



**October 2019**

**Standard Underwriting Agreement**

**DBCT Management Pty Limited**

**[insert]**

## Table of contents

<b>Table of contents</b> .....	<b>2</b>
<b>Underwriting Agreement</b> .....	<b>3</b>
<b>1 Definitions and interpretation</b> .....	<b>4</b>
1.1 Definitions.....	4
1.2 Interpretation.....	6
<b>2 Underwritten Amount</b> .....	<b>6</b>
<b>3 Access Seeker acknowledgements</b> .....	<b>7</b>
<b>4 Conduct of Studies</b> .....	<b>7</b>
4.1 Studies.....	7
4.2 Cost Variation.....	7
4.3 Scope Variation .....	8
<b>5 Further Studies</b> .....	<b>8</b>
5.1 Further Study Proposal .....	8
5.2 Funding.....	8
<b>6 Security</b> .....	<b>9</b>
6.1 Access Seeker to provide Security .....	9
6.2 Conversion of Security .....	9
6.3 Return of Security .....	9
<b>7 Reporting</b> .....	<b>10</b>
7.1 Summary of progress .....	10
7.2 Transparency of expenditure.....	10
<b>8 Ownership of Intellectual Property</b> .....	<b>10</b>
<b>9 Confidential Information</b> .....	<b>10</b>
9.1 Confidential Information to be kept confidential .....	10
9.2 Expiry of confidentiality obligations.....	11
<b>10 Termination of Underwriting Agreement</b> .....	<b>11</b>
<b>11 Liability</b> .....	<b>11</b>
<b>12 Warranties and reliance</b> .....	<b>11</b>
12.1 Warranties.....	11
12.2 Reliance .....	12
<b>13 Disputes</b> .....	<b>12</b>
<b>14 GST</b> .....	<b>12</b>
<b>15 General</b> .....	<b>12</b>
15.1 Assignment.....	12
15.2 Governing Law and jurisdiction.....	13
15.3 Costs and expenses .....	13
15.4 Entire agreement .....	13
15.5 Variation.....	13
15.6 Relationship of parties .....	13
15.7 Survival of acknowledgements, representations and warranties .....	13
15.8 Address for Notices.....	13
<b>Annexure 1 – Description of Studies and Estimated Study Cost</b> .....	<b>14</b>
<b>Annexure 2 – Deed of waiver and release</b> .....	<b>15</b>
<b>Annexure 3 – Form of bank guarantee</b> .....	<b>16</b>
<b>Executed as an agreement</b> .....	<b>17</b>

## Underwriting Agreement

Date ►

Between the parties **DBCT Management Pty Limited**

ABN 16 097 698 916 of Level 15, Waterfront Place, 1 Eagle Street, Brisbane, QLD,  
4000

**(DBCTM)**

**[insert]**

(ABN [insert ABN]) of [insert address]

**(Access Seeker)**

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Recitals

- 1 DBCTM is the lessee of the Terminal under long term leases.
- 2 DBCT Pty Ltd operates and maintains the Terminal on behalf of DBCTM.
- 3 The Access Seeker has submitted an Access Application or entered into a Conditional Access Agreement to use the Terminal to handle its coal.
- 4 DBCTM considers that the Aggregate Annual Contract Tonnage applied for in Access Applications or Conditional Access Agreements justifies the undertaking of the Studies.
- 5 The Access Seeker has agreed to underwrite the costs of the Studies in accordance with this Agreement and the Access Undertaking.
- 6 This Agreement has been approved by the QCA for the purposes of section 5.10(q) of the Access Undertaking.
- 7 This Agreement sets out the basis on which the Access Seeker will underwrite the cost of the Studies undertaken by DBCTM.

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The parties agree as follows:

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# 1 Definitions and interpretation

## 1.1 Definitions

Terms used in this Agreement have the meaning given to them in the Access Undertaking except as set out below.

**Access Undertaking** means the access undertaking submitted by DBCTM and approved by the QCA from time to time relating to provision of services at the Terminal, and at the commencement of this Agreement means the access undertaking approved by the QCA on 20 September 2018.

**Actual Study Costs** means the actual cost of the Studies and includes:

1. the cost of engineering and design services and project management costs incurred by DBCTM in connection with the Studies;
2. reasonable third party consultant costs incurred by DBCTM (including but not limited to, legal fees);
3. financing costs incurred by DBCTM in connection with the financing of the Studies;
4. site investigations as required; and
5. any other cost reasonably incurred by DBCTM in connection with the Studies.

