

WIGGINS ISLAND COAL EXPORT TERMINAL ACCESS POLICY

Effective 24 May 2010

Incorporating amendments adopted following the review under paragraph 3.5
completed on 12 February 2018

Contents

1.	INTRODUCTION	1
2.	SCOPE AND OBJECTIVE OF THIS POLICY	1
3.	COMMENCEMENT, AMENDMENT AND REVIEW	2
4.	INFORMATION TO BE PROVIDED BY WICET	4
5.	WICET SHARES AND ASSOCIATED RIGHTS	6
6.	B CLASS SHARE APPLICATION PROCEDURE	7
7.	TAKE OR PAY AGREEMENTS	9
8.	CAPACITY MANAGEMENT PRINCIPLES	12
9.	EXPANSION PRINCIPLES	18
10.	PRICING PRINCIPLES	25
11.	INDEPENDENT CONSULTANT	28
12.	CONFIDENTIAL INFORMATION	29
13.	DISPUTE RESOLUTION	30
14.	PROHIBITION ON HINDERING ACCESS	31
15.	WHO TO CONTACT	31
	DICTIONARY	32
	ANNEXURE 1	39
	ANNEXURE 2	40
	ANNEXURE 3	41
	ANNEXURE 4	45
	ANNEXURE 5	46
	ANNEXURE 6	48

1. INTRODUCTION

- 1.1 The Terminal is owned and operated by WICET. WICET may appoint contractors to provide services at the Terminal including operational and/or maintenance services.
- 1.2 WICET will provide the Services at the Terminal once it has completed the works required for Stage 1¹.
- 1.3 Subject to Financial Close of each Stage, the Terminal is to be built as follows:
- (a) Stage 1, which is planned to have a Capacity under normal operating conditions of at least 20 Mtpa²; and
 - (b) Subject to demand from Gladstone Coal Producers and available finance, additional increments to be determined up to a forecast reasonably achievable Capacity under normal operating conditions aligned to the Terminal Master Plan and subject to applicable regulatory approvals, with any decision to expand to be made in accordance with the Expansion Principles.
- 1.4 If WICET:
- (a) voluntarily transfers ownership of the Terminal to a third party, WICET must ensure that; or
 - (b) is required to transfer ownership of the Terminal to a third party, WICET must do everything within its power and control to ensure that,

as a condition of such transfer the relevant third party undertakes in writing, in favour of all Gladstone Coal Producers (including, without limitation, the Reserved Capacity Producers), to adhere strictly to the terms of this Access Policy.

2. SCOPE AND OBJECTIVE OF THIS POLICY

- 2.1 Subject to availability, Capacity (and access to Services) is available to any Gladstone Coal Producer which meets the requirements of this Policy.
- 2.2 The contents of this Policy are intended to be consistent with the Key Principles and reflect the obligations imposed, and rights provided, under the contractual arrangements agreed between the shareholders of WICET and WICET, Shippers and WICET, and WICET and the State and GPC.
- 2.3 This Policy describes the process by which a Gladstone Coal Producer can itself or through a related body corporate:
- (a) acquire contractually enforceable rights relevant to the Terminal, WICET and the Services; and
 - (b) subject to availability, obtain an allocation of Capacity at the Terminal.
- 2.4 In summary this Policy, among other things:
- (a) identifies the information WICET must provide to a Gladstone Coal Producer upon request in writing (paragraph 4);

¹ Services have been provided since Mechanical Completion on 30 June 2015

² Stage 1 has a throughput capacity of approximately 27mtpa

- (b) lists the requirements, including the application process, a Gladstone Coal Producer must meet to enter into a ToP Agreement and for it and (if relevant) a related body corporate to become a party to the WICET Holdings Shareholders Agreement (and therefore also an A Class Shareholder) (paragraph 7);
 - (c) describes the application requirements and application assessment process and confers rights in relation to Gladstone Coal Producers who are seeking to become B Class Shareholders (paragraph 6);
 - (d) summarises the rights and obligations of a B Class Shareholder and an A Class Shareholder (paragraph 5);
 - (e) describes the process and/or methodology by which:
 - (i) demand for future capacity is ascertained;
 - (ii) capacity is allocated to Shippers and Proposers;
 - (iii) capacity allocations can be varied to ensure Capacity is managed optimally;
 - (iv) expansion decisions relevant to the Terminal and its operations are made; (paragraphs 8 and 9 and Annexure 4);
 - (f) describes the methodology used to determine the pricing principles, which are based on cost recovery (paragraph 10);
 - (g) describes how confidential information will be protected and conflicts of interest will be managed (paragraph 12); and
 - (h) describes the dispute resolution process available to a Gladstone Coal Producer if a dispute arises under the Policy (paragraph 13).
- 2.5 WICET has undertaken in clause 16.2 of the Framework Deed to:
- (a) comply with and give effect to this Policy; and
 - (b) ensure the Terminal is operated (and expansions of the Terminal are conducted) in a manner consistent with this Policy.
- 2.6 A Gladstone Coal Producer or a Shipper may accept the benefit of the undertaking given by WICET in clause 16.2 of the Framework Deed referred to in paragraph 2.5 above by delivering a notice of acceptance to WICET at its registered office marked to the attention of the WICET Access Officer stating that it accepts the benefit of the undertaking given by WICET in clause 16.2 of the Framework Deed.
- 3. COMMENCEMENT, AMENDMENT AND REVIEW**
- 3.1 This Policy is effective as from the date upon which it is agreed by the State and WICET (**Effective Date**), but will cease to have effect if the Framework Deed is terminated because Financial Close for Stage 1 does not occur prior to the End Date³.
- 3.2 If, at any time, WICET considers one or more aspects of the Policy to be unworkable or otherwise an impediment to the efficient and effective operation of the Terminal, provision of Services or the securing of financing for development of the Terminal, WICET can, at its

³ The Policy was agreed between WICET and the State on 24 May 2010 and Financial Close for Stage 1 occurred on 30 September 2011

- discretion, but with the consent of the State and in consultation with Relevant Industry Stakeholders, review and amend the Policy to address those unworkable or otherwise inefficient or ineffective aspects of the Policy provided that the Policy as amended must at all times be consistent with the requirements of the Key Principles.
- 3.3 At any time prior to Financial Close for Stage 1, WICET may amend the Policy (with the consent of the State pursuant to the Framework Deed) to reflect any amendments the parties have made to the WICET Agreements to ensure consistency between the WICET Agreements and the Policy provided that the Policy as amended must at all times be consistent with the requirements of the Key Principles.
- 3.4 The State, in accordance with the terms of the Framework Deed, may at any time by written notice to WICET, request WICET to amend the Policy provided that the Policy remains consistent with the Key Principles. WICET and the State will enter into good faith discussions with a view to agreeing upon amendments so as to address the concerns or issues of the State.
- 3.5 The Policy is to be reviewed by WICET in conjunction with an independent consultant with relevant expertise, who has been engaged pursuant to paragraph 11:
- (a) five years from the date of Financial Close for Stage 1 of the Terminal;
 - (b) thereafter, on a three yearly basis; and
 - (c) at such other times (if any) as WICET may determine in its absolute discretion,
- to ensure that it continues to meet the requirements of the Key Principles.
- 3.6 Each review by WICET pursuant to paragraph 3.5 is to be conducted by WICET and the independent consultant in consultation with the State and Relevant Industry Stakeholders. WICET must advertise in regional and national newspapers selected by it and publish on its website a notice that the review is to take place and invite submissions from Relevant Industry Stakeholders. WICET must ensure that there is at least 20 Business Days between the date of the advertisement and the closing date for submissions.
- 3.7 Following completion of the review, WICET in conjunction with the independent consultant will prepare a report setting out the findings of the review and recommending any changes which need to be made to the Policy so that it will continue to meet the requirements of the Key Principles. Copies of the report will be provided to each of the persons referred to in paragraph 3.6 above.
- 3.8 If a recommended change to the Policy requires a corresponding amendment to the WICET Agreements, WICET will:
- (a) in good faith seek to agree the proposed amendments with the counterparties to the WICET Agreements; and
 - (b) if the counterparties agree to the proposed amendments and WICET has obtained all other necessary approvals and consents (including from the State under the Framework Deed), promptly amend the Policy and the WICET Agreements in accordance with the recommendations made in the report referred to in paragraph 3.7.
- 3.9 WICET acknowledges that amendments to the Policy require the prior written approval of the State under the Framework Deed.
- 3.10 WICET will publish the revised Policy on its website as soon as practicable after it has made any changes to it in accordance with the provisions of this paragraph 3.

- 3.11 Notwithstanding any other provision of this Policy, WICET shall not make any amendment to this Policy (including any amendment to the defined terms in the Dictionary) or the WICET Agreements which adversely affects an entitlement, right or obligation of any Reserved Capacity Producer under the Dictionary and paragraphs 1.4, 3.11, 8.7, 8.9, 8.10, 8.11, 9.7, 9.8, and/or **Annexure 4** of this Policy without the prior written agreement of the relevant Reserved Capacity Producer. The rights of the Reserved Capacity Producers set out in this Policy are not inconsistent with the Key Principles.
- 3.12 WICET acknowledges that it must implement the terms of the Policy acting reasonably and in good faith.

4. INFORMATION TO BE PROVIDED BY WICET

4.1 WICET will:

- (a) as soon as practicable after such information becomes available publish on its website (www.wicet.com.au) that is accessible to all Gladstone Coal Producers information regarding the Terminal and its facilities to assist any Gladstone Coal Producer to determine whether the Terminal and its facilities, in terms of location and capacity of physical infrastructure, are suitable to export its product (**Technical Information**).
- (b) subject to paragraph 4.6, provide or make available as soon as practicable after such information becomes available:
- (i) the B Class Commercial Information to a Gladstone Coal Producer which is considering acquiring a B Class Share; and
 - (ii) the A Class Commercial Information to a Gladstone Coal Producer that proposes to submit or has submitted a ToP Application Form under paragraph 7.1 to enter into a ToP Agreement, acquire an A Class Share and become a party to the WICET Holdings Shareholders Agreement (including in respect of an expansion under paragraph 9),

within 10 Business Days of receiving a request for information in writing from the Gladstone Coal Producer.

4.2 Technical Information includes the following:

- (a) a map of the Terminal and surrounding areas as relevant showing the layout of the:
- (i) train unloader and associated rail tracks;
 - (ii) stockpiling configuration with stacker and associated conveyor systems;
 - (iii) product stockpiles;
 - (iv) reclaimers with associated conveyor systems;
 - (v) shiploader and associated conveyors;
 - (vi) berth and jetty; and
 - (vii) access roads.
- (b) train unloader capacity rates;
- (c) stockpiling capacity rates;
- (d) the number and capacity of product stockpiles;

- (e) reclaimer capacity rates;
- (f) shiploader capacity rates;
- (g) the length of jetty;
- (h) draft capacity of the berth (ship draft);
- (i) vessel size capacity (dwt);
- (j) the Terminal Rules;
- (k) the Nominal Capacity;
- (l) the amount (if any) of Unallocated Long Term Capacity; and
- (m) the Minimum Capped Annual Tonnage applicable to Shippers.

4.3 The B Class Commercial Information includes:

- (a) a summary of the rights and obligations of a B Class Shareholder, including the dispute resolution process available to all B Class Shareholders;
- (b) a copy of the Constitution;
- (c) a summary of the key commercial features of the ToP Agreement (which includes the Stockyard Allocation Principles) a Gladstone Coal Producer must sign with WICET to secure long term capacity allocation rights;
- (d) a summary of WICET's current Strategic Plan;
- (e) any current Expansion Report relating to future expansion of the Terminal;
- (f) such other information as WICET determines from time to time is relevant to a Gladstone Coal Producer who wants to become a B Class Shareholder; and
- (g) identification of any other relevant contractual arrangements of which WICET is aware that an A Class Shareholder may need to sign as a Shipper.

4.4 The A Class Commercial Information includes the B Class Commercial Information and:

- (a) a copy of the WICET Holdings Shareholders Agreement, which includes the THCCM and a proforma of the ToP Agreement a party must agree to secure long term capacity allocation rights;
- (b) an indication of the Application Cost Prepayment;
- (c) the THC or forecast THC, or if differential pricing applies in respect of different Stages, the THCs or forecast THCs;
- (d) a proforma deed of accession to the WICET Holdings Shareholders Agreement;
- (e) an opportunity to review WICET's current Strategic Plan; and
- (f) such other information as WICET determines from time to time is relevant to a Gladstone Coal Producer that proposes to submit or has submitted a ToP Application Form.

4.5 Subject to paragraph 4.6, WICET will provide upon request:

- (a) details of available Surplus Capacity;

- (b) the charges applicable to use of that Surplus Capacity; and
- (c) if there is Surplus Capacity, a copy of the proforma Third Party Shipper Agreement a person must agree with WICET in order to obtain Surplus Capacity,

to any Gladstone Coal Producer or potential Third Party Shipper who has a bona fide interest in securing Surplus Capacity.

