

**PORT USER PRO FORMA LONG TERM PRICING DEED**

PON encourages Vessel Agents, Vessel Operators, Coal Producers and FOB coal consignees involved in the shipment of coal from the Port to contact PON directly to discuss entering into longer term discounted pricing arrangements with PON, based on the terms of this pro forma deed. Please refer in particular to Schedule 2 of this deed for discounted navigation service charge pricing available.

This document is not binding on PON or the relevant Port User unless and until PON and the Port User have each agreed, executed and delivered the final form of the deed.

[date]

[Name]

[Position]

[Port User name]

[Address]

Dear [name]

**Long term pricing arrangements: NSC and Wharfage for Covered Vessels**

This document (executed as a deed) sets out the following long term charges agreed between PON and [Port User name] which will apply during the Initial Term with respect to certain coal loaded onto Covered Vessels at the Port:

- navigation service charge to be imposed by PON under Division 2 of Part 5 of the PAMA Act; and
- wharfage charge to be imposed by PON under Division 5 of Part 5 of the PAMA Act.

The agreed special pricing arrangements are set out in more detail in the **Annexure** to this deed.

Please confirm [Port User name] agreement to these special arrangements by executing and returning to me a copy of this deed.

Following our receipt of your executed version of this deed, PON will implement those arrangements from the Commencement Date as set out in the Annexure.

This deed does not apply with respect to nor affect any provision of the terms and conditions of the supply of services at the Port, whether with respect to Covered Vessels, coal loaded onto Covered Vessels or otherwise other than the navigation service charge and wharfage charge applicable to Covered Vessels in accordance with its terms.

Yours sincerely

[PON contact officer]

**Executed as a deed**

**Signed, sealed and delivered** for and on behalf of **Port of Newcastle Operations Pty Limited (ACN 165 332 990) as trustee for the Port of Newcastle Unit Trust ABN (97 539 122 070)** by its attorneys under a power of attorney dated 11 February 2015 in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

\_\_\_\_\_  
Full name of attorney

\_\_\_\_\_  
Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

\_\_\_\_\_  
Full name of attorney

**Executed** by [name and ABN of Port User] in accordance with section 127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Full name of director

\_\_\_\_\_  
Signature of company secretary/director

\_\_\_\_\_  
Full name of company secretary/director

## Annexure

Item	Matter	Provision
1.	<b>Parties</b>	Port of Newcastle Operations Pty Limited (ACN 165 332 990) as trustee for the Port of Newcastle Unit Trust (ABN 97 539 122 070) trading as Port of Newcastle ( <b>PON</b> ).  The entity named in Paragraph 1 of Schedule 1 ( <b>Port User</b> ).
2.	<b>Initial Term</b>	The Covered Vessel Specific Charges will commence on the Commencement Date and continue for 10 years (unless terminated earlier under Item 13) ( <b>Initial Term</b> ).
3.	<b>Extension of Initial Term</b>	Not later than 36 months prior to the expiry of the Initial Term, PON or the Port User may issue written notice to the other requesting that the parties enter into discussions with respect to agreeing any special pricing arrangements to apply following the expiry of the Initial Term ( <b>Extension Notice</b> ).  Following the issue of an Extension Notice, PON and the Port User will promptly commence discussions regarding any special pricing arrangements to apply following the expiry of the Initial Term and will continue such discussions in good faith for a period of up to 6 months (or such other period as the parties agree in writing).
4.	<b>Covered Vessel Specific Charges</b>	Schedule 2 sets out the Covered Vessel Specific Charges agreed by PON and the Port User to apply during the Initial Term in respect of:  (a) the Navigation Service Charge for Covered Vessels; and  (b) the Wharfage Charge in respect of [coal <sup>1</sup> ] loaded onto a Covered Vessel.  For the avoidance of doubt, the Covered Vessel Specific Charges are in addition to any other fees or charges payable to PON in respect of a Covered Vessel's visit to the Port pursuant to the Published Vessel Standard Terms and Conditions and PON's published fees and charges for Port services, and are in substitution (only) for the Navigation Service Charge and the Wharfage Charge which would otherwise be payable in respect of the Covered Vessel and [coal <sup>2</sup> ] loaded onto the Covered Vessel under PON's published standard fees and charges for Port services.
5.	<b>Provision of vessel and cargo information to PON</b>	The Port User must promptly provide to PON such information as PON may reasonably require from time to time to verify that a vessel is a Covered Vessel for the purposes of receiving the benefit of Covered Vessel Specific Charges.  Without limitation, the Port User must ensure that the following information is provided to PON for each Covered Vessel within the timeframes specified below:  (a) at least 14 days prior to the Covered Vessel entering the Port Channel, the vessel and cargo details prescribed by

<sup>1</sup>Delete "coal" and insert "Producer Coal" if the Port User is a Producer.

