective of the validity, regularity or enforceability of any provision of this Agreement or the absence of any action to enforce the same or the waiver or the consent of the User in respect of any provision of this Agreement or the recovery of any judgment against DBCT Management or any action to enforce the same or any variation of the terms of this Agreement or any other dealings, transactions or arrangements between the User and DBCT Management or other circumstances which might otherwise constitute a legal or equitable discharge of or defence to a surety). This guarantee shall be a continuing guarantee which shall not be discharged except by a complete performance of all obligations of DBCT Management under this Agreement.

30.3 Guarantee not affected by changed circumstances

The liability of DBCT Guarantor under this Agreement will not be lessened, affected or impaired by any time or indulgence granted to DBCT Management by the User or any dealings or transactions between the User and DBCT Management (whether or not DBCT Guarantor is a party or cognisant of the same) or by the dissolution of DBCT Management or any change in the status, functions, control or ownership of DBCT Management or any consolidation, merger, conveyance or transfer by DBCT Management or any waiver, variation or novation of this Agreement or other dealings, transactions or arrangements between the User and DBCT Management which might otherwise constitute a discharge to a surety.

30.4 Capacity of DBCT Guarantor

- (a) DBCT Guarantor enters into this Agreement as trustee of the DBCT Trust and in no other capacity.
- (b) Any liability of DBCT Guarantor arising from this Agreement can be enforced against DBCT Guarantor only to the extent to which it can be satisfied out of the property of the DBCT Trust and out of which the DBCT Guarantor is actually indemnified for the liability. This provision applies despite any other provision of this Agreement.
- (c) A person entitled to the benefit of this Agreement may not sue DBCT Guarantor personally or seek the appointment of a liquidator, administrator, receiver or similar person to DBCT Guarantor personally or prove any liquidation, administration or arrangement of or affecting DBCT Guarantor personally.
- (d) The provisions of this clause 30.4 do not apply to any obligation or liability of DBCT Guarantor to the extent that it is not satisfied because under its constitution or deed of trust or by operation of law there is a reduction in the extent of DBCT Guarantor's indemnification over the assets of the DBCT Trust, as a result of DBCT Guarantor's fraud, negligence, breach of trust or breach of duty.
- (e) All of the provisions of this clause 30 are subject to this clause 30.4.

31. LIMITATIONS TO LOSSES AND DAMAGES

31.1 No indirect Loss or Consequential Loss

Notwithstanding any other provision of this Agreement, DBCT Management is not liable to the User for any indirect Loss or Consequential Loss.

SCHEDULE 1 - REFERENCE SCHEDULE

Item	Reference	Definition/Details
1	DBCT Management	DBCT Management Pty Limited ABN 16 097 698 916
2	DBCT Guarantor	DBCT Investor Services Pty Ltd ABN 11 052 156 082 as trustee for the DBCT Trust
3	User	<i>[Insert name, address for notices and contact details]</i>
4	Execution Date	
5	Effective Date	
6	Term	[] years* (* note: if this Agreement provides for the Shipping of Coal for 10 years or more the Option and rolling 12 month extension process in Clause 20 applies)
7	Annual Contract Tonnage	Year Tonnage 20xx AAA 20yy BBB 20zz etc CCC
8	Terminal Component	<i>[For an Agreement which is entered by an Expansion Party in respect of one or more Expansion Component(s) only, insert details of the Expansion Component(s)]</i> <i>[For an Agreement which is entered in respect of the Existing Terminal (excluding Expansion Components), identify the Existing Terminal excluding any Expansion Components]</i>

SCHEDULE 2 - CALCULATION OF CHARGES – PLACEHOLDER TERMINAL INFRASTRUCTURE CHARGE AND MONTHLY PAYMENT

[Drafting Note: Please refer to Appendix 7 of DBCTM's submission, which sets out the pricing framework. Drafting to give effect to the pricing framework is being developed and this schedule will be updated to reflect the pricing framework.]

1. Monthly Payment (MP)

For each Terminal Component the User must pay to DBCT Management a Monthly Payment in each Month "m" of each Financial Year ($MP_{u,m}$), calculated as follows:-

$$\underline{MP_{u,m} = TIC \times MRT_{u,m}}$$

where:-

TIC is the Terminal Infrastructure Charge per tonne of Annual Contract Tonnage applicable for a relevant Financial Year to the Terminal Component as specified under Schedule 2, Section 2, and amended or adjusted in accordance with Schedule 2, Section 3; and

MRT_{u,m} is the number of tonnes which is the proportion of the Annual Contract Tonnage attributable to each Month "m" of a Financial Year in respect of the Terminal Component. Where the rate of the Annual Contract Tonnage for the User does not vary during a Financial Year and applies to the full Financial Year, the MRT_{u,m} for the User will be one-twelfth of the Annual Contract Tonnage for the relevant Financial Year. Where the rate of the Annual Contract Tonnage for the User varies during a Financial Year, the MRT_{u,m} will vary from Month to Month to reflect one-twelfth of the annualised rate of the Annual Contract Tonnage at that time.

The Monthly Payment will be adjusted during a Financial Year where the TIC is amended or adjusted in accordance with Schedule 2, Section 3.

2. Terminal Infrastructure Charge (TIC)

The Initial TIC for the Terminal Component for the Financial Year commencing on the Effective Date, being a charge per tonne of Annual Contract Tonnage for the Terminal Component, is \$[insert amount agreed between DBCTM and User or determined by the arbitrator in the event the Initial TIC is referred to arbitration under the Access Framework].

3. Amendment of the TIC

- (a) The TIC will be amended and adjusted annually and on the occurrence of a Review Event in accordance with section 10 and Schedule C of the Access Framework.
- (b) DBCT Management will notify the User of any amendment or adjustment to the TIC in accordance with Schedule C of the Access Framework.
- (c) Any amendment to the TIC will be effective from the date specified in the Access Framework.

SCHEDULE 3 - SERVICES

1. Train scheduling

DBCT Management must (subject to availability of trains and factors beyond its control) co-ordinate cargo assembly windows at the terminal to receive Coal parcels and provide train operators and ~~Users~~[Access Holders](#) with details of cargo receival windows suitable for terminal acceptance of trains and ensure sufficient unloading capacity is made available at the Terminal, to allow each Access Holder to ship its Annual Contract Tonnage of Coal in each Financial Year.

2. Train unloading

If a train carrying an Access Holder's Coal arrives at the Terminal within its designated cargo build window, DBCT Management must ensure that the train is unloaded at a rate (consistent with the type and condition of the Coal) consistent with achieving Handling of the Annual Contract Tonnage of Coal for an Access Holder.

3. Reclaiming and vessel loading

DBCT Management must:

- (a) make the Terminal available for berthing by vessels (which are satisfactory in all respects to receive Coal) nominated by the User, such that not less than the Annual Contract Tonnage can be Handled by DBCT Management in each Financial Year (as long as the vessel and/or cargo mix required by the User or its customer does not unreasonably impact on the efficiency of the Terminal). ~~It is agreed that historical vessel or cargo mixes prior to 30 June 2005 will be taken generally not to have unreasonably impacted on efficiency~~; and
- (b) load the User's Coal into a vessel which is nominated by the User and is available for loading so as to achieve the objective in section 3(a).

4. Incidental services

DBCT Management must provide the following services, incidental to Coal handling (unless provided directly by the Operator):

- sampling and survey services;
- vessel monitoring;
- co-ordination with ships' agents, masters, customers and other relevant entities;
- crew disembarkation services; and
- wharfage and line services.

5. Miscellaneous services

If required by the User or any ~~approval~~[Approval](#) or statutory authority notified to DBCT Management, DBCT Management must provide the following Miscellaneous Services to the User:

- moisture adding;

- compacting;
- surfactant adding;
- dozing;
- blending (subject to section 6(d) below); and
- any other services reasonably requested from time to time in writing by the User to DBCT Management, provided that such services will not unreasonably impact on the efficiency or capacity of the Terminal.

6. Stockpiling and blending

- (a) DBCT Management must provide to the User sufficient stockpile areas to allow cargo assembly (i.e. assembly of cargo for a nominated vessel with an appropriate arrival time) for vessels onto which the User's Coal is to be loaded.
- (b) Remnant management areas will be determined by the Operator in areas of the Terminal which are not required for cargo assembly and which can be made available for dedicated stockpiling without materially affecting efficiency of the Terminal. DBCT Management must ensure that the User is offered the opportunity to use a proportion of that stockpiling area which accords with its proportion of the total annual contract tonnage under all Access Agreements and Existing User Agreements.
- (c) The stockpiling rights in sections 6(a) and 6(b) are subject to any other obligation of DBCT Management under any Existing User Agreement with ~~another Access Holder~~^{an} Existing User entered into prior to 1 July 2004 (to the extent that such obligation has not been waived).
- (d) DBCT Management must blend Coal if so requested, but subject to requirements in the Terminal Regulations from time to time, which may:
 - (i) require Coal to be blended before it is received at the Terminal, where reasonably practicable;
 - (ii) require Coal to be blended into a stockpile where reasonably practicable (rather than being blended from stockpile); and
 - (iii) limit the proportions in which Coal may be blended (to limit the increase in consumption of capacity of the Terminal consumed because of blending).
- (e) DBCT Management must transfer the User's Coal from the train unloading facility at the Terminal to the relevant stockpile area or a cargo assembly area and stockpile the User's Coal in that area (except to the extent that a quality plan under the Terminal Regulations has been agreed to which provides for direct loading from train to vessel).

7. Prevention of contamination

DBCT Management must take all practicable measures to maintain the integrity of the User's Coal at the Terminal, including (without limitation) by:

- (a) avoiding contamination of the User's Coal, including (without limitation) contamination with other Coal or waste material; and
- (b) minimising handling and associated degradation of the User's Coal.

8. Data provision

DBCT Management must provide such information and access to systems as are reasonable to inform Access Holders of relevant data relating to handling of their Coal.

9. Co-ordination

Subject to the User providing relevant information to DBCT Management within a reasonable time, DBCT Management must:

- (a) ensure, as far as practicable, that it discharges its obligations in this Schedule in accordance with the requirements of the User's reasonable quality plans, reasonable shipping programs and contracts as notified to DBCT Management and the Operator from time to time consistent with Terminal Regulations, and
- (b) (subject to the foregoing and having regard to equity amongst Access Holders and Existing Users) use its best endeavours to minimise the aggregate cost to the User arising out of Handling at the Terminal (including Demurrage Costs and rail freight).

10. Terminal Regulations, Force Majeure, Laws and Operation & Maintenance Contract

The provision of each of the above services by DBCT Management is subject to (and DBCT Management's obligations are modified to the extent of):

- (a) any relevant provisions of the Terminal Regulations;
- (b) any specific provision of this Agreement including any provisions relating to an event of Force Majeure;
- (c) the ability of DBCT Management to require the Operator under the Operation & Maintenance Contract to provide the Services; and
- (d) without limiting section 10(c) any specific provision in the Operation & Maintenance Contract including any provisions relating to an event of force majeure.

11. Standard for Services

- (a) The provision of the above Services by DBCT Management must be carried out in accordance with due skill, care and diligence in accordance with the Access Framework, the Terminal Regulations, Good Operating and Maintenance Practice and all applicable Laws.
- (b) When providing the above Services, DBCT Management must take into account the following factors, where relevant:
 - (i) lowest total whole of life cost;
 - (ii) reliability and economy of performance;
 - (iii) maximising the effective life of the Terminal; and
 - (iv) DBCT Management's non-discrimination obligations under the Access Framework.

SCHEDULE 4 – UTILISATION ADVICE

(clause 6.1)

* This Utilisation Advice will satisfy the User's obligations under Clause 6.1 of the User Agreement and DBCT Management acknowledges that the User will be under no liability to DBCT Management if the actual number, types or tonnages of vessels or the amount of Coal is greater or fewer than the number, types, tonnages or amounts estimated in this Utilisation Advice.