**Agreement** means this underwriting agreement.

**Confidential Information** means any information (in any form) which is disclosed or made available by a party to the other party in connection with the Agreement that is expressly provided or made available on a confidential basis, including the terms of this Agreement, any summary of the Studies and any documents produced in connection with the Studies, but excluding:

1. information which is in the public domain, other than due to a breach of confidentiality by a party; and
2. information which was in a party's possession prior to the Execution Date and is not the subject of confidentiality obligations pursuant to another agreement.

**Consequential Loss** means loss of production, loss of profit or anticipated profit, loss of opportunities, loss of anticipated saving or any special, exemplary or punitive damages.

**Cost Notice** has the meaning given in clause 4.2(a).

**Co-Venturer** means any other entity with whom the Access Seeker is, or may be from time to time, a party to a joint venture agreement in relation to a mine which is intended to be serviced by access to the Terminal.

**Engineering Consultant** means the engineering consultant or consultants that are contracted by DBCTM to undertake the engineering component of the Studies on behalf of DBCTM.

**Execution Date** means the date on which the last of the parties to this Agreement signs this Agreement.

**Estimated Study Cost** means the estimated cost of the Studies as detailed in Annexure 1.

**Estimated Further Study Cost** means the estimated cost of the Further Studies as advised by DBCTM in a Further Study Proposal.

**Further Studies** means a FEL 3 Feasibility Study and any further study reasonably required by DBCTM in relation to the proposed Terminal Capacity Expansion.

**Further Study Cost** means the actual cost of the Further Studies and includes:

1. the cost of engineering and design services and project management costs incurred by DBCTM in connection with the Further Studies;
2. reasonable third party consultant costs incurred by DBCTM;
3. financing costs incurred by DBCTM in connection with the financing of the Further Studies; and
4. site investigations as required; and
5. any other cost reasonably incurred by DBCTM in connection with the Further Studies.

**Further Study Notice** has the meaning given in clause 5.1(a).

**Further Study Proposal** has the meaning given in clause 5.1(b).

**Intellectual Property Rights** means all current and future industrial and intellectual property rights and interests, including:

1. patents, utility models, trade marks, topographical rights, copyrights, eligible layout rights, designs and other like rights;
2. inventions, discovery, trade secret, know-how and computer software; and
3. any business, scientific, technical and product information, including proprietary information relating to the development of new products,

whether registered, registrable or unregistered, throughout the world and for the duration of the rights and interests.

**Loss** means any damage, liability, cost, expense, outgoings, payments, fine or penalty or other loss of whatever nature.

**QCA** means Queensland Competition Authority

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

**Return Date** means 5 days after the earlier of:

1. the date when the Underwriting Party has paid to DBCTM the Underwritten Amount or any portion thereof demanded by DBCTM in accordance with clause 2(b); and
2. the date on which DBCTM notifies the Underwriting Party that the Terminal Capacity Expansion will proceed or the costs of the Studies will otherwise be recovered through the Access Charges for the Terminal in accordance with the Access Undertaking.

**Revised Estimated Study Costs** has the meaning given in clause 4.2(a).

**Scope** means the scope of the Studies as agreed between DBCTM and the Access Seeker as set out in Annexure 1 and amended from time to time in accordance with the terms of this Agreement.

**Security** means an unconditional, irrevocable bank guarantee in the form of Annexure 3 given by an entity licenced to provide banking services in Australia and with a credit rating from Standard and Poors of not less than 'A'.

**Studies** means the studies as detailed in Annexure 1.

**Tax Invoice** has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Underwriting Agreements** means this Agreement and each other underwriting agreement entered into between DBCTM and an Underwriting Party in respect of the Studies, and "Underwriting Agreement" means any of them.

**Underwritten Amount** means the dollar amount calculated as:

$$U = \frac{C}{T} \times A$$

where:

*U* = Underwritten Amount.

*C* = the total volume of the Access Seeker's request for Access for the first 10 years in which the Access Seeker is seeking Access.

*T* = the aggregate total volume of Access requests by all Underwriting Parties over the first 10 years in which Access is sought as determined by each Underwriting Party's access application.