<sup>2</sup>Delete "coal" and insert "Producer Coal" if the Port User is a Producer.

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		<p>PON that are provided to the relevant coal terminal as part of the nomination process; and</p> <p>(b) at least 24 hours before the Covered Vessel enters the Port Channel, the following information:</p> <ul style="list-style-type: none"> <li>(i) the name of the Covered Vessel;</li> <li>(ii) the Covered Vessel's International Maritime Organization (IMO) Number;</li> <li>(iii) [name and contact details of the Covered Vessel's agent]<sup>3</sup>;</li> <li>(iv) proposed berth;</li> <li>(v) coal destination port and country;</li> <li>(vi) contracted tonnes to be loaded;</li> <li>(vii) the mine(s) the coal has been mined from and the owner of each identified mine;</li> <li>(viii) the name and contact details of the Covered Vessel owner;</li> <li>(ix) [the charterer of the Covered Vessel];</li> <li>(x) the name and contact details of each consignee of coal to be loaded onto the Covered Vessel [and, if not previously provided to PON, an original executed copy of the Consignee Commitment Document for each such consignee duly executed by that consignee]<sup>4</sup>; and</li> <li>(xi) the operator of the Covered Vessel (if different from Covered Vessel's owner); and</li> </ul> <p>(c) within 24 hours of the Covered Vessel's departure from the Port Channel:</p> <ul style="list-style-type: none"> <li>(i) the Vessel Manifest;</li> <li>(ii) Draft Survey Report;</li> <li>(iii) Mates Receipt; and</li> <li>(iv) vessel demurrage hours and costs incurred by vessel charterer (in \$US) and the nominated cause of the demurrage.</li> </ul> <p>If the Port User fails to provide such information to PON within the time periods specified above, PON may, if it is not reasonably satisfied that the vessel is a Covered Vessel, decline to apply the Covered Vessel Specific Charges to that vessel and PON's published standard charges will apply to that vessel and</p>

<sup>3</sup> To be deleted if the Port User is a Vessel Agent.

<sup>4</sup> To be included if the Port User is a Vessel Agent.

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		such amount is a debt due and payable by the Port User in accordance with the Published Vessel Standard Terms and Conditions.
6.	<b>Variations to Covered Vessel Specific Charges</b>	<p>The Covered Vessel Specific Charges will not be varied by PON during the Initial Term, except for the following variations:</p> <p>(a) <b>Annual Adjustment</b></p> <p>At the beginning of each Contract Year (other than the beginning of the first Contract Year) (each an <b>Adjustment Date</b>) each Covered Vessel Specific Charge will be adjusted to the amount which is the greater of <b>Amount A</b> and <b>Amount B</b>, where:</p> $\text{Amount A} = C_1 + (C_1 \times 4\%)$ $\text{Amount B} = \left\{ C_1 \times \frac{\text{Current CPI}}{\text{Previous CPI}} \right\}$ <p>Where:</p> <p><b>C<sub>1</sub></b> is the amount of the relevant Covered Vessel Specific Charge (excluding GST) immediately before the Adjustment Date</p> <p><b>CPI</b> means the consumer price index number published by the Australian Statistician for Australia-All Groups</p> <p><b>Current CPI</b> means the CPI for the quarter ending 30 September in the calendar year immediately preceding the Adjustment Date (<b>Current Contract Year</b>)</p> <p><b>Previous CPI</b> means the CPI for the quarter ending 30 September in the calendar year immediately before the Current Contract Year</p> <p>(b) <b>Change in Tax or law</b></p> <p>If during the Initial Term there is a change in any Tax (including any new Tax) or a change in any law (including any new law) which:</p> <ul style="list-style-type: none"> <li>(i) PON pays or bears, or is required to pay or bear; or</li> <li>(ii) will result in PON bearing increased costs or being able to recover less revenue,</li> </ul> <p>PON may vary the Covered Vessel Specific Charges to pass through the net effect of such changes on PON's costs or revenue in accordance with the Pricing Principles.</p> <p>(c) <b>Material change event</b></p> <p>On the occurrence of any material change during the Initial Term which will:</p>