- 4.6 A Gladstone Coal Producer, or a Third Party Shipper who requests details of available Surplus Capacity under paragraph 4.5, must enter into a confidentiality agreement with WICET substantially on the terms of the template confidentiality agreement (which can be found at WICET's website⁴) before WICET provides it with either B Class Commercial Information, A Class Commercial Information or the information and Third Party Shipper Agreement referred to in paragraph 4.5.

5. WICET SHARES AND ASSOCIATED RIGHTS

Explanatory note to paragraph 5:

The following paragraphs summarise, in so far as is relevant, terms set out in the WICET Holdings Shareholders Agreement and the Constitution. They do not form part of either document, nor do they have any bearing on how the provisions of those documents may be interpreted.

- 5.1 The rights and obligations attaching to A Class Shares and B Class Shares are set out in the WICET Holdings Shareholders Agreement and the Constitution.
- 5.2 A person is entitled to become a B Class Shareholder if:
- (a) it is a Gladstone Coal Producer; and
 - (b) it meets the application requirements set out in paragraphs 6.1 and 6.2.
- 5.3 The rights of a B Class Shareholder include:
- (a) access to information in respect of WICET that is not publicly available (including the right to receive a summary of WICET's Strategic Plan when that plan is sent to A Class Shareholders);
 - (b) subject to paragraph (g) (below), limited voting rights, including the right to vote on any A Class Shareholder resolution which may affect:
 - (i) the rights attaching to B Class Shares;
 - (ii) the future rights of Gladstone Coal Producers to receive Capacity Entitlements; or
 - (iii) the rights and principles regarding an expansion of the Terminal;
 - (c) the right with all other B Class Shareholders to appoint either a director with certain limited rights to represent all B Class Shareholders or, if the B Class Shareholders decide they do not want to appoint a director, an observer to attend board meetings of WICET and WICET Holdings;
 - (d) the right to approve the appointment of an independent chairman of WICET and WICET Holdings (by simple majority vote);

⁴ www.wicet.com.au

- (e) the right to transfer its B Class Share to another Gladstone Coal Producer that meets the requirements of paragraph 6;
 - (f) the right conferred under paragraph 13.13 to invoke the dispute resolution mechanism set out in the WICET Holdings Shareholders Agreement; and
 - (g) if the B Class Shareholder or a related body corporate has signed a Capacity Commitment Deed, voting rights as if it is an A Class Shareholder (unless it has forfeited such rights in accordance with the Capacity Commitment Deed or WICET Holdings Shareholders Agreement).
- 5.4 Any resolution by A Class Shareholders in relation to matters contained in paragraph 5.3(b) above shall be void unless:
- (a) where there are B Class Shareholders at the time of the resolution who do not have the voting rights referred to in paragraph 5.3(g) of A Class Shareholders, the resolution is also accompanied by a resolution passed by at least 75% of eligible votes cast by, and at least 75% by number of, B Class Shareholders; and
 - (b) in the case of a resolution referred to in paragraph 5.3(b) in so far as it may adversely impact on the rights of B Class Shareholders where there are no B Class Shareholders at the time, the prior written consent of the State has been obtained.
- 5.5 A person is entitled to become an A Class Shareholder if it (or one of its related bodies corporate):
- (a) is a Potential Shipper;
 - (b) meets the requirements set out in paragraph 7; and
 - (c) subject to the terms of this Policy, signs a ToP Agreement with WICET either in connection with Stage 1 or an expansion or in connection with the allocation of Unallocated Long Term Capacity under paragraph 8.
- 5.6 An A Class Shareholder's rights include:
- (a) the right to appoint a nominee director if the A Class Shareholder's Capacity Entitlement is at least 10%;
 - (b) the right to jointly appoint a nominee director, if the combined Capacity Entitlements of two or more A Class Shareholders (each with less than 10%) is at least 10%; and
 - (c) the right on winding up to participate in any distribution in proportion to the A Class Shareholder's Capacity Entitlement.

6. B CLASS SHARE APPLICATION PROCEDURE

Application requirements

- 6.1 A Gladstone Coal Producer, or a related body corporate of a Gladstone Coal Producer, that does not hold a share in WICET Holdings and that wants to apply to WICET Holdings to acquire a B Class Share (**Applicant**) after the WICET Holdings Shareholders Agreement becoming effective must complete a B Class Share Application Form (a pro-forma of which is at **Annexure 2**) addressing all requirements in, and making the necessary representations and undertakings required by, that application form. These are:
- (a) the application fee of \$1.00;

- (b) a representation and undertaking (respectively) to WICET Holdings that the Applicant:
 - (i) is a Gladstone Coal Producer, or a related body corporate of a Gladstone Coal Producer; and
 - (ii) has not engaged (and agrees not to engage) in any conduct which has the purpose of hindering or preventing legitimate access to the Services or expansion of the Terminal;
- (c) a statutory declaration by an authorised officer of the Applicant (together with supporting evidence) that the Applicant, or a related body corporate of the Applicant, is a Gladstone Coal Producer and that there is no share in WICET Holdings on issue in respect of that Gladstone Coal Producer or a related body corporate other than:
 - (i) a related body corporate in its capacity as agent or other representative of a joint venture which includes a participant which is not a related body corporate of the Gladstone Coal Producer; or
 - (ii) a related body corporate which is an incorporated joint venture and has a shareholder which is not a related body corporate of the Gladstone Coal Producer; and
- (d) an agreement to be bound by the Constitution.

6.2 The Applicant must submit its signed and completed B Class Share Application Form together with supporting documentation in relation to its relevant mining tenements to WICET at the contact details provided at WICET's website⁵.

Consideration of application

6.3 WICET must acknowledge receipt of an Applicant's B Class Share Application Form in writing within 10 Business Days of receiving the application.

6.4 WICET will reject any B Class Share Application Form that is incomplete and will notify the Applicant within 10 Business Days of receiving the application if the application is incomplete giving details of the deficiency.

6.5 An Applicant whose B Class Share Application Form has been rejected by WICET under paragraph 6.4 is entitled to submit a new B Class Share Application Form in which case time starts from the date the new B Class Share Application Form is submitted.

6.6 If an Applicant meets all the relevant requirements referred to in paragraph 5.2, WICET Holdings will issue to the Applicant a B Class Share within 20 Business Days of receipt of the Applicant's duly completed application.

6.7 If WICET:

- (a) determines that an Applicant does not meet the requirements of paragraph 5.2; and
- (b) for that reason, does not issue the Applicant with a B Class Share,

WICET must inform the Applicant of its decision in writing and the reasons for that decision within 20 Business Days of making that determination. WICET will make its determination

⁵ www.wicet.com.au

under paragraph (a) (above) as expeditiously as possible after it receives all of the information it requires for that determination.

- 6.8 An Applicant that disagrees with a decision made by WICET under this paragraph 6 may notify WICET of a dispute in accordance with paragraph 13 of this Policy.

7. TAKE OR PAY AGREEMENTS

7.1 If:

- (a) a Shipper wants to increase its Capacity Entitlement Tonnage either under an existing ToP Agreement which it has entered into or by entering into a new ToP Agreement; or
- (b) a Potential Shipper wants to enter into a ToP Agreement and become a party to the WICET Holdings Shareholders Agreement (and therefore also an A Class Shareholder) and be allocated a Capacity Entitlement,

it must complete and submit to WICET a ToP Application Form (a proforma of which is at **Annexure 3**) addressing all the ToP Requirements in, making the necessary representations and warranties required by, and providing the information referred to in, that application form and provide WICET with its Application Cost Prepayment.

7.2 The ToP Requirements are:

Source Mine(s) and Marketable Coal Reserves

- (a) The Shipper or Potential Shipper must:
 - (i) nominate a Source Mine or Source Mines that will supply the coal under the ToP Agreement or support its increased Capacity Entitlement Tonnage under its existing ToP Agreement;
 - (ii) provide evidence in relation to its Source Mines that it (or the person who is or will become its Affiliated Guarantor under the ToP Agreement) holds a mining lease or sub-lease of a mining lease (or an interest therein) or it or its Affiliated Guarantor (or a nominee or manager on its behalf or on behalf of its Affiliated Guarantor) has applied for and is diligently pursuing the grant of a mining lease or sublease of a mining lease and WICET is satisfied it is probable it or its Affiliated Guarantor (or a nominee or manager on its behalf or on behalf of its Affiliated Guarantor) will have obtained a mining lease or sub-lease (or an interest therein) by the time that either:
 - (A) in the case of an allocation of Unallocated Long Term Capacity where there is no expansion, its payment obligations under its ToP Agreement commence; or
 - (B) in the case of an allocation of Capacity where an expansion is proposed, WICET expects that it will need to make a decision whether or not to proceed with the expansion and go to market to raise finance for the expansion;
 - (iii) provide evidence that its Source Mine is technically feasible and that the Shipper or Potential Shipper or the person who will become its Affiliated Guarantor will be in a position to ship production from that mine through the Terminal under its ToP Agreement by the time its payment obligations under its ToP Agreement commence;

- (iv) nominate its desired Capped Annual Tonnage under its ToP Agreement which must be no less than the Minimum Capped Annual Tonnage and disclose whether there will be any ramp up of its requirements for the Services with details of expected quantities and timing of ramp up;
- (v) provide a Statement of Marketable Coal Reserves (**MCR**) to be allocated for shipment under the ToP Agreement through the Terminal calculated in accordance with the JORC Code (a copy of which can be found at <http://www.jorc.org>) or, where the ToP Application Form is lodged in relation to an expansion of the Terminal under paragraph 9, provide evidence to WICET that it will be able to provide such statement by the time WICET expects that it will need to make a decision whether or not to proceed with the expansion. The Statement of MCR and the key documents used to develop the statement must be verified by a competent person in accordance with the JORC Code; and
- (vi) provide evidence that the Reserve Life Cover Ratio (**RLCR**) of its Source Mine or Source Mines will exceed 1.1:1 times at execution of the ToP Agreement or, where the ToP Application Form is lodged in relation to an expansion of the Terminal under paragraph 9, provide evidence to WICET that it will be able to satisfy that RLCR requirement by the time WICET expects that it will need to make a decision whether or not to proceed with the expansion and to go to market to raise finance for the expansion.

Shipper/Potential Shipper and Affiliated Guarantor

- (b) If the Shipper or Potential Shipper does not itself hold the mining lease or hold a sublease of the mining lease (or an interest therein) granting rights to produce coal from the land that is the subject of the mining lease for the Source Mine(s) or does not hold the Exploration Permit, mineral development licence or other Prescribed Mining Tenure, it must provide evidence that the Affiliated Guarantor which holds the mining lease or sublease (or an interest therein), or who itself or through a nominee or manager on its behalf has applied for and is diligently pursuing the grant of a mining lease or sub-lease or which otherwise holds the Exploration Permit, mineral development licence or other Prescribed Mining Tenure, will guarantee the obligations of the Shipper or Potential Shipper under the ToP Agreement.

Other Infrastructure

- (c) The Shipper or Potential Shipper must provide evidence:
 - (i) that the relevant rail infrastructure provider has demonstrated plans for expanding rail capacity where needed, consistent with the timing requirements of the relevant Source Mine and ready for use at the commencement of services under the ToP Agreement;
 - (ii) that other connecting or supporting infrastructure necessary (including rail spurs and sidings, power, water and channel infrastructure) to the production and delivery of coal from its Source Mine is likely to be approved and in place as required to meet its obligations under the ToP Agreement; and
 - (iii) that the Shipper, Potential Shipper or its Affiliated Guarantor (or an entity on its behalf or on behalf of its Affiliated Guarantor) has entered into the necessary above and below-rail contracts and port services agreements or these contracts will be entered into prior to the commencement of the provision of services under the ToP Agreement.

Acceptable Security

- (d) The Shipper or Potential Shipper must provide evidence to WICET's satisfaction that it will be able to provide:
 - (i) acceptable security to WICET in an amount equal to the aggregate forecast THC for its Capped Annual Tonnage for a period up to 12 months or such longer period as WICET reasonably considers its financiers may require; and
 - (ii) either in addition to or in substitution for the security referred to in sub-paragraph (i) (above), any other security in the form and amount that WICET reasonably considers is financially prudent having regard to the development and funding schedule for the applicable Source Mine and associated supporting infrastructure.