+ Annual railing capacity is to be provided subject to the consent of the contractor providing rail haulage services to the User (which the User will endeavour to obtain)

++ Handi = Handimax, S-Pan = single parcel Panamax, M-Pan = multi-parcel Panamax, S-Cape = single parcel Capes & VLC, M-Cape = multi-parcel Cape & VLC, Unk. = Unknown (or same as historic if all tonnage included in this column)

SCHEDULE 5 - PRODUCT SHIPMENT NOTICE

(clause 9.1) *[Drafting Note: Consequential amendments to this Schedule 5 will be required in drafting changes to give effect to the pricing framework set out at Appendix 7 of DBCTM's submission dated 30 May 2018]*

TO	:	North Queensland Bulk Ports Corporation Limited (Fax:) DBCT Management Pty Ltd (Fax: 07 3002 3101)
FROM	:	<i>[User shipping coal]</i>
SUBJECT	:	Product Shipment Notice – DBCT
DATE	:	
PAGE	:	1 (including this cover page)

Ship Name:	
Date Departed:	
Shipping Number:	
Mine Name:	
User Agreement Name:	
Party liable for User Agreement charges:	
Total Number of Tonnes:	
Reference Tonnes: Non-Reference Tonnes: <small>(Add additional references for more than one class of Non-Reference Tonnage)</small>	

(This total **MUST** agree with Manifest. If the Manifest covers multiple cargoes, separate Product Shipment Notices for each cargo must be completed)

Does Manifest include more than one cargo?

No
Yes

User: _____ Date: _____

**SCHEDULE 6 - TEMPLATE FOR ASSIGNMENT OF ANNUAL CONTRACT
TONNAGE**

(clause 12.2)

Deed of Variation

DBCT Management Pty Limited

[User 1 full name]


and

[Assignee full name]


This Deed of Variation

is made on between the following parties:

- 1 **DBCT Management Pty Limited**
ACN 097 698 916)
of Level 15, 1 Eagle Street, Brisbane, Queensland
(DBCT Management)
 - 2 **The User named in item 1 of the Schedule**
([User 1])
 - 3 **The person named in item 3 of the Schedule**
([Assignee])

Recitals [Option 1 – Select this option where the Assignee **is not** an existing User.]

- A. DBCT Management is the owner of a long term lease of the Terminal.
 - B. [User 1] is a party to a User Agreement with DBCT Management, and under the User Agreement DBCT Management grants [User 1] a right to have an Annual Contract Tonnage of Coal Handled at the Terminal.
 - C. [User 1]'s entitlement to Ship Coal through the Terminal in the Swap Period under [User 1]'s User Agreement exceeds its requirements by the Swap Contract Tonnage.
 - D. [Assignee] wishes to Ship Coal through the Terminal in the Swap Period under a User Agreement.
 - E. [User 1] wishes to vary the Annual Contract Tonnage in its User Agreement so that [Assignee] is entitled to Ship the Swap Contract Tonnage through the Terminal in the Swap Period, and [User 1]'s entitlement to Ship Coal under [User 1]'s User Agreement is reduced accordingly.
 - F. [Assignee] wishes to enter into a User Agreement with DBCT Management to Ship the Swap Contract Tonnage through the Terminal in the Swap Period.
 - G. DBCT Management has agreed to consent to the variation to [User 1]'s User Agreement to achieve that objective, on the terms of this deed.

Recitals [Option 2 – Select this option where the Assignee is an existing User.]

- A. DBCT Management is the owner of a long term lease of the Terminal.

- B. [User 1] and [Assignee] are each a party to a User Agreement with DBCT Management, and under each User Agreement DBCT Management grants them a right to have an Annual Contract Tonnage of Coal Handled at the Terminal.
- C. [User 1]'s entitlement to Ship Coal through the Terminal in the Swap Period under [User 1]'s User Agreement exceeds its requirements by the Swap Contract Tonnage.
- D. [Assignee] wishes to Ship more Coal through the Terminal in the Swap Period than its entitlement under [Assignee]'s User Agreement.
- E. [User 1] and [Assignee] wish to vary the Annual Contract Tonnages in their respective User Agreements so that [Assignee] is entitled to Ship the Swap Contract Tonnage through the Terminal in the Swap Period (in addition to its existing Annual Contract Tonnage), and [User 1]'s entitlement to Ship Coal under [User 1]'s User Agreement is reduced accordingly.
- F. DBCT Management has agreed to consent to the variations to the User Agreements to achieve that objective, on the terms of this deed.

The deed witnesses

that in consideration of, among other things, the mutual promises contained in this deed, the parties agree:

1 Definitions and interpretation

1.1 Definitions

[Drafting Note: Consequential amendments to this clause I will be required in drafting changes to give effect to the pricing framework set out at Appendix 7 of DBCTM's submission dated 30 May 2018]

Effective Date means the date set out in item 7 of the Schedule.

Swap Contract Tonnage means the absolute tonnages (or respective tonnages for respective periods) set out in item 6 of the Schedule. Where the Swap Period relates to part, but not all, of a Financial Year, the Swap Contract Tonnage in respect of that period is expressed:

- (a) as an annualised rate for that period - for the purposes of calculating the Monthly Charges for the Swap Period under the User Agreement and determining the rate at which Shipping is permitted in that period; and
- (b) as an absolute amount in respect of that period which amount will be the amount to be taken into account in the Year End Adjustment, to the extent that it relates to Annual Contract Tonnage for the relevant Financial Year.

Swap Period means the period set out in item 5 of the Schedule.

[User 1]'s User Agreement means an agreement between DBCT Management and [User 1] bearing the date set out in item 2 of the Schedule.

[[Assignee]'s User Agreement means an agreement between DBCT Management and [Assignee] bearing the date set out in item 4 of the Schedule and DBCT Management.] *[Drafting Note: Select this option if the Assignee is an existing User.]*

[[Assignee]'s User Agreement means a User Agreement to be entered into between DBCT Management and [Assignee]. *[Drafting Note: Select this option if the Assignee is not an existing User.]*

User Agreement means one or more of [User 1]'s User Agreement and [Assignee]'s User Agreement as the context requires.

1.2 Interpretation

- (a) Terms which are defined in the User Agreement/s or Terminal Regulations have the same meaning in this deed (except where the context otherwise requires).
- (b) The interpretation provisions of the User Agreement/s apply in respect of the interpretation of this deed, as if set out in this deed.

2 Variations to User Agreement/s

2.1 [User 1]'s User Agreement

As of the Effective Date, the Annual Contract Tonnage in [User 1]'s User Agreement is reduced by the Swap Contract Tonnage for the Swap Period.

2.2 [Assignee]'s User Agreement

As of the Effective Date, the Annual Contract Tonnage in [Assignee]'s User Agreement will be the Swap Contract Tonnage for the Swap Period. *[Drafting Note: Delete this paragraph if the Assignee is not an existing User.]*

As of the Effective Date, the Annual Contract Tonnage in the [Assignee]'s User Agreement is increased by the Swap Contract Tonnage for the Swap Period. *[Drafting Note: Delete this paragraph if the Assignee is not an existing User.]*

2.3 Revised Consolidated Annual Contract Tonnages

DBCT Management will provide to [User 1] and [Assignee] respectively a revised, consolidated table of Annual Contract Tonnages for the Term of their User Agreement, to reflect the amendments [and new entitlements] pursuant to this deed. In the absence of manifest error, that table will be taken to replace the table of Annual Contract Tonnages previously applicable under the relevant User Agreement (if applicable). *[Drafting Note: Delete words in square brackets if the Assignee is an existing User.]*

2.4 Calculation of Entitlement under the Terminal Regulations

For the avoidance of any doubt, it is intended that [Assignee] will become entitled to the "Entitlement" under the Queue Management Procedures currently in place under the Terminal Regulations which [User 1] would (but for this deed) have previously been entitled to in relation to the Swap Contract Tonnage for the Swap Period, but that neither parties' Entitlements outside the Swap Period (if any) will be affected. *[Note: only required if Terminal Regulations include a Queue Management System at the time this deed is entered into]*

2.5 Transitional

- (a) The parties recognise that certain determinations (for example, the annualised amount of HCF and HCV) may have been made to date in respect of a current Financial Year before the variations in this deed were agreed.
- (b) DBCT Management shall, as soon as practicable, cause appropriate adjustments to be made in respect to the amounts charged under [[User 1]'s User Agreement/the respective User Agreements], to reflect the variations arising out of this deed. *[Drafting Note: Select the relevant option depending in whether the Assignee is an existing User.]*
- (c) Nothing in this deed requires DBCT Management or the Operator to pay or repay amounts other than adjustments of the kind already contemplated by [[User 1]'s User Agreement/the User Agreements]. In particular, DBCT Management is not as a result of the variations effected by this deed required to accelerate a payment, or to make a payment to either of the other parties which, in aggregate, is more than it would have otherwise have been required to make but for this deed. *[Drafting Note: Select the relevant option depending in whether the Assignee is an existing User.]*

2.6 User Agreements still in force

Except as set out in clauses 2.1 and 2.2 of this deed, the parties agree and acknowledge that all other provisions of [User 1]'s User Agreement/the User Agreements] remain in full force and effect. *[Drafting Note: Select the relevant option depending in whether the Assignee is an existing User.]*

3 Costs and stamp duty etc

- (a) [User 1] and [Assignee] will each bear their own costs and expenses in respect of the negotiation, preparation and execution of this deed.
- (b) [Assignee] will be liable for the costs and expenses (including legal costs) of DBCT Management in respect of the negotiation,

preparation and execution of this deed, and any stamp duty and other duties, taxes or other amounts payable as a result of this deed.

4 Governing law

This deed is governed by the laws of Queensland.

5 Counterparts

This deed may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one instrument.

Schedule to Deed of Variation

(clause 12.2 Standard Access Agreement)

Item

1.	User reducing Annual Contract Tonnage	[insert User 1 full name]
2.	[User 1]'s User Agreement (date)	[insert date]
3.	User [increasing / acquiring] Annual Contract Tonnage [Drafting Note: Select the relevant option depending on whether the Assignee is an existing User.]	[insert Assignee's full name] [insert date]
4.	[Assignee]'s User Agreement (date)	[insert date] [Drafting Note: Insert 'Not applicable' if the Assignee is not an existing User.]
5.	Swap Period	[insert start and end dates of Swap Period]
6.	Swap Contract Tonnage	[insert absolute no. of tonnes swapped for each relevant period and annualised rate for each period] Mt (Annualised rate*: [_____] Mtpa)
7.	Effective Date	[insert date of agreement to swap]

* Annualised rate = (Swap Contract Tonnage / No. of days in Swap Period) x 365

Executed as a deed:

**Signed sealed and delivered by
DBCT Management Pty Limited:**

Secretary/Director

Director

Name (please print)

Name (please print)

**Signed sealed and delivered by
[User 1 full name]:**

Secretary/Director

Director

Name (please print)

Name (please print)

**Signed sealed and delivered by
[Assignee full name]:**

Secretary/Director

Director

Name (please print)

Name (please print)

SCHEDULE 7 - TEMPLATE REQUEST FOR THIRD PARTY PERMISSION TO SHIP

(clause 12.5)

TO : Dalrymple Bay Coal Terminal Pty Ltd (Fax: 07 4956 3353)
 DBCT Management Pty Ltd (Fax: 07 3002 3101)

FROM : [Principal's name]
[Beneficiary's name]

SUBJECT : Request for Permission for Third Party to Ship Coal

DATE :

User offering the Capacity (Principal):	
Company accepting the Capacity (Beneficiary):	
Period pertaining to the swap:	
Total Number of Tonnes:	
Nominated Vessel (where known):	
Is this a: (a) Transfer (i.e. a one-way transaction) that will not be repaid; or (b) Swap (i.e. a two-way transaction) that will be repaid?	
When is repayment expected?	Repayment date: / /

Acceptance of this request is subject to receipt of separate Product Shipment Notice (PSN) for all cargos. Invoicing will be in strict accordance with User Agreement terms (i.e. all charges will be to the Principal).