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		<p>(i) increase the costs (including operating and capital expenditure costs) to PON of providing the Vessel Services; or</p> <p>(ii) reduce the equity rate of return (<b>ERR</b>) for the equity investors in PON,</p> <p>PON may increase the Covered Vessel Specific Charges to recover the additional costs or to sustain the ERR in accordance with the Pricing Principles.</p> <p>(d) <b>Capex investment</b></p> <p>PON may increase the Covered Vessel Specific Charges at the end of each of each Contract Year to provide for a reasonable rate of return on any capital expenditure incurred by PON during the applicable Contract Year in accordance with the Pricing Principles.</p>
7.	<b>Notice of proposed variations to Covered Vessel Specific Charges</b>	<p>PON must provide the Port User with written notice of any proposed variations to the Covered Vessel Specific Charges pursuant to Item 6 not later than 45 days before the proposed date for commencement of the proposed variation (<b>Notified Price Change</b>).</p> <p>If the Port User objects to any Notified Price Change, the Port User must issue a price objection notice to PON within 14 days of receipt of the Notified Price Change (<b>Price Variation Objection Notice</b>).</p> <p>The Port User must not object to any Annual Adjustment made by PON in accordance with Item 6 and may not issue a Price Variation Objection Notice or raise a Dispute in respect of the same unless it is clear on its face that PON has failed to correctly calculate the proposed increase in accordance with the requirements of Item 6 for calculating the Annual Adjustment.</p> <p>All variations the subject of a Notified Price Change will take effect on and from the date notified by PON (provided that the parties will retrospectively make such adjustments as may be necessary to take account of the resolution of any dispute notified by the Port User in any Price Variation Objection Notice).</p>
8.	<b>Disputes in regard to Price Variation Objection Notice and other Disputes</b>	<p>Where PON receives a Price Variation Objection Notice in accordance with Item 7, the Dispute is to be resolved pursuant to the Dispute Resolution Process.</p> <p>The Dispute Resolution Process will also apply in respect of all other Disputes.</p>
9.	<b>Consultation in relation to efficiency improvements and other matters</b>	<p>PON and the Port User will meet at least twice in each Contract Year (or at such other frequency as PON and the Port User may agree from time to time) to consult on the following matters:</p> <p>(a) measures that can be introduced to improve the efficiency of delivery of any Vessel Services to Covered Vessels;</p> <p>(b) PON's delivery of Vessel Services, including (as they relate to the delivery of the Vessel Services):</p> <p>(i) PON's capital expenditure;</p>

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		<p>(ii) any proposed variation to PON's fees and charges;</p> <p>(iii) PON's costs of operations;</p> <p>(iv) the Port User's future needs, including the Port User's estimates of [coal<sup>5</sup>] to be shipped from the Port on Covered Vessels in the next 6 month period;</p> <p>(v) the application of these special pricing arrangements; and</p> <p>(vi) any other matters agreed between PON and the Port User (each acting reasonably); and</p> <p>(c) respective market insights of the parties, including volume forecasts and shipment destinations.</p>
10.	<b>GST</b>	<p>Unless expressly stated otherwise, all amounts specified in this deed are exclusive of GST and any GST payable must be paid in accordance with PON's standard terms. Words and expressions used in this Item 10 which have a defined meaning in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) (<b>GST Act</b>) have the same meaning in this Item as in the GST Act.</p>
11.	<b>Assignment</b>	<p>Neither party may assign or novate its rights and obligations under this deed to any person without the prior written consent of the other party in its absolute discretion.</p>
12.	<b>Published Vessel Standard Terms and Conditions</b>	<p>For the avoidance of any doubt, the Published Vessel Standard Terms and Conditions apply to Covered Vessels entering and using the Port, except that this deed will prevail to the extent of any inconsistency between the terms of this deed and the terms of the Published Vessel Standard Terms and Conditions.</p>
13.	<b>Termination</b>	<p><b>Termination by PON</b></p> <p>If the Port User is in default of this deed and the default is not remedied within a period of 14 days from the date PON provides notice of the breach to the Port User, PON may terminate this deed by written notice to the Port User. For the purposes of this Item, failure by the Port User to pay any amount due and payable to PON in respect of a Covered Vessel, or to comply with any other material obligation owed to PON in respect of a Covered Vessel, within 7 days of receiving written notice of the outstanding payment or breach from PON will be deemed to constitute a breach by the Port User of this deed.</p> <p><b>Termination by the Port User</b></p> <p>The Port User may terminate this deed by written notice to PON if PON is in default of a material obligation and such default has not been remedied within 21 days of the Port User giving written notice of the default to PON.</p>
14.	<b>Trustee limitations</b>	<p>PON is the trustee for the Port of Newcastle Unit Trust (in this Item 14, the <b>Trustee</b>) and is a party to this deed only in its capacity as trustee for the Port of Newcastle Unit Trust (in this Item 14, the <b>Trust</b>).</p>

<sup>5</sup> Delete "coal" and insert "Producer Coal" if the Port User is a Producer.

