Dalrymple Bay Coal Terminal Access Undertaking

DAAU to amend 2017 Access Undertaking

Submitted by DBCT Management Pty Ltd

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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.

(Declared service under QCA Act**)** In March of 2001 the State passed a regulation under which the handling of coal at the Terminal was made a "declared service" for the purposes of the QCA Act. Access providers of declared services have an obligation under the QCA Act to negotiate with, and in certain circumstances provide access to, third parties seeking access to that service. The regulator under the QCA Act is the QCA.

(Draft access undertaking under QCA Act) The QCA Act has provisions that allow the owner or operator of a declared service to voluntarily submit a draft access undertaking to the QCA which sets out the terms and conditions upon which access will be granted to Access Seekers. If the draft access undertaking meets certain criteria set out under the QCA Act and is approved by the QCA, it will regulate third party access to the service.

(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.

(Port Services Agreement) One of the agreements referred to above, the Port Services Agreement, requires DBCT Trustee to prepare a draft access undertaking on behalf of DBCT Holdings (which as the owner of the Terminal was formally responsible for submitting the draft access undertaking) for submission to the QCA for approval under the QCA Act. The Port Services Agreement also specifies a number of issues the draft access undertaking must address above and beyond the requirements of the QCA Act.

(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.

(Previous access undertakings) The first access undertaking for the Terminal was approved by the QCA in June 2006. That undertaking was superseded by a further access undertaking for the Terminal that was approved by the QCA in September 2010 (**2010 Access Undertaking**). The 2010 Access Undertaking was due to expire on 30 June 2016 but was extended by an extension DAAU approved by the QCA on 16 June 2016 until the earlier of 30 June 2017 and the approval date of this Undertaking.

(Background to this Undertaking) On 23 June 2015 the QCA issued an initial undertaking notice under the QCA Act. In response to that Notice, DBCT Management submitted an Undertaking to the QCA on 9 October 2015, to replace the 2010 Access Undertaking and to establish a new term.

(Approval of this Undertaking) After a public consultation process, the QCA approved this Undertaking on 16 February 2017.

1.2 Scope of Undertaking

This Undertaking 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 common ownership within the Brookfield Group of both DBCT Management and the Trading SCB.

1.3 Duration of Undertaking

This Undertaking will apply on and from the Approval Date. It will apply until the Terminating Date unless withdrawn as provided for in the QCA Act.

1.4 Reviews of Undertaking

(a) **(General reviews)** If:

(1) as a result of any review of this Undertaking by DBCT Management, the Access Holders and the QCA, DBCT Management, the Access Holders and the QCA agree that amendment of the Undertaking is desirable; or

(2) the QCA considers it necessary that the Undertaking be amended so as to rectify a significant inequity or significant unfairness suffered by an Access Seeker, Access Holder or DBCT Management, which inequity or unfairness was not generally foreseen or intended at the Approval Date,

then DBCT Management will submit to the QCA a draft amending access undertaking addressing the relevant issue or issues, for approval under the QCA Act.

(b) **(Undertaking includes Standard Access Agreement)** For clarification, an amendment to this Undertaking may include an amendment to the Standard Access Agreement.

1.5 Access Agreements and effect on Existing User Agreements

This Undertaking 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 Undertaking requires a party to an Existing User Agreement to vary a term or provision of that Existing User Agreement.

1.6 Amendment to Undertaking

Any amendment to this Undertaking will be prepared and submitted to the QCA by DBCT Management in accordance with the QCA Act.

1.7 Implementation of Differentiation in Existing User 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 Undertaking; and

(b) in good faith, take all reasonable steps to negotiate any necessary amendments to any Access Agreement executed prior to Pricing Ruling, including Existing User Agreements, to ensure that they are consistent with the Access Charges being calculated in accordance with the provisions of this Undertaking 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 Undertaking 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 Undertaking.

3 Role of DBCT Management and the Operator

3.1 Role of DBCT Management

(a) The owner or operator of a declared service may voluntarily submit a draft access undertaking to the QCA under section 136(1) of the QCA Act or be required to do so under section 133(1) or 134(2) of the QCA Act.

(b) The owner of the Terminal (and consequently the declared service) is DBCT Holdings.

(c) 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. Accordingly, DBCT Management is the operator (within the meaning of that term in the QCA Act) of the declared service.

(d) DBCT Management will comply with and give effect to this Undertaking and any applicable laws relating to the provision of Access as the operator.

(e) DBCT Management will ensure that employees, subcontractors and agents of subcontractors comply with the requirements of this Undertaking, except as otherwise provided for under an Access Agreement.

(f) Where the performance of an obligation under this Undertaking requires a Related Body Corporate of DBCT Management (including Trading SCB) to take or refrain from taking some action, DBCT Management must procure that the Related Body Corporate takes or refrains from taking that action.

(g) 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 this Undertaking, including (without limitation) with any direction from the QCA under this Undertaking.

3.2 Role of the Operator

During the term of the Undertaking, 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;

(b) each Access Holder has a right under the constitution of DBCT PL to become a shareholder of DBCT PL;

(c) if an Access Holder is not a shareholder of DBCT PL but wishes to become a shareholder of DBCT PL then that Access Holder 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 Undertaking, 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 I.

4 Services to be provided

DBCT Management must provide the Services at the Terminal in accordance with this Undertaking 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 Undertaking).

5 Negotiation arrangements

5.1 Framework for negotiation

(Outline) This Section 5 of this Undertaking outlines the process which will be followed to enable Access Seekers to obtain Access. It deals with:

(a) an Access Application by an Access Seeker and a Renewal Application by an Access Applicant;

(b) provision of an Indicative Access Proposal by DBCT Management;

(c) negotiations to develop an Access Agreement;

(d) principles for the entering into of Access Agreements where it is conditional upon a Terminal Capacity Expansion; and

(e) various other provisions relating to when and the basis on which Access Agreements may be entered into pursuant to Access Applications.

(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.

5.2 Application for Access and information to be provided

(Form of Access Application) Any application for Access must be in the form specified in Schedule A and include:

(a) a warranty in the form specified in; and

(b) such other information that may be required by,

Schedule A.

(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.

(Information sought by Access Seeker prior to Access Application) Prior to submitting an Access Application, an Access Seeker may request from DBCT Management:

(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

(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)

(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.

(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.

(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).

(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 Undertaking, then the Access Seeker may refer the matter for dispute resolution in accordance with Section 17 of this Undertaking 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 Undertaking 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) an Access Application submitted to DBCT Management on or after the Commencement Date but before 28 February 2017 will, unless the Access Application is renewed under Section 5.3A, expire on 31 August 2017;

(3) any Access Application submitted to DBCT Management on or after 1 March 2017 will, unless the Application is renewed under Section 5.3A, expire on the next occurring 31 August; and

(4) 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;

(2) for Access Applications for which the expiry date is set by Section 5.3(f)(2), 5.3(f)(3) or 5.3(f)(4), 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) the warranty in the form specified in Schedule A; and

(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.

(b) **(Forecasts in Access 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 Section 5.2 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 Undertaking, then the Access Applicant may refer the matter for dispute resolution in accordance with Section 17 of this Undertaking 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 the following paragraph, 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):

(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 Undertaking; and

(3) the priority of 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 Terminal Capacity at any relevant time to accommodate an increase in 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 Undertaking. 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 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 that 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 Undertaking).

(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;

(A) re-deliver one signed copy to such Notified Access Seeker; and

(B) 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 Undertaking).

(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 QCA determines to be fair is provided within 20 Business Days after the QCA 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 17 – 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 Undertaking;

(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 12 of this Undertaking, 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 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 Undertaking), 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 12.1(l) or 12.1(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, 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 Holder 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 Undertaking.

(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 QCA determines to be fair is provided within 20 Business Days after the QCA 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 12.1(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 12.1(k)(2) 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 12.1(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 number of 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 access undertaking which applied prior to this Undertaking 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 Undertaking, as if this Undertaking 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 12.1(k)) will be:

(A) firstly utilised to eliminate shortfalls in Annual Contract Tonnages under existing Access 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 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, with the approval of the QCA, 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 which has an option to extend the term of its Access Agreement or Existing User Agreement 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 Undertaking 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 12 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 Undertaking, 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 17.

(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 dispute resolution in accordance with Section 17 of this Undertaking. 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 QCA.

(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 non-Reference 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 Undertaking);

(5) if there is sufficient Available System Capacity to accommodate the Access Application, advice to that effect, and:

(A) an initial assessment of the Pricing Method applicable to the Access sought (including reasons), having regard to any planned or reasonably expected Terminal Capacity Expansion that is required, relevant QCA rulings 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:

(i) the initial assessment of the applicable Pricing Method; and

(ii) where provision of any of the Access sought depends upon completion of a 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 11.11 for any estimates related to a Differentiated Expansion Component;

(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 Undertaking (including as a result of the relevant Access Application);

(D) an initial assessment of the Pricing Method applicable to the Access sought (including reasons) having regard to any planned or reasonably expected Terminal Capacity Expansions, relevant QCA rulings and the Expansion Pricing Principles;

(E) where reasonable, an estimate of prospective Access Charges for the requested Services in the Access Application based on:

(i) the initial assessment of the applicable Pricing Method; and

(ii) the alternative Pricing Method,

with the Non-Expansion Costs being allocated in accordance with Section 11.11 for any estimates related to a Differentiated Expansion Component; and

(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 of Access Charges**) In estimating the applicable Pricing Method(s) and resulting Access Charges for the purpose of this Section 5, DBCT Management shall use its best endeavours to provide an accurate assessment, 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 17 of this Undertaking.

(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 12 of this Undertaking 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 Undertaking, it will advise the Access Seeker of the estimated timeframes. If the Access Seeker does not believe the proposed timetable is reasonable or that DBCT Management is not making reasonable progress, it may refer the matter to dispute resolution in accordance with Section 17 of this Undertaking.

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 Undertaking, it must notify DBCT Management 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 Undertaking.

(d) **(Response to notice of non-compliance)** DBCT Management must use all reasonable efforts to respond to this notice, including, where appropriate, the making of revisions to the Indicative Access Proposal, within 20 Business Days of the notification under this Section 5.6. 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 this Section; or

(2) DBCT Management's estimated date to respond to the notice,

the Access Seeker may seek to resolve the dispute in accordance with the dispute resolution procedure in Section 17.

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 (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 term, 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 Undertaking, 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 12.1, 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 the following paragraph, 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 during the negotiation period a dispute arises between the parties that, after reasonable negotiations, the parties are unable to resolve to their mutual satisfaction, then either party may seek to resolve the dispute in accordance with the dispute resolution process set out in Section 17.

(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 17 of this Undertaking.

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 Undertaking;

(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 expert is in manifest error, the Access Seeker does not materially comply with a decision of an expert pursuant to Section 17.3; or

(6) an Access Seeker does not materially comply with a decision of the QCA pursuant to Section 17.4.

(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**) Without limitation, 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:

(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 17. 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 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 Dispute about the recovery of these costs to dispute resolution in accordance with Section 17 of this Undertaking.

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 12.1 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 12.1 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 QCA's website in accordance with Section 5.10(q)(9)(A).

(c) (**Notices will be given simultaneously**) DBCT Management will, in giving notices under Section 5.10(a), 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(a) pursuant to a Funding Agreement or Underwriting Agreement (as applicable) be proportionate amongst the relevant participating Access Applicants, according to the respective Aggregate 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), 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 after the Non-Funding Access Applicant in the Queue within 3 months thereafter:

(A) enters into a Funding Agreement or Underwriting Agreement with DBCT Management; and

(B) provides 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) in the proportion to which the tonnage applied for by an Access Applicant bears to the aggregate additional 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 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 12.