Principal

Date of Request:

Beneficiary

Date of Request:

Request Approved:

DBCT Management Pty Ltd

Date of Approval:

SCHEDULE 8 - SECURITY

(clause 29)

[Insert details, if applicable]

[eg The User must provide the following Security from an entity which, in the reasonable opinion of DBCT Management, is reputable and of good financial standing, with the capability to fulfil all of the obligations of the User under this Agreement.]

SCHEDULE 9 - DEFINITIONS AND INTERPRETATION

[Drafting Note: Amendments to this Schedule 9 will be required in drafting changes to give effect to the pricing framework set out at Appendix 7 of DBCTM's submission dated 30 May 2018. Shaded terms in particular are pricing-related terms that will be reviewed.]

Definitions

"Access" means access to and the provision of the Services under a User Agreement. has the meaning given in the Access Framework.

"Access Agreement" has the meaning given in the Access Framework.

"Access Application" has the meaning given in the Access Framework.

"Access Charges" means amounts payable by a has the meaning given in the Access Holder under a User Agreement for Access Framework.

"Access Holder" means a person who has an entitlement to has the meaning given in the Access under a User Agreement Framework.

"Access Seekers" has the meaning given in the Access Framework.

"Access Framework" means the access framework (including its schedules) applying to DBCT Management from time to time relating to provision of the Services by it, as implemented under the Deed Poll.

"Additional Tonnage" means, in respect of all Access Holders in a relevant Financial Year, the aggregate of all Excess Tonnage for that Financial Year which, because of Terminal Capacity, could not have been Handled unless there had been an Early Termination. For clarification, the Additional Tonnage cannot exceed the relevant annual tonnages the subject of Early Termination.

"Aggregate Annual Contract Tonnage" means, in respect of a relevant Financial Year, the sum of the tonnages contracted to be Handled under all User Agreements for all Access Holders for that Financial Year. "Aggregate Reference Tonnage" has the meaning given in the Access Framework.

"Agreement" means this agreement, including all schedules attached to it.

"Agreement Revision Date" means:

- (a) the date of commencement of each Access Undertaking for the Terminal after the first Access Undertaking;
- (b) the date a Price Ruling is made that a Current Expansion will be a Differentiated Expansion Component under Section 5.12(e) of the Access Undertaking; and
- (c) if an Access Undertaking ceases to be relevant to the Terminal, then the date 5 years after the immediately previous Agreement Revision Date but if two such dates would otherwise occur within 12 months of each other, the parties may agree that one will be disregarded.

"Annual Contract Tonnage" means the maximum quantity of Coal that the User is entitled to deliver to and have Handled through the Terminal in a relevant Financial Year under this Agreement in accordance with Item 7 of Schedule 1 (as amended from time to time pursuant to this Agreement);

(a) **"Annual Contract Tonnage"** means the maximum quantity of Coal that the User is entitled to deliver to and have Handled through the Terminal in a relevant Financial Year under this Agreement in accordance with Item 7 of Schedule 1 (as amended from time to time pursuant to this Agreement) including tonnage which the User is entitled to have Handled but which may not, at a practical level, be able to be Handled due to circumstances such as a force majeure event or relevant provisions of Terminal Regulations and any tonnage which the User would be entitled to have Handled but for the suspension of the User's right to have the tonnage Handled under this Agreement; but

(b) **~~excluding ad hoc over shipments which may be permitted subject to available capacity.~~**

For clarification, where a Financial Year or any relevant period is less than twelve months, or the annualised rate of Annual Contract Tonnage varies during a Financial Year, the Annual Contract Tonnage will be expressed as the relevant annualised rate at a point in time for the purposes of calculating the charges payable each Month, but will nevertheless be the absolute amount of tonnes which the User is entitled to have Handled over the entire Financial Year for purposes such as **~~the determination of any Year End Adjustment, any Excess Charge,~~** any annual reconciliation of HCF and the tonnages included in the Aggregate Annual Contract Tonnage.

~~"Annual Revenue Requirement or ARR Approval"~~ has the meaning given in the Access **Undertaking Framework**.

"Business Day" means any day other than a Saturday, a Sunday, or a public holiday in Brisbane.

~~"Capital Charge"~~ has the meaning given in the Access **Undertaking**.

"Capital Expenditure" means expenditure which:

- (a) relates to replacement or **~~Expansion~~** expansion of any part of the Terminal;
- (b) relates to the refurbishment or upgrade of any part of the Terminal which can reasonably be expected to extend the life of the relevant part beyond its original useful life; or
- (c) otherwise relates to the refurbishment or upgrade of Terminal plant and/or infrastructure which is reasonably expected to improve whole of life cost or is incurred with the agreement of the Operator,

but not expenditure recovered through HCF or HCV.

"Cargo Manifest" means the manifest referred to in clause 9.

"Cash Rate Target" means, at a relevant time, the cash rate target then prevailing and published by the Reserve Bank of Australia on its website (www.rba.gov.au) at that time.

"Change of Control" will occur in the User if at any time during the term of this Agreement, any person obtains, or ceases to hold, directly or indirectly:

- (a) beneficial ownership of 50% or more (in aggregate) of the voting shares in the corporation; or
- (b) effective control of the board of directors of the corporation, other than as a result of the transfer of securities in a corporation listed on any recognised stock exchange.

"Claim" means any action, proceeding, allegation, demand or claim in any form for relief or compensation of any nature.

"Coal" means coal, coke, and other like materials as are approved by DBCT Management.

"Commencement Date" has the meaning given in the Access Framework.

"Conditional Access Agreement" has the meaning given in the Access Framework.

"Consequential Loss" means any one or more of the following:

- (a) Loss of profits; or
- (b) Loss of opportunity to make profits; or
- (c) Loss of business opportunity; or
- (d) special exemplary or punitive damages; or
- (e) any Loss which does not directly and naturally flow in the normal course of events from the occurrence of the event giving rise to the liability for such Loss, whether or not such Loss was in the contemplation of the parties at the time of entry into this agreement,

including any of the above types of Loss arising from an interruption to a business or activity.

[**"Current Expansion"** means *(to be inserted as applicable)*].

"Deed Poll" means the irrevocable deed poll dated [*insert*] given by DBCT Management under which it covenants to comply with the [Access Framework](#).

"Default Interest Rate" means, at a relevant time, the rate per annum equal to the Cash Rate Target at that time plus 3.5%.

"DBCT Management's Personal Responsibility" means DBCT Management's personal liability as a result of its own acts or omissions, independently of and excluding any liability which it might have directly or indirectly arising from the acts or omissions of the Operator or third parties (including contractors and subcontractors of DBCT Management).

"Delay" means any delay, inability or failure (for any reason, including breach of this Agreement or negligence) to Ship or Handle Coal in the tonnages and at the rates contemplated in this Agreement. For the User, this includes a failure to deliver Coal to the Terminal or an inability to schedule vessels to load Coal. For DBCT Management, this includes the inability to provide Services at the Terminal (in whole or part) for any reason when Coal would otherwise have been made available by the User.

"Demurrage Costs" means the average cost across all Access Holders [and Existing Users](#) of demurrage in respect of the loading of Coal on vessels at the Terminal over any period of 3 consecutive months (as estimated by the Operator in accordance with its historical practice of estimating notional demurrage costs).

"Differentially Priced Capacity" has the meaning given in the Access Framework.

"Differentiated Expansion Component" has the meaning given in the Access Framework.

"Differentiation" and "Differentiated" has the meaning given in the Access Framework.

"Direct Loss" means charges actually paid pursuant to this Agreement in respect of the period of the Delay. For the purposes of clause 13.4, the User's Losses arising out of a Delay will be taken to include the amount of the relevant Direct Losses.

"Due Date" has the meaning given in clause 5.1.

"Early Termination" means the termination of a User Agreement (the "**Terminated Agreement**") before its originally scheduled expiry date (but not where that occurred as a result of the exercise of a contractual right to terminate which was included in the Terminated Agreement when it was entered into, other than a right to do so for default in payment or insolvency of the Access Holder, or default by DBCT Management). For the purpose of this definition, termination for default in payment or insolvency will be taken to have occurred if DBCT Management terminates the Terminated Agreement on other grounds but in circumstances

~~where a default in payment or the insolvency of the Access Holder could have been reasonably expected within a reasonably short time thereafter had that termination not occurred).~~

"Effective Date" means, [subject to prior satisfaction of the condition precedent in clause 29.1,] the date set out as such in Schedule 1.

~~"Excess Charge" means the component of the Capital Charge payable in respect of Excess Tonnage, calculated in accordance with Schedule 2, Part B, Section [x].~~

~~"Excess Tonnage" means the number of tonnes of the User's Coal (excluding Non Reference Tonnage) Handled in a Financial Year which is more than the User's Annual Contract Tonnage for the Financial Year.~~

"Execution Date" is the date described as such in Schedule 1 and will be completed as the day this Agreement is executed by the last of the parties to execute it.

"Existing Terminal" has the meaning given in the Access Framework.

"Existing User" means a party who has an entitlement to have coal Handled through the Terminal as at the Commencement Date.

"Existing User Agreement" ~~has the meaning given in the Access Framework~~ means an agreement which is in force as at the Commencement Date by which DBCT Management has granted an Existing User an entitlement to have coal handled through the Terminal.

~~"Expansion" means the construction, purchase, installation or erection of new works intended to increase the Terminal Capacity.~~

"Expansion Component" has the meaning given in the Access Framework.

"Expansion Component Capacity" has the meaning given in the Access Framework.

"Expansion Party" has the meaning given in the Access Framework.

"Financial Year" means:-

- (a) the First Financial Year; and
- (b) each 12-month period from July 1 of one calendar year to June 30 of the next ensuing calendar year; and
- (c) any period from the last July 1 in the Term until the end of the Term.

"First Financial Year" means the period from the Effective Date to the next following 30 June.

"Fixed Operating Costs" means the aggregate of all amounts:

- (a) reasonably incurred or charged by the Operator (including any margin payable to the Operator under the Operation & Maintenance Contract);
- (b) reasonably incurred or charged by DBCT Management with the express written consent of not less than two thirds of Access Holders and Existing Users by contract tonnage; and
- (c) reasonably incurred by DBCT Management in exercising its rights under the Operation & Maintenance Contract to step in or take work out of the hands of the Operator (as a result of a default by the Operator),

to the extent that they represent a fixed cost of operating the Terminal.

"Force Majeure" means any event or circumstance not within the control of DBCT Management, and which, by the exercise of a reasonable standard of care and diligence, DBCT Management could not have overcome. Any act or omission of the Operator will be assumed to be beyond the control of DBCT Management, unless it has been specifically directed by DBCT

Management and carried out by the Operator in the manner in which it can reasonably be inferred that DBCT Management intended.

"Formula" has the meaning given in clause 7.3.

"Framework Agreement" means the framework agreement between DBCT Holdings Pty Ltd, the State of Queensland, DBCT Management and others dated 31 August 2001.

"Good Operating and Maintenance Practice" means, in the performance of any obligation under this Agreement, adherence to a standard of practice which includes the exercise of that degree of skill, diligence, prudence and foresight which would reasonably be expected from a competent, experienced and qualified operator of a facility comparable with the Terminal.

"GST Exclusive Consideration" has meaning given to it in clause 21(b).

"Handle" means the receiving by rail, unloading, stacking, storing, reclaiming and loading of vessels with Coal, including any other relevant Services required by the User using infrastructure at the Terminal.

"HCF" or **"Handling Charge - Fixed"** means the charge determined under clause 6.2.

"HCV" or **"Handling Charge - Variable"** means the charge determined under clause 6.3.

"Increment" has the meaning given in Schedule 2, Part B, Section [x].

