

SCHEDULE 1 INDICATIVE ACCESS AGREEMENT



Emerald Logistics Pty Ltd
ABN 39 087 280 260

For Melbourne Bulk Commodity Terminal at the Port of Melbourne.

Indicative Access Agreement

201~~43~~/1~~54~~

Client Name:

ABN:

This **AGREEMENT** is dated the _____ day of _____ 201~~43~~

BETWEEN

–Emerald Logistics Pty Ltd
“**Company**”
Level 4/600 Victoria St
RICHMOND VIC 3121

AND

Legal Entity Name: _____
“**Client**”

Client ABN: _____
(*must be inserted*)

Postal Address: _____

Client’s Short Code –

BACKGROUND

- (a) The Company carries on the business of receiving, handling storing and loading Grain and other commodities at the Port Terminal.
- (b) The Client purchases Grain and desires to access the Services at the Port Terminal
- (c) This Indicative Access Agreement (“**Agreement**”) sets out the standard minimum terms and conditions upon which the Company is willing to provide the Client with access to the Services at the Port Terminal in respect of Bulk Wheat for the 201~~43~~-1~~54~~ season.
- (d) Alternatively the Client may negotiate and enter into an agreement, with the Company for the Services, which has different terms and conditions to this Indicative Access Agreement (such negotiated agreement being a “**Port Terminal Storage & Handling Agreement**”);
- (e) The Company may at its discretion offer these terms and conditions to the Client for the provision of Services at the Port Terminal in respect of Grain other than Bulk Wheat.
- (f) The Client has accepted the Company’s offer to provide the Services on the terms and conditions contained in this Indicative Access Agreement.

This Agreement between

Emerald Logistics Pty Ltd, - "**Company**"

Level 4/600 Victoria St

RICHMOND VIC 3121

and

The Client as described above

The Parties agree to be bound by the provisions of this Agreement and by signing the signatories warrant that they each have the authority and to enter into this Agreement on behalf of their respective organisations.

Executed as an Agreement.

General Manager, Commercial & Business Development

Signature of Witness

Date: ____/____/____

Signature of Client's Authorised Representative

Full Name of Client's Authorised Representative

Title of Client's Authorised Representative

Signature of Witness

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1. Interpretation

1.1 Definitions

The following definitions apply in this Agreement:

“**AQIS**” means DAFF Biosecurity Australia or such other body that is responsible for Australian Quarantine and Inspection Service.

“**Binned Grade**” means the Grade of Grain stored in a Cell. The Binned Grade may contain different Grades.

“**Blending**” means either the mixing of originally segregated Binned Grades within a Facility or during the outturn process.

“**Bulk Wheat**” means wheat for export from Australia other than wheat that is exported in a bag or a container capable of holding not more than 50 tonnes of wheat.

“**Business Day**” means any day on which the principal office of the Company is open for business and does not include a Saturday, Sunday or day that is a public holiday in the State of Victoria.

“**Cargo Assembly Plan**” means the document of that title provided by the Client to the Company from time to time setting out the Client’s plan for marshalling, freighting and accumulating at port sufficient Grain to meet the Client’s cargo requirement.

“**Cell**” means a physical unit for storage of Grain.

“**Charges**” means those charges for the 2014/15 season calculated in accordance with the Reference Prices, which, if available at the date of this Agreement, are set out in Schedule A.

“**client**” means a person that uses the Port Terminal for Services.

“**Client**” means the party to this agreement that is not the Company and where applicable its contractors and agents and their successors and permitted assigns.

“**Client Grain**” means that quantity of Grain held by the Company for the Client within the Port Terminal.

“**Commingling**” is the situation where different Grades of Grain are stored in the same Cell.

“**Company**” means Emerald Logistics Pty Ltd ABN 39 087 280 260.

“**Damaged Grain**” means Grain that has been damaged in an incident or event to such an extent that it can no longer be classified by any Receival (Classification) Standards and is only of salvage value or suitable for disposal.

“**Delivered**” means, in respect of Grain, the point and time at which Grain first arrives at the Port Terminal and is accepted into storage.

“**Dust**” means Grain dust attributable to the Client Grain extracted from dust collection plants in a Facility, but excluding Damaged Grain.

"Facility" means any Grain receival, storage and handling facilities used by the Company in connection with the provision of Receival or other services to the Growers and/or the provision of the Services to the Client, including the Receival Stations and the Port Terminal.

"GMO" or **"Grain Movement Order"** means an authorisation to Outturn Grain issued by the Client:

- (a) in writing, or
- (b) by electronic mail, or
- (c) via the Company's grain management system accessible through the Company's website.

"Grade" means a grade of Grain of a given Season specified in the Receival Standards of that same Season, or any other grade agreed by the Parties.

"Grain" means the seed of any crop or pasture species including Pulses.

"GTA" means Grain Trade Australia the organisation previously known as the National Agricultural Commodities Marketing Association.