(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, make application to the QCA to determine what is reasonable, and in such event:

(1) the determination of the QCA 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 QCA 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 the Funding Agreement or Underwriting Agreement (as applicable), or is otherwise approved by the QCA 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 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;

(3) DBCT Management's rights to apply to have such sum included in the relevant Regulated Asset Base if DBCT Management is required by Section 12 of this Undertaking to investigate or undertake a Terminal Capacity Expansion; or

(4) DBCT Management's obligation to fund a FEL 3 Feasibility Study.

(p) **(Refund of FEL1, 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 or Conditional Access Agreement may justify undertaking Feasibility Studies during the term of the Access Undertaking; or

(B) DBCT Management receives a written notice from an Access Seeker or Access Holder requesting DBCT Management develops 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 Undertaking and s 138(2) of the QCA Act.

(4) DBCT Management must provide the QCA with its Proposed Standard Funding/Underwriting Agreement for the QCA to publish it on its website and must separately notify all Access Holders and Access Seekers promptly following the QCA's publication of DBCT Management's Proposed Standard Funding/Underwriting Agreement on the QCA website.

(5) An Access Seeker or Access Holder may, within 3 months after receiving the notice from DBCT Management, give the QCA and DBCT Management a Section 17.4 notice of a dispute 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 notice is given and within the time required by Section 5.10(q)(5), such dispute is to be resolved in accordance with Section 17.4.

(7) In accordance with Section 17.4, the QCA is to decide whether the Proposed Standard Funding/Underwriting Agreement satisfies Section 5.10(q)(3). If the QCA decides that the Proposed Standard Funding/Underwriting Agreement does not satisfy Section 5.10(q)(3) it 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 QCA must give DBCT Management a reasonable opportunity to consider and comment on the draft. The QCA will take into account any comments made by DBCT Management in relation to the QCA's draft.

(8) Notwithstanding any notice being given under Section 5.10(q)(5), the QCA may approve the Proposed Standard Funding/Underwriting Agreement, if QCA considers it reasonable in all of the circumstances having regard to terms of the Undertaking and s 138(2) of the QCA Act.

(9) If no notice is given under Section 5.10(q)(5); or if the QCA decides that the Proposed Standard Funding/Underwriting Agreement satisfies Section 5.10(q)(3); or if the QCA decides that an Alternative Proposed Standard Funding/Underwriting Agreement satisfies Section 5.10(q)(3), then

(A) 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 the QCA's website; and

(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 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, 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 Section 5.4, and any other Section in Section 5 which is not inconsistent with the terms of that agreement will apply.

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 12.5(a)) review the Revised Pricing Proposal and apply to the QCA in accordance with s150D of the QCA Act for a ruling as to how the QCA intends to treat the following matters for the purpose of any draft amending access undertaking to be submitted by DBCT Management in respect of the Terminal Capacity Expansion under Section 12.5:

(A) the applicable Pricing Method for the Terminal Capacity Expansion;

(B) if the applicable Pricing Method is determined by the QCA to be Differential, what Access Charges should apply to the Expansion Component, (a **Price Ruling**); and

(C) any Different Terms for an Access Agreement in respect of the Terminal Capacity Expansion, agreed or determined in accordance with Section 13.1(f); and

if Different Terms are approved by the QCA, the approved Different Terms will be included in any Access Agreement that applies to the Price Ruling.

(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 or required in accordance with Section 13.1(f);

(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;

(4) information about the increase in Terminal Capacity expected to arise from the Terminal Capacity Expansion (and expected increases to System Capacity);

(5) information about positive or negative impacts on existing users of the Terminal or existing operations of the Terminal;

(6) information about the forecast demand for Access to the increased Terminal Capacity;

(7) an assessment of the Pricing Method applicable to the Terminal Capacity Expansion, applying the Expansion Pricing Principles;

(8) information about the anticipated impact on Non-Expansion Costs for the Terminal; and

(9) an estimate of the Reference Tariff that will apply to the Terminal Component the subject of the Terminal Capacity Expansion, if it was Differentiated and if it was Socialised, having regard to the information referred to above and the other pricing arrangements set out in Section 11.

(c) (**QCA to provide Price Ruling**) In response to an application for a Price Ruling, the QCA shall, after conducting an investigation pursuant to Part 5, Subdivision 3 of the QCA Act:

(1) determine the application in accordance s150F of the QCA Act; 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;

(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

(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; and

(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 17, an Access Holder or an Access Seeker may refer to the QCA as a dispute under this Undertaking:

(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) the wording of the proposed amendment;

(B) whether it has given its consent to the proposed amendment;

(C) the detailed reasons for its decision to give (or not give) consent to the proposed amendment;

(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, the QCA 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 QCA 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 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 Undertaking, 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 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 Undertaking 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.

(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 by the QCA 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 and the QCA of its objection to the consent to the proposed amendment.

(2) If, in response to an objection notified to the QCA by an Access Holder, Access Seeker or Expansion Party (whether under Section 6.2(f)(1) of this Undertaking or any corresponding provision of an Access Agreement), the QCA determines in accordance with the process under Section 17.4 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 and the QCA of its objection to DBCT Management not providing consent for the proposed amendment.

(2) If, in response to an objection notified to the QCA by an Access Holder, Access Seeker or Expansion Party (whether under Section 6.2(g)(1) of this Undertaking or any corresponding provision of an Access Agreement), the QCA 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 QCA, 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 Undertaking 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, Rail Operator and the QCA (which may be by displaying it on DBCT Management's website).

7 Information provision

The QCA has the right, by written notice, to request that DBCT Management provide to the QCA any information or documents that the QCA reasonably requires for the purpose of performing its obligations and functions in accordance with either this Undertaking or an Access Agreement developed pursuant to this Undertaking, or to determine compliance with this Undertaking. The notice must include a description of the information or document required, the purpose for which it is required, and the date it is required (with such date to allow DBCT Management reasonable time to comply with the notice).

DBCT Management will comply with any such request by the date stated in the notice, unless there is a reasonable reason for non-compliance. Information or documents provided to the QCA may be subject to obligations of confidence in accordance with section 239 of the QCA Act.

8 Confidentiality requirements

8.1 Confidential Information **to be kept confidential**

Subject to Section 5.4(c) 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 Undertaking or any other part of this Undertaking, 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 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 an expert or the QCA to the extent necessary for resolving a Dispute provided that DBCT Management does not disclose the Confidential Information of one Access Seeker to another Access Seeker without the first Access Seeker’s consent, unless directed to by the QCA; 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.

8.2 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 Undertaking.

8.3 Use of Confidential Information

Without limiting the circumstances specified in this Section 8 in which Confidential Information may be used or disclosed, both the Access Seeker and DBCT Management must otherwise only use Confidential Information provided by the other party for the purposes for which it was provided.

8.4 Reporting of aggregated information

For the avoidance of doubt, nothing in this Section 8 prevents DBCT Management from:

(a) complying with its obligations under Sections 10.2 and 10.3; 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, or Rail Operator.

9 Ring-fencing arrangements

9.1 No related Supply Chain Businesses

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

(b) The Trading SCB engages solely in the trading of secondary capacity at the Terminal and any access rights held by the Trading SCB, from time to time, are intended to be held by it as an intermediary in order to facilitate the transfer of such access rights between third parties.

(c) DBCT Management must procure that the Trading SCB executes the undertaking in the form set out in Schedule H and will provide an executed copy of the undertaking to the QCA before the Trading SCB commences any activities related to the trading of capacity at the Terminal under this Undertaking.

9.2 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;

(b) unfairly differentiate between Access Seekers, Access Holders, or Rail Operators;

(c) provide Access to the Trading SCB on more favourable terms than the terms on which DBCT Management provides Access to other Access Seekers or Access Holders; or

(d) exercise a right or a power (including a right to withhold consent or in respect of the timeliness of any assessment) under an Access Agreement in relation to an assignment or transfer of Access rights or an Access Agreement in a manner that discriminates in favour of, or otherwise unfairly benefits, the Trading SCB relative to other Access Seekers or Access Holders.

9.3 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.

9.4 Complaint handling

If an Access Holder, Access Seeker, Rail Operator or other affected party considers that DBCT Management may have breached one or more of its obligations under this Section 9 they may raise a dispute in respect of such complaint in accordance with Section 17 of this Undertaking.

10 Reporting by DBCT Management

10.1 Regulatory accounts

DBCT Management will for each Terminal Component report to the QCA on an annual and confidential basis, (with a copy to each relevant Access Holder), within four (4) months of the close of the relevant Financial Year, the following information relating to, its Regulated Asset Base:

(a) **(Asset base details)** the opening Regulated Asset Base value for the relevant Financial Year — by asset class/type consistent with the asset class/types used to determine the initial capital base;

(b) **(Indexation of asset base)** the amount of indexation of the Regulated Asset Base calculated for the relevant Financial Year — by asset class/type;

(c) **(Depreciation)** the amount of depreciation calculated for the relevant Financial Year — by asset class/type;

(d) **(Corporate overheads)** DBCT Management’s aggregate permitted corporate overheads for the relevant Financial Year and its allocation of them to each Terminal Component;

(e) **(New assets)** the value of any new assets (capital expenditure) acquired during the relevant Financial Year — by asset class/type. Capital Expenditure is to be identified as either replacement or expansionary Capital Expenditure, and is to include information relating to the estimated life of each new asset;

(f) **(Disposals)** asset disposals for the relevant Financial Year — by asset class/type;

(g) **(Operating and maintenance costs)** the actual operating and maintenance costs incurred for the relevant Financial Year including minor capital expenditure not exceeding $3 million for the Financial Year – at a level of detail to be determined by the QCA. This should separately identify any minor Capital Expenditure recovered through the Operation & Maintenance Charge;

(h) **(Variances)** an explanation for any significant variance in actual capital expenditure and/or operating and maintenance costs, and forecast capital expenditure and/or operating and maintenance costs for the relevant Financial Year; and

(i) (**Apportionment**) where a cost for the Terminal Component has been apportioned among multiple Terminal Components, details of the relevant apportionments and the basis of the allocation, and how that is consistent with the Cost Allocation Manual (or, where none exists, the Cost Allocation Principles).

10.2 Indicators relating to compliance with this Undertaking

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 17;

(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 QCA 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;

(i) (**Complaints**) written complaints received by DBCT Management in relation to its compliance with this Undertaking; and

(j) **(Other)** any other performance measure requested by the QCA, provided that DBCT Management is not required to Publicly Report any information which the QCA accepts it would not disclose in the same circumstances under section 239 of the QCA Act (although, in such cases, the QCA may require DBCT Management to comply with alternative publication arrangements).

10.3 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 the QCA, DBCT Management and Access Holders agree from time to time.

10.4 Review of reporting provisions

The QCA may:

(a) review the operation of Section 10.3 from time to time; and

(b) if, as a result of the review, the QCA considers that any additional or alternative service quality key performance indicators should be specified in Section 10.3, the QCA may, notwithstanding Section 10.3(i), require the additional or alternative service quality key performance indicators to be specified.