"Independent Expert" means an independent expert appointed under clause section {16.3} of the Access Framework.

"Initial TIC" means the TIC for the Terminal Component to apply under this Agreement from the Effective Date or the commencement of a Pricing Period. The Initial TIC for the Terminal Component for the Financial Year commencing on the Effective Date is the amount specified in Schedule 2, clause 2.

"Law" means any law, statute, by-law, regulation, rule, order, ordinance, proclamation, or delegated or subordinated legislation of the Commonwealth or of any State or Territory of Australia or of any local government.

"Long Term Delays" means ongoing, sustained Delays that arise out of physical loss, destruction or damage at the Terminal.

"Loss" means any damage, loss (including loss of reputation), cost, expense, fine, penalty or liability incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

"Maintenance Work" means any work involving maintenance of or repairs to (including repair by replacement) any part of the Terminal, including any inspections or investigations required by Good Operating and Maintenance Practice.

"Miscellaneous Services" means:

- (a) services requested by the User from time to time which services are nominated in Schedule 3 as Miscellaneous Services; or
- (b) services to the extent that they are materially different (in nature, extent or cost) to the Services provided to other Access Holders and Existing Users at the Terminal including as a result of the nature of the User's Coal (or any contaminants in it) or requirements in respect of its handling, storage, blending, unloading or loading which result in materially additional costs or delays.

"Month" means a calendar month.

"Monthly Payment" means the monthly instalment of the TIC payable pursuant to clause 4.4, calculated (and adjusted as required) in accordance with Schedule 2, Part A, Section [x].

"**Mtpa**" means million tonnes per annum.

"**No Fault Interest Rate**" means, at a relevant time, the rate per annum equal to the Cash Rate Target at that time plus 0.2%.

"Non-Reference Tonnage" has the meaning given in the Access Framework;

"**Notified Period**" has the meaning given in clause 11.4.

"**Notified Tonnage**" has the meaning given in clause 11.4.

"**Notional Contracted Tonnage**" means, in respect of a Financial Year the Aggregate Annual Contract Tonnage.

"**Operation & Maintenance Contract**" means the agreement under which the Operator agrees to operate and maintain the Terminal on a day to day basis, and includes any other agreement in substitution for it under which DBCT Management agrees with a person to operate the Terminal.

"**Operator**" means Dalrymple Bay Coal Terminal Pty Ltd ACN 010 268 167 or such other contractor engaged by DBCT Management under the Operation & Maintenance Contract.

"Over-shipment" has the meaning given in Schedule 2, Part B, Section [x].

"**Permissible Delay**" means:

- (a) any Delay from which DBCT Management is released from liability pursuant to clauses 3.6(l) or 10.3; or
- (b) any Delay which is imposed by DBCT Management, acting reasonably:
 - (i) because it considers it necessary for the safety of any person or to prevent material damage to property (except where the threat to the person or property arises out of Wilful Default or reckless neglect on the part of DBCT Management); or
 - (ii) to facilitate the performance of Maintenance Work (other than Maintenance Work to the extent it is necessitated by Wilful Default or reckless neglect on the part of DBCT Management) or of an **Terminal Capacity** Expansion in accordance with clause 10.2.

"**Port**" means both the harbour of Hay Point proclaimed by the Governor-in-Council by Order-in-Council dated 30 October 1983, and all real property held by DBCT Management as part of or relating to that Port.

"**Port Services Agreement**" has the meaning given in the Framework Agreement.

"Pricing Period" means the period ending on 30 June 2026 and each subsequent 5 year period during the Term.

"**Product Shipment Notice**" means a notice in the form of Schedule 5.

"Provisional Increment" has the meaning given in Schedule 2, Part B, Section [x].

"Provisional Increment Repayment" has the meaning given in Schedule 2, Part B, Section [x].

"QCA" means the Queensland Competition Authority established under the QCA Act or any other relevant body from time to time having substantially similar powers in respect of the Terminal, including the power to arbitrate disputes over charges payable for access to services or to otherwise determine such charges.

"QCA Act" means the Queensland Competition Authority Act 1997 (Qld).

"**Quarter**" means:

- (a) each 3 month period commencing on 1 July, 1 October, 1 January and 1 April; and

- (b) in respect of the first quarter, commencing on the Effective Date and ending on the day before the commencement of the next quarter.

"**Rail Operator**" has the meaning given in the Access Framework.

~~"Reference Tariff" has the meaning given in the Access Framework.~~

~~"Reference Terms" has the meaning given in the Access Framework. For clarification, the terms of this Agreement will be taken to be Reference Terms.~~

~~"Reference Tonnage" has the meaning given in the Access Framework.~~

~~"Reference Tonnage Access Holder" has the meaning given in the Access Framework.~~

"Representative" has the meaning given to it in clause 17.4 "~~Revenue Cap~~" is the amount ~~DBCT Management is entitled to earn from Reference Tonnage and is calculated in accordance with Schedule 2, Part A, Section [x]~~.

"Review Event" has the meaning given to it in the Access Framework.

"Rules" has the meaning given in clause 15.4(a).

"Security" means any form of security or guarantee required to be provided or in fact provided pursuant to clause 29.

"Services" means the services described in Schedule 3.

"Ship" means the delivery of Coal to the Terminal by rail and the arrangement of vessels by the User such that DBCT Management is able to Handle the User's Annual Contract Tonnage.

"Socialised Terminal Capacity" has the meaning given in the Access Framework.

"Standard Access Agreement" has the meaning given in the Access Framework.

"Supplier" has the meaning given to it in clause 21(d).

"System" has the meaning given in the Access Framework.

"System Capacity" has the meaning given in the Access Framework.

"Term" means the term of this Agreement as specified in Item 6 of Schedule 1, as extended in accordance with this Agreement.

"Terminal" means the Terminal Component of the land and port infrastructure located at the Port of Hay Point which is owned by DBCT Holdings Pty Ltd or the State of Queensland and leased to DBCT Guarantor and/or DBCT Management, and known as the Dalrymple Bay Coal Terminal, and includes the following which form part of the Terminal Component:

- (a) loading and unloading equipment;
- (b) stacking, reclaiming, conveying and other handling equipment;
- (c) wharves and piers;
- (d) deepwater berths; and
- (e) shiploaders.

"Terminal Capacity" has the meaning given in the Access Framework.

"Terminal Capacity Expansion" has the meaning given in the Access Framework.

"Terminal Component" means the part of the Terminal as specified in Item 8 of Schedule 1.

"Terminal Infrastructure Charge" or "TIC" means the ~~component of the Capital Charge amount~~ (per tonne) payable on the Annual Contract Tonnage, ~~calculated specified in~~

Schedule 2, as adjusted in accordance with Schedule 2, Part A, Section [x].2 and the Access Framework.

"Terminal Regulations" means regulations in force and available on DBCT Management's website governing procedures for the operation of the Terminal existing as at the commencement of this Agreement as amended from time to time in accordance with the Access Framework.

"Terminating Date" has the meaning given in the Access Framework.

"Third Party Amount" means the amount for which DBCT Management is actually indemnified by the Operator and/or another third party (including a liability insurer) in respect of liability for any Claim made by the User, less DBCT Management's costs of recovery of that amount. For clarification, if a Delay affects more than one Access Holder or Existing User, then the aggregate amount of any payment received by DBCT Management which related to a common Third Party Amount claimed by such affected Access Holders or Existing Users will be distributed to them in the proportions of their respective annual contracted tonnages.

"User" means the person specified in item 3 of Schedule 1.

User Agreement means an agreement for the provision of Access to the Services.

"User Committee" has the meaning given to it in clause 17.1.

"Utilisation Advice" means a notice in the form in Schedule 4 given by the User to DBCT Management under clause 6.1.

"Variable Operating Costs" means the aggregate of all amounts:

- (a) reasonably incurred or charged by the Operator (including any margin payable to the Operator under the Operation & Maintenance Contract);
- (b) reasonably incurred or charged by DBCT Management with the express written consent of not less than two thirds of Access Holders and Existing Users by contract tonnage; and
- (c) reasonably incurred by DBCT Management in exercising its rights under the Operation & Maintenance Contract to step in or take work out of the hands of the Operator (as a result of a default by the Operator),

to the extent that they represent a variable cost of operating the Terminal.

"Vessel Nomination" means a vessel nomination notice given by the User under the Terminal Regulations for the purpose of finalising the relevant nominated parcel and vessel details for a proposed shipment.

"Wilful Default" means a deliberate act or omission which will result in (and can reasonably be expected to have been intended to result in) a breach of this Agreement and which, as soon as practicable, but in any event within 30 days after written notice (particularising the alleged breach) is given to the party alleged to be in default, is not either:

- (a) acknowledged by the defaulting party and rectified; or
- (b) disputed by the party allegedly in default and referred to dispute resolution in accordance with clause 15, but if the notice of default is ultimately determined by arbitration or order of a court or agreement to have been justified, then rectified as soon as practicable but in any event within 30 days of the adjudication or agreement.

For the purposes of this definition, rectification will be taken to have occurred within the time period stated above, even if not actually completed within that time period, if rectification is reasonably practicable and commences within the stated period and proceeds at all times expeditiously.

"Year 10" of this Agreement means the Financial Year commencing on 1 July [insert year].

"Year End Adjustment" means the adjustment calculated in respect of a Financial Year pursuant to Schedule 2, Part B, Section [x].

Interpretation

1. In this Agreement headings are for convenience only and do not affect its interpretation.
2. Except to the extent that the context otherwise requires:
 - (a) reference to any statute or statutory provision includes any modification or re-enactment of, or any legislative provisions substituted for, and all legislation and statutory instruments issued under such legislation or such provision;
 - (b) words denoting the singular include the plural and vice versa;
 - (c) words denoting persons or individuals include corporations, associations, trustees, instrumentalities and partnerships and vice versa;
 - (d) words denoting any gender include all genders;
 - (e) references to parties, clauses and Schedules are references to parties, clauses and Schedules to this Agreement as modified or varied from time to time;
 - (f) references to any document, deed or agreement include references to such document or agreement as amended, novated, supplemented, varied or replaced from time to time;
 - (g) references to any party to this Agreement or any other document, deed or agreement include its successors or permitted assigns;
 - (h) all references to dates and times are to Brisbane time;
 - (i) all references to "\$" and "dollars" are to the lawful currency of Australia;
 - (j) a reference to "including" shall be construed as "including, but not limited to," and "include" and "includes" shall be construed similarly;
 - (k) where a provision provides that a party "may" do something, "may" shall be construed as discretionary and without obligation;
 - (l) where any word or phrase is given a defined meaning, any other grammatical form of that word or phrase has a corresponding meaning;
 - (m) where a provision provides that a party will act reasonably or prudently, that shall (where the context permits) be construed in the context of DBCT Management's obligation to act in accordance with Good Operating and Maintenance Practice;
 - (n) where there is a requirement under this Agreement to consider whether the User or Access Holders are being treated or will be affected equitably, the party so considering must have regard to (amongst other things) the Access Holder's respective annual contract tonnage; and
 - (o) where measurement of Coal "Handled" (or in the context of the User, "Shipped") is being made in respect of a period, the tonnage loaded into vessels as determined in accordance with clause 9 will be taken to be the tonnage Handled (or, as the context requires, Shipped) in that period.
3. Payments on Business Days

Where the day on which any payment of money under this Agreement is to be made is not a Business Day, the payment may be made on the next Business Day.