*A* = Actual Study Costs.

**Underwriting Parties** means the Access Seeker and any other party who has entered into an Underwriting Agreement in respect of the Studies and "Underwriting Party" means any of them.

**Variation Notice** has the meaning given in clause 4.3(a).

**Wilful Misconduct** means any act or omission which was deliberate and wrongful, or involved reckless disregard or wanton indifference to the consequences.

**Withdrawing Underwriting Party** has the meaning given in clause 5.2(b)(1).

## 1.2 Interpretation

In this Agreement, headings are for convenience only and do not affect the interpretation of this Agreement and, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- (e) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (f) a reference to \$ is to Australian currency unless denominated otherwise;
- (g) if an act prescribed under this Agreement to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day;
- (h) a reference to time is a reference to Brisbane time; and
- (i) specifying anything in this Agreement after the words 'including', 'includes' or 'for example' or similar expressions does not limit what else is included unless there is express wording to the contrary.

## 2 Underwritten Amount

- (a) The Access Seeker agrees to underwrite the Studies up to the Underwritten Amount.
- (b) The Access Seeker agrees to pay DBCTM the Underwritten Amount (or relevant portion of the Underwritten Amount) within 30 days after DBCTM notifies the Access Seeker in writing that:
  - (1) the Studies have concluded and the Actual Study Costs (or part thereof) are not, for whatever reason, to be recovered through Access Charges for the Terminal;
  - (2) DBCTM determines the Studies should not proceed as a result of any or all of the Underwriting Parties not agreeing to a variation of the Scope of the Studies in accordance with clause 4.3(b);
  - (3) the Underwriting Parties have not agreed to continue to underwrite the Studies in light of the Revised Estimated Study Costs in accordance with clause 4.2(a);
  - (4) the Underwriting Parties have not agreed to underwrite the Further Studies or have failed to provide the appropriate Security required to underwrite the Further Studies in circumstances where neither DBCTM or another Underwriting Party agrees to underwrite the Further Studies in accordance with clause 5.2; or
  - (5) DBCTM in its sole discretion, or all the Underwriting Parties, resolve that the Further Studies or the proposed Terminal Capacity Expansion will not proceed.
- (c) The Access Seeker must pay any Underwritten Amount to the bank account nominated in writing by DBCTM.
- (d) If:
  - (1) the proposed Terminal Capacity Expansion to which the Studies relate is the subject of a Terminal Capacity Expansion application; or
  - (2) the output of the Studies is used for the benefit of other Access Seekers,after the Access Seeker pays to DBCTM the Underwritten Amount or any portion of the Underwritten Amount in relation to the Studies, DBCTM will refund the Access Seeker to the extent the DBCTM recovers the cost of the Studies from the other Access Seeker or has the cost of the Study included in the assessment of prudent Capital Expenditure by the QCA for the Expansion in accordance with section 12.5(e) of the Access Undertaking up to a maximum of the

Underwritten Amount or part thereof paid by the Access Seeker in accordance with this Agreement.

### 3 Access Seeker acknowledgements

The Access Seeker acknowledges and agrees that:

- (a) subject to section 5.10(f) of the Access Undertaking, nothing in this Agreement, including the underwriting of the Studies guarantees any Access rights to the Access Seeker;
- (b) the QCA's approval or failure to approve the inclusion of all or any part of the Actual Study Costs in the Access Charges in accordance with the Access Undertaking does not in any way affect the liability of the Access Seeker to pay to DBCTM the Underwritten Amount in accordance with this Agreement;
- (c) the Estimated Study Costs are an estimate only and are provided to the Access Seeker as a guide and DBCTM does not warrant the accuracy of the Estimated Study Costs and the Access Seeker will not rely on the Estimated Study Costs for any purpose;
- (d) DBCTM does not represent or warrant that the Studies will be completed for an Actual Study Cost that is equal to or less than the Estimated Study Cost;
- (e) subject to clause 4.2, DBCTM may change, vary or amend the Scope of the Studies, or any other aspect of the Studies at any time and for any reason which may result in a change to the Actual Study Costs;
- (f) DBCTM is not obliged to continue the performance of the Studies if the study costs incurred, as calculated from time to time by DBCTM, exceed the Security provided by the Underwriting Parties.
- (g) subject to section 5.10(f) of the Access Undertaking, this Agreement does not prevent DBCTM from entering into a contract, including an Access Agreement, with any Access Seeker for Available System Capacity in accordance with the terms of the Access Undertaking; and
- (h) nothing in this Agreement or in Annexure 1 obliges DBCTM to undertake the Further Studies or any Terminal Capacity Expansion.