11 Pricing arrangements

11.1 Interpretation of Pricing Provisions

In this undertaking, the following principles of interpretation shall apply:

(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 and definitions of this Undertaking relevant to pricing apply to all Access collectively; and

(b) (**Alternative meanings where Differentiation applies**) where, pursuant to Section 11.13, 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, the terms and definitions of this Undertaking relevant to pricing apply to each Terminal Component separately.

11.2 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;

(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.

11.3 Access Charges

Access Charges for each Terminal Component will comprise two parts:

(a) a Capital 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.

11.4 Reference Tariff

(a) (**Applies to Reference Tonnage**) A Reference Tariff will apply to all Reference Tonnage, or where Section 11.1(b) applies, a different Reference Tariff for the Reference Tonnage in respect of each Terminal Component.

(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, Part A.

(d) (**Reviews of Reference Tariff, etc**) On each occasion referred to in Schedule C, Part A, Sections 4(c), 4(e) and 4(h), DBCT Management will (and, on each occasion mentioned in Section 12.5(o), 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, Part A, Sections 4(c) and 4(f) or Section 12.5(o) (as the case may be), in accordance with Schedule C, Part A. They will be amended (effective from the relevant date in Schedule C, Part A, Section 4) 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).

11.5 Excess Charge

(a) The Excess Charge will apply to all Excess Tonnage.

(b) The Excess Charge will be calculated in accordance with Schedule C, Part B, Section 3.

11.6 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, Part B, Section 1.

11.7 Increment

DBCT Management is entitled to add an Increment to the Revenue Cap otherwise applying, in the circumstances outlined in Schedule C, Part B, Section 4. 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, Part B, Sub-Section 4(b).

11.8 Provisional Increment Repayment

The Provisional Increment Repayment (if any) will apply where DBCT Management has retained an amount in accordance with Schedule C, Part B, Sub-Section 4(a) (the Provisional

Increment) but that amount must subsequently be repaid to relevant Access Holders pursuant to Schedule C, Part B Sub-Section 4(e).

11.9 Payment and adjustment of Capital Charges

(a) (**Interim payments**) Each Access Holder will pay to DBCT Management in respect of its Reference 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, Part A.

(b) (**Financial Year end adjustments**) After the end of each Financial Year:

(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);

(2) DBCT Management will pay any Year End Adjustment in respect of the Financial Year, due to each Access Holder; and

(3) DBCT Management will pay any Provisional Increment Repayment in respect of the Financial Year, due to each Access Holder.

11.10 Operation & Maintenance Charge

(a) (**Terminal Operating Costs recovery**) Terminal Operating Costs will be recovered from each Access Holder through the Operation & Maintenance Charge. The Operation & Maintenance Charge for each 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 11.11(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, any variation it considers necessary to comply with Section 11.10(c)(3);

(3) DBCT Management will recover the Operation & Maintenance Charge from Access Holders in accordance with the QCA’s decision.

(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 over-recovery 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 11.10(c)(3).

11.11 Cost Allocation

(a) (**Cost allocation as per Cost Allocation Manual**) Where this undertaking provides for:

(1) allocation of Terminal Operating Costs among multiple Terminal Components; or

(2) the inclusion in a Regulated 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 under Section 17 of the Undertaking.

(b) (**Request for Cost Allocation Manual**) When the first Price Ruling is made, the QCA shall request that DBCT Management 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 to the QCA for approval a draft Cost Allocation Manual within 60 days of a request from the QCA to do so.

(d) (**Preparation of revised draft Cost Allocation Manual**) DBCT Management shall, if so requested by the QCA, prepare and submit within 60 days of such request, a revised draft Cost Allocation Manual that satisfies the requirements of the QCA.

(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.

(f) (**Approval of Cost Allocation Manual**) The QCA shall prepare the final Cost Allocation Manual in accordance with section 159 of the QCA Act and publish the Cost Allocation Manual in accordance with section 160 of the QCA Act.

(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.

(2) Where costs of a Terminal Capacity Expansion should not be Socialised, other 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.

11.12 Limits on price differentiation

(a) Subject to paragraph 11.12(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 12.5(o) and 12.5(q).

11.13 Expansion Pricing Principles

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

(a) where Socialisation of a Terminal Capacity Expansion would decrease the Reference Tariff for users of the Existing Terminal, 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 the Terminal Capacity Expansion) (a **Socialised Expansion**).

(b) where Socialisation of a Terminal Capacity Expansion would increase the Reference Tariff for users of the Existing Terminal (a **Cost Sensitive Expansion**), subject to Section 11.13(c), the Terminal Capacity Expansion should be treated as a separate Terminal Component, with its own Regulated Asset Base, Reference Tariff and Annual Revenue Requirement (a Differentiated Expansion Component).

(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 be given to:

(1) the materiality of the increase in the Existing Terminal's Reference Tariff 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; and

(5) any other factor that the QCA 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.

12 Terminal Capacity Expansion

12.1 Procedure for determining Terminal Capacity and System Capacity

(a) DBCT Management will, at each time required in Section 12.1(k), either:

(1) (**Estimate capacities**) accept an estimation that has been accepted by the expert as provided for in Section 12.1(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 Existing Terminal (on a “name-plate capacity” basis) (**Existing Terminal Capacity**); and

(ii) each Expansion Component (on a “name-plate capacity” basis) (**Expansion Component Capacity)**, which for clarity may constitute either Socialised Capacity or Differentially Priced Capacity depending upon the nature of the relevant Expansion Component; and

(B) the System (**System Capacity**); or

(2) (**Determine capacities after advice and consultation**) (to the extent that there is no estimation as provided for in Section 12.1(m)(3) in that regard at the time) acting reasonably and after:

(A) taking advice from an independent expert appointed by DBCT Management; and

(B) consultation by DBCT Management and that 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) having regard to:

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

(i) DBCT Management’s obligations and Access Holders’ entitlements under Access Agreements (including taking into account historical and reasonably estimated rates of utilisation of the Terminal's 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 – the Terminal operating assumptions set out at Section 12.1(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 at each relevant train load out facility;

(iv) Terminal Capacity as assessed in accordance with Section 12.1(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 12.1(b)(2), except to the extent that (at the time of making the estimation) DBCT Management or the independent 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 QCA, 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 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 12.1(c) except as may be commercially reasonable and customary to avoid disclosure of commercially sensitive information.

(d) (**Independent expert**) Any independent expert to be appointed by DBCT Management under this Section 12.1 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 for that Financial Year object (in accordance with Section 12.1(g)) to the independent expert nominated by DBCT Management, an independent expert appointed by the QCA in accordance with Section 12.1(g); or

(2) where a majority of the group of Expansion Parties for an Expansion Component object (in accordance with Section 12.1(g)) to the independent expert nominated by DBCT Management, an independent expert appointed by the QCA in accordance with Section 12.1(g).

(3) where Section 12.1(d)(1) and (2) do not apply - an independent 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 it proposes appointing pursuant to Section 12.1(a)(2) and request that any objection to that independent 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) objects in writing to the independent expert nominated by DBCT Management within the 14 day period referred to in Section 12.1(e), DBCT Management will promptly appoint the independent expert nominated by it.

(g) (**Procedure if objection to proposed independent expert**) If a group of Access Holders or Expansion Parties determined in accordance with Section 12.1(d) objects within the 14 day period provided for in Section 12.1(e):

(1) DBCT Management will promptly request the QCA to nominate an independent expert, and it will engage the independent expert nominated by the QCA; and

(2) the 6 month period referred to in Section 12.1(k)(1) will not commence until the independent expert has been nominated by the QCA.

(h) (**Independent expert to consult**) DBCT Management must require its independent 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 12.1(a)(2)(C), and.12.1(a)(2)(E).

(i) (**Objection to estimation by independent expert**) Despite Section 17, DBCT Management's estimation of Terminal Capacity, Expansion Component Capacity and System Capacity under Section 12.1(a) may not be disputed or challenged 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 Undertaking 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 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 12.1(a) (or, if applicable, Section 17) will constitute Terminal Capacity, Expansion Component Capacity or System Capacity (as relevant) for the purposes of this Undertaking 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 12.1(a) and will be reassessed during the Term of this Undertaking:

(1) during each stage of a Feasibility Study being conducted by DBCT Management in accordance with Section 5.10;

(2) (subject to Section 12.1(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

(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 the QCA, DBCT Holdings, each Access Holder and Access Seeker of each capacity assessment undertaken in accordance with this Section 12.1.

(m) (**Requirements for expert report process**) The following will apply to an expert report for the purposes of Section 12.1(a):

(1) subject to confidentiality restrictions applying to DBCT Management, DBCT Management must provide to the expert all relevant information which DBCT Management has or to which it has access, to assist the expert to reach their estimation. DBCT Management will not enter into any confidentiality restrictions which would prevent disclosure for the purposes of this Section 12.1(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 for the purposes of both this Undertaking and in respect of similar obligations by other Service Providers; and

(3) if the 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 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 reasonably forms the opinion that there is compelling evidence to the contrary.

(n) (**Tonnages under Access 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 Undertaking (including pursuant to Section 12.3), statute, 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 expansion); and

(2) (**Undertaking not breached if System Capacity exceeded after good faith reasonable efforts**) DBCT Management will not be in breach of this Undertaking if it has complied with this Undertaking (or made good faith and reasonable attempts to comply) but the re-determination of System Capacity in accordance with Section 12.1(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 Undertaking, if DBCT Management complies (or makes a good faith and reasonable attempt to comply) with the provisions of this Section 12.1, DBCT Management will not have any liability (whether for loss, damage, cost, expense or other remedy) to the QCA or 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) breach of this Section 12.1;

(2) 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) 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 Undertaking or an Access Agreement); or

(4) any defect, error or omission on the part of the independent expert appointed under Section 12.1.

(p) (**Recovery of independent expert's costs**) The costs of an independent expert appointed under Section 12.1(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 Terminal or Differentiated Expansion Component, as relevant) as an Other Cost in accordance with Section 12.5(a)(3)(B); and

(2) in all circumstances other than as described in Section 12.1(p)(1), be borne by DBCT Management.

(q) (**Provisional allocation pending determination of Capacity**) Notwithstanding any other provision of this Undertaking, 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 12.1(k).

12.2 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 Capacity with Differentially Priced Access Holders for the relevant 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, DBCT Holdings and the QCA.

(d) (**Separate meetings with Expansion Parties**) For the avoidance of doubt, nothing in this Section 12.2 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.

12.3 General obligation to undertake Terminal Capacity Expansions

(a) Subject to Sections 12.7 and 12.8 of this Undertaking, 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, 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 the QCA or 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 12.3, even if it does not actually comply with this Section 12.3.

12.4 Accommodation of Capacity

(a) (**General obligation to accommodate Access Applications**) Subject to Sections 5.4(j), 12.7 and 12.8 of this Undertaking, and the proviso in Section 12.3(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, Access Seekers and the QCA its process for so calculating vessel waiting times and average net costs to Access Holders.

(c) (**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 12.4, DBCT Management will be taken to have received from a reasonably creditworthy Access Seeker a bona fide offer to enter into an Access Agreement.

12.5 Undertaking Terminal Capacity Expansions

(a) (**Terminal Capacity Expansion application to be lodged with QCA**) If DBCT Management proposes to expand the Terminal during the Term of the Undertaking (either because it is obliged to do so under this Undertaking or wishes to do so without being obliged to do so), it will submit to the QCA 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) confirmation that, and details of how, the Terminal Capacity Expansion complies with both the current Terminal Master Plan and System Master Plan; or

(C) a justification acceptable to the QCA 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 QCA 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 QCA**) DBCT Management will also submit to the QCA (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) (**QCA to confirm Price Ruling following application for Expansion**) Following receipt of an application under 5.12(a)(2), the QCA 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 QCA's ruling and details of any material changes apparent in the application which may require a new or varied 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 12.5(a)(9), a copy of the Price Ruling Application and information on the QCA's process for determining a Price Ruling for that Terminal Capacity Expansion.