4. [Change to index](#)

- (a) If the index used in any formula is not published at the time it is to take effect but will subsequently be published, then the formula will not be applied until such index is available, and the result of applying such formula at such later date shall be backdated to the date of effect.
 - (b) If an index used in any formula under this Agreement is suspended or discontinued, then:
 - (i) it shall be replaced by the index substituted for it; or
 - (ii) if the index is not substituted by another index, the parties shall, acting in good faith, meet to agree a replacement index. If the parties cannot agree upon a replacement index within 28 days, then either party may refer the issue to dispute resolution in accordance with clause 15.
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EXECUTION

Executed as an agreement

Signed for
DBCT
Management Pty Limited
by its representative
in the presence of:

Witness

Director

Name (please print)

Name (please print)

Signed for
DBCT Investor Services Pty Ltd
as trustee for the DBCT Trust
by its representative
in the presence of:

Witness

Director

Name (please print)

Name (please print)

Signed for
[Insert User name]:
by its representative
in the presence of:

Witness

Representative

Name (please print)

Name (please print)

Rationale for changes to DBCT Access Framework — Pricing amendments

This table summarises substantive changes to the Access Framework (Framework) to implement the pricing framework set out in DBCTM's submission to the QCA dated 30 May 2018. This table does not summarise further typographic amendments or drafting clarifications (including, for example, changes to the capitalisation of terms that are not defined, corrections to cross-references or formatting/clause numbering and clarification of whether disputes under the Framework can be referred to either expert determination or arbitration) which have been identified in the 2017 Access Undertaking and SAA and which have been corrected in the revised Framework and SAA.

Section	Changes	Rationale
1.6 (Implementation of Differentiation in Access Agreements)	<p>Change reference to 'Existing User Agreements' in title of clause to 'Access Agreements'</p> <p>At Section 1.6(b) - Delete 'and the allocation of costs relating to it' and the final sentence of paragraph (b)</p>	<p>References to 'Existing User Agreements' have been removed from Section 1.6 because any future Differentiation will have implications only for an Access Agreement entered into after commencement of the Access Framework.</p> <p>The reference to the 'allocation of costs' has been deleted as it is unnecessary and could cause confusion in circumstances where pricing is not based solely on a cost-based model. The final sentence of Section 1.6(b) has been deleted because it could prevent efficient multi-part pricing and price discrimination, which as recognised in section 168A of the QCA Act and the CPA principles, should be allowed for when it aids efficiency. The Framework also retains an obligation on DBCTM not to unfairly differentiate between Access Seekers/Access Holders.</p>
3.1 (Role of DBCT Management)	<p>At Section 3.1(c) - Clarify that DBCTM's obligation to comply the Framework can be modified in an Access Agreement</p> <p>At Section 3.1(f) - Amend so consistent with change to Section 3.1(b)</p>	The change to Section 3.1(c) clarifies that DBCTM's obligation to comply with provisions of the Framework in respect of a particular access holder can be modified in an Access Agreement with that access holder or by law. The drafting of section 3.1(f) has been consequentially amended.
3.2 (Role of the Operator)	At Section 3.2(a), (b) and (c) - Add references to 'Existing Users'	The introduction of references to 'Existing Users' throughout the Framework is consequential to the amendment of the definition of 'Access Holder' so that that term is defined (only) by reference to an entitlement to access under a user agreement entered into under the Framework (discussed below).
5.1 (Framework for negotiation)	Add obligations based on sections 100 and 101(1) of the QCA Act	<p>Paragraphs (c) to (e) of Section 5.1 have been added to make it clear that similar general obligations to those that apply under the QCA Act that apply in respect of declared services will also apply without declaration. In particular:</p> <ul style="list-style-type: none"> • DBCTM and an Access Seeker must negotiate in good faith for reaching an Access Agreement. • DBCTM must not unfairly differentiate between Access Seekers in a way that has a material adverse effect on the ability of more of more Access Seekers to compete with other Access Seekers. • In negotiations for an Access Agreement, DBCT Management must make all reasonable efforts to try to satisfy the reasonable requirements of the Access Seeker.

Section	Changes	Rationale
5.2 (Application for Access and information to be provided)	<p>At Section 5.2(b) - Clarify implications of Access Seeker not agreeing to comply with the Framework and Deed Poll</p> <p>At Section 5.2(c) - Provide for Access Seeker to notify DBCTM if information it provides becomes inaccurate</p> <p>At Section 5.2(d) - Remove requirements to provide information specified in section 101(2) of the QCA Act</p>	<p>Clause 5.2(b) has been amended to clarify that DBCTM will have no obligations, and an Access Seeker no rights, under the Framework in respect of an Access Application if the Access Seeker does not agree to comply with the Framework and Deed Poll.</p> <p>The change to Section 5.2(c) adds an additional requirement for an Access Seeker to notify DBCTM if it becomes aware that information provided in an Access Application is (or is likely to be) inaccurate. The impact of this change will not be onerous for Access Seekers, and would be expected to occur during the access negotiation process in any event. Ensuring that information provided by the Access Seeker and relied upon by DBCTM is accurate at all times will minimise delay in the finalisation of the request.</p> <p>In relation to the change to Section 5.2(d), section 101(2) of the QCA Act only applies to declared services and therefore will not be applicable if declaration expires. Further, some of the information required to be provided as specified in section 101(2) (such as the costs of providing the service and information about the value of the access provider's assets) would not be required by an Access Seeker at the preliminary information stage, given the new pricing framework is based on negotiation between DBCTM and an Access Seeker (with a TIC determined in the event of an arbitration that reflects the TIC that would be agreed between a willing but not anxious buyer and a willing but not anxious seller, rather than based on a cost-based model). The obligation for DBCTM to provide reasonably available preliminary information in Section 5.2(d)(1) and have initial meetings to discuss a proposed Access Application have been retained to ensure that Access Seekers can obtain relevant information from DBCTM. In addition, DBCTM will be required to make reasonable efforts to try to satisfy the reasonable requirements of the Access Seeker under new Section 5.1(e).</p>
5.3A (Renewal Applications)	At Section 5.3A(a) - Renewal Access Applicants to agree to the terms of the Framework and Deed Poll	This section has been added so that Renewal Access Applicants must comply with the requirements, obligations and processes in the Framework and the Deed Poll. The amendment is necessary to reflect the terms of the Deed Poll and the basis on which DBCT Management's commitments in the Deed Poll are being made. It is consistent with the change made to Section 5.2 (relating to Access Seekers agreeing to the terms of the Framework and Deed Poll) in the version of the Access Framework submitted by DBCTM to the QCA on 30 May 2018, and the change to Section 5.3A has been made for consistency and completeness.

Section	Changes	Rationale
5.5 (Indicative Access Proposal)	<p>At Section 5.5(d)(3) - Remove reference to 'non-Reference Terms' and replace with 'different terms'</p> <p>At Section 5.5(d)(5) and (6) - Delete references to QCA and replace with Expansion Arbitrator.</p> <p>Clarify drafting in (d)(5) and (6)</p> <p>At the end of Section 5.5(d)(5)(B) and (6)(E) - Delete 'for any estimates related to a Differentiated Expansion Component'</p> <p>At Section 5.5(e) - Clarify terminology</p> <p>At 5.5(g) and (h) - Clarify dispute resolution procedure</p>	<p>The concept of 'Reference Terms' is no longer apposite in circumstances where there is no 'Reference Tariff', so the reference to 'non-Reference Terms' has been replaced with 'Different Terms'. The concept of a Reference Tariff is based on a charge being approved by the QCA, which will no longer occur if the service is not declared.</p> <p>References to the QCA in Section 5.5(d)(5) and (6) will be redundant if declaration expires and have therefore been removed throughout the Framework. Given matters will not fall for determination by the QCA, consequential amendments have been made which provide for an Expansion Arbitrator to determine matters relating to expansions.</p> <p>The drafting in paragraph (d)(5) has been clarified. On the original drafting, the operation of sub-paragraphs (A) and (B) (including in particular the circumstances in which the various content requirements operate including in particular the requirement to include indicative Access Charges in an Indicative Access Proposal) is unclear. Paragraph (d)(5) has therefore been amended to clarify that:</p> <ul style="list-style-type: none"> • where there is sufficient Available System Capacity to accommodate the Access Application, indicative Access Charges must be included in the Indicative Access Proposal regardless of whether a Terminal Capacity Expansion is required (provided it is reasonable to provide such an indication); and • where the sufficiency of Available System Capacity for the provision of any of the Access sought depends on the Completion of a planned or reasonably expected Terminal Capacity Expansion, the Indicative Access Proposal must include an initial assessment of the applicable Pricing Method (i.e. Socialised or Differentiated), indicative Access Charges that reflect that assessment and, if no Price Ruling has been made determining the applicable Pricing Method, also indicative Access Charges that reflect the alternative Pricing Method. <p>Analogous amendments have been made to paragraph (d)(6).</p> <p>The phrase 'for any estimates related to a Differentiated Expansion Component' at the end of Section 5.5(d)(5)(B) and (6)(E) has been deleted because cost allocation will be required wherever there is a Differentiated Expansion Component in existence or contemplation and there does not appear to be a reason why cost allocation of non-expansion costs is only contemplated where the estimate of Access Charges relates to a Differentiated Expansion Component.</p> <p>The terminology under Section 5.5(e) has been clarified to better reflect the new pricing framework, with reference to 'estimate' replaced with 'indication'.</p> <p>The applicable dispute resolution procedure has been clarified in Section 5.5(g) and (h).</p>
5.6 (Response to Indicative Access Proposal)	Clarify drafting and dispute resolution procedure	The drafting in Section 5.6 has been amended to clarify the provision. In particular, as there are two types of notice provided by an Access Seeker under the provision, references to responses to 'the notice' have been clarified to make it clear which notice is being referred to. The applicable dispute resolution procedure has also been clarified in Section 5.6(e).

Section	Changes	Rationale
5.7 (Negotiation process)	At Section 5.7(f) - Provide for a dispute to be referred to dispute resolution within 3 months of the end of the negotiation period	Section 5.7 has been amended to provide that a dispute may be referred to dispute resolution within 3 months of the end of the negotiation period, to ensure there is certainty as to when a dispute can be raised.
5.10 (Funding of feasibility studies)	Clarify drafting At Section 5.10(o) - Remove references to Regulated Asset Base and align with new pricing framework	The drafting in Section 5.10 has been amended to clarify the provision. Section 5.10(o) has been amended to reflect the new pricing framework and that there will not be an asset base regulated by the QCA if the service is no longer declared.
5.11 (Access Agreement Process)	Align with Standard Access Agreement and other changes in Framework relating to Existing User Agreements	Section 5.11 has been amended to align it with the Standard Access Agreement provisions relating to seeking additional capacity.
5.12 (Review of Pricing Method and Indicative Access Charges)	Amend to reflect the new pricing framework	Section 5.12 has been amended to reflect the new pricing framework. In particular, Section 5.12(a)(2) has been amended to reflect that an Expansion Arbitrator will make a Price Ruling about whether pricing relating to an expansion will be differentiated or socialised and the prudence of capital expenditure relating to the expansion relevant to the TIC. References to 'Different Terms' in Section 5.12 have been amended as the Expansion Arbitrator will not have the power to determine different terms. It will remain open for the parties to agree different terms. In Section 5.12(b)(8), the reference to 'Reference Tariff' has been replaced with 'Terminal Infrastructure Charge' to reflect that the concept of a Reference Tariff is no longer apposite because it is based on a charge being approved by the QCA, which will no longer occur if the service is not declared.
5.13 (Access Transfers)	At Section 5.13(d) - Remove reference to 'without limitation'	The reference to 'Without limitation to section 16' has been removed from Section 5.13(d) as disputes regarding the Framework are referred to dispute resolution under Section 16 of the Framework. The previous wording 'Without limitation' was based on disputes being separately referred to the QCA, which will no longer be applicable if the service is not declared.
8.4 (Complaint handling)	Remove reference to Rail Operator or other affected party	As the Section 16 dispute resolution process is only open to Access Seekers and Access Holders, consistent with the Deed Poll which provides that the beneficiaries are Access Seekers, Access Applicants, Access Holders, DBCT Holdings and the State (clause 2.1 of the Deed Poll), Rail Operators and other affected parties cannot use Section 16 to enforce these ring-fencing obligations.