### 4 Conduct of Studies

#### 4.1 Studies

- (a) DBCTM will procure and manage the performance of the Studies in accordance with the details set out in Annexure 1.
- (b) The details of the Studies, including the Scope and Estimated Study Costs, are set out in Annexure 1 and the Scope and Estimated Study Costs have been agreed by the Access Seeker and DBCTM (and each of the Underwriting Parties).
- (c) DBCTM will use its reasonable endeavours to conduct the Studies in accordance with Annexure 1 and will keep the Access Seeker informed as to the progress of the Studies in accordance with this Agreement.

#### 4.2 Cost Variation

- (a) If DBCTM considers, based on forecasts provided by the Engineering Consultant, that the Actual Study Costs will exceed the Estimated Study Costs by more than 10%, DBCTM will, within 28 days of receiving such a forecast from the Engineering Consultant, issue a written notice to each Underwriting Party with the details of the Actual Study Costs incurred to date (**Cost Notice**) and a further estimate of the cost of completing the Studies (**Revised Estimated Study Costs**).
- (b) The Access Seeker must notify DBCTM whether or not it agrees to continue to underwrite the Studies within 21 days of receiving a Revised Estimated Study Costs.
- (c) DBCTM is not obliged to continue with the Studies unless;

- (1) each of the Underwriting Parties agrees to continue to underwrite the Studies in light of the Revised Estimated Study Costs; or
  - (2) if an Underwriting Party elects not to continue to underwrite the Studies in light of the Revised Estimated Study Costs, the Underwriting Parties which elect to continue to underwrite the Studies also agree in writing with DBCTM to underwrite any withdrawing Underwriting Party's share of the increase in costs from the Estimated Study Costs to the Revised Estimated Study Costs.
- (d) If each of the Underwriting Parties agrees to continue to underwrite the Studies in light of the Revised Estimated Study Costs, the Revised Estimated Study Costs will be taken to be the Estimated Study Costs, including for the purpose of any further cost or scope variation in accordance with this clause 4.

### 4.3 Scope Variation

- (a) If DBCTM proposes a change to the Scope of the Studies that, when taken in conjunction with any cost variations under clause 4.2, will result in an increase to the Estimated Study Costs of more than 10%, DBCTM will issue a written notice to each Underwriting Party with the details of the change in Scope and associated amendments to the Estimated Study Costs (**Variation Notice**).
- (b) The Access Seeker must notify DBCTM whether or not it agrees to the change in Scope within 7 days of receiving a Variation Notice.
- (c) DBCTM must not change the Scope of the Studies unless each of the Underwriting Parties has agreed to a variation of the Scope as detailed in the Variation Notice.
- (d) If each of the Underwriting Parties agrees to the change in Scope and Estimated Study Costs as set out in the Variation Notice, the scope as set out in the Variation Notice will be taken to be the Scope and the Estimated Study Costs will be amended as set out in the Variation Notice, including for the purpose of any further cost or scope variation in accordance with this clause 4.

## 5 Further Studies

### 5.1 Further Study Proposal

- (a) If, during the Studies, DBCTM determines that the Further Studies should be undertaken it will provide notice to the Underwriting Parties of its intention to proceed with the Further Studies (**Further Study Notice**).
- (b) DBCTM will provide Access Seeker with final details of the Further Studies including the intended scope and the Estimated Further Study Cost within 60 days of notice given in accordance with clause 5.1(a) (**Further Study Proposal**).
- (c) Within 14 days of receiving a Further Study Proposal from DBCTM the Access Seeker must advise whether it agrees to underwrite the Further Study Costs in accordance with the Further Study Proposal.