Compliance with ToP Agreement and Terminal Rules

- (e) WICET must be satisfied that the Shipper or Potential Shipper is capable of complying with the Part B Requirements and the Terminal Rules.
- 7.3 WICET will provide a written acknowledgement to each Potential Shipper or Shipper who submits a ToP Application Form within 10 Business Days of receipt of that form.
- 7.4 Upon receipt by WICET of a ToP Application Form and the Application Cost Prepayment, WICET shall promptly review the information provided in the ToP Application Form to assess whether it satisfies the ToP Requirements. WICET may engage one or more independent expert(s) with the appropriate expertise to assist WICET in its review. The costs of such review shall be recovered by WICET from the Application Cost Prepayment, and any surplus amounts refunded to the applicant on completion of the review.
- 7.5 WICET, acting reasonably and in good faith, reserves the right to seek additional information or management presentations from a Shipper or Potential Shipper to verify information provided by that Shipper or Potential Shipper pursuant to paragraph 7.2. WICET may provide feedback to the Shipper or Potential Shipper of its preliminary review of the material supplied in support of the ToP Application Form to enable the Shipper or Potential Shipper to either amend its ToP Application Form or to provide further information or other materials to support its application within such timeframe as WICET may notify (acting reasonably and in good faith) to the Shipper or Potential Shipper.
- 7.6 If following the review of information provided by the Shipper or Potential Shipper under paragraphs 7.2 and 7.5 and the review undertaken in paragraph 7.4, WICET concludes that a Shipper or Potential Shipper satisfies the ToP Requirements, WICET shall notify the Shipper or Potential Shipper accordingly. WICET, thereafter, will allocate Capacity to that Shipper or Potential Shipper in accordance with the Capacity Management Principles set out in paragraph 8.
- 7.7 Should WICET conclude (acting reasonably) following a review of information provided by the Shipper or Potential Shipper under paragraphs 7.2 and 7.5 and completion of the review undertaken in paragraph 7.4 that a Shipper or Potential Shipper does not meet the ToP Requirements, WICET must notify the Shipper or Potential Shipper that its application has been unsuccessful.
- 7.8 If a Potential Shipper submits a ToP Application Form and satisfies the ToP Requirements, but there is no or insufficient Capacity available at the Terminal for the Potential Shipper to enter into a ToP Agreement with WICET, WICET will, if the Potential Shipper is not already a B Class Shareholder, offer a B Class Share to the Potential Shipper provided the Potential Shipper meets the requirements of paragraph 6.

- 7.9 A Shipper or Potential Shipper that disagrees with a decision made by WICET under this paragraph 7 may notify WICET of a dispute in accordance with paragraph 13 of this Policy. Where any such dispute arises from a decision made by WICET as to whether a Shipper or Potential Shipper meets the ToP Requirements set out in paragraph 7.2, WICET will not amend a ToP Agreement to increase a Shipper's Capped Annual Tonnage or agree a Capped Annual Tonnage under a ToP Agreement with a Potential Shipper in respect of the amount of capacity in dispute unless and until the dispute is resolved.

8. CAPACITY MANAGEMENT PRINCIPLES

- 8.1 Capacity will be allocated to Shippers, Potential Shippers and other Third Party Shippers approved by WICET from time to time in accordance with the Capacity Management Principles. The Capacity Management Principles apply to:

- (a) allocation of Capacity on a long term basis under ToP Agreements entered into by the Shipper:
 - (i) where there is sufficient Unallocated Long Term Capacity available to satisfy all or part of the Capped Annual Tonnage nominated by a Shipper or Potential Shipper who satisfies the ToP Requirements under paragraph 7 without the need to expand the Terminal, pursuant to the process described in paragraphs 8.5 and 8.6;
 - (ii) where the Terminal has been expanded, pursuant to the process described in paragraphs 8.7, 8.8 and 8.9; and
- (b) short term allocations of Surplus Capacity (if any), pursuant to the process described in paragraph 8.13.

8.2

- (a) As WICET has no control over other elements of the coal supply chain, it is possible that at any point in time one or both of the Aggregate Capped Annual Tonnage and the sum of all contracted Capacity Entitlement Tonnages will exceed the maximum deliverable capacity of the coal chain as a whole. However, WICET will take such steps as are reasonably practicable to inform itself about the maximum throughput capacity of the coal supply chain for the Terminal.
- (b) WICET acknowledges there is an industry objective to encourage all service providers in the coal supply chain to plan and provide for, and for Gladstone Coal Producers to hold, access contracts under which each of the service providers, and the coal supply chain as a whole, are capable of fully delivering the aggregate contracted tonnage. WICET will, subject to its confidentiality obligations, work cooperatively with Relevant Industry Stakeholders, the State and other parties as required to develop the mechanisms necessary to achieve this objective. WICET will be bound by any obligations imposed by any such mechanisms if and only if:
 - (i) to do so does not put WICET in breach of any law or any confidentiality or regulatory obligation;
 - (ii) any necessary regulatory approvals for those mechanisms have been obtained;
 - (iii) WICET, together with any other relevant parties, agree in writing to be so bound; and
 - (iv) any amendments that may need to be made to this Access Policy for WICET to implement the arrangements are agreed by the State pursuant to paragraph 3 and the Framework Deed.

- 8.3 WICET will not enter into a ToP Agreement which results in the Aggregate Capped Annual Tonnages exceeding the planned future Nominal Capacity at the time it enters into the ToP Agreement.

Allocation of Stage 1 Capacity

- 8.4 The initial allocation of Stage 1 Capacity was made in accordance with the process described in **Annexure 4** and not in accordance with the allocation process set out below.

Allocations of Unallocated Long Term Capacity to ToP Shippers

8.5

- (a) WICET's objective in allocating Unallocated Long Term Capacity is to reduce the THC for all existing Shippers by increasing the Aggregate Capped Annual Tonnage if there is demand for Capacity on a long term basis.
- (b) If WICET determines that there is or that it is possible there will be Unallocated Long Term Capacity which can be made available to Shippers or Potential Shippers under ToP Agreements, it will notify Gladstone Coal Producers of the availability of that Unallocated Long Term Capacity by posting details on its website (www.wicet.com.au).

8.6 WICET will allocate the Unallocated Long Term Capacity on the following basis:

- (a) first, if the Shippers who entered into a ToP Agreement in respect of the most recently completed Stage had their ToP Nominations scaled back under paragraph 8.7, to any such Shippers who respond to WICET under paragraph 8.5, satisfy the ToP Requirements and agree to an increase in their Capped Annual Tonnage up to the amount each had been scaled back provided that if the Unallocated Long Term Capacity is insufficient to meet the demand of those Shippers, to those Shippers pro rata based on their respective Capped Annual Tonnages referable to the most recently completed Stage; and
- (b) if after any allocation in accordance with paragraph (a) (above) is made all or any part of the Unallocated Long Term Capacity is still available, to any Shipper or Potential Shipper who satisfies the ToP Requirements and agrees either to sign a ToP Agreement to take up the available Capacity as its Capped Annual Tonnage or to increase its Capped Annual Tonnage under an existing ToP Agreement with immediate effect.

If the available Unallocated Long Term Capacity is insufficient to meet the demand of the Shippers or Potential Shippers referred to in this paragraph (b), the Unallocated Long Term Capacity will be allocated to them pro-rata to their ToP Nominations.

Allocations of Capacity where expansion is proposed

8.7 Where the capacity of the Terminal is proposed to be expanded (see paragraph 9), WICET will allocate to Proposers the Capacity which is planned to be available for use after completion of the expansion as follows:

- (a) where there is sufficient Capacity in the expansion to meet all ToP Nominations, to all Proposers who satisfy the ToP Requirements in accordance with paragraph 7.2 and are not disentitled from acquiring Capacity under paragraph 9; or
- (b) where there is insufficient Capacity in the expansion to meet in full all ToP Nominations, to Proposers who satisfy the ToP Requirements in accordance with

paragraph 7.2 and are not disentitled from acquiring Capacity under paragraph 9 pro-rata to their ToP Nominations.

Usage of Capacity where expansion has been completed

- 8.8 Upon mechanical completion of an expansion and subject to:
- (a) the Proposers having entered into ToP Agreements pursuant to paragraph 9.28 (thereupon becoming Shippers); and
 - (b) paragraph 8.9 below,
- Shippers will be entitled to their Capacity Entitlement Tonnages pursuant to their respective ToP Agreements.
- 8.9 If WICET determines after an expansion has been completed and the Ramp Up Period referable to that expansion has ended that the increased Capacity of the Terminal does not meet, in full, the Aggregate Capped Annual Tonnage then the Shippers who have been allocated a Capacity Entitlement Tonnage in the most recently completed expansion will have that Capacity Entitlement Tonnage compressed before Shippers in Stage 1 or any other previously completed Stage have their Capacity Entitlement Tonnages allocated in respect of those earlier Stages compressed. Compression of the Capacity Entitlement Tonnages allocated to Shippers in respect of the most recently completed expansion is on the basis that any available Capacity in excess of the Capacity Entitlement Tonnages allocated in respect of earlier Stages is available to each Shipper a proportion of that available Capacity which corresponds to the proportion that its Capped Annual Tonnage for that expansion bears to the Aggregate Capped Annual Tonnage for all other Shippers for that expansion.

Additional Reserved Capacity⁶

- 8.10 [Intentionally omitted]
- 8.11 [Intentionally omitted]

Allocation to Substitute Shipper

- 8.12 Each Shipper has the right to allocate all or part of its Capacity Entitlement Tonnage to a Substitute Shipper on a temporary basis in accordance with the Substitute Shipper provisions set out in the ToP Agreement entered into by that Shipper.

Allocation of Surplus Capacity

- 8.13 WICET, having regard to the objectives of WICET, the Terminal Rules and likely future demands for allocation of Capacity on a long term basis under ToP Agreements, may allocate Surplus Capacity, in whole or in part, firstly to a Gladstone Coal Producer or, if no Gladstone Coal Producer requires Surplus Capacity, then and only then to any other person approved by it who applies for the Surplus Capacity (the "**Surplus Capacity Applicant**") for use other than on a long term basis on a first come, first serve non-discriminatory basis subject to:
- (a) the use of Surplus Capacity not adversely affecting the continued use of the Terminal by Shippers;
 - (b) if the Surplus Capacity Applicant is a not a Shipper, it makes a written request for Surplus Capacity:

⁶ Paragraphs 8.10 and 8.11 related to certain Reserved Capacity Rights which are no longer available

- (i) setting out the tonnage it requires and when it expects to commence delivery of that tonnage to the Terminal;
 - (ii) confirming that it needs the Surplus Capacity for its own use, and enters into a Third Party Shipper Agreement; and
- (c) if the Surplus Capacity Applicant is a Shipper, it makes a written request for Surplus Capacity:
- (i) setting out the tonnages it requires and when it expects to commence delivery of that tonnage to the Terminal;
 - (ii) confirming that it needs the Surplus Capacity for its own use;
 - (iii) providing evidence to WICET's satisfaction that the Shipper will be using all its allocated Capacity Entitlement Tonnage for the allocation period requested, and
- enters into a Third Party Shipper Agreement for the relevant tonnages.

WICET will as soon as practicable after such information becomes available publish on its website, as publicly available information, the total amount of Surplus Capacity available from time to time to be allocated under paragraphs 8.13 and 8.15 of this Policy.

- 8.14 A Third Party Shipper allocated Surplus Capacity under paragraph 8.13 will only be entitled to that allocation for the period of time specified by WICET, and must comply with the relevant Third Party Shipper Agreement and Terminal Rules.

Temporary variations to Capacity Entitlement Tonnages

- 8.15 In order to optimise usage of the Terminal's Capacity, WICET is entitled by prior written agreement with a Shipper:
- (a) to allocate that Shipper's underutilised capacity as Surplus Capacity to another Shipper, Potential Shipper or Third Party Shipper for short term use in accordance with the process described in paragraph 8.13;
 - (b) to allow that Shipper to utilise the Services that may result in the Shipper shipping more than its permitted tonnage under its ToP Agreement for one or more Utilisation Periods where to do so does not disadvantage other Shippers or Third Party Shippers.

- 8.16 WICET's right by agreement to temporarily vary usage does not impact any Shipper's Capacity Entitlements.

Permanent variations to Capacity Entitlements

- 8.17 A Shipper's Capacity Entitlement will be varied permanently in the following circumstances:
- (a) if the Shipper (**Transferor**) assigns its Capacity Entitlement Tonnage, in whole or in part, to another Gladstone Coal Producer (**Transferee**) who acquires a Source Mine or an interest therein from the Transferor in accordance with the WICET Holdings Shareholders Agreement provided the Transferee:
 - (i) meets the ToP Requirements; and
 - (ii) assumes the obligations of the Transferor or otherwise enters into a ToP Agreement;

- (b) if the Shipper assigns its Capacity Entitlement Tonnage to a related body corporate;
- (c) if the Shipper otherwise voluntarily and permanently assigns its Capacity Entitlement Tonnage in accordance with the Shipper's ToP Agreement;
- (d) if there is an increase in the Capacity Entitlement Tonnages of other Shippers or an allocation of Capacity Entitlement Tonnages to new Shippers (who have entered into a ToP Agreement and become a party to the WICET Holdings Shareholders Agreement) through expansions to the Terminal (but whilst a Shipper's Capacity Entitlement may reduce on an expansion, its Capacity Entitlement Tonnage cannot be reduced without that Shipper's consent);
- (e) if the Shipper's Capacity Entitlement and Capped Annual Tonnage is reduced to nil and cancelled pursuant to its ToP Agreement upon default by the Shipper under its ToP Agreement;
- (f) if WICET has cancelled a Shipper's Unused Capacity Entitlement Tonnage pursuant to paragraphs 8.19 to 8.21 (inclusive).