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		<p>(a) A Liability arising under this deed is limited to and can be enforced against the Trustee only to the extent to which it can be satisfied out of the property of the Trust out of which the Trustee is actually indemnified for the Liability.</p> <p>(b) No person will be entitled to:</p> <p>(i) Claim from or commence proceedings against the Trustee in respect of any Liability under this deed in any capacity other than as trustee for the Trust;</p> <p>(ii) seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to any property of the Trustee, or prove in any liquidation, administration or arrangement of or affecting the Trustee, except in relation to the property of the Trust; or</p> <p>(iii) enforce or seek to enforce any judgment in respect of a Liability under this deed against the Trustee in any capacity other than as trustee of the Trust.</p> <p>(c) The limitations of Liability and restrictions in this Item 14 will not apply in respect of any obligation or Liability of the Trustee to the extent that it is not satisfied because under the agreement governing the Trust or by operation of law there is a reduction in the extent of the indemnification of the Trustee out of the assets of the Trust as a result of fraud, negligence or breach of trust of the Trustee or the Trustee waiving or agreeing to amend the rights of indemnification it would otherwise have out of the assets of the Trust.</p> <p>(d) The limitation of liability in this Item 14 applies despite any other provision of this deed.</p> <p>(e) In this Item 14:</p> <p>(i) <b>Claim</b> includes a claim, cause of action, notice, demand, action, proceeding, litigation, investigation, judgement, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort (including negligence), statute or otherwise and whether involving a third party or a party to this deed; and</p> <p>(ii) <b>Liability</b> includes all liabilities, losses, damages, costs, charges and expenses however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort (including negligence), statute or otherwise including where arising under any Claim.</p>
15.	<b>Variation</b>	This deed may only be varied by a document signed by or on behalf of PON and the Port User.
16.	<b>Confidentiality</b>	(a) ( <b>Confidentiality</b> ) The existence of and the terms of this deed, and any information disclosed to a party pursuant to this deed, is confidential ( <b>Confidential Information</b> ).



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Item	Matter	Provision
		<p>(b) <b>(Keep confidential)</b> Subject to Item 16(c), each party must keep the Confidential Information confidential and not themselves nor through their servants, agents or employees directly or indirectly disclose Confidential Information to another person.</p> <p>(c) <b>(Exceptions)</b> A party may disclose Confidential Information:</p> <ul style="list-style-type: none"> <li>(i) to a professional adviser, financial adviser, banker, financier or auditor if that other person is obliged to keep the information confidential;</li> <li>(ii) to comply with any applicable law, or any requirement of any regulatory body (including any relevant stock exchange);</li> <li>(iii) to any of its employees on a confidential basis to whom it is necessary to disclose the information;</li> <li>(iv) to obtain the consent of any third party to any term of, or to any act pursuant to, this deed;</li> <li>(v) to enforce its rights or to defend any claim or action under this deed;</li> <li>(vi) to a related body corporate on a confidential basis;</li> <li>(vii) [to a party who proposes to enter into a Consignee Commitment Document<sup>6</sup>;] or</li> <li>(viii) if the information has come into the public domain through no fault of that party.</li> </ul>
17.	<b>Definitions</b>	In this deed, defined terms have the meaning given in this Annexure and Schedule 4.

<sup>6</sup> To be included if the Port User is a Vessel Agent.

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Schedule 1 - Reference Schedule

Paragraph	Reference	Details
1.	Port User	[insert name and ABN of Port User]
2.	Commencement Date	[1 January 2020]. [*Note: the drafting of this deed assumes a 01/01/2020 effective commencement date for the deed. If this is not agreed by PON and the Port User -consequential amendments to this pro forma deed will be made by PON prior to execution]

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### Schedule 2 - Covered Vessel Specific Charges

1. **Navigation Service Charge**

**\$0.8121** (exclusive of GST) per vessel gross tonne from the Commencement Date calculated by reference to the gross tonnage of the relevant Covered Vessel, adjusted over the Initial Term pursuant to Item 6 of this deed.