### 5.2 Funding

- (a) Within 14 days after notifying DBCTM of its decision to proceed under clause 5.1(c) (**Funding Underwriting Party**), the Access Seeker must enter into a underwriting agreement with DBCTM in respect of the Further Study Proposal on terms substantially the same as the terms of this Agreement.
- (b) If:
  - (1) an Underwriting Party does not agree to underwrite the Further Study Costs in accordance with the Further Study Proposal (**Withdrawing Underwriting Party**) and;
    - (A) neither DBCTM nor any other Underwriting Party wishes to underwrite the Withdrawing Underwriting Party's portion of the Estimated Further Study Costs; or



- (B) if DBCTM, in its sole discretion, considers it appropriate to (because of the withdrawal of the Withdrawing Underwriting Party) reduce the scope of the Further Study Proposal, neither DBCTM nor any other Underwriting Party wishes to underwrite the Withdrawing Underwriting Party's portion of the amended Estimated Further Study Costs as advised by DBCTM; or
- (2) a Funding Underwriting Party does not enter into a underwriting agreement in respect of the Further Study Proposal in the time required by this Agreement,  
DBCTM is not obliged to proceed with the Further Studies.
- (c) A Withdrawing Underwriting Party will be considered to be a Non-Funding Access Applicant for the purposes of (and as defined in) section 5.10(f) of the Access Undertaking.
- (d) Nothing in this clause 5, relieves the Access Seeker of its obligations under this Agreement in respect of the Underwritten Amount.

## **6 Security**

### **6.1 Access Seeker to provide Security**

- (a) If required by DBCTM, acting reasonably, the Access Seeker must, on or before the Execution Date provide Security for an amount equal to the Underwritten Amount.
- (b) Where DBCTM does not request Security at the Execution Date, if after the Execution Date, in the reasonable opinion of DBCTM, there is a likelihood that the Access Seeker may have ceased or will cease to be reputable or of good financial standing with the capability to fulfil all of its obligations under (or in respect of) this Agreement, then the Access Seeker must provide to DBCTM, within 20 Business Days after written notice from DBCTM, a Security in the amount of the Underwritten Amount.
- (c) If the Access Seeker agrees to continue the Studies under clause 4.2(b), if required by DBCTM, acting reasonably, the Access Seeker must, within 30 days after receiving a Cost Notice under clause 4.2(a), provide further Security, or increase the Security, for the amount equal to the Underwritten Amount based on the Revised Estimated Study Costs as advised by DBCTM.
- (d) To the extent that DBCTM elects to accept Security which has an expiry date, if such Security will expire before the Return Date, then the Access Seeker must, not less than 30 days prior to that expiry date provide DBCTM with a replacement Security which is specified to expire not earlier than two years after the date on which it is provided. If the Access Seeker fails to provide the replacement Security in accordance with this clause 6.1(d), DBCTM may draw down on the whole of the Security and hold the proceeds as cash security.

### **6.2 Conversion of Security**

- (a) DBCTM may call upon, demand, receive and use the proceeds of the Security if in DBCTM's opinion (acting in good faith), the Access Seeker fails to pay any amount that is payable to DBCTM in accordance with this Agreement.
- (b) Without prejudice to clause 6.2(a), DBCTM is entitled to call upon the Security if the Access Seeker refuses to pay the Underwritten Amount when, in DBCTM's opinion (acting in good faith), the Underwritten Amount is due and payable in accordance with this Agreement, even if the Access Seeker disputes its liability to pay or the quantum of the Underwritten Amount.
- (c) DBCTM's right to call on the Security is without prejudice to any other right or remedy available to DBCTM.

### **6.3 Return of Security**

Subject to clause 6.2, DBCTM will return any Security on the Return Date.

## 7 Reporting

### 7.1 Summary of progress

- (a) Within 2 weeks after the end of each month in which the Studies are performed, DBCTM will provide the Access Seeker with a written monthly report summarising:
  - (1) the progress of the Studies to date and the work in relation to the Studies which is to be undertaken during the following month;
  - (2) any significant engineering issues identified as part of the Studies; and
  - (3) expenditure to date against Estimated Study Costs (and Revised Estimated Study Costs, if relevant), including a breakdown of the Actual Study Costs incurred by DBCTM to date.
- (b) Promptly after the completion of the Studies, DBCTM will provide the Access Seeker with a report detailing a summary of the results of the Studies undertaken.

### 7.2 Transparency of expenditure

- (a) DBCTM will maintain complete records of all Actual Study Costs and will, upon written request from the Access Seeker, share copies of those records with the Access Seeker for the purpose of the Access Seeker verifying the Actual Study Costs.
- (b) The Access Seeker is not entitled to any audit of the Actual Study Costs.