(d) (**DBCT Management to provide information to QCA**) DBCT Management will provide all information required by the QCA or any advisor to the QCA to enable the QCA to assess the prudency of any proposed or actual Capital Expenditure and Different Terms. Any information provided by DBCT Management and nominated as confidential will be handled by the QCA in accordance with the confidentiality provisions of the QCA Act.

(e) (**QCA's acceptance of prudency of contract costs**)

(1) Subject to 12.5(e)(3), the QCA will accept that capital expenditure in respect of a proposed Expansion Component is prudent and will include it into the Regulated Asset Base (of the Existing Terminal, or Differentiated Expansion Component, as applicable) following Completion of the Terminal Capacity Expansion if DBCT Management can demonstrate and the QCA is satisfied that:

(A) the scope of the works complies with Section 12.5(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 12.5(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 12.5(i), 12.5(j), 12.5(k) and 12.5(l) and the requirements of those Sections have been met.

(2) In the event that the QCA considers that any elements specified in Section 12.5(e)(1) are not satisfactorily met, the QCA will undertake an assessment of the prudency of the capital expenditure as if the works were Other Costs, as provided for in Section 12.5(m). In undertaking this assessment, the QCA will take into account the extent to which DBCT Management has achieved compliance with the expansion approval process outlined in this Section 12.5, including consistency with any assumptions associated with a Price Ruling.

(3) Any dispute in relation to whether the QCA should be satisfied as to any of the elements specified in Section 12.5(e)(1) is to be resolved in accordance with Section 17.4.

(f) (**QCA's acceptance of scope of works**)

(1) The QCA 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 QCA 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 12.5(f)(1). If the QCA does not accept the scope of the proposed works, it will give reasons in writing.

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

(1) The QCA 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 QCA 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 QCA to review the standard, specifications and contract terms for the works. If the QCA 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 QCA, DBCT Management will immediately advise the QCA of the changes. The QCA will accept or not accept the changes.

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

(1) (**What is the 60/60 Requirement**) In this Section 12.5, 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; and

(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 12.5(h)(1)(C)) do not oppose the Terminal Capacity Expansion, having been given the information and notice in Section 12.5(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 12.5(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 12.5(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 12.1 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 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 QCA's 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 QCA under Section 12.5(a)(9).

(3) (**60/60 Requirement conclusive**) Once evidence of compliance with the 60/60 Requirement has been provided and accepted by the QCA 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 12.5(a)(6)(A) applies, the QCA 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 QCA provides such confirmation, it will be deemed to have accepted the need for the Terminal Capacity Expansion.

(5) (**QCA review if 60/60 Requirement not met**) If Section 12.5(a)(6)(B) applies, the QCA 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 QCA 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 QCA approval**) The QCA 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 QCA approval**) In particular, in considering whether or not to approve DBCT Management's TCMP, the QCA 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 12.5(l) to monitor compliance with the TCMP.

(3) (**Notification of TCMP decision by QCA**) The QCA will within 20 Business Days of the QCA 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

QCA. Promptly following receipt of a request to amend the TCMP the QCA will approve or not approve the amendments. In considering such amendments the QCA will apply Sections 12.5(i)(1), 12.5(i)(2) and 12.5(i)(3).

(j) (**Indicators of prudent contract value**) The QCA will accept that the value of a contract as awarded is prudent and will include it into the relevant Regulated Asset Base if:

(1) the QCA has approved DBCT Management's TCMP in accordance with Section 12.5(i);

(2) the QCA is satisfied that contract provisions regarding contract variations and escalation accord with good commercial practice; and

(3) the auditor engaged in accordance with Section 12.5(l) certifies that the works have been conducted in accordance with the approved TCMP.

(k) (**Indicators of prudent variations and escalations**) The QCA 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 if:

(1) (**Compliance with TCMP**) a contract which has been accepted as prudent under Section 12.5(j) has been managed in accordance with the approved TCMP;

(2) (**Auditor certification**) the auditor engaged in accordance with Section 12.5(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 QCA 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 12.5(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 12.5. The process in this regard will be as follows:

(1) (**Appointment**) DBCT Management will appoint the auditor, subject to obtaining the QCA's prior approval of the selection of the auditor and the QCA'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 QCA 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 QCA, the auditor's duty of care to the QCA 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 QCA'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 Expansion Component if Differentiated), 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 QCA upon completion of the audit. The QCA may publish the audit report if it considers it appropriate; and

(8) (**QCA may require additional detail**) if the QCA 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 QCA may direct DBCT Management to instruct the auditor to review their report and, in doing so, to address the concerns of the QCA.

(m) (**Prudency of Other Costs**)

(1) (**QCA to assess prudency**) The QCA will undertake an assessment of the prudency of Other Costs, and costs to which Section 12.5(e)(2) applies, after the relevant costs have been expended, in accordance with its usual practice for the assessment of the prudency of capital expenditure undertaken by regulated entities.

(2) (**Considerations relating to prudency**) In assessing whether actual capital expenditure is prudent, the QCA will have regard for 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 QCA 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 15.2(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 QCA 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 Undertaking.

(5) (**Factors relevant to reasonableness**) In assessing the reasonableness of the cost of works undertaken, the QCA 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 prudency of capital expenditure undertaken, the QCA 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 QCA).

(7) (**Audit costs**) The costs of the external auditor referred to in Section 12.5(l) and the advisers referred to in Section 12.5(m)(6) (where payable by DBCT Management) will form part of the Other Costs.

(8) (**Inclusion in asset base**) The QCA 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 QCA will undertake a preliminary assessment of the reasonableness of the Other Costs and shall advise DBCT Management of the results of such assessment. The QCA will not be bound by this assessment when determining the prudency of actual 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).

(o) (**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, Part A, Section 5 of the Undertaking 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.

(p) (**Consistency of Interim Reference Tariff with earlier pricing reviews**) Where a draft amending access undertaking is submitted in accordance with Section 12.5(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, Part A, Section 5 of the Undertaking;

(2) include any information about queuing and how the relevant queue is to be managed; and

(3) be consistent with any relevant Price Ruling.

(q) (**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, Part A, Section 5 of the Undertaking;

(2) include any updated information as required by section 12.5(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 12.5(o) if it is not yet approved by the QCA.

12.6 Return on capital applicable to 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 QCA pursuant to Section 12.5, including construction related financing costs, (which will include a return on capital over the construction period on the Terminal Capacity Expansion expenditure incurred), will be included in the Expansion Component's Regulated Asset Base upon which the ARR and Reference Tariff are determined. 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) will be calculated at the WACC(2) 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.

12.7 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 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 12.3, 12.4 and 12.5 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 12, 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 12 to the extent that DBCT Holdings agrees to modify or delay a Terminal Capacity Expansion (whether such agreement is given under the Undertaking or the Port Services Agreement).

12.8 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 12; or

(c) reasonably of the view that it is not possible to increase Terminal Capacity,

then the obligations of DBCT Management under this Section 12 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.

12.9 Terminal Capacity Expansions to comply with Terminal Master Plan

If DBCT Management wishes to undertake a Terminal Capacity Expansion under this Section 12, 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.

12.10 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 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) is prudent and include it in the relevant Regulated Asset Base:

(1) provided that DBCT Management confirms, to the reasonable satisfaction of the QCA, that the expenditure incurred falls within the definition of Capital Expenditure;

(2) if:

(A) the Capital Expenditure is unanimously approved by all Access Holders whose Reference Tariff is calculated by reference to the relevant Regulated Asset Base(s); or

(B) no Access Holder at the relevant time objected to the Capital Expenditure within 20 Business Days after receiving written notice of the estimated Capital Expenditure from DBCT Management which expressly drew their attention to this Section; and

(3) if the Operator has recommended in writing the incurring of the Capital Expenditure.

(c) (**Inclusion of Capital Expenditure 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) does not comply with all the conditions in Section 12.10(b),

if the QCA forms the view that such expenditure is prudent having regard to (among other things):

(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;

(4) the scope of the work undertaken;

(5) the standard of the work undertaken;

(6) the circumstances prevailing in the markets for engineering, equipment supply and construction;

(7) safety during construction and operation;

(8) compliance with environmental requirements during construction and operation;

(9) minimising whole of asset life costs; and

(10) the advice of independent advisors using appropriate benchmarks and experience and which advisors are appointed (and paid for) by the QCA or paid for by DBCT Management.

13 Terms and conditions of Access

13.1 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, in all material respects be consistent with 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, but if either does so:

(1) DBCT Management may, acting reasonably:

(A) decline to agree to any such Different Term (for example if accepting the Different Term would create obligations which would be impractical for it to comply with or incur unreasonable expense which it could not recoup from the Access Seeker or cause it to breach another Access Agreement or Existing User Agreement or materially disadvantage other Access Holders); and

(B) require that charges other than the Reference Tariff apply if the Different Terms result in a risk profile or costs (direct or indirect) to it different from those that would have applied under the Standard Access Agreement; or

(2) an Access Seeker may, acting reasonably:

(A) decline to agree to any such Different Term (for example, if accepting the Different Term would result in a material and adverse risk or cost position that is inconsistent with an appropriate and symmetrical risk and cost allocation between the contracting parties; and

(B) require that charges other than the Reference Tariff apply if the Different Terms result in a risk profile or costs (direct or indirect) to it different from those that would have applied under the Standard Access Agreement.

and if the parties cannot agree on any such matter, it may be referred to the QCA for determination.

(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) (**Different Terms in a Conditional Access Agreement**) If an Access Seeker is unwilling to agree to any Different Terms required by DBCT Management in respect of the Conditional Access Agreement and DBCT Management or the Access Seeker Disputes the Different Terms, the Conditional Access Agreement to be executed will take effect subject to any new or amended Different Terms which the QCA determines or approves arising out of the Dispute.

(g) (**Execution copies to be prepared**) Once an Access Seeker has notified DBCT Management that it is satisfied, subject to Section 13.1(f), 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.

(h) (**Prompt execution**) The parties will use reasonable efforts to duly execute the final Access Agreement as soon as practicable after negotiations are finalised.

13.2 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 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 13.2 (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 13.2 does not include an Access Agreement resulting from the exercise of an option to renew or extend the term under a previous access agreement.

14 Whole of supply chain efficiency

14.1 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).

14.2 Amend Undertaking to comply with Agreed Supply Chain Outcome

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:

(a) consult with the Access Holders regarding the amendments to this Undertaking reasonably required to implement the agreed mechanisms (to the extent relevant to the Services, the Terminal or this Undertaking); and

(b) submit to the QCA for approval a draft amending access undertaking incorporating the amendments to this Undertaking which are reasonably required to implement the agreed mechanisms (to the extent relevant to the Services, the Terminal or this Undertaking).

15 Master plans

15.1 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 Undertaking 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 15.1(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, the Operator and the QCA (which may be by way of reference to a website) promptly after each amendment of the Terminal Master Plan.

15.2 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 Undertaking. 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 Undertaking requires DBCT Management (or the QCA) to have regard to a System Plan, DBCT Management (or the QCA, 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 the QCA, as relevant) reasonably understands to be generally accepted System operating assumptions.