2. **Wharfage Charge**

**\$0.0802** (exclusive of GST) from the Commencement Date per Revenue Tonne of [coal<sup>7</sup>] loaded onto the relevant Covered Vessel, adjusted over the Initial Term pursuant to Item 6 of this deed.

#### Illustrative example

By way of illustration with respect to the Navigation Service Charge and the Wharfage Charge only, and without limiting Item 6 of this deed, an example of the adjusted Navigation Service Charge (exclusive of GST) and adjusted Wharfage Charge (exclusive of GST) each Contract Year during the Initial Term applying the Annual Adjustment under Item 6 if the increase in CPI for the relevant Contract Year is less than 4%, assuming no other adjustments apply under Item 6:

Scenario	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
CPI increase	2.37%	2.37%	2.37%	2.37%	2.37%	2.39%	2.50%	2.50%	2.50%	2.50%
NSC + 4% (A\$)	0.8121	0.8446	0.8784	0.9135	0.9501	0.9881	1.0276	1.0687	1.1115	1.1559
Wharfage + 4% (A\$)	0.0802	0.0834	0.0867	0.0902	0.0938	0.0976	0.1015	0.1056	0.1098	0.1142

<sup>7</sup> Delete "coal" and insert "Producer Coal" if the Port User is a Producer.

## **Schedule 3 - Dispute Resolution Process**

This Dispute Resolution Process forms part of and binds the parties to the Contract.

### **1. Objective**

- 1.1 PON and the Port User are committed to the fair and final resolution of commercial disputes proactively and constructively without unnecessary delay or expense and, where possible, informally and quickly in a cost effective manner.

### **2. Raising a Dispute**

#### **2.1 Where:**

- (a) the Port User wishes to raise a Dispute with PON; or
- (b) PON wishes to raise a Dispute with the Port User,

that party must do so within 21 days after the circumstance giving rise to that Dispute by providing a Dispute Notice to the other party for the purpose of endeavouring to resolve the Dispute.

#### **2.2 The Dispute Notice must be in writing and include details of:**

- (a) the nature of the Dispute;
- (b) the outcome sought by the party in relation to the Dispute; and
- (c) the action on the part of the other party which the party believes will resolve the Dispute.

#### **2.3 The parties agree and the Port User accepts that no Dispute may be raised by the Port User that is an Excluded Dispute.**

### **3. Resolving the Dispute**

- 3.1 Within 7 days of a party providing the other party with a Dispute Notice, senior representatives of each party must meet and undertake genuine and good faith negotiations with a view to resolving the Dispute expeditiously by joint discussion.

- 3.2 If the Dispute is not resolved in accordance with clause 3.1 within 14 days of a party providing the Dispute Notice to the other, then the Dispute shall be mediated in accordance with the ACICA Mediation Rules. The mediation shall take place in Sydney, Australia and be administered by ACICA.

- 3.3 If the Dispute has not been settled pursuant to the ACICA Mediation Rules within 28 days of a party providing the Dispute Notice to the other or within such other period as the parties may agree in writing, the Dispute shall be resolved by arbitration in accordance with the ACICA Arbitration Rules, and:

- (a) the seat of arbitration shall be Sydney, Australia;
- (b) the language of the arbitration shall be English;
- (c) the number of arbitrators shall be one; and
- (d) the parties designate the laws applicable in the State of New South Wales as applicable to the substance of the Dispute.

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### 4. Matters to be taken into account in Permitted Price Disputes

4.1 To the extent the Dispute to be resolved is a Permitted Price Dispute:

- (a) a mediator in conducting a mediation must take into account; and
- (b) an arbitrator in making any award must apply,

the Pricing Principles set out in clause 4.2.

#### Pricing Principles

4.2 The matters that must be taken into account by a mediator and applied by the arbitrator in resolving a Permitted Price Dispute are:

- (a) the provisions in Item 6 of this deed;
- (b) PON's legitimate business interests and investment in the port or port facilities, including a reasonable opportunity to recover over the Leasehold Period the efficient cost of the service provided at the Port of Newcastle, which recovery shall include:
  - (i) the value of its Initial Capital Base and any updates thereof;
  - (ii) a reasonable rate of return on the value of all assets comprising its Initial Capital Base and any updates thereof; and
  - (iii) the return over the Leasehold Period of the total value of the assets comprising its Initial Capital Base and any updates thereof;
- (c) the costs to PON of providing the service (including the costs of any necessary modification to, or extension of, a port facility) but not costs associated with losses arising from increased competition in upstream or downstream markets;
- (d) the economic value to PON of any additional investment that the Port User or PON has agreed to undertake;
- (e) the interests of all persons holding contracts for use of any relevant port facility;
- (f) firm and binding contractual obligations of PON or other persons (or both) already using any relevant port facility;
- (g) the operational and technical requirements necessary for the safe and reliable provision of the service;
- (h) the economically efficient operation of any relevant port facility;
- (i) the benefit to the public from having competitive markets;
- (j) that prices should allow multi-part pricing and price discrimination when it aids efficiency;
- (k) that prices should not allow a vertically integrated service provider to set terms and conditions that would discriminate in favour of either its upstream