## 8 Ownership of Intellectual Property

- (a) As between the Access Seeker and DBCTM, DBCTM owns all Intellectual Property Rights created during or arising out of the performance of the Studies.
- (b) Prior to receiving a summary of the findings of the Studies or any information relating to the Studies, the Access Seeker must execute a deed of waiver and release:
  - (1) in favour of DBCTM as set out in Annexure 2; and
  - (2) a deed of waiver and release in favour of the Engineering Consultant or other third party consultant, as required by the Engineering Consultant or other third party consultant from time to time.
- (c) Subject to clause 8(b):
  - (1) as between the Access Seeker and DBCTM, all materials and documents (in any form) developed during the performance of the Studies are the property of DBCTM; and
  - (2) to the extent DBCTM has the right to use material and documents developed during the performance of the Studies, DBCTM grants the Access Seeker a non-exclusive and royalty free license to:
    - (A) use all materials and documents developed during the performance of the Studies (including the Intellectual Property Rights in such materials and documents) solely for the purpose of exercising the Access Seeker's rights under this Underwriting Agreement; and
    - (B) provided that any Related Body Corporate or Co-Venturer has executed the deeds of waiver required by clause 8(b), sub-licence its rights under this clause 8(c) to any Related Body Corporate or Co-Venturer.

## 9 Confidential Information

### 9.1 Confidential Information to be kept confidential

- (a) Except as otherwise permitted under this Agreement, during the term of this Agreement and thereafter each party undertakes and agrees:
  - (1) to treat all Confidential Information as confidential and to not disclose the Confidential Information to any third party without the other party's prior written consent, such consent not to be unreasonably withheld or delayed; and

- (2) to take all reasonable steps to ensure that the party's officers, employees, agents and representatives comply with the party's obligations under this clause.
- (b) Each party may disclose Confidential Information:
- (1) to its financiers, financial advisers, auditors, legal advisers and other professional advisers without the prior written consent of the other party;
  - (2) to its Related Bodies Corporate or Co-Venturers who have a need to know or receive the Confidential Information and who have been made aware of the obligations of confidentiality under this Agreement, without the prior written consent of the other party; and
  - (3) as required by the Access Undertaking, order of a court, the requirements of any law or the rules of any recognised stock exchange on which its shares or the shares of a Related Body Corporate are listed, provided that the party has consulted with the provider of the information as to the content of the disclosure.

The Access Seeker remains liable for any breach of the obligations of confidentiality by persons to whom Confidential Information has been disclosed under clause 9.1(b)(1) or 9.1(b)(2).

## 9.2 Expiry of confidentiality obligations

Notwithstanding any other provision of this Agreement, the obligations in this clause 9 survive until the later of:

- (a) three (3) years from the date this Agreement is executed; or
- (b) the date this Agreement is terminated.

## 10 Termination of Underwriting Agreement

This Agreement will terminate upon the earlier of:

- (a) DBCTM releasing the underwriting obligation of the Access Seeker;
- (b) the Studies reaching conclusion and the full value of the Actual Study Costs is included in the Regulated Asset Base;
- (c) the Access Seeker paying to DBCTM the Underwritten Amount in accordance with the terms of this Agreement; or
- (d) DBCTM calling on the Security and receiving the full value of the Underwritten Amount in accordance with clause 6.

## 11 Liability

- (a) DBCTM will not be liable to the Access Seeker for any Loss suffered by the Access Seeker arising out of or in connection with the Studies not proceeding or the proposed Terminal Capacity Expansion contemplated by the Studies not proceeding for any reason whatsoever.
- (b) Notwithstanding any other clause of this Agreement neither Party will be liable to the other Party for any Consequential Loss arising out of, or in connection with this Agreement except to the extent the Consequential Loss is caused by a deliberate breach of this Agreement or any Wilful Misconduct.

## 12 Warranties and reliance

### 12.1 Warranties

Each of DBCTM and the Access Seeker represents and warrants to each other that it has the requisite power to enter into this Agreement on and from the Execution Date and that:

- (a) it is validly incorporated, organised and subsisting in accordance with the laws of its place of incorporation;
- (b) it has full power and capacity to own its assets, to carry on its business as it is now being conducted and to enter into and perform its obligations under this Agreement; and

- (c) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement in accordance with its terms.