Use it or lose it rules

8.18

- (a) The rules in paragraphs 8.19 and 8.20 describe WICET's right to reduce a Shipper's Capped Annual Tonnage without the Shipper's consent where the Shipper is not fully utilising its Capacity Entitlement Tonnage and, apply to each Shipper under its ToP Agreement.
- (b) Each ToP Agreement signed by a Shipper will contain a provision which incorporates the use it or lose it rules set out in this Access Policy from time to time. Therefore, uniform use it or lose it rules will apply to those Shippers under their ToP Agreements.

8.19 If:

- (a) WICET is aware of a demand for Capacity from a Gladstone Coal Producer who has confirmed to WICET that it will take up tonnage requested by it under a ToP Agreement; and
- (b) that demand for Capacity cannot be satisfied by WICET from existing Unallocated Long Term Capacity; and
- (c) WICET is aware that a Shipper or a Substitute Shipper appointed by that Shipper has not used either:
 - (i) at least 1.5 million tonnes of its Capacity Entitlement Tonnage; or
 - (ii) if 1.5 million tonnes is less than 20% of the Shipper's Capacity Entitlement Tonnage for an 18 month period, at least 20% of its Capacity Entitlement Tonnage,

under its ToP Agreement (**Unused Capacity Entitlement Tonnage**) during a period of at least 18 consecutive months commencing no earlier than the fifth anniversary of the date its obligations under its ToP Agreement commenced; and

- (d) WICET has issued a 'show cause' notice to that Shipper in relation to that Unused Capacity Entitlement Tonnage, seeking reasons for its non-use; and

- (e) the Shipper is unable to provide any legitimate commercial reason (in the reasonable opinion of WICET) for not using that Unused Capacity Entitlement Tonnage; and
- (f) WICET has issued a further 'show cause' notice, seeking reasons as to why the Shipper:
 - (i) has not allocated the Unused Capacity Entitlement Tonnage to a Substitute Shipper under its ToP Agreement; or
 - (ii) has not agreed with WICET to include that capacity as Surplus Capacity under paragraph 8.15; or
 - (iii) has not initiated a sale or assignment process under paragraph 8.17; and
- (g) the Shipper is unable to provide any legitimate commercial reason (in the reasonable opinion of WICET) for not allocating Unused Capacity Entitlement Tonnage to a Substitute Shipper, agreeing to WICET including that Capacity as Surplus Capacity or initiating a sale or assignment process; and
- (h) WICET has issued another 'show cause' notice that it intends to cancel that Unused Capacity Entitlement Tonnage, seeking reasons from the Shipper as to why WICET ought not to do so; and
- (i) the Shipper is unable to provide a legitimate commercial reason (in the reasonable opinion of WICET) why WICET ought not cancel that Unused Capacity Entitlement Tonnage,

then WICET may within three months of issuing its final show cause notice under paragraph (h) (above) issue a final notice that it intends to cancel that Unused Capacity Entitlement Tonnage and reduce the Shipper's Capped Annual Tonnage by a corresponding amount from a date specified by it, from which time the amount by which the Capped Annual Tonnage is reduced becomes Unallocated Long Term Capacity.

8.20 WICET will only cancel a Shipper's Unused Capacity Entitlement Tonnage and reduce its Capped Annual Tonnage pursuant to paragraph 8.19 if:

- (a) WICET issued its final notice of intention to cancel the Unused Capacity Entitlement Tonnage after all the procedures referred to in paragraph 8.19 prior to the issue of that final notice, including the expiration of the 18 month period referred to in paragraph 8.19(c), have been completed; and
- (b) WICET is satisfied that a Shipper or Potential Shipper that meets the ToP Requirements is prepared to acquire immediately under a ToP Agreement the Unallocated Long Term Capacity resulting from the cancellation of the Shipper's Unused Capacity Entitlement Tonnage.

WICET may call for applications for the Unallocated Long Term Capacity which will result from the cancellation of the Shipper's Unused Capacity Entitlement Tonnage under paragraph 8.19 prior to cancelling that Unused Capacity Entitlement Tonnage.

- 8.21 [Intentionally omitted]
- 8.22 Subject to paragraphs 8.17 to 8.20 (inclusive), a Shipper's Capacity Entitlement Tonnage and Capped Annual Tonnage can only be varied by prior written agreement between the Shipper and WICET.

Strategic Plan

- 8.23 WICET will have a Strategic Plan after the Terminal commences operations which will be approved by WICET on an annual basis.
- 8.24 A summary of the Strategic Plan once approved will be provided to Gladstone Coal Producers in accordance with paragraphs 4.1(b), 4.3 and 4.4.
- 8.25 Each Strategic Plan will include, among other things:
- (a) If available, a Gladstone Port Regional Development Plan as it relates to the Terminal;
 - (b) an indicative 10 year development outlook;
 - (c) an asset management strategy to be prepared having regard to Good Industry Practice; and
 - (d) an operating strategy.

Dispute Resolution

- 8.26 A Shipper or Potential Shipper that disagrees with a decision made by WICET under this paragraph 8 may notify WICET of a dispute in accordance with paragraph 13 of this Policy. Where any such dispute arises from a decision made by WICET as to the capacity allocation, WICET will not amend a ToP Agreement to increase a Shipper's Capped Annual Tonnage or agree a Capped Annual Tonnage under a ToP Agreement with a Potential Shipper in respect of the amount of capacity in dispute unless and until the dispute is resolved.

9. EXPANSION PRINCIPLES

- 9.1 The forecast reasonably achievable throughput Capacity of the Terminal under normal operating conditions once fully developed will be assessed in alignment with the Terminal Master Plan and subject to availability of aligned coal chain capacity.
- 9.2 The principles governing a decision to expand the Terminal which is made after Financial Close of Stage 1 are set out in this paragraph 9.

Requirements under the Lease

- 9.3 Notwithstanding any other provision of this Access Policy, WICET can only expand the Terminal if it has obtained the necessary approval to do so from the Landlord pursuant to the terms of the Leases.

Requirements to secure tonnage on an expansion

- 9.4 A Gladstone Coal Producer will only be entitled to enter into a ToP Agreement or a Shipper to increase the amount of its Capped Annual Tonnage under an expansion:
- (a) if it has:
 - (i) proposed a Feasibility Study be conducted under paragraph 9.5 or it responds as a Proposer within the time specified in paragraph 9.8; and

- (ii) satisfied the requirements set out in paragraph 7 of this Access Policy; and
 - (iii) been allocated Capacity pursuant to paragraph 8.7 of this Access Policy;
or
- (b) if all of the capacity requirements of the Gladstone Coal Producers who qualify under paragraph (a) (above) have been satisfied and there is Unallocated Long Term Capacity available to be allocated by WICET in accordance with paragraphs 8.5 and 8.6 if it has satisfied the requirements set out in paragraph 7 of this Access Policy.

Notification of Expansion

9.5 An expansion of the Terminal may be proposed by:

- (a) WICET pursuant to its Strategic Plan; or
- (b) a Gladstone Coal Producer by notifying WICET in writing that it wants to initiate or participate in a Feasibility Study to determine the commercial viability of expanding the Terminal to meet the required increased Capacity (**Expansion Notification**).

If WICET proposes an expansion of the Terminal pursuant to its Strategic Plan, WICET will notify in writing all Gladstone Coal Producers for whom it has contact details, or that have written to WICET expressing an interest in participating in the Project, of a possible Capacity increase requesting them to advise WICET in writing as to whether they want to participate in the expansion as a Proposer.

9.6 Any Gladstone Coal Producer that lodges an Expansion Notification with WICET must include with the Expansion Notification:

- (a) a nomination of the Capped Annual Tonnage for which it proposes to subscribe, which amount must not be less than the Minimum Capped Annual Tonnage at the time of lodgement of the Expansion Notification;
- (b) details of the proposed Source Mine that will support its Capped Annual Tonnage and evidence that it is able to fund its share of the costs of the Feasibility Study;
- (c) confirmation that it plans to enter into a ToP Agreement for its nominated Capped Annual Tonnage subject to the forecast THC at financial close for the expansion applicable to its Capped Annual Tonnage being acceptable to it and that it, or a related body corporate, will enter into the WICET Holdings Shareholders Agreement if it, or a related body corporate, is not already an A Class Shareholder; and
- (d) the date it expects to be ready to commence shipment of its nominated Capped Annual Tonnage.

WICET will undertake a limited preliminary review to substantiate the details set out in each Expansion Notification and to verify that on the basis of the proposed Source Mine the person who has lodged the Expansion Notification is a Gladstone Coal Producer.

WICET may also require the Gladstone Coal Producer to confirm in writing that it will pay its share of the costs of any Feasibility Study undertaken by WICET in response to its Expansion Notification in accordance with paragraph 9.11.

9.7 WICET must:

- (a) acknowledge the Proposer(s) Expansion Notification within 10 Business Days of its receipt;

- (b) notify the Proposer(s) as soon as it is able to do so whether it is satisfied that the Proposer(s) meet the requirements set out in paragraph 9.6; and
 - (c) if it notifies the Proposer(s) that they meet the requirements set out in paragraph 9.6, concurrently notify in writing all other Gladstone Coal Producers for whom WICET has contact details or that have expressed an interest in writing to WICET in using the Terminal to ship its coal of a possible Capacity increase and request them to advise WICET in writing as to whether they want to join in the expansion as a Proposer.
- 9.8 Any Gladstone Coal Producer that wants to join in the expansion as a Proposer can apply to do so if it complies with paragraph 9.6 and advises WICET of this in writing within 30 Business Days of WICET notifying it under paragraph 9.5, 9.7(b) or 9.7(d). WICET must be satisfied that the Proposer has complied with the requirements set out in paragraph 9.6.

Feasibility Study

- 9.9 A feasibility study is required for each and any proposed expansion of the Terminal, be it:
- (a) a limited feasibility study for the purpose of paragraph 9.12 (**Limited Feasibility Study**); or
 - (b) a comprehensive feasibility study for the purpose of paragraph 9.13 (**Expansion Feasibility Study**),
- (collectively **Feasibility Study**).
- 9.10 A Feasibility Study:
- (a) can be initiated by WICET or by one or more Proposer(s) that has or have submitted an Expansion Notification;
 - (b) will be conducted by WICET in consultation on the scope with:
 - (i) any Proposer(s); and
 - (ii) the Shippers;
 - (c) will have a budget agreed between WICET, acting reasonably and in good faith, and any Proposer(s) who funds the cost of any such Feasibility Study under paragraph 9.11;
 - (d) will comply with generally accepted industry standards for studies of this nature;
 - (e) must consider whether the Expansion Tests (see paragraph 9.14), taking into consideration the Expansion Feasibility Study Requirements (see paragraphs 9.15 to 9.17), are met; and
 - (f) once initiated, will be undertaken by WICET without unreasonable delay and in any event must be completed as soon as reasonably practicable after receipt of the Expansion Notification.
- 9.11 The costs and expenses calculated by WICET of a Feasibility Study will be borne by the Proposer(s) in the manner agreed by those parties and WICET or, in the absence of agreement, by the Proposers in proportion to their nominated Capped Annual Tonnages in the expansion. The Proposers will be reimbursed the costs of the Feasibility Study paid by them on Financial Close of the expansion out of funding provided to WICET for the expansion. The Proposers will not be reimbursed their costs by WICET if the expansion does not proceed (other than to the extent that the Feasibility Study is subsequently used in an expansion and the financiers for that expansion agree to reimburse those costs).

Each Feasibility Study is the property of WICET and will be made available by WICET to Shippers and Proposers upon request.

Scope of Feasibility Study

- 9.12 If WICET as initiator or otherwise determines that the aggregate of all tonnages sought under Expansion Notifications can be met without the need for a Major Expansion of the Terminal, it will undertake a Limited Feasibility Study to determine the likely cost and impact on the THC of the proposed expansion and prepare an Expansion Report as soon as practicable after making such determination. The scope of work required for the Limited Feasibility Study and the time in which WICET must prepare an Expansion Report will be as agreed by the Proposer(s) and WICET. Without limiting the foregoing, WICET and the Proposers may agree that WICET in conducting the Limited Feasibility Study may exclude from consideration any of the Expansion Feasibility Study Requirements set out in paragraph 9.17. WICET and the Proposers cannot agree to amend the Expansion Tests or to exclude consideration of whether the Expansion Tests are met in conducting the Limited Feasibility Study.
- 9.13 If WICET determines that the aggregate of all tonnages sought under Expansion Notifications can only be met by a Major Expansion, then paragraph 9.12 does not apply and WICET will:
- (a) finalise the Expansion Feasibility Study Requirements in accordance with paragraphs 9.15 to 9.17 within 20 Business Days of making such determination; and
 - (b) undertake and complete the Expansion Feasibility Study as soon as reasonably practicable after receipt of the Expansion Notification.