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or downstream operations, except to the extent that the cost of providing services to others would be higher; and

- (l) that prices should provide incentives to reduce costs or otherwise improve productivity.

### 5. General

5.1 The terms of this Dispute Resolution Process govern the resolution of all Disputes to the exclusion of other forms of dispute resolution unless agreed to by the parties. Neither the Port User, PON, nor any person acting on their behalf, may commence any court proceedings in relation to a Dispute, except where:

- (a) an Insolvency Event affects, or is reasonably likely to affect imminently, either PON or the Port User, and the other party reasonably considers it necessary to commence court proceedings in relation to a Dispute to preserve its position with respect to creditors of the other party;
- (b) PON or the Port User is seeking to enforce unpaid debts;
- (c) PON or the Port User is seeking urgent interlocutory relief; or
- (d) the relevant Dispute relates to a material failure by PON or the Port User to comply with this Dispute Resolution Process.

5.2 The parties agree that no appeal may be made to the Court on a question of law arising out of an award of the arbitrator appointed under this Dispute Resolution Process.

5.3 The particulars of the Dispute, any negotiation, mediation or arbitration and any terms of resolution including any Award must be kept strictly confidential by PON and the Port User.

### 6. DEFINITIONS

In this Dispute Resolution Process, capitalised terms have the meaning given in Schedule 4 of this deed and the following meanings will apply (unless the context otherwise indicates):

**ACICA** means the Australian Centre for International Commercial Arbitration.

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

**Dispute Notice** means a notice given by a party of a Dispute under clause 2.1 in a form which complies with clause 2.2.

**Excluded Dispute** means a Dispute relating to:

- (a) the amount of the Navigation Service Charge for Covered Vessels, where the amount of the Navigation Service Charge per gross tonne for Covered Vessels does not exceed \$0.8121 (exclusive of GST) per vessel gross tonne in 2020, and each subsequent Annual Adjustment in the amount of the Navigation Service Charge for Covered Vessels from 1 January 2020; and
- (b) the amount of the Wharfage Charge in respect of [coal<sup>8</sup>] loaded onto Covered Vessels, where the amount of that Wharfage Charge does not exceed \$0.0802 (exclusive of GST) per revenue tonne in 2020, and each

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<sup>8</sup> Delete "coal" and insert "Producer Coal" if the Port User is a Producer.

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subsequent Annual Adjustment in the amount of that Wharfage Charge for coal<sup>9</sup> loaded onto Covered Vessels.

**Initial Capital Base** means the value established by reference to the depreciated optimised replacement cost as at 31 December 2014 of the assets used in the provision of all of the services at the Port of Newcastle and, unless otherwise agreed by PON, without deduction for user contributions.

**Insolvency Event** means, in respect of a person:

- (a) the person states that it is unable to pay its debts or becomes insolvent within the meaning of section 95A of the Corporations Act or insolvent under administration within the meaning of section 9 of the Corporations Act, or circumstances exist such that the court must presume insolvency under section 459C of the Corporations Act (regardless of whether or not an application has been made as referred to in that section);
- (b) an application being made to a court for an order to appoint, or a step is taken to appoint, a controller, administrator, receiver, provisional liquidator, trustee for creditors in bankruptcy or analogous person to the person or any of the person's property or such an appointment being made;
- (c) the person suspends payment of its debts or enters, or takes any step towards entering, a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- (d) any event under any law which is analogous to, or which has a substantially similar effect to, any of the events referred to in paragraphs (a) to (c),

unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation.

**Leasehold Period** means the term of the Port Lease which expires on 30 May 2112, at which time the land and improvements to the land on which the Port is situate will revert to the lessor for nil consideration.

**Permitted Price Dispute** means a Dispute which is not an Excluded Dispute and relates to:

- (a) the amount of the Navigation Service Charge for Covered Vessels; and
- (b) the amount of the Wharfage Charge in respect of [coal<sup>10</sup>] loaded onto Covered Vessels.