Section	Changes	Rationale
10 (Pricing arrangements)	Amend to reflect new pricing framework	<p>Section 10 has been amended to reflect the pricing framework set out in Appendix 7 to DBCTM's submission to the QCA dated 30 May 2018. Consistent with that Appendix, Section 10 includes:</p> <ul style="list-style-type: none"> • Provisions to reflect that the Initial Access Charges to apply from the commencement of an Access Agreement or Pricing Period will be as negotiated between DBCTM and an Access Seeker, or determined by an arbitrator. In the case of an arbitration, the arbitrator must (among other things) determine an Initial TIC for the relevant Terminal Component that, in summary: <ul style="list-style-type: none"> - reflects a TIC that would be agreed between a willing but not anxious buyer and a willing but not anxious seller; - is no less than the Floor TIC calculated in accordance with Schedule C of the Framework; and - is no greater than the Ceiling TIC calculated in accordance with Schedule C of the Framework. • Provisions relating to amendments to the TIC payable by an access holder under an Access Agreement in the form of the Standard Access Agreement if a Review Event occurs, including arbitrations of disputes regarding amendments to the TIC during a Pricing Period. <p>References to the QCA/QCA Act will be redundant if declaration expires and have therefore been removed throughout the Framework. Given matters will not fall for determination by the QCA, consequential amendments have been made which provide for an Independent Expert to determine matters relating to cost allocation in Section 10.7.</p> <p>References to the Regulated Asset Base and Reference Tariff have also been removed to reflect that there will not be an asset base regulated by the QCA if the service is no longer declared and that the concept of a Reference Tariff is no longer apposite because it is based on a charge being approved by the QCA, which will no longer occur if the service is not declared.</p> <p>The pricing objectives that are in Section 11.2 of the current access undertaking have been deleted as they have been superseded by the introduction of the objective for the Framework (see Section 1.3 of the Framework).</p> <p>Section 11.2 (limits on price differentiation) of the current access undertaking has not been retained in the Framework. As acknowledged in the pricing principles in section 168A of the QCA Act, multi-part pricing and price discrimination should be allowed for when it aids efficiency. The Framework does not therefore prevent multi-part pricing and price discrimination.</p> <p>The expansion pricing principles have been amended consistent with paragraph 24 of Appendix 7 to DBCTM's submission to the QCA dated 30 May 2018, to include a requirement that the arbitrator have regard to the financeability of any proposed expansion pricing arrangement, and to clarify the drafting in light of the new pricing framework.</p>

Section	Changes	Rationale
11.1 (Procedure for determining Terminal Capacity and System Capacity)	Clarify drafting and align with Standard Access Agreement	<p>The drafting of Section 11.1 has been amended to clarify that there are two distinct procedures for the determination of Terminal Capacity and System Capacity under section 11.1 (one in which a current estimation has been accepted by an expert under Section 11.1(m)(3) and one in which there is no such expert estimation), and the circumstances in which an expert estimation will be considered sufficiently current to apply.</p> <p>References to the Regulated Asset Base have also been amended throughout Section 11 to reflect that there will not be an asset base regulated by the QCA if the service is no longer declared and that the prudence of Capital Expenditure will be determined by the Expansion Arbitrator.</p> <p>Section 11.1(k) has been amended to align with clause 10.3(b) of the Standard Access Agreement.</p>
11.4 (Accommodation of Capacity)	Clarify drafting	<p>Section 11.4(a) and (b) have been consolidated because previously paragraph (a) was incomplete. It specified a condition but not obligation where the condition was met (which appeared to be due to an inadvertent paragraph break).</p>
11.5 (Undertaking Terminal Capacity Expansions)	<p>At Section 11.5(a)(2) - Remove provisions relating to justifications for different terms</p> <p>Amend to reflect new pricing framework</p>	<p>Paragraphs (A) and (B) of Section 11.5(a)(2) have been amended to remove the requirement for a Terminal Capacity Expansion application to include details of how the Conditional Access Agreement complies with the Standard Access Agreement and a justification as to why the Conditional Access Agreement does not need to comply with the Standard Access Agreement. This is because the Expansion Arbitrator will not have the power to determine different terms. It will remain open for the parties to agree different terms.</p> <p>As noted above, references to the Regulated Asset Base have also been amended throughout Section 11 to reflect that there will not be an asset base regulated by the QCA if the service is no longer declared and that any determination of the prudence of Capital Expenditure by the Expansion Arbitrator will be applied in any subsequent determination by an Arbitrator of a Floor TIC or amended TIC for the Existing Terminal or a Floor TIC for the Differentiated Expansion Component (as relevant) in that Capital Expenditure determined by the Expansion Arbitrator to be prudent will be taken into account by the Arbitrator in determining that Floor TIC or amended TIC.</p> <p>Paragraphs (o) to (q) of Section 11.5 have been deleted as the concepts of a Reference Tariff, Revenue Cap and Annual Revenue Requirement approved by the QCA will no longer be applicable if the service is not declared.</p>
11.6 (Interest during construction for Terminal Capacity Expansions)	<p>Amend title to refer to interest during construction rather than return on capital</p> <p>Amend Section to reflect new pricing framework</p>	<p>Under the new pricing framework, there is no determination of any Annual Revenue Requirement or Regulated Asset Base as the TIC is no longer cost-based and costs are relevant only in the determination of the Floor TIC, being the TIC that would apply under a QCA administered pricing regime. As a result, there is no role for any return on capital for a Regulated Asset Base following a Terminal Capacity Expansion and paragraphs (b) and (c) of Section 11.6 have been removed.</p> <p>Section 11.6 has therefore been retitled to reflect the remaining paragraph of that Section (concerning interest during construction for Terminal Capacity Expansions).</p>

Section	Changes	Rationale
11.7 (Unreasonable and uneconomic proposed Terminal Capacity Expansions)	At Section 11.7(d) - Remove reference to QCA	Section 11.7(d) has been amended to reflect the new pricing framework and that there will not be a cost base regulated by the QCA if the service is no longer declared.
11.10 (Non-expansion capital expenditure)	Amend to remove references to QCA, Reference Tariff and Regulated Asset Base	References to the QCA, Reference Tariff and Regulated Asset Base have been amended to reflect that the QCA will not have a role in approving NECAP if the service is no longer declared, and that there will not be an asset base regulated by the QCA or a Reference Tariff approved by the QCA. The general process for NECAP (involving expenditure being recommended by the Operator and approved by Access Holders, or otherwise accepted by an independent party as prudent having regard to certain factors) has been retained. However, instead of the QCA, NECAP will be assessed by an arbitrator if there is a dispute about an adjustment to a TIC if there is a NECAP Review Event.
12.1 (Access Agreements)	At Section 12.1(c) - change 'in all material respects be consistent with' to 'be substantively identical to'	Section 12.1(c) has been amended to enable an Access Seeker to require that an Access Agreement be substantively identical to the Standard Access Agreement, to tighten the drafting and reduce the lack of clarity in the phrase 'in all material respects consistent with'. This change will reduce the risk of disputes as to the default terms upon which access will be provided.
12.2 (Minimum Term of Access Agreements)	At Section 12.2(d) - Clarify based on differences between Access Agreements and Existing User Agreements	Section 12.2(d) has been amended consistent with the amendment of the definition of 'Access Holders' so that that term is defined by reference (only) to an entitlement to access under a user agreement entered into under the Framework (discussed below).
16.1 (Disputes)	Clarify which disputes are disputes under the Framework	Section 16.1 has been amended to clarify that disputes regarding the determination or review of access charges applicable under an Access Agreement that contains pricing provisions that are in substantively identical terms to those under the Standard Access Agreement applicable at the time of entry into the Access Agreement is a dispute under the Framework. This is to reduce the potential for confusion as to whether disputes about charges are raised and determined under the Access Agreement or Framework provisions. Consequential changes have also been made to Section 16.1 based on clarifications added to the Deed Poll.

Section	Changes	Rationale
16.4 (Determination by Arbitration)	<p>Include provisions relating to confidentiality of arbitrations</p> <p>Clarify that an arbitrator must determine terms and conditions of access that are substantively identical to the terms of the Standard Access Agreement and (in an arbitration relating to access charges) make a determination in accordance with Section 10 of the Framework</p> <p>Provide that, in an arbitration relating to Access Charges, the parties agree that the arbitration will be consolidated</p>	<p>New paragraph (e) of Section 16.4 has been added to make clear that arbitration proceedings and determinations are confidential (as provided for under the <i>Commercial Arbitration Act 2013 (Qld)</i>), other than that DBCTM may disclose an Initial TIC determined by an arbitrator for a Pricing Period in subsequent negotiations with an Access Seeker relating to that Pricing Period or an arbitration concerning such an Initial TIC.</p> <p>New paragraphs (f) and (g) of Section 16.4 have been added to make it clear that an arbitrator must determine terms and conditions of access that are substantively identical to the terms of the Standard Access Agreement and (in an arbitration relating to access charges) make a determination in accordance with Section 10 of the Framework, except to the extent necessary to give effect to a matter agreed by the parties to the arbitration.</p> <p>As set out in paragraph 36 of Appendix 7 to DBCTM's submission to the QCA dated 30 May 2018, if more than one user is involved in a dispute with DBCTM as to the charges to apply from the start of a Pricing Period, there will be a single arbitration of such disputes. This is to ensure efficiency and reduce the risk of inconsistent arbitral outcomes. New paragraph (j) has been added to Section 16.4 to provide for this. It has been included in the Framework rather than Standard Access Agreement as Section 16.1 provides that disputes relating to charges to apply from the start of a Pricing Period under an Access Agreement that contains pricing provisions that are substantively identical to those in the Standard Access Agreement are to be dealt with under the Framework, not the Access Agreement, for the reasons explained above.</p>
Schedule A - Access Application Form and Renewal Application Form		
Forms	Clarify relevance of forms to Existing Users	The forms in Schedule A have been amended to clarify the relevance of the forms to Existing Users seeking additional capacity.
Schedule B - Standard Access Agreement		
3.1 (Agreement to provide Access)	At clause 3.1(a) - Include requirement for DBCTM to comply with the Access Framework	Clause 3.1(a) has been amended so that DBCTM has a corresponding obligation to the requirement for the User to comply with the Framework.
3.6 (Terminal Regulations)	Clarify drafting and align with Access Framework provisions relating to Terminal Regulations	Clause 3.6 has been amended to align it with the equivalent provisions in the Access Framework. The introduction of references to 'Existing Users' throughout the Standard Access Agreement is consequential to the amendment of the definition of 'Access Holder' so that that term is defined (only) by reference to an entitlement to access under a user agreement entered into under the Framework (discussed below).
4.3 (Access Charges)	Amend to reflect new pricing framework	Clause 4.3 has been amended to reflect that, under the new pricing framework, there will not be Excess Charges, Year End Adjustments or Provisional Increment Repayments (as such concepts are based on there being a revenue cap approved by the QCA, which will not apply if the service is not declared). The concept of Capital Charge has also been removed as it is unnecessary in light of this change.