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"Grower" means any person or entity involved in the growing of Grain, the contact details for whom have been registered by the Client or the Company or a national grower register.

"GST" means the tax imposed by the GST Law.

"GST Law" has the same meaning as in A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth).

"Harvest" means the period of time during which grain may be harvested and Delivered, this is usually between 1 October in the first year and the end of February in the following year.

"Industrial Dispute" includes a strike, stop-work, boycott or lockout.

"Insolvency Event" means in relation to a Party:

- (a) a receiver, receiver and manager, administrator, trustee or similar official is appointed over the whole or a substantial part of the assets or undertaking of the Party and is not removed within 30 days;
- (b) the Party suspends payment of its debts generally;
- (c) the Party is insolvent within the meaning of the Corporations Act 2001 (Cth);
- (d) the Party enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (e) an application (other than a vexatious application) or order is made for the winding up or dissolution of, or the appointment of a provisional liquidator to, the Party or a resolution is passed or steps are taken to pass a resolution for the winding up or dissolution of the Party otherwise than for the purpose of an amalgamation or reconstruction which has the prior written consent of the other Party and, in the case of an application, the application is not withdrawn or dismissed within 60 days; or
- (f) an administrator is appointed under Division 2 of Part 5.3A of the Corporations Act 2001 (Cth) and, except in the case of an appointment by the Party or its directors, is not withdrawn or removed within 14 days.

"Interest" means in respect of a client, the portion of the Stored Grain to which legal title as client is held, and which is equivalent to the percentage the grain of the relevant type and grade received from that client makes up of the total Stored Grain.

"Non Company Facilities" means bulk storage facilities which are not owned, either in whole or in part, by the Company or are not affiliated with the Company via operating agreements. "Non Company Facility" has a corresponding meaning.

"Outturn" means:

- (a) to cause Grain to physically leave the Company's custody at the Port Terminal when the Grain exits the delivery spout into a ship at which point physical possession passes from the Company to the Client or a third party authorised by the Client to receive the Grain;
- (b) the disposal of Damaged Grain; or
- (c) any other outturn from the Port Terminal required and directed by the Client; and
- (d) as evidenced by a GMO.

"Outturn Entitlement" has the meaning given to it in clause 7.1.

"Outturn Protocols" means the document/s of that title as published on the Company website as amended from time to time,

"Outturn Standards" means, in respect of a Grain outturned from the Port Terminal, the Receival Standards for that Grain, adjusted for the variances and allowances specified in the Outturn Protocols at the date of receipt of the Grain.

"Party" means, depending upon the context, either the Company or the Client.

"Port Terminal" means the Company's seaboard terminal at 18-20 Enterprize Road West Melbourne or such other port terminals as may be operated by the Company.

"Port Loading Protocols" means the document of that title as published on the Company website at the time of the relevant activity.

"Port Terminal Storage & Handling Agreement" means an agreement entered into by the Company and the Client in lieu of this Indicative Access Agreement.

"Pulses" means chickpeas, lupins, field peas, faba beans, lentils, vetch, broad beans and any other grain legumes.

"Receival" means the process of Testing, weighing, tipping, inwardly elevating and placing the Grain into the storage facilities on behalf of a Client. "Receive" has a corresponding meaning.

"Receival Standards" means the standards as published on the Company website, in respect of Receival, at the time the Grain is received, and in respect of Outturn, at the time of Outturn.

"Receival Station" means a Company facility for Receival from Growers and storage of Grain, other than the Port Terminal.

"Reference Prices" means the standard prices charged by the Company for the Services provided between 1 October 201~~4~~³ and September 201~~4~~⁵, as published by the Company no later than 30 September 201~~4~~³ and as may be varied from time to time in accordance with the Undertaking.

"Regrade" means the re-grading of Grain of the Grade of one Season to the same Grade of Grain of another Season or as the case may be the re-grading of Grain of one Grade of a Season to a different Grade of Grain of the same or different Season.

"Sampling Methods" means the document of that title as published on the Company website, in respect of Receival, at the time the Grain is received, and in respect of Outturn, at the time of Outturn. In the absence of specific reference to any particular sampling methods published by the Company, Grain Trade Australia sampling methods apply.

"Season" means the period in which most of the Grower's Grain is harvested and delivered to Company sites, typically commencing in November in one year and going through to the February of the following year.

"Segregation" means the physical separation of the storage of Grain by type, Grade, variety or such other distinguishing quality as may be determined by the Company.

"Services" means the Port Terminal services for Bulk Wheat provided by the Company to the Client as specified in Schedule B and similar services for such other Grains as the Company may agree in writing with the Client to be subject to this Agreement.

"Shrinkage" means that quantity of Client Grain, which is lost in:

- (a) the normal storage and handling process including loss of mass through changes in moisture content;
- (b) handling; and
- (c) Waste,

but does not include Grain lost as Dust or Damaged Grain.

"Shrinkage Allowance" means the allowance for Shrinkage specified in Schedule A or such other allowance for Shrinkage as may be agreed between the Company and the Client from time to time.