(d) (**Protection of DBCT Management**) DBCT Management will not be liable to the QCA or 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 15.

(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 15.2(a) and 15.2(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 or any Access Holder or Access Seeker); and

(2) DBCT Management must, as far as practicable, work cooperatively with each other Service Provider (for example regularly provide information relevant to System Capacity and, as far as practicable, using reasonable endeavours to agree on the joint engagement of experts for the purpose of the Undertaking and similar obligations by other Service Providers).

16 Transitional arrangements

Nothing in this Undertaking requires a party to an Existing User Agreement to vary a term or provision of that Existing User Agreement.

17 Dispute resolution

17.1 Disputes

(a) (**Disputes under this Undertaking**) If any dispute or question arises under this Undertaking or in relation to the negotiation of Access between an Access Seeker or Access Holder and DBCT Management (**Dispute**) then, unless otherwise expressly agreed by both parties, such Dispute will be resolved in accordance with this Section

17 and 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 set out in this Section 17.

(b) (**Disputes under Access Agreements**) Unless otherwise agreed by the parties, 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 Undertaking.

17.2 Chief Executive resolution

(a) (**Reference to CEOs**) Unless otherwise agreed by both parties or provided for in this Undertaking, 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 his or her nominee) for resolution.

(b) (**Reference to expert**) 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 17 that is unacceptable to the other party,

the relevant Dispute may, by agreement between DBCT Management and the Access Seeker or Access Holder, be referred for resolution by an expert in accordance with Section 17. Failing such agreement, either party may refer the Dispute to the QCA in accordance with Section 17.

17.3 Expert determination

Where a matter is referred to an expert in accordance with Section 17.2 or as otherwise specified in accordance with this Undertaking, then the following will apply:

(a) (**Appointment**) An expert may be appointed by the parties, or where agreement cannot be reached by the parties within 20 Business Days, in the case of financial matters, by the President for the time being of the Australian Society of Certified Practicing Accountants and, in the case of non-financial matters, the President for the time being of the Institution of Engineers, Australia;

(b) (**Criteria for expert**) In any event the 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 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 DBCT Management or of a Related Body Corporate of either of them;

(c) (**Acceptance of appointment**) The expert appointed pursuant to this Section 17.3 must not act until the expert has given written notice of the acceptance of his or her appointment to both parties;

(d) (**Provision of information to expert**) The parties must upon request by the expert, provide or make available to the 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 expert may reasonably require. Any such information or assistance must be provided as soon as reasonably practicable. Any determination made by an expert in relation to a Dispute must be consistent with the provisions of this Undertaking;

(e) (**Determination to be given to each party**) The expert will provide both parties with a copy of the determination in relation to the Dispute within a reasonable time after his or her appointment;

(f) (**Confidentiality**) The expert appointed pursuant to this Section 17.3 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 expert pursuant to this Section 17.3 is deemed to be and must act as an 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 expert or to the determination or to the procedures by which the expert may reach that determination;

(h) (**Expert's decision final**) In the absence of manifest error, the decision of the 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 QCA for a determination. If the QCA determines that there was a manifest error, then the parties may agree to refer the Dispute to another expert in accordance with this Section 17.3, or failing such agreement, either party may refer the Dispute to the QCA for resolution in accordance with Section 17.4; and

(i) (**Costs of expert**) The costs of the expert and the reasonable costs of the parties are to be borne by the parties in such proportions as determined by the expert. If two or more 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 Holders in aggregate to recover the costs of being collectively represented in any Dispute.

17.4 Determination by the QCA

(a) (**Division 5 Part 5 process**) If a Dispute is referred to the QCA in accordance with this Undertaking, then Division 5 of Part 5 of the QCA Act will apply. The QCA must not make an access determination that is inconsistent with this Undertaking (unless all parties agree and no other relevant stakeholder is adversely affected).

(b) (**Process in other cases**) If an issue is referred to the QCA for determination as specified in accordance with this Undertaking but does not constitute a Dispute for the purposes of Division 5 of Part 5 of the QCA Act, then the QCA will make a determination through any process that it considers appropriate, provided that:

(1) prior to considering the issue, the QCA advises both parties of the process that it will use to make the determination and both parties are given the opportunity to advise the QCA of any concerns they may have with that process and receive a response from the QCA as to how it will deal with such concerns, if at all; and

(2) the QCA must not make an access determination that is inconsistent with this Undertaking (unless all parties agree and no other relevant stakeholder is adversely affected).

(c) (**Costs awarded as QCA determines**) The costs of the QCA and the reasonable costs of the parties are to be borne by the parties in such proportions as determined by the QCA. If two or more 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 Holders in aggregate to recover the costs of being collectively represented in any Dispute.

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 Undertaking.

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 *(please (1) complete Schedule A attached and (2) provide evidence of solvency or security offered to enable DBCT Management to assess creditworthiness).*	☐
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 Undertaking).	☐
C	An existing Access Holder seeking additional capacity (including an extension of the Term) other than in the circumstances contemplated by 5.11 of the Access Undertaking.	☐
	For existing Access Holders making a category B or C 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, and any Security required, will be as per our existing Access Agreement *[tick box at right].* *[Note: If box is not ticked, please complete Schedule A attached]*	☐

Name	*DBCT Management use only* *Received Date:*
Position	
Signed	*Access Application Date:* *[per section 5.4(b) of the Access Undertaking]*
Date	

Schedule A to the Access Application of [insert name]

(Note – where the Access Seeker is an Existing Access Holder and the details are relevantly the same as the Services being provided under the Access Agreement, 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	• 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:
	  • 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	• 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 Undertaking.

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 Undertaking).	☐
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 5.11 of the Access Undertaking.	☐
	For existing Access Holders making a category B or C 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, and any Security required, will be as per our current Access Application and existing Access Agreement *[tick box at right].* *[Note: If box is not ticked, please complete Schedule A attached]*	☐

Name	*DBCT Management use only* *Received Date:*
Position	
Signed	
Date	

Schedule A to the Renewal Application of [insert name]

(Note – where the Access Seeker is an Existing Access Holder and the details are relevantly the same as the Services being provided under the Access Agreement, 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	• 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	• 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 – Revenue Cap/Pricing Structure (Reference Tonnage only)

For the avoidance of doubt, the terms and provisions of this Schedule should be interpreted in accordance with Section 11.1 of the Undertaking.

Part A – Rules for calculating Terminal Infrastructure Charge and Monthly Payment

1 Monthly Payment (MP)

Each Access Holder "u" with Reference Tonnage (**RTAHu**) must pay to DBCT Management a Monthly Payment in respect of that Reference Tonnage in each Month "m" of each Financial Year ($\mathrm{MP}_{\mathrm{u,m}}$), calculated as follows:-

$$\mathrm{MP}_{\mathrm{u,m}} = TIC \times MRT_{u,m}$$

where:-

TIC is the Terminal Infrastructure Charge applicable for a relevant Financial Year to the Existing Terminal or Differentiated Expansion Component (as relevant) as calculated under Section 3, Part A, Schedule C; and

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

The Monthly Payment will be adjusted during a Financial Year where the TIC is adjusted in accordance with Schedule C, Part A, Sections 4 and 5.

2 Determination of Revenue Cap

The Revenue Cap (**RC**) for each Financial Year (or where there is a Review Event, for each period "i" in the Financial Year) is calculated as follows:

$$\mathrm{RC} = \frac{ARR \times ART}{NCT} + INCR \text{ - ETS}$$

where:

ARR is the Annual Revenue Requirement**;**

ART is the Aggregate Reference Tonnage;

NCT is the Notional Contracted Tonnage; and

INCR is the sum of any relevant increments approved by the QCA in respect of prior Financial Years pursuant to Schedule C, Part B, Sub-Section 4(d), in each case, in respect of the Existing Terminal or Differentiated Expansion Component (as relevant).

ETS is, where the Revenue Cap is being altered by a Review Event resulting from an Early Termination of an Access Agreement, the value of security which was held by DBCT Management in respect of that Access Agreement at the time of Early Termination, to the extent that DBCT Management is entitled under that Access Agreement to call on that security.

3 Terminal Infrastructure Charge

(a) Where no Review Event occurs after 1 July in a Financial Year, the relevant Terminal Infrastructure Charge (**TIC**) for that Financial Year (being a charge per tonne for Reference Tonnage) will be calculated as follows:-

$$\mathrm{TIC} = \frac{RC}{ART}$$

where:-

RC is the relevant Revenue Cap; and

ART is the relevant Aggregate Reference Tonnage.

(b) Where a Review Event occurs after 1 July in a Financial Year, the relevant Terminal Infrastructure Charge (per tonne of Reference Tonnage) to apply for each period i in that Financial Year (TIC_i) will be calculated as follows:-

$$\mathrm{TIC}_i = \frac{RC_i}{ART_i}$$

where:-

RCi is the relevant portion of the Revenue Cap to apply for period i in the Financial Year; and

ARTi is the relevant portion of the Aggregate Reference Tonnage applying to the relevant period i in the Financial Year.

4 Determination of ARR

(a) The ARR that will apply in each Financial Year will be calculated based on:

(1) principles set out by the QCA in its Final Decision on the Dalrymple Bay Coal Terminal Draft Access Undertaking dated 21 November 2016 and the Cost Allocation Manual (or where none exists, the Cost Allocation Principles);

(2) any amendment to the Access Undertaking or the relevant ARR, Revenue Cap or Reference Tariff made pursuant to Sub-Sections 4(c) and (e) below; and

(3) any amendment to the relevant ARR, Revenue Cap and Reference Tariff required to reflect the fees charged to DBCT Management by the QCA in respect of that or any prior period (to the extent not previously recovered) pursuant to the Queensland Competition Authority Regulation 2007 or section 150L of the QCA Act in providing regulatory services in connection with the Terminal. An amendment under this Sub-Section may be submitted to the QCA at the same time as the relevant ARR, Revenue Cap and Reference Tariff under Sub-Section 4(b) below, or effected as a later amendment to the relevant ARR, Revenue Cap and Reference Tariff during the relevant Financial Year under Sub-Sections 4(h) or (i) below.

Annual amendment of the ARR, Revenue Cap and Reference Tariff

(b) By each 15 May after the Commencement Date, DBCT Management, after consultation with Access Holders, will submit each relevant ARR to apply for the next Financial Year to the QCA for approval.

(c) The QCA must approve each relevant ARR submitted by DBCT Management if it considers it has been calculated in accordance with Sub-Section 4(a) above.

(d) Each Reference Tariff will be amended annually on 1 July to reflect the new relevant ARR and any variation to reflect the relevant Increment, Aggregate Reference Tonnage and the Notional Contract Tonnage applicable for that Financial Year.

Amendment of the ARR, Revenue Cap and Reference Tariff if a Review Event occurs

(e) If a Review Event occurs, and where described in Section 12.5(o), DBCT Management will submit to the QCA for approval:

(1) in the case of a Review Event referred to in paragraphs (a), (b) or (e)(1)(A) of the definition of Review Event, a request to amend; or

(2) in the case of a Review Event referred to in paragraphs (c), (d) or (e) other than (e)(1)(A) of the definition of Review Event or in the case of Section 12.5(o), a draft amending access undertaking to make any necessary amendments to,

any one or more of each relevant ARR, Revenue Cap and Reference Tariff to the extent required because of the Review Event. The QCA may approve a request to amend any one or more of each relevant ARR, the Revenue Cap and the Reference Tariff or the draft amending access undertaking (as the case may be) in accordance with this Sub-Section only if it considers it appropriate having regard to the pricing objectives in Section 11.2 of this Undertaking.