## 12.2 Reliance

Each of the Parties have entered into this Agreement in reliance on the representations and warranties in clause 12.1.

## 13 Disputes

- (a) Any disputes arising out of or in connection with this Agreement must, unless otherwise agreed by the Access Seeker and DBCTM, be resolved in accordance with Section 17 of the Access Undertaking.

## 14 GST

- (a) In this clause:
  - (1) any reference to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)* is, unless the context indicates otherwise, a reference to that term as defined or used in the GST Act;
  - (2) a reference to GST payable by or input tax credit of a party includes the corresponding GST payable by or input tax credit of the representative member of the GST group of which that party is a member; and
  - (3) the term '**Excess GST**' has the meaning given to that term in section 142-10 of the GST Act.
- (b) Unless otherwise expressly stated, all amounts referred to in this agreement, including amounts used to determine a payment to be made by one party to the other (other than an amount referred to in clause 14(f)), are exclusive of GST (**GST Exclusive Consideration**).
- (c) To the extent that GST is payable in respect of all or any part of a supply made by a party (**Supplier**) under or in connection with this agreement, the GST Exclusive Consideration to be provided under this agreement for that supply is increased by an amount equal to the GST payable by the Supplier (excluding any Excess GST).
- (d) The recipient must pay the additional amount payable under clause 14(c) to the Supplier at the same time and in the same manner as the GST Exclusive Consideration for the supply is otherwise required to be provided.
- (e) Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with this agreement the Supplier must determine the net GST in relation to the supply (taking into account any adjustment and excluding any Excess GST) and if the net GST differs from the amount previously paid under clause 14(d), the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
- (f) If one of the parties to this agreement is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this agreement, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the party being reimbursed or indemnified is entitled in relation to that loss, cost, expense or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with clause 14(c).

## 15 General

### 15.1 Assignment

The Access Seeker may assign its rights or delegate its obligations to a Related Body Corporate, provided that before such assignment takes effect the assignee provides DBCTM with Security which complies with clause 6 and enters into a deed of assignment agreeing to be bound by the terms of this Agreement as if it were the original party to the Agreement.

**15.2 Governing Law and jurisdiction**

This Agreement is governed by the laws of Queensland. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland.

**15.3 Costs and expenses**

Each party must pay its own costs (including legal costs) and expenses in connection with the negotiation, preparation, execution and delivery of this Agreement.

**15.4 Entire agreement**

This Agreement contains the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings between the parties in connection with it.

**15.5 Variation**

A variation of any term of this Agreement must be in writing and signed by the parties.

**15.6 Relationship of parties**

No party is the partner, agent, employee or representative of the other party and no party has the power to incur any obligations on behalf of, or pledge the credit of, the other party.

**15.7 Survival of acknowledgements, representations and warranties**

All acknowledgements, representations and warranties in this Agreement, including in clause 12.1 will survive execution and completion of this Agreement.

**15.8 Address for Notices**

Any notices required to be given under this Agreement must be addressed as follows:

If to DBCTM:

Attention: Anthony Timbrell

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Address: Level 15, Waterfront Place, 1 Eagle Street, Brisbane, Qld 4000

---

Email: anthony.timbrell@dbctm.com.au

---

If to the Access Seeker:

Attention: [insert]

---

Address: [insert]

---

Email: [insert]

---

## **Annexure 1 – Description of Studies and Estimated Study Cost**

[insert]

## Annexure 2 – Deed of waiver and release

**To:** DBCT Management Pty Limited (**DBCTM**) (ABN 16 097 698 916);

**Re:** **[insert description of studies “Studies”]**, summary findings of the Studies and related documentation (the "Summary Findings", including any part of them) prepared by DBCTM’s consultants at the request of, and in conjunction with DBCTM.

DBCTM will provide the Summary Findings to **[insert recipient name, company number and address]** (**Recipient**) subject to the terms of this Deed Poll.