"Storage" means warehousing, control and movement of Grain. "Store" has a corresponding meaning.

"Stored Grain" means, in respect of a particular type and grade of Grain, all of the grain of that type and grade Stored by the Company in which clients have an Interest.

"Testing" means testing as described in clause 5.

"Undertaking" means an undertaking (as varied) regarding access for exporters of Bulk Wheat to Services during the period 1 October 2013~~3~~ to 30 September 2015~~4~~ offered by the Company and accepted by the Australian Competition and Consumer Commission pursuant to Division 6 Part IIIA of the *Competition and Consumer Act 2010* (Cth).

"Washout Price" means the price determined in clause 7.3.

"Waste" means Grain that as a result of the normal handling process has been downgraded to Grain of no commercial value, for example mouldy grain, grain mixed with dirt and stones.

"Weather Working Day" means a day on which weather permits continuous work.

"Working Days" means all days except Saturday, Sunday and Public Holidays of the State in which the relevant Facility is located.

1.2 Rules for interpreting this Agreement

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Agreement, except where the context makes it clear that a rule is not intended to apply.

A reference to:

- (a) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (b) a document, terms and conditions, or a provision of a document or terms and conditions, is to that document, terms and conditions or provision as amended, supplemented, replaced or novated;
- (c) a Party to this Agreement or to any other document or terms and conditions includes a permitted substitute or a permitted assign of that Party;
- (d) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
- (e) anything (including a right, obligation or concept) includes each part of it;
- (f) 'A\$', '\$A', 'dollar', '\$' or any charge making reference to a monetary amount is a reference to Australian currency; and
- (g) to a clause, part, schedule or annexure is a reference to a clause, part, schedule or annexure of this Agreement unless otherwise stated.

In addition:

- (a) a singular word includes the plural, and vice versa;
- (h) a word which suggests one gender, includes the other genders;
- (i) if a word or phrase is defined, a matching word or phrase containing another part of speech has a corresponding meaning, whether or not the word or words in the matching phrase commence with a capital letter;
- (j) if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing;
- (k) the word "agree" includes an undertaking or other binding arrangement or understanding, and, unless otherwise qualified in this terms and conditions, whether or not in writing;
- (l) a provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement; and
- (m) in the event of an inconsistency or conflict between the provisions of the main body of the Agreement and the relevant schedule, the provisions of the relevant schedule shall prevail.

2. Term and Services

2.1 Subject to this Agreement and in consideration of the Client paying the Company the Charges, the Company agrees to provide the Services to the Client from 1 October 201~~4~~³ to 30 September 201~~5~~⁴ (the "Term").

2.2 The Client is bound by the terms and conditions of this Agreement from the earlier of:

- (a) the date of execution of this Agreement; or

(b) the date, during the term, that the Company provides Services to the Client, including in respect of Grain of Seasons prior to the 201~~43~~/201~~54~~ Season.

2.3 This Agreement supersedes any previous agreement between the Company and the Client for the provision of the Services or services similar to the Services.

2.4 This Agreement will not apply to the 201~~43~~/1~~54~~ season if and from the point when the Client and the Company have negotiated and entered into a Port Terminal Storage & Handling Agreement in respect of the Services or services similar to the Services.

2.5 This Agreement will terminate on 30 September 201~~54~~ and, in the absence of having agreed and signed a new 201~~54~~/1~~65~~ Access Agreement, the Client must ensure that arrangements are made to outturn all the Client's Grain prior to this date.

3. Receival

3.1 The Company will make available to the Client facilities to receive Bulk Wheat (and by agreement other Grains):

(a) by road and rail from Company Facilities and Non-Company Facilities;

(b) by road ex-farm if the Grain has been pre-contracted by a Client to fill a Cargo Assembly Plan and otherwise in accordance with this Agreement.

4. Receival Standards

4.1 All Grain that is to be received and stored by the Company for the Client must comply with the Receival Standards. If Grain has characteristics which do not comply with the Receival Standards the Company may, in its absolute discretion, refuse to receive that Grain.

4.2 The Company may, in its discretion, refuse to Receive Grain known or suspected to contain chemical contaminants or residues or undeclared genetically modified ("GM") organisms or events.

4.3 The Client must not deliver, and must ensure that none of its suppliers deliver, Grain known or suspected to contain nil tolerance contaminants, chemical contaminants or residues, to the Port Terminal..

4.4 The Client indemnifies the Company against all loss (including consequential and indirect loss) resulting from the delivery by it or its suppliers of Grain containing chemical contaminants or residues or nil tolerance contaminants.

5. Testing

5.1 The Company will conduct Testing on Grain:

(a) delivered by the Client, for the purpose of classifying the Grain into a Grade and determining whether to Receive the Grain (**Receival Tests**) ; and

(b) intended for Outturn (**Outturn Tests**).

5.2 Testing will be undertaken in accordance with the Receival Standards and Sampling Methods as published by the Company from time to time.