(f) Any amendment made pursuant to Sub-Section 4(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 (e) of the Review Event definition, which will be effective from the relevant 1 July.

(g) For clarification, if a review under Sub-Section 4(c) above occurs simultaneously with a review under Sub-Section 4(e) they will be reviewed together and become effective on the relevant 1 July.

Amendment of the ARR, Revenue Cap and Reference Tariff to include fees for regulatory services

(h) DBCT Management may submit to the QCA a request to amend the relevant ARR, Revenue Cap and Reference Tariff to the extent required pursuant to Sub-Section 4(a)(3) above. The QCA may approve a request to amend in accordance with this Sub-Section if the amendment is in accordance with Sub-Section 4(a)(3) above. Any amendment made pursuant to this Sub-Section will be effective from the first day of the Month following the Month in which the request to amend is submitted to the QCA.

(i) In the event that DBCT Management does not submit a request to the QCA pursuant to Sub-Section 4(h) above, in circumstances where the QCA deems amendment to the relevant ARR, Revenue Cap and Reference Tariff are required pursuant to Sub-Section 4(a)(3) above, the QCA may give notice to DBCT Management requiring it to submit a request pursuant to Sub-Section 4(h). If DBCT Management does not submit a request (pursuant to Sub-Section 4(h)) within 14 days of said notice, the QCA may effect amendment to the relevant ARR, Revenue Cap and Reference Tariff in accordance with Sub-Section 4(a)(3). Any amendment made pursuant to this Sub-Section will be effective from the first day of the Month following the Month in which notice is given to DBCT Management requiring it to submit a request pursuant to Sub-Section 4(h).

5 Reconciliation of ARR, Revenue Cap and Reference Tariff between the forecast costs of a Terminal Capacity Expansion and the actual costs of a Terminal Capacity Expansion

(a) The objects of Sub-Sections 5(b) to 5(f) are:

(1) to provide for an interim ARR, Revenue Cap and Reference Tariff (which interim ARR, Revenue Cap and Reference Tariff is based on forecast costs) to apply to an Expansion Component from the first day of the Month following the Month in which a Terminal Capacity Expansion is Completed 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 relevant Terminal Capacity Expansion;

(2) to provide a mechanism for additional actual costs of a Terminal Capacity Expansion to be incorporated into the relevant Regulated Asset Base where those additional actual costs are not determined as at the date of submission (based on actual costs) of a draft amending access undertaking for the Terminal Capacity Expansion; and

(3) to provide 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, in respect of a Terminal Capacity Expansion, the difference between Access Charges which include forecast costs and Access Charges which include the actual costs of a Terminal Capacity Expansion with the purpose that DBCT Management and Reference Tonnage Access Holders will (subject to the interest calculation provided for in Sub-Section 5(e)(2) be placed in the same position they would have been in had the Access Charges for the Expansion Component which were payable were originally based on the actual costs of the Terminal Capacity Expansion and not the forecast costs.

(b) In accordance with Section 12.5(o), DBCT Management must submit a draft amending access undertaking promptly prior to Completion of a Terminal Capacity Expansion that proposes amendments to the:

(1) ARR;

(2) Revenue Cap; and

(3) Reference Tariff,

for the Expansion Component, on an interim basis so as to incorporate the reasonable forecast costs of the Terminal Capacity Expansion and reflect the QCA's Price Ruling.

(c) In accordance with Section 12.5(q), DBCT Management will submit a further draft amending access undertaking within such time as is approved by the QCA. That draft amending access undertaking will propose amendments to the:

(1) ARR;

(2) Revenue Cap; and

(3) Reference Tariff,

for the Expansion Component consistent with Sections 11.1, 11.11 and 11.13 of this Undertaking, where necessary to:

(4) reverse the effects of the amendments referred to in Sub-Section 5(b), that incorporated the reasonable forecast costs of the relevant Terminal Capacity Expansion; and

(5) (subject to Sub-Section 5(e) and Section 12.5(e) of the Undertaking) instead incorporate the actual costs of the relevant Terminal Capacity Expansion.

(d) Promptly, and in any event within sixty days, after approval by the QCA of a draft amending access undertaking referred to in Sub-Sections 5(c), DBCT Management will, for each relevant Reference Tonnage Access Holder, and in consultation with the QCA, calculate for the relevant Terminal Capacity Expansion the difference between:

(1) the Access Charges payable in the Interim Reference Tariff Period, which Access Charges are calculated using the reasonable forecast costs of the Terminal Capacity Expansion referred to in Sub-Section 5(b); and

(2) the Access Charges payable in the Interim Reference Tariff Period, which Access Charges are calculated using the actual costs of the Terminal Capacity Expansion referred to in Sub-Sections 5(c),

where “Interim Reference Tariff Period” means the period on and from the first day of the Month following the Month in which the relevant Terminal Capacity Expansion is Completed to (but excluding) the first day of the Month following the Month in which the QCA approves the Reference Tariff referred to in Sub-Sections 5(c).

DBCT Management will advise each relevant Reference Tonnage Access Holder and the QCA of the calculation referred to in Sub-Section 5(d), promptly, and in any event within one hundred and twenty days, after each date on which the QCA approves the Reference Tariff referred to in Sub-Sections 5(c).

(e) DBCT Management will, in the Month following the Month in which the calculation referred to in Sub-Section 5(d) (as the case may be) is advised to the QCA, recover or repay in a single payment:

(1) the difference referred to in Sub-Section 5(d) (as the case may be); and

(2) interest on the difference calculated on a Monthly basis from the date the applicable portion of the difference would have been payable under the relevant Access Agreement (had the amended Reference Tariff referred to in Sub-Sections 5(c) applied) to the date of payment of the difference referred to in Sub-Section 5(d) by DBCT Management or the relevant Reference Tonnage Access Holder (as applicable) calculated at a rate equal to a WACC(3) Rate compounded Monthly.

(f) Where Sub-Sections 5(c) or 5(d) specify a time period by which DBCT Management will do something, the QCA may, on one or more occasions, at its discretion, grant an extension to any time period or due date that applies provided that an application for that extension has been received by the QCA before the expiration of the time period in question.

Part B – End of Year Adjustments

1 Year End Adjustment (YEA)

The Year End Adjustment (if any) payable to each Access Holder "u" with Reference Tonnage (**YEAu**) will be calculated in respect of each Financial Year as follows:-

$$\mathrm{YEA_u} = \frac{RT_u}{ART} \times RP$$

where:-

RTu is the Reference Tonnage for the Access Holder for the Financial Year in respect of the Existing Terminal or Differentiated Expansion Component (as relevant);

ART is the Aggregate Reference Tonnage for the Financial Year in respect of the Existing Terminal or Differentiated Expansion Component (as relevant); and

RP is the Rebate Pool for the Financial Year calculated at Schedule C, Part B, Section 2**.**

2 Rebate Pool

The Rebate Pool (**RP**) for each Financial Year will be calculated as follows:-

$$\mathrm{RP} = (\max(\sum_{u=1}^{n} EC_u - PI - ATA, 0))$$

where:-

ECu is the Excess Charge (if any) for each RTAHu for the Financial Year calculated at Schedule C, Part B, Section 3 in respect of the Existing Terminal or Differentiated Expansion Component (as relevant);

n is the number of RTAHs which together hold all ART for the Financial Year in respect of the Existing Terminal or Differentiated Expansion Component (as relevant);

PI is the Provisional Increment calculated at Schedule C, Part B, Sub-Section 4(b)for the Financial Year in respect of the Existing Terminal or Differentiated Expansion Component (as relevant); and

ATA is the Additional Tonnage Amount calculated at Schedule C, Part B, Section 5 for the Financial Year in respect of the Existing Terminal or Differentiated Expansion Component (as relevant).

3 Excess Charge (EC)

(a) Where no Review Event occurs after 1 July in a Financial Year, the Excess Charge (if any) payable by each RTAHu (**ECu**) shall be calculated as follows:-

$$\mathrm{EC_u} = \begin{Bmatrix} TIC \times \max[(TS_u - RT_u), 0] + \\ TIC \times 25\% \times \max[(TS_u - RT_u \times 110\%), 0] + \\ TIC \times 25\% \times \max[(TS_u - RT_u \times 125\%), 0] \end{Bmatrix}$$

where:-

TIC is the Terminal Infrastructure Charge in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) for that Financial Year calculated at Schedule C, Part A, Section 3;

TS_u is the actual tonnes of coal shipped through the Terminal by a RTAHu during the Financial Year that are Reference Tonnage or Excess Tonnage in respect of the Existing Terminal or Differentiated Expansion Component (as relevant); and

RTu is the Reference Tonnage for the RTAHu for the Financial Year in respect of the Existing Terminal or Differentiated Expansion Component (as relevant).

(b) Where a Review Event occurs after 1 July in a Financial Year, the Excess Charge (if any) payable by each RTAHu (**EC_u**) in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) shall be calculated as follows:-

$$\mathrm{EC_u} = \begin{Bmatrix} TIC_A \times \max[(TS_u - RT_u),0] + \\ TIC_A \times 25\% \times \max[(TS_u - RT_u \times 110\%),0] + \\ TIC_A \times 25\% \times \max[(TS_u - RT_u \times 125\%),0] \end{Bmatrix}$$

where:-

(c) **TIC_A** is the annualised Terminal Infrastructure Charge in respect of the Existing Terminal or Differentiated Expansion Component (as relevant)for that Financial Year calculated at Schedule C, Part B, Section 6;

TS_u is the actual tonnes of coal shipped through the Terminal by a RTAHu during the Financial Year that are Reference Tonnage or Excess Tonnage in respect of the Existing Terminal or Differentiated Expansion Component (as relevant); and

RTu is the Reference Tonnage for the RTAHu in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) for the Financial Year.

4 Increment

(a) If the Reference Tonnage Handled for all Access Holders plus the Excess Tonnage Handled for all Access Holders in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) in a Financial Year exceeds the Aggregate Reference Tonnage in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) (**Over-shipment**), DBCT Management will initially hold (or be entitled to hold – if it is has not actually been paid the relevant amount) a portion of the revenue attributable to the Over-shipment of up to and including 2% of the relevant Revenue Cap (the **Provisional Increment**) calculated in accordance with Sub-Section 4(b) below.

(b) Where:-

(1) there has been no Review Event after 1 July during the Financial Year the Provisional Increment is calculated as follows:

$$\mathrm{PI} = \max(\min(\mathrm{TIC} \times \mathrm{TRTS} - \mathrm{RC}, 2\% \times \mathrm{RC}), 0)$$

where:-

TIC is the Terminal Infrastructure Charge in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) for the Financial Year calculated at Schedule C, Part A, Section 3;

TRTS is the Reference Tonnage Handled for all Access Holders plus the Excess Tonnage Handled for all Access Holders in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) in the Financial Year (and is the sum of all TS_u for each RTAHu); and

RC is the Revenue Cap in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) for the Financial Year.