Expansion Tests

- 9.14 The Expansion Tests comprise:
- (a) **Feasibility Test:** The proposed expansion of the Terminal can be feasibly constructed and operated.
 - (b) **Revenue Test:** The expansion meets a revenue test if the revenue expected from incremental Shippers under their ToP Agreements recovers the incremental cost (and the Proposers have confirmed in writing that the forecast THC for the expansion under the THCCM is acceptable).
 - (c) **Logistics Test:** The coal supply chain (including rail network and port channel capacity) upon which the Proposer(s) depend can (or could reasonably be expected to be able to) transport sufficient tonnage to supply or otherwise service the Terminal as expanded from the Forecast Mechanical Completion Date of the expansion (taking into account the increased Capacity which will be available during the ramp up period for the expansion, including what developments, if any, would be required along any part of the coal supply chain to accommodate the expansion of the Terminal).
 - (d) **Current Operating Parameters Test:** During the construction of the expansion, the physical capacity of the Terminal to satisfy existing Aggregate Capacity Entitlement Tonnages is not materially adversely compromised and interference from construction interfaces with existing Terminal operations is minimised in consultation with the Shippers and other users.
 - (e) **Future Operating Parameters Test:** Post construction of the expansion, the physical capacity of the Terminal to satisfy existing Aggregate Capacity Entitlement Tonnages is not adversely compromised.

- (f) **Future Expansion Test:** Future efficient expansion options are not adversely compromised by the expansion.
- (g) **Technical Quality Test:** The Terminal as expanded and its facilities are of a standard commensurate with or better than the existing Terminal and its facilities.

Expansion Feasibility Study Requirements

- 9.15 WICET must determine the Expansion Feasibility Study Requirements prior to commencing the Expansion Feasibility Study, which, subject to paragraph 9.12, must include the matters listed in paragraph 9.17.
- 9.16 Prior to finalising the Expansion Feasibility Study Requirements, WICET will provide a draft to the Proposer(s) and Shippers for their review and comment. Comments must be provided to WICET within the period notified by WICET. In finalising the Expansion Feasibility Study Requirements, WICET must have regard to comments and suggestions made by the Proposer(s), Shippers and Operator, if any, in response to their review.
- 9.17 Subject to the provisions relating to Limited Feasibility Studies in paragraph 9.12, the Expansion Feasibility Study Requirements must include:
 - (a) an assessment of the Nominal Capacity of the Terminal having regard to existing and future Capacity demand and the inherent Capacity of the Terminal;
 - (b) an assessment of the Proposers' commitment to the expansion and the tonnages nominated by them under paragraph 9.6 and consideration whether the aggregate annual tonnage nominations of all Proposers can be satisfied;
 - (c) consideration of existing Terminal requirements;
 - (d) a consideration of previous Feasibility Studies undertaken and their recommendations and outcomes;
 - (e) WICET's obligations to existing Shippers;
 - (f) the need to operate the Terminal in accordance with Good Industry Practice, including meeting maintenance requirements;
 - (g) the need to meet specified requirements with respect to operational parameters, future expansion needs, technical quality standards, infrastructure services and approval obligations;
 - (h) the likely impact on port congestion, including demurrage costs;
 - (i) consideration on the basis of information available to WICET of the constraints experienced, or likely to be experienced in the future, in other parts of the coal supply chain that may impact on the efficient operation of the Terminal, if expanded and, to the extent the same can be determined with confidence the maximum deliverable capacity of the coal chain as a whole following the expansion; and
 - (j) the cost per tonne impact on the current THC and pricing of any planned Capacity expansions calculated in accordance with paragraph 10.11,

and may include additional matters as determined by WICET acting reasonably and in good faith.

Outcome of Feasibility Study

- 9.18 WICET must, acting reasonably and in good faith:
- (a) upon completing a Feasibility Study prepare a report (**Expansion Report**) as soon as reasonably practicable but no later than 60 Business Days after completion of the study;
 - (b) in the Expansion Report:
 - (i) set out the findings and outcomes of the Expansion Tests analyses;
 - (ii) identify what the reasonably achievable annual Nominal Capacity of the Terminal after completion of the expansion is intended to be;
 - (iii) identify whether funding for the expansion is likely to be available on reasonable commercial terms;
 - (iv) note what percentage of the tonnage nominations of Proposers will be satisfied by the expansion (assuming that the Terminal expansion achieves its intended Nominal Capacity);
 - (v) determine if there is likely to be any Unallocated Long Term Capacity after the expansion; and
 - (vi) estimate the likely THC relevant to the proposed expansion or provide an estimated range; and
 - (c) make the Expansion Report available to the Proposer(s) and Shippers upon them signing a confidentiality agreement if they have not already done so. A template confidentiality agreement can be found at WICET's website⁷.
- 9.19 If the Feasibility Study:
- (a) finds all the Expansion Tests are met, the Expansion Report must recommend that the Terminal be expanded;
 - (b) does not find all the Expansion Tests are met, the Expansion Report may (but is not required to) recommend that the Terminal be expanded;
 - (c) considers that a modification to the proposed expansion is more likely to result in the Expansion Tests being satisfied, WICET can recommend a modification to the proposed expansion subject to undertaking further consultation with Proposers on the proposed modification;
 - (d) finds that the aggregate Capped Annual Tonnage nominations of all Proposers will not be satisfied on completion of the expansion, then paragraph 9.21 applies.
- 9.20 WICET must publicly announce on its website its decision whether or not to recommend expansion of the Terminal as soon as reasonably practicable and in any event within 20 Business Days of the date of release of its Expansion Report.

Proceeding from feasibility to commitment to expand

- 9.21 If WICET considers the aggregate Capped Annual Tonnage nomination of all Proposers that meet the ToP Requirements is unlikely to be satisfied on completion of the expansion,

⁷ www.wicet.com.au

then each will be allocated its respective tonnage amounts relevant to the proposed expansion in accordance with paragraph 8.7.

- 9.22 If paragraph 9.21 applies, WICET will confirm the proposed tonnage allocation for each Proposer as soon as practicable after it has determined allocations in accordance with paragraph 8.7. Otherwise, subject to paragraphs 9.24 and 9.25 (as applicable), WICET will confirm to the Proposers that their tonnage nominations provided to WICET under paragraph 9.6 have been accepted.
- 9.23 Unless WICET and all of the Proposers agree to the contrary, each Proposer who wishes to continue to participate in the expansion and retain its tonnage nomination will be required to sign a Capacity Commitment Deed pursuant to paragraphs 9.24 or 9.25 under which it undertakes to deliver a ToP Agreement for that tonnage at or about Financial Close of the expansion.
- 9.24 If the Expansion Report is based on an Expansion Feasibility Study and recommends expanding the Terminal, then a Proposer in order to be considered for an allocation of Capacity in the expanded Terminal must lodge a ToP Application Form together with the information referred to in that form and its Application Cost Prepayment with WICET in accordance with paragraph 7.1. Provided WICET is satisfied that the Proposer meets all of the ToP Requirements, WICET must endeavour to enter into a Capacity Commitment Deed with the Proposer and endeavour to secure finance for the recommended expansion on terms compatible with its existing terms of finance in each case without unreasonable delay having regard to prevailing financial and coal export market conditions.
- 9.25 If the Expansion Report is based on a Limited Feasibility Study and recommends expanding the Terminal, then a Proposer in order to be considered for an allocation of Capacity in the expanded Terminal must lodge a ToP Application Form together with the information referred to in that form and its Application Cost Prepayment with WICET in accordance with paragraph 7.1. Provided WICET is satisfied that the Proposer meets all of the ToP Requirements, WICET must endeavour to enter into a Capacity Commitment Deed with the Proposer and, if it is necessary to secure finance for the recommended expansion, endeavour to secure such finance on terms compatible with its existing terms of finance in each case without unreasonable delay having regard to prevailing financial and coal export market conditions.

Basis upon which WICET undertakes expansion

- 9.26 WICET may request each Proposer provide it with security or a Bid Bond in order to support the obligations of the Proposer under its Capacity Commitment Deed or to confirm the Proposer's commitment to enter into a ToP Agreement or amend its existing ToP Agreement (if necessary) to take account of its increased capacity requirement. If WICET requires security or a Bid Bond, it must request that it be provided by all Proposers and WICET must calculate the amount of the security or Bid Bond it requires from each Proposer on the basis of the proportion which its ToP Nomination bears to the aggregate ToP Nominations of all Proposers. If a Proposer fails to provide a security or a Bid Bond as requested by WICET or the Bid Bond is forfeited and not replaced by the Proposer, the Proposer will not be entitled to any Capped Annual Tonnage in the expansion and WICET is not required to enter into a Capacity Commitment Deed or a ToP Agreement with that Proposer in connection with the expansion.
- 9.27 WICET may decide not to proceed with an expansion (and WICET may be unable to raise finance for the expansion) if one or more Proposers:
- (a) fail to sign Capacity Commitment Deeds sufficient to finance the cost of the increased Terminal Capacity;
 - (b) fail to lodge the Bid Bonds or other security requested by WICET; or

- (c) subsequently either fail to sign a ToP Agreement or to confirm an increase in their Capped Annual Tonnage requirements under existing ToP Agreements,

unless WICET is satisfied the remaining Proposers are prepared to proceed on the basis of the newly calculated THC and increase their commitments under the Capacity Commitment Deeds and ToP Agreements executed by them to replace the commitments of the defaulting Proposers.

- 9.28 If WICET proceeds to arrange finance for the expansion, all Proposers that meet the ToP Requirements and have agreed to participate in the expansion in accordance with paragraph 9.24 or paragraph 9.25 (as applicable) shall cooperate fully to provide the necessary due diligence material for WICET and its financiers and shall execute and deliver to WICET a ToP Agreement, or amendments to its existing ToP Agreement (as the case may be), when requested by WICET to achieve financial close for the expansion. WICET will not proceed with an expansion if it is unable to raise sufficient finance for the expansion or can only do so on terms which result in a THC which is unacceptable to the Proposers or any of them and it is not possible to finance the expansion without those Proposers.
- 9.29 If the Expansion Report finds that the proposed expansion does not meet all the Expansion Tests and recommends that the Terminal not be expanded, WICET shall provide details of its analysis and consideration of these matters to the Proposer(s) and Shippers.
- 9.30 Any Proposer or Shipper that disagrees with a decision made by WICET under this paragraph 9 may notify WICET of a dispute in accordance with paragraph 13 of this Access Policy.

Expansion pricing

- 9.31 Pricing for expansions is addressed in paragraphs 10.9 to 10.11.

Effect of Expansion

- 9.32 A Shipper that does not participate in the expansion will have its existing Capacity Entitlement Tonnage and Capped Annual Tonnage maintained and the pricing for use of that existing Capacity will be maintained or adjusted in accordance with paragraph 10.11.
- 9.33 Upon the expansion of the Terminal, the Capacity Entitlement of all Shippers will be recalculated and will be apportioned according to their respective Capped Annual Tonnages.

10. PRICING PRINCIPLES

- 10.1 WICET's pricing principle in setting its Terminal Handling Charge (**THC**) is for WICET's expected revenue to be sufficient to meet its expected costs in the provision of Services subject to any cap on finance costs set out in the THCCM which places a ceiling on the maximum amount of finance costs that each Shipper must pay under the THC.
- 10.2 The THC:
- (a) is non-discriminatory and, subject to paragraphs 10.7 and 10.8 and the rules relating to expansion pricing set out in paragraphs 10.9 to 10.11 (inclusive), applied uniformly to all Shippers; and
 - (b) is charged to all Shippers for the Services; and
 - (c) can be adjusted at any time where costs, payments or throughput change.

- 10.3 The THC is calculated pursuant to the Terminal Handling Charge Calculation Methodology (THCCM) by:
- (a) adding Expected Costs (Operating and Financing Costs);
 - (b) subtracting carried forward Excess Revenue; and
 - (c) dividing by 95% of the Aggregate Capacity Entitlement Tonnage of WICET.
- 10.4 Surcharges for Special Handling, if any, will be charged to individual Shippers (including in respect of Services provided to their Substitute Shippers) as additional charges to the THC.
- 10.5 The components of the THCCM include:

[Explanatory note: the THCCM is set out in full in the WICET Holdings Shareholders Agreement. This is a summary only.]

Table 1: THCCM Components	
Components	Description
Expected Costs Operating Costs	Cash operating costs
	Rent and other amounts payable pursuant to the Leases and other tenure documents in respect the area of the Terminal
	Maintenance capital expenditure
	Interest and fees paid in respect of working capital facilities
	Sinking fund provisions for restoration and rehabilitation costs at closure
	Taxation charges
Expected Costs Financing Costs	Financing costs including Interest, coupons, dividends, arrears, amortisation, redemption or buy back of debt and equity securities subject to any cap on these costs set out in the THCCM.
Surcharges	Additional costs incurred by WICET in providing the Services which adversely affect the efficient operation of the Terminal such as unusual blending requirements, inefficient train unloading, or other specific services required by a Shipper will be charged to that particular Shipper in addition to the THC
Excess Revenue	Excess cash generated by WICET beyond its requirements and obligations from the previous year
Nominal Capacity	During a Utilisation Period, the maximum reasonably achievable throughput capacity of the Terminal in Mtpa rounded to the nearest 10,000 tpa specified for that Utilisation Period in the most recent Annual Plan (as may be updated from time to time by WICET during the course of the year covered by the Annual Plan)
Aggregate Capacity Entitlement Tonnage	Either the aggregate of all Capped Annual Tonnages of the Shippers or if the Nominal Capacity is less than that tonnage amount, the Nominal Capacity

- 10.6 Where Operating Costs and/or Financing Costs differ from that projected in the Terminal's annual budget, the THC will be adjusted pursuant to the terms of each Shipper's ToP Agreement.