5.3 The Client will be provided with the results of the Testing. If the Client does not agree with the results of the Testing the Client must immediately notify the Company. The Client is deemed to have accepted the results of the Testing as final and binding:

- (a) in the case of Receival Tests, if the Client fails to immediately so notify the Company, or
 - (b) in the case of Outturn Tests, immediately upon Outturn.
- 5.4 For wheat and barley only: protein, moisture, test weight, screenings, defective grains and contaminants testing will be undertaken.
- 5.5 For Canola only: oil content, test weight, impurity, defective seed and contaminant testing will be undertaken. Free fatty acid testing will not be undertaken.
- 5.6 The Client acknowledges that:
- (a) Testing is conducted on a sample taken in accordance with the Receival Standards and the Sampling Methods,
 - (b) Testing is indicative of the quality of Grain, it is not determinative of the quality of all of the Grain Delivered,
 - (c) variation in results between the Receival Tests and Outturn Tests is not abnormal.
 - (d) Test results that fall within the margin of error for the sample size are acceptable as meeting the grade specifications
 - (e) The Company applies a definition of "NIL" as meaning less than or equal to 0.05% by weight where a NIL tolerance is specified in Receival Standards or Outturn Standards.
- 5.7 The Company warrants only that it will conduct the Testing in accordance with the Receival Standards. The Company makes no other warranty or guarantee in relation to the Testing, including but not limited to, that malting barley will germinate after Outturn.
- 5.8 The Client agrees to comply with the Outturn Protocols and accepts the quality variances on outturn set out in the Outturn Protocols as they applied on the date of receipt of the relevant Grain.

6. Receipt and Storage

- 6.1 The Company will:
- (a) ~~r~~Receive Bulk Wheat (and by agreement other Grains) Delivered at the Port Terminal during the Term provided that in the sole opinion of the Company the Grain in each case complies with the Receival Standards, is in fit condition for safe and hygienic storage and, in the opinion of the Company, storage space permits;
 - (b) ~~s~~Store the Grain for the Client at the Port Terminal ; and
 - (c) ~~o~~Outturn the Grain for the Client at such time or times and in such quantities as the Client requires in accordance with Clause 7.
- 6.2 The Client must, in addition to compliance with all other requirements of this clause 6:
- (a) notify the Company that the Client wishes to Deliver Grain to the Port Terminal, including the expected time of Delivery,
 - (b) obtain the agreement of the Company to Deliver the Grain to the Port Terminal; and
 - (c) use best endeavours to ensure that the Grain delivered to the Port Terminal meets the quality specifications for the respective GMO and indemnify the Company against all losses, costs and claims made against the Company as a result of grain delivered by the client that is subsequently found not to comply fully with the Grade standards.

- 6.3 The Client will ensure that where a Grain is Delivered by a Grower or agent on behalf of the Client the Grower or agent will clearly state in writing the Client's name at the time of delivery ("**Nomination**"). The Client will also ensure that a Nomination contains a statement to the effect that the Grower or agent transfers all of the right, title and interest to and in the Grain to the Client. All Nominations are final and irrevocable and the Company may rely on the details of the Nomination without any further enquiries.
- 6.4 The Client will ensure that where Grain is Delivered from a Non Company Facility, it provides written confirmation to the Company of:
- (a) fumigation clearance, and
 - (b) grain treatment details for the period of time Grain was at a Non Company Facility,
- 6.5 Unless specifically agreed otherwise, the Company reserves the right to mix the whole or any part of any Grain delivered to it by any client or Growers with Grain of similar specification and any and all such Grains so received will be Stored Grain.
- 6.6 If the Client Grain is not Outturned on or prior to 30 September 2015⁴, the Company may do any or all of the following:
- (a) Regrade the Client Grain and
 - (b) the provisions of the Company's then current standard Indicative Access Agreement for the coming season will apply to the storage and handling of such Client Grain, whether signed by the Client or not.
- 6.7 Where Client Grain of a particular type and grade of Grain at the Port Terminal is between or equal to the values -1.00 and +1.00 tonne, the Client Grain of that particular type and grade of Grain will be deemed to have no value and will be removed from the Client's Outturn Entitlement and neither party will have any liability for any Claim or Loss to the other for that amount of Grain.
- 6.8 Only in respect of malting barley:
- (a) if the Client Grain is in the Facility after 1 September 2015⁴ and in the Company's opinion it is impractical to maintain the Grain Segregation, the Company may regrade malting barley to feed barley grade where the germination quality is less than 95%; and
 - (b) if the Client Grain is in the Facility on or after 1 July 2016⁵ the Company may Regrade malting barley to feed barley grade.

and in each case the Client indemnifies the Company against any claims arising out of or related to the Regrading.