(2) there has been a Review Event after 1 July during the Financial Year the Provisional Increment is calculated as follows:

$$\mathrm{PI} = \max\left(\min\left(\mathrm{TIC_A} \times \mathrm{TRTS} - \mathrm{RC}, 2\% \times \mathrm{RC}\right), 0\right)$$

where:-

TIC_A is the annualised Terminal Infrastructure Charge in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) for the Financial Year calculated at Schedule C, Part B, Section 6;

TRTS is the Reference Tonnage Handled for all Access Holders plus the Excess Tonnage Handled for all Access Holders in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) in the Financial Year (and is the sum of all TS_u for each RTAHu); and

RC is the Revenue Cap in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) for the Financial Year.

For clarification, DBCT Management may elect not to make a claim for an Increment in respect of a Financial Year, and to treat the Provisional Increment as nil.

(c) DBCT Management may submit an application to the QCA seeking to permanently retain the Provisional Increment, within 60 days of Financial Year end. If the QCA is reasonably satisfied that some or all of the over recovery is a direct result of DBCT Management itself or through its contractors (other than the Operator) engaging in activities which have improved capital or operational productivity of the Terminal then the QCA may approve the retention by DBCT Management of all or part of the Provisional Increment (the amount so approved being the **Increment**).

(d) If the QCA approves an Increment, the relevant Revenue Cap otherwise applicable will be increased commencing from the next Financial Year and for each Financial Year (or part thereof) thereafter until the Terminating Date by the amount of the Increment (or a proportion of it, if the final period in the Term is not a whole Financial Year).

(e) If the QCA does not approve DBCT Management's application (in whole or in part) or DBCT Management does not submit an application to the QCA as outlined above, DBCT Management will distribute any retained portion of the Provisional Increment (the **Provisional Increment Repayment**) to Reference Tonnage Access Holders in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) within 14 days of the QCA's decision (or, if no application is made, then no later than 14 days after the last date on which the application could have been made), in proportion to their respective Reference Tonnages for the relevant Financial Year.

5 Additional Tonnage Amount (ATA)

(a) Where no Review Event occurs after 1 July in a Financial Year, the Additional Tonnage Amount (**ATA**) will be calculated as follows:

$$\mathrm{ATA} = TIC \times AT$$

where:-

TIC is the Terminal Infrastructure Charge in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) for the Financial Year calculated at Schedule C , Part A, Section 3; and

AT is the Additional Tonnage in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) for the Financial Year

(b) Where a Review Event occurs after 1 July in a Financial Year, the Additional Tonnage Amount (**ATA**) will be calculated as follows:

$$\mathrm{ATA} = TIC_A \times AT$$

where:-

TIC$_A$ is the annualised Terminal Infrastructure Charge in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) for the Financial Year calculated at Schedule C, Part B, Section 6; and

AT is the Additional Tonnage in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) for the Financial Year.

6 Annualised Terminal Infrastructure Charge (TIC$_A$)

If there is a Review Event after 1 July in a Financial Year, the annualised Terminal Infrastructure Charge (**TIC$_A$**) for that Financial Year will be calculated as follows:-

$$TIC_A = \sum_{i=1}^{n} \left(\frac{TIC_i \times RTP_i}{ART} \right)$$

where:

TIC$_i$ is the Terminal Infrastructure Charge in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) for each period i in the Financial Year calculated at Schedule C, Part A, Section 3;

RTP$_i$ is that part of the Reference Tonnage for all RTAHus in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) relating to each period i in the Financial Year (for example, if the Aggregate Reference Tonnage rate in period “i” is 50Mtpa and the period “i” is of 6 Months duration then RTP$_i$ would be 25 Mt);

ART is the Aggregate Reference Tonnage in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) for the Financial Year (for example, if there are two periods “i” in a Financial Year, each of 6 Months duration, and the Aggregate Reference Tonnage rate in each of the periods is 50 Mtpa and 60 Mtpa respectively, then the ART for the Financial Year would be 55Mt); and

n is the number of periods “i” in the Financial Year.

Part C Transitional charges from 2010AU

For the avoidance of doubt, and without limitation to Section 11.11 of the 2010 access undertaking, promptly following the Commencement Date, DBCT Management must undertake the reconciliation of Capital Charges and determine a final true up amount as contemplated by Section 11.11 and Part C of that undertaking.

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 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 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 Undertaking;

(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 Undertaking; 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 Undertaking;

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 Undertaking; 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 Undertaking 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, submissions to the Queensland Competition Authority or other proceeding contemplated in the Access Undertaking or the *Queensland Competition Authority Act 1997* (Qld));

(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) The parties irrevocably submit to the exclusive jurisdiction of the courts of Queensland.

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 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) 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 Holder’s 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;

(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 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 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 Undertaking, 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 Undertaking.

Schedule F – Terminal Master Plan

[Terminal Master Plan attached separately]

Schedule G – Definitions and Interpretation

1. Definitions

In this Undertaking:

60/60 Requirement has the meaning given in Section 12.5(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 Undertaking (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 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 Undertaking;

(b) for the purposes of Sections 5.3A, 5.4, 5.7, 5.8, 5.9, and Section 17 only – an Access Application which was duly submitted to DBCT Management prior to the Commencement Date under and in accordance with a previous 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)(B) which is made after the Commencement Date,

as renewed from time to time in accordance with this Undertaking.

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 Undertaking.

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, Part B, Section 5.

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

(a) in respect of an 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 Base Terminal, the sum of the Annual Contract Tonnages for all 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 by the QCA 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) including tonnage which an Access Holder 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 would be entitled to have Handled but for the suspension of the Access Holder's right to have the tonnage Handled under an Access Agreement; but

(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.

Approval Date means 16 February 2017.

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).

Brookfield Group means the group of companies that are Controlled by Brookfield Asset Management Inc.

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.

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).

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 1 July 2016.

Completion means, in respect of relevant works comprising a Terminal Capacity Expansion:

(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 Undertaking.

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 Undertaking or a breach of any confidentiality deed contemplated in Section 8 of this Undertaking;

(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 Undertaking or a breach of any confidentiality deed contemplated in Section 8 of this Undertaking; 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.

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 Manual means a cost allocation manual prepared by the QCA under s159 of the QCA Act for use by DBCT Management.

Cost Allocation Principles has the meaning given in Section 11.11(h).

Cost Sensitive Expansion has the meaning given in Section 11.13(c).

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.

Different Terms has the meaning given in Section 13.1(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 a separate Regulated Asset Base, Annual Revenue Requirement and Reference Tariff for the purpose of calculating Capital Charges in respect of the Terminal Capacity Expansion. Where expansion costs are differentiated, they are not shared by the users of existing Terminal Components and **Differentiated** has a corresponding meaning.

Differentiated Expansion Component has the meaning giving in Section 11.13(b).

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 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 17.1.

Dispute Notice has the meaning given to that term in Section 17.1.

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 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 has the meaning given in the Standard Access Agreement.

Excess Charge has the meaning given in Section 11.5.

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 12.1(a)(1).

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

Expansion Component means in respect of a Terminal Capacity Expansion, the Terminal Component the subject of the expansion, as determined in accordance with this Undertaking.

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 12.1.

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 11.13.

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 12.1 of the Undertaking;

(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 12.1 of the Undertaking

(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 12.1 of the Undertaking

(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;

(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 Undertaking which, in respect of a Financial Year, assumes a full 12 months period, will be taken to be modified proportionately.

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

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 using any of the infrastructure at the Terminal.

Increment has the meaning given in Schedule C, Part B, Sub-Section 4(c).

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

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, Part A, Sub-Section 5(d).

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.

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 11.9(a).

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

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 11.10.

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 I.

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

Other Costs has the meaning given in Section 12.5(a)(3)(B).

Over-shipment has the meaning given in Schedule C, Part B, Sub-Section 4(a).

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).

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

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, Part B, Sub-Section 4(a).

Provisional Increment Repayment has the meaning given in Schedule C, Part B, Sub-Section 4(e).

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 Undertaking, as amended from time to time, in accordance with this Undertaking.

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.

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 Undertaking; 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 Undertaking.

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.

Revenue Cap is the amount DBCT Management is entitled to earn from Reference Tonnage and is calculated in accordance with Schedule C. Part A, Section 2.

Review Event means, for any Terminal Component, any one or more of the following events:

(a) a change in Reference Tonnage;

(b) a change in Non-Reference Tonnage;

(c) Completion and handover to the Operator of the whole of a discrete phase of a Terminal Capacity Expansion;

(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

(e) each 1 July, in respect of:

  (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:

    (A) Capital Expenditure referred to in Section 12.10(b)

    (B) Capital Expenditure referred to in Section 12.10(c);

  (2) sale of assets comprised in the Terminal Component during the preceding 12 months;

  (3) the prudent cost of a FEL 3 Feasibility Study to the extent not included in Capital Expenditure the subject of a Capacity Expansion;

  (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 Undertaking.

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 **Socialised** has a corresponding meaning.

Socialised Terminal Capacity means capacity associated with a Socialised Expansion.

Socialised Expansion has the meaning given in Section 11.13(a)

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

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

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

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 12.1 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 15.

TCMP has the meaning given in Section 12.5(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 12.1.

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 11.4(c).

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 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 or Existing User Agreement.

Terminating Date means the earliest of the following dates:

(a) 1 July 2021; and

(b) the date that the handling of coal at the Terminal ceases to be a “declared service” for the purposes of the QCA Act.

Tonnage means the volume of Access supplied under an Access Agreement, determined by reference to the volume of coal Handled or contracted to be Handled.

Trading SCB means a Supply Chain Business in the Brookfield Group that solely engages in the trading of secondary capacity at the Terminal and which includes, as at the Commencement Date, Brookfield Port Capacity Pty Ltd ACN 134 741 567.

Undertaking means this Access Undertaking (as amended from time to time) which is an access undertaking for the purposes of the QCA Act.

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%.

Year End Adjustment or **YEA** has the meaning given in Section 11.6.

2. Interpretation

In this Undertaking 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 Undertaking 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 Undertaking 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 Undertaking 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; and

(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.

(o) Headings are for convenience only and do not affect interpretation of this Undertaking.

Schedule H – Undertaking by Trading SCB

This deed poll is given on by:

[**Trading SCB *name***] ACN [***number***] of [***address***] (**Trading SCB**)

in favour of:

DBCT Management Pty Limited ACN 097 098 916 of Level 15, Waterfront Place, 1 Eagle Street, Brisbane QLD 4000 (**DBCT Management**);

each Access Holder (as that term is defined in the Access Undertaking) from time to time;

each Access Seeker (as that term is defined in the Access Undertaking) from time to time;

each Rail Operator (as that term is defined in the Access Undertaking) from time to time; and

the Queensland Competition Authority

Recitals

A. Under the Access Undertaking, DBCT Management must procure an undertaking from Trading SCB in the form of this undertaking.

B. At the request of DBCT Management, Trading SCB has agreed to enter into this deed poll to ensure that DBCT Management complies with the relevant provisions of the Access Undertaking.

This deed witnesses that the Trading SCB agrees to the following terms:

1 Ring-fencing

1.1 Non-discrimination

In carrying out Secondary Capacity Trading, Trading SCB will not:

(a) engage in conduct for the purpose of preventing or hindering an Access Holder's or Access Seeker's Access;

(b) unfairly differentiate between Access Seekers, Access Holders or Rail Operators.

1.2 Confidentiality

(a) Trading SCB will enter into a confidentiality deed poll, substantially in the form specified in Annexure A, in favour of any Trading SCB Customer that discloses, or notifies Trading SCB that it intends to disclose, Confidential Information to Trading SCB.

(b) Trading SCB will not disclose to a Trading SCB Customer that acquires Access from Trading SCB the identity of the Trading SCB Customer that assigned that Access (or any part thereof) to Trading SCB.