Section	Changes	Rationale
4.5 (User to Pay Excess Charge) and 4.6 (DBCTM Management to pay Year End Adjustment) and 4.7 (DBCT Management to pay Provisional Increment Repayment)	Delete	Clauses 4.5 to 4.7 have been deleted to reflect that, under the new pricing framework, there will not be Excess Charges, Year End Adjustments or Provisional Increment Repayments (as such concepts are based on there being a revenue cap approved by the QCA, which will not apply if the service is not declared).
New 4.8 (DBCT Management's business interruption insurance)	Remove reference to 'Reference Terms'	Clause 4.8 has been amended to replace the term 'Reference Terms' with 'the terms of the Standard Access Agreement' because, as noted above, the concept of 'Reference Terms' is no longer apposite in circumstances where there is no 'Reference Tariff'. The concept of Reference Tariff is no longer included in the Framework or Standard Access Agreement because it is based on a charge being approved by the QCA, which will no longer occur if the service is not declared.
5.1 (Calculation, rendering and payment of tax invoices)	At clause 5.1(b) - Delete reference to Excess Charge At clause 5.1(c) - Delete paragraphs relating to Excess Tonnage and Excess Charge Delete clause 5.1(e) and (f)	Clause 5.1 has been amended to reflect that, under the new pricing framework, there will not be Excess Charges, Year End Adjustments or Provisional Increment Repayments (as such concepts are based on there being a revenue cap approved by the QCA, which will not apply if the service is not declared).
6.2 (HCF) and 6.3 (HCV)	At clauses 6.2(a) and 6.3(a) - Delete 'For clarification, tonnages referred to in this clause included Reference Tonnages and Non-Reference Tonnages'; clarify that HCF and HCV is calculated in respect of a Terminal Component and remove reference to tonnage shipped that is higher than the User's Annual Contract Tonnage in definition of ACT	<p>The concept of 'Reference Tonnage' is no longer apposite in circumstances where there is no 'Reference Tariff', so the references to 'Reference Tonnages' and 'Non-Reference Tonnages' have been removed. The concept of Reference Tariff is no longer included in the Framework or Standard Access Agreement because it is based on a charge being approved by the QCA, which will no longer occur if the service is not declared. References to the relevant Terminal Component have also been added to sections 6.2 and 6.3 to make clear that HCV and HCF is paid in respect of a Terminal Component.</p> <p>The definition of ACT has been amended to reflect the change to clause 11.2 (discussed below), which restricts a user from shipping in excess of its Annual Contract Tonnage unless pursuant to an assignment.</p>
7 (Review of access charges)	Amend to reflect new pricing framework	Clause 7 has been amended to reflect the pricing framework set out in Appendix 7 to DBCTM's submission to the QCA dated 30 May 2018. As noted in paragraphs 32-36 of that Appendix, the Standard Access Agreement provides for access charges, and the method of their determination, review and payment, to apply under the Agreement from the start of each 5 year Pricing Period after the first Pricing Period to be reviewed, at the request of either party, in advance of that time. The process for the review of access charges involves a similar process to the process for reviews on Agreement Revision Dates under the current Standard Access Agreement, with disputes able to be referred to arbitration.

Section	Changes	Rationale
10.3 (Terminal and System Capacity) and 11.1 (Adjustments at User's request)	<p>At clause 10.3 - Clarify drafting and align with Framework</p> <p>At clause 10.3(e) and 11.1(c) - Clarify that agreements to increased tonnage are subject to the provisions relating to Access Seekers seeking increased Access under Section 5 of the Framework</p>	<p>Clause 10.3 has been amended to clarify the drafting and align it with equivalent provisions in the Framework.</p> <p>Clauses 10.3(e) and 11.1(c) have been amended to clarify that agreements to increase tonnage are subject to the provisions relating to Access Seekers seeking increased Access under Section 5 of the Framework, given Access Seeker is defined in the Framework to include a person seeking increased Access and to ensure consistency with the intent underlying the definition of Access Seeker that applications for increased access are treated as Access Applications.</p>
11.2 (Shipping Coal in excess of Annual Contract Tonnage)	<p>Amend clause to provide that user may not ship coal in excess of its Annual Contract Tonnage and remove references relating to Reference Tonnage and Excess Tonnage</p>	<p>Clause 11.2 has been amended to reflect that, under the new pricing framework, there will not be Excess Charges (as the concept of an Excess Charge is based on there being a revenue cap approved by the QCA, which will not apply if the service is not declared). In light of this, the clause has been amended to provide that a User may not ship coal in excess of its Annual Contract Tonnage, unless it is assigned additional annual contract tonnage from another Access Holder. In practice, this is what already occurs and the shipping of coal subject to excess charges is very rare.</p> <p>The final sentence of clause 11.2 has been deleted because the concepts of 'Reference Tonnage' and 'Non-Reference Tonnage' are no longer apposite in circumstances where there is no 'Reference Tariff'. The concept of Reference Tariff is no longer included in the Framework or Standard Access Agreement because it is based on a charge being approved by the QCA, which will no longer occur if the service is not declared.</p>
11.3 (User not using Annual Contract Tonnage)	At clause 11.3 - Delete paragraph (f)	Clause 11.3(f) has been deleted because, as noted in the row above, the concepts of 'Reference Tonnage' and 'Non-Reference Tonnage' are no longer apposite in circumstances where there is no 'Reference Tariff'.
12.3 (Response to requests for consent to assignment by User)	Clarify drafting	Clause 12.3 has been amended to clarify and simplify the drafting.
15.2 (Disputes) and 15.4 (Arbitration procedure)	Clarify drafting and align with Framework	Clauses 15.2 and 15.4 have been amended to clarify the drafting and align it with equivalent provisions in the Framework. Consequential changes have also been made to clause 15.2 based on clarifications added to the Deed Poll.
16.1 (Warranties by DBCT Management)	Delete clause 16.1(d)	Clause 16.1(d) of the current Standard Access Agreement has not been retained in the Standard Access Agreement. As acknowledged in the pricing principles in section 168A of the QCA Act, multi-part pricing and price discrimination should be allowed for when it aids efficiency. The Standard Access Agreement has therefore been amended to ensure that it does not prevent multi-part pricing and price discrimination when it aids efficiency.
20 (Options)	Clarify drafting and align with other changes in Framework relating to Existing User Agreements	Clause 20 has been amended to clarify the drafting and align it with other changes in the Framework and Standard Access Agreement relating to Existing User Agreements (discussed below).

Section	Changes	Rationale
Schedule 2 (Calculation of Terminal Infrastructure Charges and Monthly Payment)	Amend to reflect new pricing framework	<p>Schedule 2 has been amended to reflect the pricing framework set out in Appendix 7 to DBCTM's submission to the QCA dated 30 May 2018. The Schedule provides for:</p> <ul style="list-style-type: none"> the calculation of a monthly payment (in substantively the same manner as is currently done under the current Standard Access Agreement); specification of the Initial TIC (as agreed between DBCTM and a user, or determined by the arbitrator in the event the Initial TIC is referred to arbitration under the Framework); and the amendment and adjustment of the TIC annually and on the occurrence of a Review Event in accordance with the Framework.
Schedule 3 (Services)	Align with Schedule E of the Framework	Schedule 3 has been amended to align it with the equivalent schedule (Schedule E) of the Framework.
Schedule 5 (Product Shipment Notice)	Delete references to 'Reference Tonnes' and 'Non-Reference Tonnes' in table	References to 'Reference Tonnes' and 'Non-Reference Tonnes' in the template Product Shipment Notice in Schedule 5 have been deleted because the concepts of 'Reference Tonnage' and 'Non-Reference Tonnage' are no longer apposite in circumstances where there is no 'Reference Tariff'. The concept of Reference Tariff is no longer included in the Framework or Standard Access Agreement because it is based on a charge being approved by the QCA, which will no longer occur if the service is not declared.
Schedule 6 (Template for Assignment of Annual Contract Tonnage)	At clause 1.1 - Delete paragraph (b) of definition of 'Swap Contract Tonnage'	Paragraph (b) of definition of 'Swap Contract Tonnage' has been deleted to reflect that, under the new pricing framework, there will not be Year End Adjustments (as the concept of a Year End Adjustment is based on there being a revenue cap approved by the QCA, which will not apply if the service is not declared).
	At clause 2.2 - Correct drafting notes	The drafting notes in clause 2.2 have been amended as they were incorrect in the context of the relevant provisions to which they relate.
Schedule 9 Definitions and Interpretation	Amended definitions to reflect changes in SAA Delete clause 4 of the Interpretation section	<p>Certain definitions in Schedule 9 have been amended based on other changes made to the Framework and the SAA (the rationale for which is set out elsewhere in this table).</p> <p>Clause 4 of the Interpretation section in Schedule 9 has been deleted as it is not relevant in light of changes made to Schedule 2 of the Standard Access Agreement.</p>
Schedule C - The Terminal Infrastructure Charge		
2 (Initial Terminal Infrastructure Charge)	Provide for Floor TIC and Ceiling TIC	Section 2 of Schedule C defines the Floor TIC and Ceiling TIC for the purposes of an arbitration relating to the Initial TIC under Section 10 of the Framework. The Schedule is consistent with paragraphs 17 to 19 of Appendix 7 to DBCTM's submission to the QCA dated 30 May 2018.

Section	Changes	Rationale
3 (Review of the TIC)	Provide for changes to the TIC under an Access Agreement	<p>Consistent with paragraphs 27-29 of Appendix 7 to DBCTM's submission to the QCA dated 30 May 2018, Section 3 of Schedule C sets out the manner in which the TIC may be adjusted. In particular, it provides for the TIC to be amended:</p> <ul style="list-style-type: none"> • annually based on CPI escalation; and • if a Review Event occurs. <p>As outlined in paragraph 29 of Appendix 7 to DBCTM's submission to the QCA dated 30 May 2018, there are three types of Review Event under the pricing framework - in summary, Review Events relating to:</p> <ul style="list-style-type: none"> • changes in aggregate annual contract tonnage; • Terminal Capacity Expansions; and • Non-expansion capital expenditure (NECAP). <p>Clause 3 of Schedule C of the Framework provides for the TIC to be adjusted as follows if a Review Event occurs:</p> <ul style="list-style-type: none"> • In the case of a Review Event relating to a change in aggregate annual contract tonnage, the TIC will be amended based on a utilisation adjustment factor (based on the terminal utilisation ratio immediately prior to the occurrence of the change in tonnage and the terminal utilisation ratio consequent upon the change in tonnage). As is the case under the current access undertaking, an amendment to the TIC following a Review Event relating to a change in tonnage will be effective from the first day of the month following the month in which the Review Event occurs. • In the case of a Review Event relating to a Terminal Capacity Expansion that is Socialised, the TIC will be adjusted based on the costs of the expansion (by using the difference between the Floor TIC immediately prior to the expansion and the Floor TIC consequent upon the Review Event as the basis for the adjustment). The formula for the adjustment also provides for the effect of a Socialised Expansion on the utilisation adjustment factor to be taken into account in determining the amended TIC (with the amendment of the TIC by reference to the utilisation adjustment factor described in the first bullet point above not applying in those circumstances). • In the case of a Review Event relating to NECAP, the TIC will be adjusted annually in each remaining year of the relevant Pricing Period based on the return on and return of the relevant NECAP Asset Base. <p>As set out in paragraphs 30-31 of Appendix 7 to DBCTM's submission to the QCA dated 30 May 2018, a user may refer a dispute regarding an amendment to the TIC to arbitration. Section 10 of the Framework provides for an arbitration in respect of an amendment to the TIC under Schedule C, including a provision for the arbitrator to assess whether the amendment to the TIC would cause the TIC to exceed the then applicable Ceiling TIC or fall below the then applicable Floor TIC. If the amendment to the TIC would cause the TIC to exceed the Ceiling TIC or to fall below the Floor TIC, the arbitrator must not apply the amendment to the TIC to the extent that that amendment would otherwise result in an amended TIC that is higher than the Ceiling TIC or lower than the Floor TIC.</p>