7. Outturn

Outturn Entitlement

- 7.1 The Client will be entitled to an Outturn by weight of the Client Grain initially received on behalf of the Client after deduction of the Shrinkage Allowance and Dust ("**Outturn Entitlement**"). The Client may access the whole or part of the Outturn Entitlement by issuing a GMO.
- 7.2 When all Client Grain has been Outturned from the Port Terminal the Company will advise the Client of any variation between the Outturn Entitlement and the tonnage actually outturned ("**Variation**"). If the Outturn Entitlement has not been completely received by the Client, the Company will, in its absolute discretion, either

- (a) replace the physical short Outturn Entitlement of the Client, or
 - (b) determine, acting reasonably, the value of the Variation including any freight component base grade quality.
- 7.3 If the Company determines in accordance with clause 7.2(b), that, there is a difference between the Client's Outturn Entitlement and the tonnage actually Outturned to the Client:
- (a) For Client Grain, unless otherwise agreed, a Season average price will be calculated based on Season average cash prices posted by the Client and all Other Clients over harvest at the non-port Company Facilities.
 - (b) If the actual tonnage Outturned to the Client exceeds the Client's Outturn Entitlement, the Client must either pay the Company for the excess at the average price calculated under clause 7.3 (a) (Washout Price) or replace the shortfall by using other grades as negotiated and agreed with the Company.
 - (c) If the actual tonnage Outturned to the Client is less than the Client's Outturn Entitlement, the Company may, at its discretion, either replace the physical Grain shortfall in the Client's Outturn Entitlement, or pay the Client for the deficiency in the Outturn Entitlement at the Washout Price.
- 7.4 The Company is not required to Outturn Grain if it has received notice from a person holding a security interest over that Client Grain until;
- (a) The person holding the security interest has consented to; or
 - (b) The Company receives a court order requiring it to.
- 7.5 The Client will indemnify the Company against all losses, costs, damages, expenses, charges and surcharges the Company incurs or sustains as a result of a claim made against the Company by any person holding a security interest over Client Grain.

In-Store Transfer

- 7.6 The Client may elect to transfer title to all or part of the Outturn Entitlement at the Port Terminal to another client by providing prior notice of such transfer ("**In-Store Transfer**"). The Company may refuse an In-Store Transfer if the In-Store Transfer would result in the Client's Outturn Entitlement going into a negative position at the Port Terminal.
- 7.7 An In-Store Transfer is effective from the date of the notice by the Client. The Client remains liable for all Charges incurred up to the date of the In-Store Transfer.

Outturn

- 7.8 The Company undertakes to Outturn Grain in accordance with the Outturn Protocols.
- 7.9 The Company will, to the extent practicable taking into account clients' requirements, prioritise the Outturn of Outturn Entitlements for the loading of the Client's vessels (where applicable) in accordance with the Cargo Assembly Plan.
- 7.10 The Company's obligations in respect of the care of the Grain cease immediately upon Outturn of the Grain from the Port Terminal.

Client Warranties

- 7.11 The Client warrants and represents to the Company that it is the sole legal and beneficial owner of all of its Commodities held by the Company on behalf of the Client with full right, title and interest, free from any mortgage, charge, lien, option, encumbrance or other adverse claim or interest other than as notified in writing to the Company prior to:

- (a) Outturn of that Grain; or
- (b) Receipt of a notice of an In-Store Transfer.

8. Transport and Freight

- 8.1 The Client indemnifies the Company for all labour costs incurred by the Company due to train or road truck arrivals later than thirty (30) minutes of the original estimated time of arrival in cases where the Client has failed to notify the Company of the delay by 1.00pm on the Working Day immediately prior.
- 8.2 Except where otherwise agreed in writing, the Client accepts all risks of transport used by the Client to deliver or outturn Grain at the Port Terminal.

9. Port Loading Protocols

- 9.1 The Client and the Company undertake to comply with the requirements of:
 - (a) the Company's published Port Loading Protocols when the Client engages the Company to load a Bulk Wheat vessel at the Port Terminal or
 - (b) Container Packing Protocols when the Client engages the Company to pack grain into container at the Port Terminal.
- 9.2 The Client acknowledges that the efficient operation of the Port Terminal relies on a supply chain based predominantly on rail movements and the optimisation of Grain positioning. Accordingly:
 - (a) the Client may not be able to book a shipping slot if it is not able to demonstrate access to rail resources for the movement of grain to port;
 - (b) where necessary to facilitate efficient loading of the Client's ships and the ships of others, the Client will be expected to explore in good faith stock swap opportunities with other clients of the Company on terms agreeable to the Client,
- 9.3 Unless otherwise agreed with the Company, only wheat will be shipped out of the Port Terminal.
- 9.4 The Client acknowledges that the Company has the right to mitigate dust emissions at the Port Terminal. Such mitigation may include moisture conditioning of grain paths.