- 10.7 WICET may, pursuant to the THCCM, increase the THC for any Shipper that:
- (a) does not commit each year to its 10 years' evergreen ToP Agreement; or
 - (b) is unable to provide evidence to WICET that the RLCR of the relevant Source Mine(s) exceeds 1.1:1 times and does not remedy that failure within 3 months of the required date.
- 10.8 WICET will adjust the THC payable by the Shipper in accordance with the THCCM if the Shipper pays the termination payment referred to in the ToP Agreement to WICET.

Expansion pricing

- 10.9 If it is decided to expand the Capacity of the Terminal (see paragraph 9 of this Access Policy), the following pricing principles apply.
- 10.10 All Shippers who either increase their existing Capacity Entitlement Tonnages or acquire Capacity Entitlement Tonnages in the expanded Terminal, must pay for use of the Services having regard to hybrid differential pricing described in paragraph 10.11.
- 10.11 If following an expansion of the Terminal infrastructure:
- (a) the average cost of access to the expanded infrastructure falls relative to the pre-existing average cost, all Shippers (existing and new) will pay a lower price determined from the lower average cost after expansion.
 - (b) the average cost of access using the expanded infrastructure rises relative to the pre-expansion average cost, then:
 - (i) for Capacity Entitlement Tonnages allocated to new Shippers to utilise the additional Capacity provided by expansion, the new Shippers will pay a THC which is calculated to meet the incremental costs of expansion;
 - (ii) existing Shippers will continue to pay for their initial pre-expansion Capacity Entitlement Tonnages a THC calculated in accordance with the THCCM that is no greater than the pre-expansion cost; and
 - (iii) for Capacity Entitlement Tonnages allocated to existing Shippers to utilise the additional Capacity provided by expansion, the existing Shippers will either pay a THC which is calculated to meet the incremental costs of expansion for those additional tonnes or pay a blended THC for their aggregate Capacity Entitlement Tonnages in all Stages calculated on a weighted average of their Capacity Entitlement Tonnages attributable to each Stage.

True Up

- 10.12 If the actual tonnage a Shipper ships in a Utilisation Period is below the Shipper's Capacity Entitlement Tonnage for that Utilisation Period, a True Up Amount (**TUA**) payment is charged, based on the THC, for the unutilised tonnage.
- 10.13 If the actual tonnage a Shipper ships in a Utilisation Period is above the Shipper's Capacity Entitlement Tonnage for that Utilisation Period, a TUA credit is credited, based on the THC, for the excess tonnage.
- 10.14 An annual True Up process allows WICET to reconcile any differences in revenue and expenses arising from variations in costs, payments and throughput. WICET calculates the annual TUA payment or credit for each Shipper.

Surplus Capacity and Unallocated Long Term Capacity

- 10.15 If hybrid differential pricing applies following an expansion of Capacity, the THC applicable to:
- (a) [Intentionally deleted]
 - (b) any Unallocated Long Term Capacity which is allocated to a Shipper as Capped Annual Tonnage after Shippers commence to pay a differential THC will be the THC payable in respect of Capacity allocated in respect of the most recently completed expansion.

Remedies for Payment Default

- 10.16 If a Shipper defaults on payment, WICET has the following avenues of recourse available to it under the ToP Agreements⁸:

Table 2: Remedies for Payment Default	
Steps	Description
1.	Payment obligation by Shipper under quarterly or Annual True Up Process
2.	Call on defaulting Shipper's letter of credit (covering 12 months of payment obligations)
3.	Offer Capacity to other parties on short term basis
4.	After 12 months and payment default has not been cured the defaulting Shipper is required to pay the termination payment under its ToP Agreement and if it fails to do so, its Capacity Entitlement, Capacity Entitlement Tonnage and Capped Annual Tonnage is cancelled and WICET shall increase the THC for non defaulting Shippers, so that <ul style="list-style-type: none"> - Operating costs are shared across all Shippers - Financing Costs are shared among same class Shippers - Financing Cost component of THC capped in accordance with THCCM
5.	Defer payment on equity and then debt in accordance with the applicable payment priority regime

11. INDEPENDENT CONSULTANT

- 11.1 WICET will appoint an independent consultant to assist it in its review of the Access Policy under paragraph 3.5.
- 11.2 An independent consultant appointed to review this Policy in conjunction with WICET must:
- (a) be suitably qualified;
 - (b) have relevant regulatory, commercial and practical experience;
 - (c) be independent of WICET; and
 - (d) have no interest or duty that conflicts with his or her role as independent consultant.

⁸ The default regime is set out in full in the applicable ToP Agreement. This is a summary only.

- 11.3 Under the terms of WICET's engagement of the independent consultant, the independent consultant will be entitled to issue its own report with its own recommendations arising from the review of the Access Policy pursuant to paragraph 3.5 if the independent consultant does not agree with WICET's recommendations.

12. CONFIDENTIAL INFORMATION

Protection of Confidential Information

- 12.1 WICET will ensure that any Confidential Information relating to the affairs of Shippers, Potential Shippers and Third Party Shippers remains confidential and:
- (a) is not provided to the relevant Shippers' and Potential Shippers' competitors;
 - (b) is used only for the purpose for which it is provided;
 - (c) is disclosed by approved officers to other officers and employees of WICET as approved only for proper purposes and only to the extent necessary for them to pursue their duties; and
 - (d) is otherwise treated in accordance with the confidentiality provisions set out in the ToP Agreement or Third Party Shipper Agreement.
- 12.2 WICET has policies and procedures for the handling of a Shipper's, Potential Shipper's and Third Party Shipper's Confidential Information, which include access to information being restricted to approved WICET officers who are responsible for:
- (a) responding to a Potential Shipper's or Shipper's application for a B Class Share or a ToP Agreement;
 - (b) negotiating and agreeing a ToP Agreement or Third Party Shippers Agreement;
 - (c) preparing a Feasibility Report pursuant to paragraph 9; and
 - (d) managing any dispute brought under the Access Policy.
- 12.3 Confidential Information means information that has not been made public and which:
- (a) is by its nature confidential;
 - (b) was specified to be confidential by the person who supplied it; or
 - (c) is known by a person using it or disclosing it to be confidential,
- but does not include information that:
- (d) is in the public domain through no action of WICET; or
 - (e) is or was made available to WICET by another person who is or was not under an obligation of confidence.
- 12.4 WICET may disclose Confidential Information that it is required to disclose:
- (a) by law or by order of any court, tribunal of competent jurisdiction; or
 - (b) by any Government agency or regulatory body.

Management of Conflicts of Interest

- 12.5 WICET will, within 6 months of Financial Close of Stage 1, establish and implement a policy to ensure that potential conflicts of interest between a relevant officer's duties:
- (a) as a person concerned in the performance of Capacity allocation; and
 - (b) as a person involved in other business of WICET or a shareholder of WICET,
- are appropriately managed (**Conflict of Interest Policy**).
- 12.6 This Conflict of Interest Policy will:
- (a) broadly identify WICET's operations and where there is the risk of conflicts of interest;
 - (b) identify the processes WICET has in place to minimise and manage those risks;
 - (c) require employees, consultants and other personnel to disclose potential conflicts of interest; and
 - (d) identify procedures and restrictions WICET may adopt to facilitate the management of any conflicts of interest.

13. DISPUTE RESOLUTION

- 13.1 A dispute between WICET, a Potential Shipper or any Applicant relating to this Policy is to be resolved in accordance with this paragraph 13.

Applicant's rights

- 13.2 If a dispute arises between an Applicant and WICET in relation to decisions made by WICET pursuant to the Access Policy the Applicant must notify WICET in writing as to the dispute (**Dispute Notice**) and its nature.
- 13.3 WICET will acknowledge notice of receipt of the Dispute Notice within 10 Business Days of receipt and will inform the Applicant of who within WICET is allocated to resolve the dispute.
- 13.4 The parties must negotiate in good faith and use their best endeavours to resolve any dispute notified under paragraph 13.2 within 20 Business Days (or such other period as the parties may agree) of WICET receiving the Dispute Notice.
- 13.5 If the dispute remains unresolved after the period specified in paragraph 13.4, the Chief Executives, or their equivalent, of each party must meet and negotiate in good faith and use their best endeavours to resolve the dispute within 40 Business Days (or such other period as the parties may agree) of the Dispute Notice.
- 13.6 If the dispute is not resolved by the Chief Executives within the period specified in paragraph 13.5, either party may issue a notice to the other party requiring the dispute to be referred to an expert for determination (**Expert Referral**).
- 13.7 The parties must select an expert within 10 Business Days of issuing the Expert Referral or if the parties fail to select an expert, an expert nominated by the President for the time being of either the Queensland Law Society or the Institute of Chartered Accountants in Australia (Queensland branch) having regard to the nature of the dispute.
- 13.8 An expert selected under paragraph 13.7 to resolve a dispute must:
- (a) be familiar with the nature of the dispute;

- (b) be suitably qualified;
- (c) have commercial and practical experience relevant to the matter in dispute;
- (d) be independent of the parties to the dispute; and
- (e) have no interest or duty that conflicts with his or her role as expert.

13.9 The:

- (a) dispute is to be resolved according to the Institute of Arbitrators and Mediators Australia Expert Determination Rules, current at the date of the dispute (**Expert Determination Rules**); and
- (b) parties to the dispute must abide by the Expert Determination Rules and must procure the expert's agreement to resolve the dispute according to those rules.

13.10 The referral of a dispute to an expert must require the expert to use his or her best endeavours to give the parties to the dispute a written decision with 20 Business Days (or such other period as the parties may agree) of the dispute being referred to the expert.

13.11 The expert's decision is binding and the parties must give effect to the expert's decision promptly.

13.12 Each party is to meet its own costs incurred in connection with the dispute and an equal portion of the expert's costs.

B Class Shareholder rights

13.13 A dispute between WICET and a B Class Shareholder on an issue arising under the Access Policy may be resolved at the B Class Shareholder's option pursuant to the relevant dispute resolution provisions set out in the WICET Holdings Shareholders Agreement or this paragraph 13.

Shippers' rights

13.14 A dispute between WICET and a Shipper or between Shippers on an issue arising under the WICET Holdings Shareholders Agreement or any other transaction document relevant to WICET and/or the Terminal which specifically provides for dispute resolution, will be resolved pursuant to the WICET Holdings Shareholders Agreement or the relevant transaction document (as applicable).

Nothing in this paragraph 13.14 limits the scope of the dispute resolution provisions set out elsewhere in this paragraph 13 so that if an Applicant who is also a Shipper disputes a decision made by WICET pursuant to the Access Policy, the provisions set out elsewhere in this paragraph 13 will apply to the resolution of that dispute.

14. PROHIBITION ON HINDERING ACCESS

WICET and Shippers:

- (a) must not engage in conduct for the purpose of hindering or preventing legitimate access to Services by another party or expansion of the Terminal; and
- (b) must be cognisant of, and comply with, their legal obligations, including requirements pursuant to the *Competition and Consumer Act 2010* (Cth).

15. WHO TO CONTACT

WICET's website (www.wicet.com.au) will set out relevant contact details.

DICTIONARY

A Class Commercial Information means the information referred to in paragraph 4.4 of this Policy.

A Class Share means an issued fully paid ordinary share in the capital of WICET Holdings with the rights described generally in the WICET Holdings Shareholders Agreement for an "A Class Share" and more fully in the Constitution.

A Class Shareholder means a Shipper or a related body corporate of a Shipper which holds an A Class Share.

Acceptable Rating means A or better (Standard & Poor's Corporation long term debt rating) or A2 or better (Moody's Investor Service, Inc long term debt rating).

Adjusted Aggregate Capped Annual Tonnage means the Aggregate Capped Annual Tonnage less, to the extent that it has been contracted under a ToP Agreement, the Wesfarmers Reserved Tonnage.

Affiliated Guarantor means the entity that holds the mining lease for the Source Mine(s) if not held by the Shipper.

Aggregate Capacity Entitlement Tonnages means, in respect of a Utilisation Period, the aggregate Capacity Entitlement Tonnages of all Shippers under all ToP Agreements in effect during the relevant Utilisation Period.

Aggregate Capped Annual Tonnage means, at any time the aggregate Capped Annual Tonnages of all Shippers under all ToP Agreements in effect at that time. The definition may, in its usage, apply to the entire Terminal or a specific Stage.

Annual Plan means the annual plan adopted by the WICET Board.

Applicant is defined in paragraph 6.1 of this Policy.

Application Cost Prepayment means an amount, as determined by WICET from time to time acting reasonably and in good faith, payable to WICET on lodgement of a ToP Application Form pursuant to paragraphs 7.1 and 7.4 to cover the costs of WICET conducting its review of the information provided in that ToP Application Form, including the costs of engaging one or more independent experts to assist in that review.