**Port Lease** means the 98-year leasehold interest dated 30 May 2014 granted by Port of Newcastle Lessor Pty Limited to Port of Newcastle Investments (Property) Pty Limited in the land on which the Port is situate.

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<sup>9</sup> Delete "coal" and insert "Producer Coal" if the Port User is a Producer.

<sup>10</sup> Delete "coal" and insert "Producer Coal" if the Port User is a Producer.

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### Schedule 4 - Defined Terms

<b>Annual Adjustment</b>	each annual price adjustment of the Covered Vessel Specific Charges provided for in paragraph (a) of Item 6.
<b>Commencement Date</b>	the date specified in Paragraph 2 of Schedule 1.
<b>[Consignee Commitment Document]</b>	[a document in the form of the deed poll attached as Schedule 5 or such other form of document as may be approved by PON in writing.] <sup>11</sup>
<b>Contract Year</b>	each year in the Initial Term comprising 1 January to 31 December.
<b>Covered Vessel</b>	<p><i>[where the Port User is a Vessel Agent. [PON note: PON has assumed that vessel charterers will contract with PON through agents - but PON is happy to consider direct contractual arrangements with the principal charterer]]</i></p> <p>a vessel that:</p> <ul style="list-style-type: none"><li>(a) is loaded with coal at the Port in respect of which the Vessel Agent is a person referred to in section 48(4)(b) of the PAMA Act for that vessel's visit to the Port or is the charterer of the vessel for that vessel's visit to the Port for the purposes of section 48(2) (b) of the PAMA Act (<b>Calling Coal Vessel</b>); and</li><li>(b) unless otherwise agreed in writing by PON, where each consignee of coal loaded onto the Calling Coal Vessel has duly executed and provided to PON not later than 24 hours before the Vessel enters the Port Channel a Consignee Commitment Document.</li></ul> <p><i>[OR where the Port User is a Vessel Operator]</i></p> <p>a vessel that is owned by the Vessel Operator within the meaning of section 48(2)(a) of the PAMA that is to be loaded with coal at the Port during the applicable visit to the Port.</p> <p><i>[OR where the Port User is a Producer]</i></p>

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<sup>11</sup> To be included if the Port User is a Vessel Agent.



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	a vessel that is loaded with and carries out of the Port:
	(a) Producer Coal and no other coal; or
	(b) Producer Coal and other coal in respect of which PON has agreed that the Navigation Service Charge and Wharfage Charge are the same for that other coal as the Covered Vessel Specific Charges, and, unless otherwise agreed in writing by PON, no other coal.
<b>Covered Vessel Specific Charges</b>	the charges set out in Schedule 2, as varied pursuant to Item 6.
<b>Dispute</b>	means any dispute, controversy or claim arising out of, relating to or in connection with this deed, including any question regarding its existence, validity or termination.
<b>Dispute Resolution Process</b>	the dispute resolution process set out in Schedule 3.
<b>Initial Term</b>	has the meaning given in Item 2.
<b>Navigation Service Charge</b>	a navigation service charge imposed by PON for standard vessel movements under Division 2 of Part 5 of the PAMA Act.
<b>PAMA Act</b>	<i>Ports and Maritime Administration Act 1995</i> (NSW).
<b>Parties</b>	the parties named in Item 1.
<b>Port</b>	the Port of Newcastle.
<b>Pricing Principles</b>	the principles set out in clause 4.2 of Schedule 3.
<b>[Producer Coal]<sup>12</sup></b>	any coal to be loaded at the Port which has been mined from a Producer Mine.
<b>[Producer Mine]<sup>13</sup></b>	the following operating coal mines owned and operated by the Producer as at the Commencement Date: [ <i>*Note: details of covered mines to be discussed and agreed with PON prior to execution of this deed</i> ] <i>[insert mines]</i> and any further mines owned and operated by the Producer that become operational after the Commencement Date (as may be

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<sup>12</sup> To be included if the Port User is a Producer.

<sup>13</sup> To be included if the Port User is a Producer.

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approved by PON from time to time acting reasonably in writing for the purposes of this definition).

### **Published Vessel Standard Terms and Conditions**

PON's Vessel Standard Terms and Conditions for vessels entering the Port as published (and varied) by PON from time to time.

### **Revenue Tonne**

a mass of 1,000 kilograms or a volume of 1 cubic metre or 1 kilolitre, whichever gives the largest number of units of quantity cargo.