10. Stored Grain

- 10.1 The Client acknowledges that when the Company receives the Client Grain, it becomes Stored Grain and the Client maintains an Interest in the Stored Grain.
- 10.2 Except if the Company suffers an Insolvency Event, the Client does not have the right to nominate any particular parcel Stored Grain as being owned by the Client.
- 10.3 While the Company has possession of the Client Grain:
 - (a) the relationship between the Company and the Client in respect of the possession of the Grain is one of bailment only;

- (b) that relationship will continue to exist despite the Grain losing its identity by being part of Stored Grain, or despite the inability of the Company to redeliver to the Client Grain the subject of the bailment; and
- (c) unless specifically agreed otherwise, the Company as bailee may manage, use, deal with or otherwise control the Grain in its possession in any manner consistent with the Outturn Entitlement.

10.4 Where the Company suffers an Insolvency Event the Client will be entitled, upon reasonable notice and subject to the provisions of this Agreement relating to Stored Grain, to re-take possession of the Client Grain from the Port Terminal.

11. Charges and Invoices

11.1 The Client will pay the Charges in accordance with this clause 11.

11.2 The Client will pay to the Company within 14 days of the date of an invoice or statement from the Company the Charges set out therein.

11.3 Where parts of an invoice are disputed, the Client will pay to the Company the undisputed amounts in accordance with clause 11.2. Upon resolution of the disputed amounts the Client will pay to the Company those amounts within 30 days of the date of dispute resolution.

11.4 Payment must be made by either:

- (a) direct credit into the company's bank account as follows or any other account notified to the Client in writing:

Account name	Emerald Logistics Pty Limited
BSB	033 039
Account	365462

- (b) cheque or money order by post.

11.5 The Client must submit a remittance advice clearly identifying the invoice/s being paid:

- (a) in the case of clause 11.4 (b) to any of the following on the same day that payment is made:

Email	accounts@ emeraldgrain.com
Fax	03 9274 8889
Mail	Emerald Logistics Pty Limited Attention: Accounts Level 4, 600 Victoria St Richmond VIC 3121

- (b) in the case of clause (b) to attached to the cheque or money order:

Mail	Emerald Logistics Pty Limited Attention: Accounts Level 4, 600 Victoria St Richmond VIC 3121
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- 11.6 If the Client purchases Grain, including through an In-Store Transfer, the Company may invoice the Client for all Charges remaining unpaid at the time of the In-Store Transfer and the Client must pay those Charges in accordance with this clause 11.
- 11.7 The Client agrees to pay any charges levied by the Port Authority or AQIS, relating to the Commodities or the provision of Services (including, but not limited to, wharfage, berth hire, harbour dues and quarantine inspection fees). In addition, to the extent that the Company has any liability to pay those charges, the Client agrees to indemnify the Company against that liability, unless the Company specifically agrees to pay these charges on the Client's behalf.
- 11.8 The Company and the Client acknowledge that all fees and charges payable as stated in this Agreement have been calculated on a GST exclusive basis unless otherwise stated.
- 11.9 Any reimbursement of money pursuant to this Agreement paid by a Party to a third party shall be net of the benefit of GST input tax credits claimable by the Party in respect of the payment.
- 11.10 If the Client fails to pay any amounts owing under this Agreement by the due date any amount outstanding will bear simple interest at the rate of interest being 5% higher than the 90 day Bank Bill Rate offered by the Commonwealth Bank as at the due date, calculated from the due date to the date of actual payment in full.

12. Books and Records

- 12.1 The Company will keep at its principal place of business records, books of account and documents relating to transactions in the Grain and such books of account, records and documents will be available for inspection by officers of the Client at any reasonable time upon request.
- 12.2 All information provided to the Client by the Company will be treated as conclusive evidence of the correctness of the details set out in that information unless:
- (a) the Client notifies the Company in writing, setting out the detailed reasons, within 14 days of receipt of that information that there exists a bona fide dispute concerning the correctness of that information; or
 - (b) it is demonstrated at any time that there is a clear and manifest error in that information.

13. Lien

- 13.1 Notwithstanding that the Grain received by the Company under this Agreement may be deemed to be Stored Grain, the Company shall have a first and paramount lien on the Client Grain for all monies payable (on any account whatsoever) by the Client to the Company under this Agreement or otherwise.
- 13.2 In the case of Stored Grain, the Company may nominate and identify any particular quantity of Grain comprising the Stored Grain as being the Client Grain for the purposes of enforcing its lien.
- 13.3 Subject to any requirement of law the Company will be entitled for the purpose of enforcing such lien to retain possession of the whole or any part of the Client Grain until all amounts due and payable are paid, or to sell all or any of the Client Grain in such manner as it thinks fit (after giving the Client at least 7 days prior notice) whereupon the proceeds of such sale will be applied in or towards the satisfaction of the moneys due to the Company and the costs of effecting the sale and the balance (if any) will be paid by the Company to the Client. Where the

Company sells all or any of the Client Grain for the purpose of enforcing its lien, the Client irrevocably appoints the Company as its agent and attorney.

13.4 In enforcing a lien in respect of any client Grain the Company will ensure that its actions do not affect the right of the Client to receive the Outturn Entitlement under this Agreement.