Section	Changes	Rationale
Schedule E - Services		
Align with other changes in Framework relating to Existing User Agreements		The introduction of references to 'Existing Users' throughout the Framework is consequential to the amendment of the definition of 'Access Holder' so that that term is defined (only) by reference to an entitlement to access under a user agreement entered into under the Framework (discussed below). The deletion of the last sentence of section 3(b) of Schedule E is consequential to the change to the definition of Access Holder.
Schedule G - Definitions		
Amended the definitions section to reflect changes in Framework that give effect to the new pricing framework		<p>Certain definitions have been amended based on other changes made to the Framework (the rationale for which is set out elsewhere in this table). The changes include:</p> <ul style="list-style-type: none"> • New definitions of "Capacity Expert", "Ceiling TIC", "Demurrage Costs" (to align with the Standard Access Agreement), "Existing User", "Floor TIC", "Initial Access Charges", "Initial TIC", "NECAP Asset Base", "NECAP Risk Free Rate", "Non-Expansion Capital Expenditure or NECAP" and "Pricing Period". • Deleting definitions "Additional Tonnage", "Additional Tonnage Amount", "Aggregate Reference Tonnage", "Annual Revenue Requirement", "Capital Charge", "Effective Date", "Excess Charge", "Excess Tonnage", "Increment", "Interim Reference Tariff Period", "Non-Reference Tonnage", "Over-shipment", "Provisional Increment", "Provisional Increment Repayment", "Reference Tariff", "Reference Terms", "Reference Tonnage", "Reference Tonnage Access Holder", "Regulated Asset Base", "Revenue Cap", "Terminal Capacity Expansion Risk Free Rate", "WACC(3) Rate" and "Year End Adjustment". • Amending definitions "Access", "Access Agreement", "Access Charges", "Access Holder", "Aggregate Annual Contract Tonnage", "Annual Contract Tonnage", "Construction Period Risk Free Rate", "Differentiation", "Early Termination", "Expansion Component", "Price Ruling", "Review Event", "Socialisation", "Terminal Component", "Terminal Regulations", "Tonnage", "WACC(1) Rate" and "WACC(2) Rate". <p>References to 'Access Agreements' and 'Access Holders' in the Framework have been amended to make it clear that the Framework applies to Access Seekers and Access Holders who negotiate and enter into a user agreement under the Framework, and does not apply to Existing Users (for which Existing User Agreements entered into before the commencement of the Framework apply).</p>

Irrevocable Deed Poll

DETAILS

Date **2018**

Parties Name DBCT Management Pty Limited
Address Level 15, 1 Eagle Street, Brisbane QLD 4000

BACKGROUND

- A The Terminal is a common user coal port. The Terminal includes in-loading, stockpiling, reclaiming, out-loading, and associated facilities for the handling of coal. The Terminal is located at the Port of Hay Point, south of Mackay in Queensland.
- B On 14 September 2001, the DBCT Trustee as trustee of the DBCT Trust, and DBCT Management, entered into a number of agreements with DBCT Holdings and PCQ (both wholly owned by the State) under which DBCT Trustee and DBCT Management were granted a 50 year lease (with an option for a further 49 years) of the Terminal.
- C An Operator is contracted to operate the Terminal on behalf of DBCT Management pursuant to an operations and maintenance contract. The Operator of the Terminal has historically been user-owned and independent of the lessee.
- D On 8 September 2020, the declaration of coal handling services at the Terminal under the *Queensland Competition Authority Act 1997* (Qld) expired. The Framework has been developed in response and provides a balanced approach to the provision of Access and a framework (based on a negotiate/arbitrate model) to manage negotiations in an efficient and transparent manner for Access Seekers seeking Access to the Services at the Terminal.
- E The Framework provides for:
 - a. the negotiation and provision of Access to the Services at the Terminal; and
 - b. measures to mitigate potential adverse effects on competition which could arise out of the ownership of a related Supply Chain Business.
- F As prescribed in Section 1.3(a) of the Framework, the objective of the Framework is to promote the economically efficient operation of, use of and investment in, the Terminal, with the effect of promoting effective competition in upstream and downstream markets.
- G The Framework has been prepared in accordance with, and gives effect to, the Framework Objective.
- H For the benefit of the Covenantees only, this Deed Poll:
 - a. confirms that subject to clauses 5, 7 and 8 of this Deed Poll, the Framework will remain in effect for the Term; and
 - b. prescribes how the Framework may be amended.

TERMS

1 Definitions and Interpretation

Definitions

- 1.1 In this Deed Poll, capitalised terms will have the same meaning as the meaning given to those terms in the definitions section of the Framework.

Background means the background section of this Deed Poll.

Confirmed Access Seekers has the meaning given in clause 2.1.1.

Covenantees has the meaning given in clause 2.1.

Framework means the Dalrymple Bay Coal Terminal Access Framework dated 9 September 2020 as it may be amended from time to time. A copy of the Framework which is current as at the date of this Deed Poll is at Annexure A to this Deed Poll.

Framework Objective has the meaning given in Section 1.3(a) of the Framework.

The State means the Treasurer of the State of Queensland from time to time.

Interpretation

- 1.2 In the interpretation of this Deed Poll, the following provisions apply unless the context otherwise requires:

- 1.2.1 headings are inserted for convenience only and do not affect the interpretation of this Deed Poll;
- 1.2.2 a reference in this Deed Poll to any document or agreement is to that document or agreement as amended, novated, supplemented or replaced;
- 1.2.3 a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed Poll;
- 1.2.4 where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- 1.2.5 a word which indicates the singular also indicates the plural, a word which indicates the plural also indicates the singular, and a reference to any gender also indicates the other genders;
- 1.2.6 references to the word ‘include’ or ‘including’ are to be interpreted without limitation; and
- 1.2.7 any schedules and attachments form part of this Deed Poll.

2 Beneficiaries of deed poll

- 2.1 DBCT Management makes the covenants in this Deed Poll exclusively in favour of, and only for the benefit of:

- 2.1.1 Access Seekers who have signed an Access Application Form or Access Renewal Form as set out at Schedule A to the Framework, or who are a party to a Conditional Access Agreement (**Confirmed Access Seekers**);
- 2.1.2 Access Applicants;

- 2.1.3 Access Holders; ~~including Access Holders as at the date of this Deed Poll and entities who become Access Holders in the future;~~
- 2.1.4 DBCT Holdings; and
- 2.1.5 The State,
(together, **Covenantees**).

- 2.2 DBCT Management makes the covenants in this Deed Poll on the date of this Deed, and then each day until the end of the Term.
- 2.3 DBCT Management makes the covenants in this Deed Poll subject to the conditions set out at clauses 8.4, 9, 10 and 11 of this Deed Poll.

3 Deed poll is irrevocable

- 3.1 DBCT Management covenants in favour of the Covenantees that it will not revoke or amend this Deed Poll during the Term.

4 Framework to be remain in effect and compliance with Framework

- 4.1 Subject to any amendments permitted in accordance with clauses 5, 7 and 8 of this Deed Poll, DBCT Management covenants in favour of the Covenantees that the Framework will remain in effect for the Term.

4.2 Subject to clause 9.2.3, DBCT Management covenants in favour of the Covenantees only that it will comply with the Framework.

5 Framework objective

- 5.1 DBCT Management covenants in favour of the Covenantees that it will not amend the Framework Objective, except with the prior written consent of the State.

6 Notice of intention to renew or not renew

- 6.1 At least 12 months before the tenth anniversary of the Commencement Date, DBCT Management will publish the following on its website:
 - 6.1.1 notice of its intention to renew, or not renew, the operation of the Framework for a further term; and
 - 6.1.2 where operation of the Framework is being renewed for a further term, details of the term and a copy of the Framework with any amendment(s).

7 Review of framework by agreement

- 7.1 If:
 - 7.1.1 as a result of any review of the Framework by DBCT Management and the Access Holders, DBCT Management and the Access Holders agree that amendment of the Framework is desirable; or
 - 7.1.2 DBCT Management (acting reasonably) considers it necessary that the Framework be amended so as to rectify a significant inequity or significant unfairness suffered by an Access Seeker, Access Applicant, Access Holder or DBCT Management, which inequity or unfairness was not generally foreseen or intended at the Commencement Date,

then DBCT Management will, subject to and in accordance with clause 8, amend the Framework to address the relevant issue(s).

- 7.2 For clarification, an amendment to the Framework may include an amendment to the Standard Access Agreement as set out at Schedule B to the Framework.

8 Amendments to framework

- 8.1 The Framework can only be amended in accordance with this clause 8.
- 8.2 DBCT Management can amend the Framework, from time to time, so long as the amendment(s) promotes the Framework Objective.
- 8.3 DBCT Management will consult with Confirmed Access Seekers, Access Applicants and Access Holders regarding any proposed amendment(s).
- 8.4 In the event that a Confirmed Access Seeker, Access Applicant and / or Access Holder has any concern about, or objection to, the proposed amendment(s), it will bring the concern or objection to DBCT Management's attention within one month of it having first been consulted by DBCT Management in relation to the proposed amendment(s).
- 8.5 DBCT Management covenants in favour of the Covenantees that if, and when, it amends the Framework it will have regard to each of the following:
- 8.5.1 the legitimate business interests of DBCT Holdings in its capacity as the owner of the Terminal;
 - 8.5.2 the legitimate business interests of DBCT Management in its capacity as the operator of the Terminal;
 - 8.5.3 public interest, including the public interest in having competition in markets (whether or not in Australia);
 - 8.5.4 the interests of Confirmed Access Seekers and Access Applicants, including whether adequate provision has been made for compensation if the rights of Access Holders are adversely affected;
 - 8.5.5 the effect of excluding existing assets for pricing purposes;
 - 8.5.6 the following pricing principles in relation to the price of access to the Terminal:
 - 8.5.6.1 the price should generate expected revenue for the Terminal that is at least enough to meet the efficient costs of providing access to the Terminal and include a return on investment commensurate with the regulatory and commercial risks involved;
 - 8.5.6.2 the price should allow for multi-part pricing and price discrimination when it aids efficiency;
 - 8.5.6.3 the price should not allow DBCT Management to set terms and conditions that discriminate in favour of the downstream operations of DBCT Management or a related body corporate of DBCT Management, except to the extent the cost of providing Access to other operators is higher; and
 - 8.5.6.4 the price should provide incentives to reduce costs or otherwise improve productivity.
- 8.6 Subject to this clause 8, if DBCT Management and each Access Holder reach agreement on mechanisms to improve the overall efficiency of the Dalrymple Bay Coal Chain, DBCT Management will consult with the Access Holders regarding the amendment(s) to the Framework reasonably required to implement the

agreed mechanisms (to the extent relevant to the Services, the Terminal or the Framework) and will amend the Framework accordingly.

- 8.7 Any amendment(s) to the Framework in accordance with this clause 4-8 will be published as soon as reasonably practicable on DBCT Management's website.

9 Breach of deed poll

- 9.1 DBCT Management acknowledges that damages are not an adequate remedy for breach of this Deed Poll.

- 9.2 DBCT Management makes the covenants in this Deed Poll subject to the following conditions:

9.2.1 damages are not a remedy for any breach of this Deed Poll; and

9.2.2 the only remedy available for any breach of this Deed Poll is specific performance; and

9.2.3 if a Covenantee alleges that DBCT Management has not complied with its obligations at clause 4.2, any dispute arising will be determined in accordance with the dispute resolution provisions contained in the Framework, and not this Deed Poll.

10 Governing law

- 10.1 This Deed Poll is governed by the laws in force in the State of Queensland.

11 Jurisdiction

- 11.1 Subject to clause 9.2.3, The the courts of Queensland have exclusive jurisdiction to determine any disputes arising out of or in connection with this Deed Poll.

- 11.2 In the event that any one or more of the Covenantees, commences proceedings against DBCT Management for an alleged breach of clauses 4.1, 5, 6, 7 and / or 8, such proceedings must be filed and served on DBCT Management within 90 days of the date that the relevant amendment(s) to the Framework were first published on DBCT Management's website. DBCT Management may rely upon this clause 11.2 as a complete defence to any proceedings filed or served 91 days or more after the date that the relevant amendment(s) to the Framework were first published on DBCT Management's website.

EXECUTION

Executed as a Deed.

SIGNED, SEALED AND DELIVERED by

DBCT Management Pty Ltd ACN 097 698 916 acting
by the following persons or, if the seal is affixed,
witnessed by the following persons in accordance
with s127 of the Corporations Act 2001:

.....
Signature of director

.....
Signature of director / company secretary

.....
Name of director (print)

.....
Name of director / company secretary (print)

ANNEXURE A

Framework (current as at [insert date of Deed Poll])