### **Tax**

all forms of taxes, duties, imposts, charges, withholdings, rates, levies, royalties or other governmental impositions of whatever nature and by whatever authority imposed, assessed or charged (but excluding any tax on income or profits).

### **Vessel Services**

the provision of the right to access and use the shipping channels (including berths next to the wharves as part of the channels) at the Port, by virtue of which vessels may enter the Port precinct and load and unload coal at the relevant terminals located within the Port precinct and then depart the Port precinct.

### **Wharfage Charge**

a wharfage charge imposed by PON for standard wharfage access under Division 5 of Part 5 of the PAMA Act.

## Schedule 5 - Consignee Deed Poll<sup>14</sup>

# Consignee Deed Poll

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Date

## Parties

This deed poll is given by:

[insert consignee] of [insert address] (Consignee)

in favour of:

**Port of Newcastle Operations Pty Limited (ACN 165 332 990) as trustee for the Port of Newcastle Unit Trust ABN (97 539 122 070)** of Level 4, 251 Wharf Road, Newcastle NSW 2300 (PON)

## Background

- A. PON and the Vessel Agent have entered into a deed to provide for certain pricing arrangements in respect of the navigation service charge and the wharfage charge to apply during the Initial Term with respect to coal loaded onto Covered Vessels (**Primary Deed**).
- B. The Consignee has agreed to enter into this deed poll to give certain undertakings for the benefit of PON in connection with the Primary Deed.
- C. This deed poll commences operation on and from the date a duly executed original copy of this deed poll is delivered to PON (or such earlier date requested by the Consignee as PON may agree in writing) (**Effective Date**).

## Operative provisions

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### 1. Term

This deed poll takes effect on and from the Effective Date and will continue in force until the earlier of the expiry of the Initial Term or the date of any earlier termination of the Primary Deed.

### 2. Consignee's undertakings

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- (a) The Consignee:
  - (i) acknowledges and confirms to PON that it has been provided with a copy of the Primary Deed; and
  - (ii) the Consignee covenants to PON that:
    - A. it accepts and agrees that the Covered Vessel Specific Charges will apply in respect of Consignee

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<sup>14</sup> To be included if the Port User is a Vessel Agent.

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coal loaded onto Covered Vessels and to such Covered Vessels, in accordance with the terms of the Primary Deed; and

- B. it agrees that the Dispute Resolution Process as set out in Schedule 3 of the Primary Deed will apply (as if references to the "Port User" are to the "Consignee") and be the exclusive dispute resolution process to resolve any Dispute between PON and the Consignee in respect of the subject matter of this deed poll or the Primary Deed, including any dispute in respect of the amount of the navigation service charge or wharfage charge charged or proposed to be charged by PON.

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### 3. Warranties

The Consignee:

- (a) warrants to PON that each of the following warranties is true and correct:
- (i) the Consignee is properly incorporated and validly existing under the laws of its jurisdiction of incorporation or registration;
  - (ii) the Consignee has the legal right and full power and capacity to:
    - A. execute and deliver this deed poll; and
    - B. perform its obligations under this deed poll,and has obtained all necessary authorisations and consents and taken all other actions necessary to enable it to do so; and
  - (iii) this deed poll constitutes valid legal and binding obligations of the Consignee and is enforceable against the Consignee in accordance with its terms; and
- (b) acknowledges that PON has accepted this deed poll in reliance on the warranties given in this clause 3.

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### 4. Miscellaneous

#### 4.1 Definitions and interpretation

Terms used in this deed poll which are defined in the Primary Deed will have the meaning given to them in the Primary Deed and this deed poll will be interpreted in accordance with the same rules of interpretation as apply to the Primary Deed.

#### 4.2 Governing law

This deed poll is governed by and is to be construed in accordance with the laws of New South Wales. The Consignee submits to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them.

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**4.3 Amendment or revocation**

This deed poll cannot be amended or revoked by the Consignee without the prior written consent of PON.

**4.4 Further acts and documents**

The Consignee must do all further acts and execute and deliver all further documents (in the form and content reasonably satisfactory to PON) required by law or reasonably requested by PON to give effect to this deed poll.

**EXECUTED as a deed poll** on this \_\_\_\_ day of \_\_\_\_\_ .

Executed\* by [insert consignee name] in accordance with section 127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of company secretary/director

\_\_\_\_\_  
Full name of director

\_\_\_\_\_  
Full name of company secretary/director

*[\*Note: if the Consignee is not an Australian registered company - execution block to be substituted for appropriate legally binding execution under place of registration/incorporation]*

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