14. Security

14.1 If in the reasonably held opinion of the Company, the Client does not have a legal ownership structure with a sufficient capital base and assets of value to meet the actual or potential liabilities of the Client under this Agreement, the Client will, if required by the Company:

- (a) arrange for its directors and/or shareholders to personally guarantee the Client's performance of this Agreement by signing a written guarantee in a form and on conditions specified by the Company; and/or
- (b) obtain or deposit with the Company an unconditional bank guarantee or bond in a form and for an amount and given by a bank or insurer approved by the Company by way of guarantee for the performance of this Agreement ("security").

14.2 Any written guarantee or security required by the Company must be established:

- (a) prior to the Company receiving Grain for storage on behalf of the Client; and
- (b) within 7 days after it has been requested by the Company.

14.3 If the Client defaults, then the Company may call up, draw on, use, appropriate and apply the whole or part of the security as may be necessary in the opinion of the Company to compensate the Company for loss or damage suffered by the Company by reason of the Client's default, and:

- (a) any use or appropriation of the security by the Company does not operate to waive the default and does not affect the Company's other rights; and
- (b) if the security or any part of it is used or appropriated by the Company, the Client must within seven (7) days from receipt of a request by the Company pay to or deposit with the Company new or additional security in a form and for an amount as specified by the Company.

14.4 On termination of this Agreement and if the Client has complied with this Agreement, the security less any sums drawn on, used or appropriated by the Company and not reinstated by way of further security, must be refunded, returned or cancelled.

15. Risk and Insurance

15.1 The Company bears all usual insurable risks of accidental loss or damage to Client Grain during the provision of the Services (such as storm water ingress, fire and theft).

15.2 The Company must, for the entire period that Client Grain is stored at the Port Terminal, keep Client Grain insured against the risks it bears pursuant to clause 15.1.

15.3 The Client must, and must cause any person entering the Port Terminal for or on behalf of the Client, to hold:

- (a) public liability insurance,
- (b) workers' compensation insurance required by law, and

(c) if driving a vehicle, third party motor vehicle insurance covering person and property.

15.4 The Company must, upon request of the Client, provide evidence that the Company has complied with clause 15.2.

16. Liability

16.1 The Company will only be liable for failing to Outturn the Client Grain if such failure is:

- (a) a direct result of the Company's gross negligence, fraud or wilful default; or
- (b) a direct consequence of an insurable event as described in clause 15.1.

16.2 Except as expressly contained in this Agreement, the Company will not be liable for any other loss or damage, including but not limited to:

- (a) any special or unusual event or any natural process (as determined by the Company) which is not covered by the Company's insurance, causing loss or damage to the Grain;
- (b) any loss or damage arising out of or related to the incidence or effect or both of any delays in the loading or unloading of trains, trucks, containers or ships;
- (c) any loss or damage arising out of or related to Grain passing or failing to pass inspection by the AQIS inspectors, AQIS authorised officers, or similar;
- (d) any loss or damage arising out of or related to any quality or quantity deficiencies claimed after Outturn from the Port Terminal;
- (e) any loss or damage arising out of or related to toxic or other chemical residues, other contamination or genetic modification;
- (f) any indirect or consequential loss (including but without limitation loss of profit, loss of opportunity or loss of reputation), cost, damage or expense suffered or incurred directly or indirectly by the Client as a result of any loss or downgrade of or damage to Grain

however caused (including without limitation any loss, cost, damage or expense caused by the failure of the Company to comply with any of its obligations under this Agreement or any negligent act or omission on the part of the Company, its employees or Agents).

16.3 Notwithstanding clauses 16.1 and 16.2, the Company's liability in any event will not exceed the greater of

- (a) \$250,000 in total in respect of all events occurring within the Term and \$100,000 per event; and
- (b) any proceeds of insurance payable under the insurance taken out by the Company pursuant to clause 15.1.

16.4 To the extent permitted by law the Company excludes all conditions and warranties implied at law or by statute relating to the obligations of the Company under this Agreement.

16.5 The Company's liability under any non-excludable implied condition or warranty is limited to:

- (a) in the case of services, the lowest of the costs of supplying the services again and having the services supplied again; and
- (b) in the case of goods, the lowest of the costs of replacing the goods, acquiring equivalent goods or having the goods repaired.

17. Indemnity

17.1 The Client will indemnify the Company and keep the Company indemnified from and against all losses, costs, damages, expenses, charges and surcharges suffered or incurred by the Company arising directly or indirectly out of or in relation to:

- (a) any breach non-observance or non-performance by the Client of any of its obligations under this Agreement;
- (b) any claim by a third party relating to the Client Grain;

except to the extent that the gross negligence of the Company contributed to the losses, costs, damages, expenses, charges or surcharges.

18. Variations

18.1 No variation to this Agreement is valid or has any effect unless agreed in writing by both the Client and the Company.

19. Termination

19.1 This Agreement may be terminated by either Party:

- (a) giving to the other at least 3 months prior written notice in that regard, or
- (b) if the other Party suffers an Insolvency Event.