Aurizon Network means Aurizon Network Pty Ltd.

B Class Commercial Information means the information referred to in paragraph 4.3.

B Class Share means an issued fully paid ordinary share in the capital of WICET Holdings that has the rights described generally in the WICET Holdings Shareholders Agreement for a "B Class Share" and more fully in the Constitution.

B Class Share Application Form means the form set out in **Annexure 2** to this Policy.

B Class Shareholder means a Gladstone Coal Producer that is the holder for the time being of a B Class Share.

Barney Point Producer means Wesfarmers Curragh Pty Limited, in respect of the Wesfarmers Reserved Tonnage.

Bid Bond means a bond provided by a bank or other financial institution approved by WICET with an Acceptable Rating in, or substantially in, the form of **Annexure 6** with such modifications as WICET may accept from time to time.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Brisbane.

Capacity means throughput capacity of the Terminal.

Capacity Commitment Deed means a deed under which, inter alia, a Proposer commits to enter into a ToP Agreement with WICET.

Capacity Entitlement means, in respect of a Utilisation Period, the proportion (expressed as a percentage to two decimal places) which the Shipper's annualised Capacity Entitlement Tonnage bears to the Aggregate Capacity Entitlement Tonnes during that Utilisation Period.

Capacity Entitlement Tonnage in relation to a Shipper for a Utilisation Period means:

- (a) during the Ramp Up Period for a Stage, a proportion of the Nominal Capacity applicable to the Stage that is in ramp up which corresponds to the proportion that the Shipper's Capped Annual Tonnage applicable to that Stage bears to the Aggregate Capped Annual Tonnage applicable to that Stage divided by 4;
- (b) if, in respect of each Stage (other than during the Ramp Up Period for a Stage referred to in paragraph (a) (above)), the Nominal Capacity applicable to each such Stage for that period equals or exceeds the Aggregate Capped Annual Tonnage applicable to each such Stage, the Capped Annual Tonnage of the Shipper applicable to each such Stage divided by 4; or
- (c) if, in respect of each Stage (other than during the Ramp Up Period for a Stage referred to in paragraph (a) (above)), the Nominal Capacity applicable to each such Stage for that period is less than the Aggregate Capped Annual Tonnage applicable to each such Stage:
 - (i) for each Shipper other than the Barney Point Producer, a proportion of that Nominal Capacity (after deduction of the corresponding proportion of any Wesfarmers Reserved Tonnage contracted under a ToP Agreement) determined in accordance with the compression rules set out in paragraph 8.9 of this Policy (as the case may be); and
 - (ii) for the Barney Point Producer, the aggregate of any Wesfarmers Reserved Tonnage which it has contracted under a ToP Agreement divided by 4 and in respect of any other Capacity allocated to it under a ToP Agreement, the tonnage determined in accordance with sub-paragraph (i) (above).

If sub-paragraph (i) (above) applies in respect of only one Stage, the Capacity Entitlement Tonnage will be a proportion of the relevant Nominal Capacity after deduction of the contracted Wesfarmers Reserved Tonnage which corresponds to the proportion that the Shipper's Capped Annual Tonnage bears to the Adjusted Aggregate Capped Annual Tonnage divided by 4.

If sub-paragraph (i) (above) applies to two or more Stages, the Capacity Entitlement Tonnage of the Shipper will be determined in the manner referred to above for a single Stage subject to the application of the compression rule in paragraph 8.9 of this Policy so that, for example, if the Shipper has been allocated Capacity in more than one Stage, compression will apply first to the Capacity allocated to it in the most recently completed Stage.

Capacity Management Principles means the basis upon which WICET shall allocate Capacity in accordance with paragraph 8.

Capped Annual Tonnage means, at any time, the maximum annual tonnage of coal (in Mtpa rounded to the nearest 10,000 tpa) which the Shipper is entitled to ship through the Terminal under each ToP Agreement which the Shipper has entered into using the Terminal's available Capacity at that time. The definition may, in its usage, apply to the entire Terminal or a specific Stage.

Coal Guidelines means the 2003 edition of the document titled "Australian Guidelines for Estimating and Reporting of Inventory Coal, Coal Resources and Coal Reserves" prepared by the Coalfields Geology Council of New South Wales and the Queensland Mining Council (as amended, supplemented or replaced from time to time).

Confidential Information is defined in paragraph 12.3.

Constitution means the constitution of WICET Holdings as amended from time to time.

Dispute Notice is defined in paragraph 13.2.

Expansion Feasibility Study is defined in paragraph 9.9.

Expansion Feasibility Study Requirements are those requirements that must be determined in accordance with paragraph 9.15.

Expansion Notification is defined in paragraph 9.5.

Expansion Principles are those principles set out in paragraph 9.

Expansion Report is defined in paragraph 9.18(a).

Expansion Tests are described in paragraph 9.14.

Expert Determination Rules is defined in paragraph 13.9(a).

Expert Referral is defined in paragraph 13.6.

Exploration Permit means an exploration permit for coal issued pursuant to the *Mineral Resources Act 1989* (Qld).

Feasibility Study is defined in paragraph 9.9.

Financial Close means execution of financing documentation and satisfaction of initial conditions precedent to finance an expansion.

Financial Year means each 12 month period ending on 30 June each year.

Forecast Mechanical Completion Date means, in relation to Stage 1 or an expansion, the date WICET forecasts coal will be able to be unloaded, stockpiled and loaded onto ships as more precisely defined in the Stage 1 or expansion financing documentation.

Framework Deed means the agreement titled Framework Deed – Wiggins Island Coal Export Terminal between the State of Queensland, GPC, WICET and WICET Holdings entered into in December 2009 as amended from time to time.

Gladstone Coal Producer means an actual or potential coal producer which holds, or has an interest in, an Exploration Permit, mineral development licence, a mining lease or other Prescribed Mining Tenure for coal for one or more areas that currently or potentially has or have rail transport connections to the Port of Gladstone and for the avoidance of doubt includes Shippers and Potential Shippers unless stated otherwise.

Good Industry Practice means adherence to a standard of practice which includes the exercise of the degree of skill, diligence, prudence and foresight which would reasonably be expected from a

person who is competent, experienced and qualified in operating a facility comparable with the Terminal.

GPC means Gladstone Ports Corporation Limited (ACN 131 965 896).

Industry Model means the model for the ownership and operation of the Terminal proposed by WICET in its submission to the State made on 1 August 2008.

JORC Code means the Code for Reporting of Mineral Resources and Ore Reserves developed by the Australasian Joint Ore Reserves Committee (**JORC**) as published on <http://www.jorc.org>.

Key Principles means those principles listed in **Annexure 1**.

Landlord has the meaning given in the Leases, as amended from time to time.

Leases means the forms of tenure entered into between WICET and GPC, and WICET and Aurizon Network.

Limited Feasibility Study is defined in paragraph 9.9(a).

Major Expansion means an expansion comprising a significant capital expenditure which would impact on the then existing financing arrangements of WICET requiring approval of WICET's financiers.

MCR means Marketable Coal Reserves defined in accordance with the Coal Guidelines attached to the JORC Code.

Minimum Capped Annual Tonnage means the minimum tonnage (expressed in Mtpa rounded to the nearest 10,000 tpa) determined by WICET from time to time which a Shipper must commit to ship through the Terminal each year under its ToP Agreement having regard to efficient Terminal management and the Stockyard Allocation Principles provided that in relation to the Barney Point Producer in respect of the Wesfarmers Reserved Tonnage, the Minimum Capped Annual Tonnage can never be greater than 1.5 Mtpa. [3]

Nominal Capacity means, during a Utilisation Period, the maximum reasonably achievable throughput capacity of the Terminal in Mtpa rounded to the nearest 10,000 tpa specified for that Utilisation Period in the most recent Annual Plan (as may be updated from time to time by WICET during the course of the year covered by the Annual Plan).

Part B Requirements means the operational provisions set out in Part B of the ToP Agreement.

Policy or **Access Policy** means this Access Policy.

Potential Shipper is a Gladstone Coal Producer or a related body corporate of a Gladstone Coal Producer that is not a Shipper.

Prescribed Mining Tenure means any mining tenure applicable to coal mining activities under the *Mineral Resources Act 1989* (Qld) which is approved from time to time by WICET for the purposes of the definition of Gladstone Coal Producer.

Proposer(s) means one or more Gladstone Coal Producer(s) that proposes to participate in an expansion proposal and that has or have lodged an Expansion Notification with WICET pursuant to paragraph 9.5.

Ramp Up Period means, in relation to a Stage including Stage 1, the period of time between the mechanical completion date to the completion date for that Stage.

related body corporate means the same as in the *Corporations Act 2001* (Cth), and for the purposes of an assignment of a Shipper's Capacity Entitlement, also includes a party that is in, or

will (in conjunction with the assignment) enter into, a joint venture relationship with that Shipper in relation to the same Source Mine.

Relevant Industry Stakeholders means GPC, the State, Gladstone Coal Producers and those infrastructure operators, rail freight providers and infrastructure owners that WICET determines directly contribute to the coal supply chain that services the Terminal and its Services.

Reserve Life Cover Ratio or **RLCR** means the ratio of the MCR at the Source Mine(s) which are allocated by the Shipper for shipment through WICET to the tonnage that the Shipper is entitled to ship through the Terminal over the term of the ToP Agreement.

Reserved Capacity Producers is defined in **Annexure 4**.

Services means services provided to Shippers of the kind described in **Annexure 5**.

Shipper means a Gladstone Coal Producer or a related body corporate of a Gladstone Coal Producer that has entered into a ToP Agreement with WICET (and is, or is a related body corporate of, an A Class Shareholder).

Source Mine means a coal mine or a potential coal mine situated at a location that currently or potentially has transport connections to the Port of Gladstone.

Special Handling means any work or activities in respect of any coal which is, in the opinion of the Operator, outside the ordinary course of its operation of the Terminal and includes those activities which are either specified or deemed to be Special Handling under the Terminal Rules.

Stage means a stage in the development of the Terminal for which WICET develops a separate works plan. For the avoidance of doubt, a stage may be developed in phases for an expansion pathway with different completion dates for the works applicable to each phase.

Stage 1 means the first Stage.

Stage 1 Capacity means the expected Capacity of the Terminal for Stage 1 as determined by WICET.

State means the Government of the State of Queensland as represented from time to time by a nominee of the Treasurer of Queensland.

Statement of Marketable Coal Reserves means a report prepared by a competent person (as that term is used in the JORC Code) in accordance with the guidelines set out in the Coal Guidelines and the JORC Code which provides an estimate of the MCR as at the date the statement is prepared.

Stockyard Allocation Principles means the basis on which storage space in the Terminal Stockyard is allocated to Shippers and Third Party Shippers as determined by WICET.

Strategic Plan means the five year strategic plan to be established, updated and maintained .by WICET.

Substitute Shipper means a person who has entered into an arrangement with a Shipper on a short term basis (in accordance with the terms of its ToP Agreement) to use all or part of that Shipper's Capacity Entitlement Tonnage.

Surcharges means additional costs incurred by WICET in providing the Services which adversely affect the efficient operation of the Terminal such as unusual blending requirements, inefficient train unloading, or other specific services required by a Shipper.

Surplus Capacity means, for any period, the Unallocated Long Term Capacity of the Terminal that is not subject to any capacity allocation process under paragraph 8.5 and / or Capacity which is

temporarily unused and available to WICET (for example, pursuant to paragraph 8.15) to allocate pursuant to paragraph 8.13.

Surplus Capacity Applicant is defined in paragraph 8.13.

Technical Information is defined in paragraphs 4.1(a) and 4.2.

Terminal means Wiggins Island Coal Export Terminal at the Port of Gladstone.

Terminal Handling Charge or **THC** means the per tonne amount payable by a user to WICET for the provision of Services, determined in accordance with the terminal handling charge calculation methodology (**THCCM**) set out in the WICET Holdings Shareholders Agreement as summarised in paragraph 10.

Terminal Master Plan means the plan prepared by WICET for submission to, and approved by, the State in accordance with the Framework Deed which includes, inter alia, descriptions and plans of the general layout of the Terminal, specifications for the key elements of the Terminal, standards for design, construction and operation of the Terminal and incremental stages of development of the Terminal.

Terminal Rules means the day to day operating procedures of the Terminal published by WICET for Gladstone Coal Producers on its website, as amended from time to time.

THCCM is defined in paragraph 10.3.

Third Party Shipper means a person who is allocated Surplus Capacity under paragraph 8.13.

Third Party Shipper Agreement means an agreement to use Surplus Capacity at the Terminal entered into by a Third Party Shipper under paragraph 8.13.

ToP Agreement means a take or pay agreement agreed and executed between a Shipper or Potential Shipper and WICET under paragraph 7.

ToP Application Form means a form in, or substantially in, the form of **Annexure 3** with such modifications as WICET may determine from time to time.

ToP Nomination means an application for Capacity made by a Gladstone Coal Producer in relation to a Stage of the Terminal which is confirmed by WICET.