(c) Trading SCB acknowledges that DBCT Management will not disclose Confidential Information of a Trading SCB Customer to Trading SCB without the prior written consent of the Trading SCB Customer.

2 Compliance

(a) If an Access Holder, Access Seeker, the QCA or a Rail Operator considers that Trading SCB may have breached one or more of its obligations under this deed the relevant entity (**Complainant**) may lodge a written complaint with Trading SCB.

(b) Unless otherwise notified in writing by the Complainant, the written complaint and any accompanying information (whether documentary or otherwise) will be Confidential Information until it ceases to be Confidential Information.

(c) Trading SCB will provide to the QCA, as soon as practicable, a copy of any complaint it receives pursuant to clause 2.1(a) and identify the complaint as Confidential Information.

(d) Trading SCB will:

(1) investigate complaints received pursuant to clause 2.1(a); and

(2) advise the Complainant and the QCA in writing of the outcome of that investigation and Trading SCB's proposed response, if any, and use reasonable endeavours to do so within 20 Business Days after receiving such a complaint.

(e) If the Complainant is not satisfied with the outcome of Trading SCB's investigation, the Complainant can apply to the QCA seeking an audit of the relevant subject of the complaint. The QCA will consider such a request and determine whether to require Trading SCB to conduct an audit.

(f) If the QCA requires Trading SCB to conduct an audit in accordance with clause 2.1(e), Trading SCB must promptly engage the Auditor to carry out the audit and provide the QCA with a report on the outcomes of that audit within a reasonable period of time, identifying any information contained in that report which is Confidential Information.

(g) If the QCA is of the view that the outcomes of the audit required under clause 2.1(e) show that Trading SCB has not complied with this deed, it may require Trading SCB to provide a rectification plan to address the issue and implement the rectification plan within a reasonable period of time.

(h) The QCA may advise the Complainant of:

(1) whether any audit referred to in clause 2.1(f) has demonstrated that Trading SCB has or has not complied with this deed; and

(2) whether Trading SCB has been required to provide a rectification plan to address the relevant issue in accordance with clause 2.1(g),

provided that the QCA must not disclose any Confidential Information.

(i) Trading SCB will bear the costs of the audit unless the QCA determines that the complaint made by the Complainant is vexatious or has not been made in good faith in which case:

(1) Trading SCB will not be liable for the costs of the audit; and

(2) the Complainant will bear the costs of the audit.

3 Governing law and jurisdiction

(a) This deed is governed by the laws of Queensland.

(b) The parties irrevocably submit to the exclusive jurisdiction of the courts of Queensland.

4 Definitions and interpretation

4.1 Definitions

In this deed:

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 as varied or replaced from time to time.

Secondary Capacity Trading means the carrying out of any one or more of the following activities by Trading SCB:

(a) acquiring contracted Access from Access Holders;

(b) aggregating contracted Access which Trading SCB has acquired from Access Holders; and

(c) selling the contracted Access which Trading SCB has acquired from Access Holders to Access Seekers or Access Holders.

Trading SCB Customer means a customer, or any person who is negotiating to become a customer, of Trading SCB in respect of Secondary Capacity Trading.

4.2 Interpretation

(a) Terms defined in the Access Undertaking 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 anything (including, but not limited to, any right) includes a part of that thing but nothing in this clause 4.2(c)(2) implies that performance of part of an obligation constitutes performance of the obligation;

(3) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency; and

(4) a reference to a person includes that person's successors and legal personal representatives.

Executed as a deed poll

Signed sealed and delivered by
[Trading SCB] [ACN]
By:

sign here ►

Director/Secretary	Director

print name

Annexure A – Confidentiality deed poll

Deed poll

Confidentiality deed poll

[Trading SCB]

DBCT Management Pty Ltd

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Confidentiality deed poll

Date ►

This deed poll is made by

Recipient	**[**Trading SCB**]** ACN [number] of [address] **(Trading SCB)**

and

DBCT Management	**DBCT Management Pty Ltd** ACN 097 698 916 of Level 15, 1 Eagle St, Brisbane QLD 4001 **(DBCT Management)**

in favour of

Discloser	**[User]** ACN [number] of [address] **([User alias])**

Recitals

1 The Discloser has consented to DBCT Management disclosing Confidential Information to the Recipient for the Express Purpose and for no other purpose.

2 The Discloser may disclose additional Confidential Information directly to the Recipient for the Express Purpose.

3 The Recipient agrees that the Confidential Information is provided to it on the terms of this deed poll and that it will not use or disclose the Confidential Information except as provided in this deed poll.

This deed poll witnesses as follows:

1 Definitions and interpretation

1.1 Definitions

The meanings of the terms used in this deed poll are set out below.

Term	Meaning
Capacity	up to [***insert***] mtpa of capacity at Dalrymple Bay Coal Terminal
Confidential Information	all information which: 1 is disclosed to the Recipient or a Specified Person (whether before or after the date of this deed poll) by the Discloser or DBCT Management; 2 relates directly or indirectly to the Discloser or its past, existing or future business, operations, administration or strategic plans; and 3 is in oral or visual form, or is recorded or stored in a Document, and includes, without limitation, the fact that: 4 Confidential Information is being made available by the Discloser to the Recipient or the Specified Persons; and 5 discussions or negotiations have occurred, are occurring or may occur between the Recipient and the Discloser, or their respective advisers or representatives, in relation to a possible Capacity transfer.
Corporations Act	the *Corporations Act 2001* (Cth).
Discloser	[***Insert User alias***].
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	a possible transfer of all or part of the Capacity from the Discloser to the Recipient
Recipient	Trading SCB.
Specified Person	an officer, employee or adviser of the Recipient who has a specific need to have access to the Confidential Information for the Express Purpose.

1.2 Interpretation

(a) Headings are for convenience only and do not affect interpretation.

(b) In this deed poll, unless the context otherwise requires:

(1) words importing the singular include the plural and vice versa;

(2) a reference to anything (including, but not limited to, any right) includes a part of that thing but nothing in this clause 1.2(b)(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 poll or with the prior written consent of the Discloser (which may be withheld in the Discloser's ultimate discretion);

(b) keep the Confidential Information secure and protected from any use, disclosure or access which is inconsistent with this deed poll;

(c) promptly notify the Discloser if it suspects, or becomes aware of, any unauthorised use, storage, copying or disclosure of the Confidential Information; and

(d) maintain such procedures as are necessary to ensure compliance with this deed poll by the Recipient and each Specified Person and, upon request, provide the Discloser details of the procedures adopted.

3 Permitted use and disclosure

(a) The Recipient must only use the Confidential Information for the Express Purpose.

(b) The Recipient may:

(1) only disclose Confidential Information to a Specified Person, and must only make such disclosure solely for the Express Purpose; and

(2) disclose Confidential Information to the Queensland Competition Authority.

(c) DBCT Management must only disclose Confidential Information to the Recipient, and must only make such disclosure solely for the Express Purpose.

4 Benefit of this deed poll

This deed poll is made by the Recipient and DBCT Management in favour of, and for the benefit of the Discloser.

5 Return and destruction of information

If requested by the Discloser, the Recipient must, within 7 days, return to the Discloser, or destroy or delete as the Discloser directs, all original Documents and copies which:

(a) are or contain Confidential Information; and

(b) reproduce, are based on, utilise or relate to Confidential Information,

provided however that the Recipient may keep one copy of the Confidential Information for its records.

6 Operation of this deed poll

(a) Subject to clause 6(c), this deed poll continues without limitation as to time.

(b) This deed poll 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 (including the Queensland Competition Authority); or

(2) is in the public domain other than as a result of a breach of this deed poll.

(c) If the Recipient or a Specified Person must make a disclosure referred to in clause 6(b)(1):

(1) the Recipient must disclose, and must ensure that the Specified Person discloses only the minimum Confidential Information required to comply with the applicable law, order or requirement; and

(2) before making such disclosure, the Recipient must give the Discloser reasonable written notice of the full circumstances of the required disclosure together with the Confidential Information which it, or the Specified Person, proposes to disclose and consult with the Discloser as to the form of the disclosure.

(d) Nothing in this deed poll requires the Discloser to disclose Confidential Information to the Recipient.

7 Acknowledgment

The Recipient acknowledges that:

(a) the Confidential Information is secret and highly confidential to the Discloser;

(b) disclosure of Confidential Information in breach of this deed poll could cause considerable commercial and financial detriment to the Discloser;

(c) damages may be inadequate compensation for breach of this deed poll 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 poll.

8 Recipient to ensure others comply

The Recipient must:

(a) inform each Specified Person of the Recipient's obligations under this deed poll;

(b) procure that each Specified Person strictly observes all of the Recipient's obligations under this deed poll as if those obligations were imposed on that person; and

(c) 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 poll.

9 Disclaimer

(a) The Recipient acknowledges that 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 as to the accuracy or completeness of the Confidential Information;

(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; and

(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.

(b) The Recipient acknowledges that it is making an independent assessment of the Confidential Information and that it will:

(1) carry out, and rely solely on, its own investigation and analyses in relation to the Confidential Information; and

(2) verify all information on which it intends to rely to its own satisfaction.

(c) The Recipient acknowledges that 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 poll is governed by the laws of Queensland.

(b) The Recipient irrevocably submits to the exclusive jurisdiction of the courts of Queensland.

11 Waivers

(a) Waiver of any right, power, authority, discretion or remedy arising on default under this deed poll 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 poll does not result in a waiver of that right, power, authority, discretion or remedy.

Signing page

Executed as a deed poll

Signed sealed and delivered by
[Trading SCB]
By:

sign here ►

	Director/Secretary	Director/Secretary
print name		

Signed sealed and delivered by
DBCT Management Pty Ltd
By:

sign here ►

	Director/Secretary	Director/Secretary
print name		

Schedule I – Terms of Operation and Maintenance Contract

Term	Summary of term
Parties	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**). The Operation and Maintenance Contract (**Contract**) defines the relationships between the parties and their rights and obligations.
Term	The Contract will expire on 30 June 2021 unless terminated earlier. Other than for default of DBCTM (refer further below), the Operator cannot terminate the Contract before this date. • 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	The parties' intentions include (among other things): • 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	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	Operation of the Terminal specifically includes the following services: • 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). 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.
Maintenance Services to be performed by the Operator	The Operator must maintain the Terminal and each component of the Terminal at its operating capacity as specified in the Contract. This specifically includes: • 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	The Operator must operate and maintain the Terminal in order to ensure it is capable of operating: • at its rated design capacity; • in accordance with good operating and maintenance practice; and • in good and substantial repair. 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: • 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. 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. 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.
Annual operation, maintenance and capital plan	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).
Payments to the Operator	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. The Operator is also entitled to be paid: • 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. 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.
Terminal Regulations	Both the Operator and DBCTM are required to comply with the Terminal Regulations. 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. DBCTM must require each Terminal user pursuant to their user agreement(s) to comply with the Terminal regulations as applicable from time to time.
Access to the Terminal	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. 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.

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	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. 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.
Records and audits	The Operator must maintain records (including financial records) relating to the services. 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. The Operator must work with DBCTM to ensure that DBCTM is able to comply with its reporting obligations under the approved access undertaking.
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	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. 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. 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.
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	The Contract specifies a dispute resolution procedure which includes the following provisions: • 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	There is a deemed assignment of the Contract if: • 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. The Contract may not be assigned without DBCTM's approval.
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.