The undersigned hereby:

- (a) acknowledges that it wishes to receive a copy of the Summary Findings and that a condition precedent to the provision of the Summary Findings to the undersigned is that it sign and deliver to DBCTM this Waiver and Release Deed Poll;
- (b) irrevocably and unconditionally:
  - (1) waives, releases and disclaims any and all suits, actions, proceedings, claims and any other rights (whether in tort, contract, negligence, strict liability or otherwise and whether past, present or future) that it has or may have against or in relation to DBCTM in respect of, in connection with, or arising in whole or in part from its use of or reliance upon the Summary Findings;
  - (2) agrees to maintain the Summary Findings and the information in the Summary Findings strictly confidential and not to provide the Summary Findings or any information contained in the Summary Findings to any third party without the prior written consent of the DBCTM; and
  - (3) agrees that the waivers, releases and disclaimers set out above will apply even in the case of the fault, negligence or strict liability of DBCTM and will extend to the officers, directors, employees, agents, representatives, subconsultants and related entities of DBCTM; and
  - (4) acknowledges that DBCTM is relying on the acknowledgements, covenants and agreements set out in this document in permitting the Summary Findings to be disclosed to the undersigned and this Deed is enforceable by DBCTM.

This Deed Poll is governed by and construed in accordance with the laws of Queensland and the parties submit to the exclusive jurisdiction of the courts of the State of Queensland.

Executed and delivered as a Deed for and on behalf of **[INSERT FULL CORPORATE NAME OF REPORT RECIPIENT]** in accordance with s 127 of the *Corporations Act 2001* (Cth)

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

### Annexure 3 – Form of bank guarantee

To: DBCT Management Pty Limited (**DBCTM**) (ABN 16 097 698 916) of Level 15, Waterfront Place, 1 Eagle Street, Brisbane, QLD, 4000 (“**DBCTM**”)

At the request of [insert Access Seeker’s name and registration number] (**Access Seeker**) and in consideration of DBCTM accepting this undertaking in respect of the contract between DBCTM and the Access Seeker for financial contribution towards the cost of studies for a proposed expansion of the terminal at the Dalrymple Bay Coal Terminal (**Study Underwriting Agreement**); [insert name of financial institution] ABN [insert] (**Financial Institution**) unconditionally and irrevocably undertakes to pay on demand and without deduction or set off any sum or sums which may from time to time be demanded by DBCTM up to a maximum aggregate sum of [*insert Funding Amount*] (**Security Amount**).

This Bank Guarantee continues in force until the earlier of the date on which the first of the following events occurs:

- (a) the Financial Institution receives notification in writing from DBCTM that this Bank Guarantee is no longer required by DBCTM;
- (b) this undertaking is returned to the Financial Institution by DBCTM; or
- (c) the Financial Institution has made payment to DBCTM of the whole of the Security Amount.

Should the Financial Institution receive a notice in writing purporting to be signed by an authorised representative of DBCTM, that DBCTM desires payment to be made of any part of or the whole of the Security Amount, the Financial Institution must make that payment to DBCTM immediately without reference to the Access Seeker and notwithstanding any notice given by the Access Seeker not to pay same.

The Financial Institution may at any time without being required to do so pay to DBCTM the Security Amount less any amount or amounts it has previously paid under this Bank Guarantee and upon payment of that amount to DBCTM the liability of the Financial Institution under this Bank Guarantee immediately ceases.

DBCTM may not transfer, assign or novate its rights, benefits or obligations under this undertaking except to:

- (a) such persons, and to the extent that, DBCTM transfers, assigns or novates its rights, benefits or obligations under the Study Funding Agreement to those people in accordance with the Study Funding Agreement; or
- (b) persons in whose favour, and to the extent that, DBCTM’s rights, benefits or obligations under the Study Funding Agreement have been assigned by way of security or otherwise encumbered.

provided that the Financial Institution has been informed of such transfer, assignment or novation in writing.

This Bank Guarantee is governed by the law in force in the State of Queensland in the Commonwealth of Australia.

The Financial Institution, Access Seeker and DBCTM agree to submit to the non- exclusive jurisdiction of the courts of that State and any courts of appeal from them.

**Signed, sealed and delivered this                      day of                      20[   ] .**

[Insert Financial Institution details]



**Executed as an agreement**

**Signed sealed and delivered by  
DBCT Management**

by:

\_\_\_\_\_  
Director/Secretary

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name (please print)

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

by:

\_\_\_\_\_  
Director/Secretary

\_\_\_\_\_  
Name (please print)      Name (please print)

\_\_\_\_\_  
Director

\_\_\_\_\_