ToP Requirements means the requirements as listed in paragraph 7.2 that a Gladstone Coal Producer must meet before WICET will accept a ToP Nomination from that Gladstone Coal Producer.

Transferee is defined in paragraph 8.17(a).

Transferor is defined in paragraph 8.17(a).

True Up Amount or **TUA** means an amount calculated for each Shipper to reconcile the difference between actual and contracted tonnages and actual and estimated costs for a Utilisation Period or Financial Year.

Unallocated Long Term Capacity means the Nominal Capacity of the Terminal less the Aggregate Capped Annual Tonnage from time to time.

Unsatisfied Additional Reserved Capacity is defined in paragraph 8.11.

Unused Capacity Entitlement Tonnage is defined in paragraph 8.19(c).

Utilisation Period means each calendar quarter.

WICET means Wiggins Island Coal Export Terminal Pty Limited (ACN 131 210 038) which is the owner of the Terminal.

WICET Agreements means the WICET Holdings Shareholders Agreement, the ToP Agreements and the Constitution.

WICET Holdings means WICET Holdings Pty Ltd (ACN 131 210 001), the company incorporated for the purpose of acquiring the issued capital of WICET and becoming the holding company of WICET and any other wholly owned subsidiary of the company.

WICET Holdings Shareholders Agreement means the shareholders agreement between WICET Holdings, WICET and A Class Shareholders.

A reference in this Policy to legislation is to that legislation as amended, re-enacted or replaced and includes subordinate legislation issued under it.

Footnotes are for information only and do not form part of this Access Policy.

ANNEXURE 1

KEY PRINCIPLES

- A. The Access Policy describes and defines the coal handling services provided at the Terminal.
- B. Subject to Capacity being available (including capacity created or that may be created as a result of a capacity expansion), access to the Terminal will be available to any Gladstone Coal Producer that is willing to sign a ToP Agreement and provide any security reasonably required by WICET to support its obligations under the ToP Agreement.
- C. The Access Policy will set out a process to apply for access, a process for WICET to respond and a process for negotiating access.
- D. Capacity will be allocated in accordance with a fair and transparent process which is set out in the Access Policy.
- E. Subject to anything contrary in the Barney Point Agreements (as defined in the Framework Deed), pricing is to be non-discriminatory and based on WICET's cost recovery model set out in the Industry Model.
- F. The Access Policy will describe the process by which parties can review the standard terms and conditions which apply to any person using the Capacity or seeking Capacity.
- G. If at any time there is not sufficient Capacity available to satisfy binding requests for access, WICET will follow a clear and transparent methodology so that all A Class Shareholders and Gladstone Coal Producers will be able to contract additional/expanded Capacity on the basis specified in the Access Policy and WICET will, subject to the capacity approved under the Terminal Master Plan and any other reasonable conditions being met, be obliged to promptly undertake capacity expansions.
- H. The Access Policy must be publicly available (i.e. available on the WICET website) to any Gladstone Coal Producer.
- I. Any future amendment to the Access Policy as from Financial Close of Stage 1 requires input from the Relevant Industry Stakeholders and the consent of the State.
- J. The Access Policy will set out a process to deal with access disputes in a fair, transparent, impartial and expeditious manner.
- K. No change or amendment to, or replacement of, the Access Policy can occur without the prior written consent of the State.

ANNEXURE 2

B CLASS SHARE APPLICATION FORM PROFORMA

The Directors
WICET Holdings Pty Limited ACN 131 210 001 (**Company**)

The person named below (**Applicant**) applies for one B Class Share in the Company at an issue price of \$1.00, payable in full on application.

The Applicant represents and undertakes to the Company that:

- (a) it is an Eligible B Class Shareholder*; and
- (b) it has not engaged and will not engage in conduct for the purpose of hindering or preventing legitimate access to the coal export services provided by the Terminal or any expansion of the Terminal.

Attached to this application is:

- (a) a statutory declaration by an authorised officer of the Applicant providing evidence that the Applicant is an Eligible B Class Shareholder; and

[**Note:** This should include the name and location of, and evidence of the mining title to, the Source Mine and if the Applicant is not the holder of the mining title, evidence that the Applicant is a Related Body Corporate of the title holder.]

- (d) a cheque or cash for the application moneys of \$1.00.

The Applicant agrees to be bound by the constitution of the Company.

Expressions used in this application have the same meaning as in the constitution of the Company.

Name and ABN of Applicant:

Address of Applicant:

Contact name:

Date:

EXECUTED by [insert name of Applicant]:

Signature of director

Signature of director/secretary

Name

Name

* For the purposes of the Constitution an Eligible B Class Shareholder is defined as a Gladstone Coal Producer or a related body corporate of a Gladstone Coal Producer.

ANNEXURE 3

TOP APPLICATION FORM PROFORMA

The Wiggins Island Coal Export Terminal Pty Ltd (ACN 131 210 038) Directors (WICET) and WICET Holdings Pty Limited ACN 131 210 001 (**Company**)

The person named below (**Applicant**) applies:

- to enter into a Take or Pay Agreement (**ToP Agreement**) with WICET; and
- for it or an affiliate becoming a party to the Company's Shareholders' Agreement.

Name and ABN of Applicant:

Address of Applicant:

Contact name:

Date:

Date on which Applicant [proposes to] [will] sign the ToP Agreement and to commence using the Terminal:

1. SHAREHOLDERS' AGREEMENT REQUIREMENTS

1.1 The Applicant represents and undertakes to the Company that:

- (a) it is a Gladstone Coal Producer;
- (b) it has not engaged and will not engage in conduct for the purpose of hindering or preventing legitimate access to the coal export services provided by the Terminal or any expansion of the Terminal.

1.2 Attached to this application are:

- (a) a statutory declaration by an authorised officer of the Applicant providing evidence that the Applicant is a Gladstone Coal Producer; and
- (b) either the certificate for the Company's existing B Class Share (to be redeemed) or a cheque or cash for the application moneys of \$1.00.

2. REQUIREMENTS FOR TAKE OR PAY AGREEMENT

The Applicant must provide with this ToP Application Form the following information:

2.1 Source Mine(s) and Marketable Coal Reserves

The Applicant must:

- (a) nominate the Source Mine or Source Mines from which the Applicant (or a related body corporate) will supply the coal under the ToP Agreement (and one from which it is technically feasible for the Applicant to ship coal through the Port of

Gladstone or which it expects it will be technically feasible to do so from the time its payment obligations under its ToP Agreement commence).

(b)

provide evidence in relation to its Source Mine(s) that it or its actual or proposed Affiliated Guarantor either holds a mining lease or a sublease of a mining lease (or an interest therein) or it or its Affiliated Guarantor (or a nominee or manager on its behalf or on behalf of its Affiliated Guarantor) has applied for and is diligently pursuing the grant of a mining lease or a sublease of a mining lease

(c) nominate in Mtpa the Capped Annual Tonnage it proposes to export through the Terminal (which must be no less than the Minimum Capped Annual Tonnage) (**ToP Nomination**) and disclose whether there is any ramp up of its requirements for the Services with details of quantities and timing of ramp up.

(d) provide a Statement of Marketable Coal Reserves (**MCR**) it proposes to allocate for shipment under the ToP Agreement through the Terminal calculated in accordance with the JORC Code (a copy of which can be found at <http://www.jorc.org>) (where this application is lodged in relation to an expansion of the Terminal under paragraph 9 of the Access Policy, the Applicant must instead provide evidence to WICET that it will be able to provide such statement by the time WICET expects that it will need to make a decision whether or not to proceed with the expansion and go to market to raise finance for the expansion). (The Statement of the MCR and the key documents used to develop the statement must be verified by a competent person in accordance with the JORC Code.)

(e) provide evidence that the Reserve Life Cover Ratio (**RLCR**) of its Source Mine or Source Mines will exceed 1.1:1 times at execution of the ToP Agreement or, where the ToP Application Form is lodged in relation to an expansion of the of the Terminal under paragraph 9, provide evidence to WICET that it will be able to satisfy that RLCR by the time WICET expects that it will need to make a decision whether or not to proceed with the expansion and go to market to raise finance for the expansion.

2.2 Other Infrastructure

The Applicant must:

(a) provide evidence that the relevant rail infrastructure provider has demonstrated plans for expanding rail capacity where needed, consistent with the timing requirements of the relevant Source Mine(s) and ready for use at the commencement of services under the ToP Agreement.

(b) provide evidence that other connecting or supporting infrastructure (including rail spurs and sidings, power, water and channel infrastructure) necessary to the production and delivery of coal from its Source Mine(s) is likely to be approved and in place to meet the requirements of the ToP Agreement.

- (c) provide evidence that the Applicant or its Affiliated Guarantor (or an entity on its behalf or on behalf of its Affiliated Guarantor) has entered into the necessary above and below-rail contracts or these contracts will be entered into prior to the commencement of the provision of services under the ToP Agreement.
-

2.3 Acceptable Security

If requested by WICET, the Applicant must provide evidence to WICET's satisfaction that it will be able to provide:

- (a) acceptable security to WICET (in an amount equal to the aggregate forecast THC for its Capped Annual Tonnage for a period up to 12 months or such longer period as WICET reasonably considers its financiers may require); and
- (b) Either in addition to or in substitution for the security referred to in paragraph (a) above, any other security in the form and amount that WICET reasonably considers is financially prudent having regard to the development and funding schedule for the Source Mine and associated infrastructure

[Note: This item may need to be adapted by WICET from time to time to include reference to other forms of security which may be required by WICET financiers.]

2.4 Compliance with ToP Agreement and Terminal Rules

The Applicant must provide evidence to WICET's satisfaction that the Applicant is capable of complying with the Part B Requirements and Terminal Rules.

2.5 Affiliated Guarantor

If the Applicant does not itself hold the mining lease or hold a sublease of the mining lease (or an interest therein) granting rights to produce coal from the land that is the subject of the mining lease for the Source Mine(s) , it must provide evidence to WICET's satisfaction that the entity which either holds the mining lease or sublease (or an interest therein) or who has itself or through a nominee or manager on its behalf applied for and is diligently pursuing the grant of a mining lease will guarantee the obligations of the Applicant under the ToP Agreement.

The Applicant acknowledges and agrees that if it does not provide the information specified, WICET is entitled to reject the Applicant's application.

EXECUTED by [insert name of Applicant]:

Signature of director

Signature of director/secretary

Name

Name

ANNEXURE 4

ALLOCATION OF INITIAL CAPACITY AT THE TERMINAL⁹

Reserved Capacity

Initial Reserved Capacity means 23.5 Mtpa of Terminal capacity allocated as follows:

- (e) 1.5 Mtpa to the Barney Point Producer on the terms contained in the Barney Point Agreement between WICET and the Barney Point Producer; and
- (f) 22 Mtpa to the Wandoan Joint Venture,

(the parties collectively in relation to the Capacity referred to above being the "**Reserved Capacity Producers**")¹⁰.

⁹ This Annexure described the initial allocation procedures for Stage 1 of the Terminal which are not applicable to future allocations. Only paragraph 14 remains relevant for interpretation purposes.

¹⁰ The rights of Reserved Capacity Producers to Initial Reserved Capacity have been utilised or have expired

ANNEXURE 5

SERVICES

To the extent relevant, the following Services must be provided in accordance with the Shippers' ToP Agreements.

1. Train unloading

If a train carrying a Shipper's coal arrives at the Terminal as scheduled (or within a reasonable time before or after it is scheduled, where it can reasonably be unloaded at that time), WICET must ensure that the train is unloaded at the appropriate rate (consistent with the type and condition of the coal).

2. Reclaiming and vessel loading services

WICET must:

- (a) make the Terminal available for berthing by vessels (which are satisfactory in all respects to receive coal) nominated by each Shipper and accepted by WICET in each Financial Year.
- (b) load each Shipper's coal into a vessel which is nominated by the Shipper and is available for loading so as to achieve the objective in paragraph (a).

3. Incidental services

WICET must provide the following services incidental to coal handling:

- (a) maintain coal sampling equipment;
- (b) vessel survey services;
- (c) vessel monitoring;
- (d) coordination with ships' agents, masters, customers and other relevant entities;
- (e) crew disembarkation assistance; and
- (f) wharfage and line services.

4. Miscellaneous services

If required by a Shipper, WICET must provide the following miscellaneous services to the Shipper:

- (a) moisture adding;
- (b) compacting;
- (c) surfactant adding;
- (d) dozing;
- (e) blending (subject to clause 5(b) below);
- (f) any other services reasonably requested from time to time in writing by a Shipper to WICET, provided that such services will not unreasonably impact on the efficiency of the Terminal.

5. Stockpiling and blending

- (a) WICET must provide to each Shipper the stockpile areas agreed in the ToP Agreement.
- (b) WICET must transfer each Shipper's coal from the train unloading facility at the Terminal to the relevant stockpile area for that Shipper or a cargo assembly area and stockpile a Shipper's coal in that area (except to the extent that WICET develops a plan which provides for direct loading from train to vessel).