19.2 This Agreement may be terminated by the Company with immediate effect:

- (a) ~~If~~ the Client commits a breach of any term of this Agreement, and
- (b) ~~If~~ the Client fails to remedy that breach within a period of not less than 30 days after the Company gives the Client written notice of that breach.

19.3 Subject to clause 2.4, within 28 days of termination of this Agreement, the Client must remove any Client Grain from the Port Terminal. The Company may dispose of any Client Grain still remaining after that time. Surplus proceeds, from the sale of that Client Grain after deducting costs incurred by the Company in its disposal and for amounts owing to the Company, will be returned to the Client.

19.4 Termination will not affect any rights or remedies accrued to a party under this Agreement.

19.5 Notwithstanding any other provisions of this Agreement, the Company may refuse to provide Services, including to Outturn Client Grain, if the Client has not paid any amounts owing to the Company pursuant to clause 11 of this Agreement.

20. Force Majeure

20.1 Force Majeure Event

For the purpose of this Agreement, a "Force Majeure Event" affecting a Party means anything outside that Party's reasonable control including without limitation:

- (a) accident, fire, adverse extreme weather conditions, flood, tidal conditions, earthquake, explosion, blockages of ports, civil commotion, outbreak of hostilities, terrorist act, declaration of war, war, invasion, rebellion, epidemic, or declarations of a state of emergency;

- (b) strikes, stop works, lockouts, boycotts or any other form of labour dispute or labour shortage;
- (c) breakdown, damage or destruction of the Port Terminal or ship-loader;
- (d) failure, disruption or delay in transportation;
- (e) executive or administrative order or act of either general or particular application of any Government or any official purporting to act under the authority of that Government, prohibitions or restrictions by domestic or foreign laws, regulations or policies, quarantine or custom restrictions or prohibitions on export; and
- (f) acts or omissions of any third party (including without limitation Governments, Government agencies, subcontractors or Clients).

20.2 Suspension of Obligations

If a party is wholly or partially precluded from complying in the normal manner required by this Agreement with its obligations under this Agreement by a Force Majeure Event (in this clause 24 called the "Affected Party"), then the Affected Party's obligations to perform in accordance with the terms of this Agreement, will be suspended for the duration of the Force Majeure Event.

20.3 Notice

As soon as possible after the Force Majeure Event arises, the Affected Party must notify the other party of:

- (a) the nature of the Force Majeure Event;
- (b) the cause of the Force Majeure Event;
- (c) which obligations the Affected Party believes it is wholly or partially precluded from complying with as a result of the Force Majeure Event (in this clause 24 called the "Affected Obligations");
- (d) the extent to which the Force Majeure Event precludes the Affected Party from performing the Affected Obligations;
- (e) the expected duration of the delay arising as a result of the Force Majeure Event;
- (f) the steps that are being taken to minimise the impact of the Force Majeure Event; and
- (g) the steps which would be taken (subject to the Parties reaching an agreement as to the payment of any additional costs involved) to minimise the impact of the Force Majeure Event.

20.4 Minimisation of Impact

Upon receiving a notice under clause 20.3 the Parties will meet to discuss and agree:

- (a) what action can be taken to minimise the effect of the Force Majeure Event on the performance by the Affected Party of the Affected Obligation;
- (b) whether the Affected Party is able to work around the Force Majeure Event either to prevent the delay in the performance of the Affected Obligations or to minimise the impact of that delay; and
- (c) what modifications or additions to the terms of this Agreement or any other agreements between the Parties (including without limitation any modifications or additions relating to

the appointment of any additional costs) are required to give effect to any proposal to minimise the effect of the Force Majeure Event.

20.5 Obligation to Mitigate

The Affected Party must:

- (a) keep the other party fully informed of its plan to minimise the effect of the Force Majeure Event; and
- (b) subject to reaching agreement concerning any modifications or addition required to give effect to any proposal to minimise the effect of the Force Majeure Event;
- (c) comply with all reasonable requests made by the other Party relating to the prevention or minimisation of the impact of the Force Majeure Event; and
- (d) use all reasonable endeavours to resolve, and minimise the impact of, the Force Majeure Event.

20.6 Payments

An obligation to pay money is never excused by a Force Majeure Event.

20.7 Labour Disputes

The requirement to use all reasonable endeavours to resolve or minimise the impact of the Force Majeure Event will not require either Party to settle any strike, lockout, boycott or other dispute or claim, or any demand by a third party, on the terms contrary to the wishes of that Party.

21. Disputes

21.1 The parties will endeavour to resolve any dispute concerning the terms of this Agreement between themselves, including where necessary escalating the dispute for negotiation between both parties' chief executives.

21.2 If the Parties cannot resolve the dispute within 30 days of one party giving notice of the dispute to either Party may refer the matter to arbitration in accordance with the Commercial Arbitration Act 1984 (VIC) by an arbitrator nominated by the President of the Law Society of Victoria except that:

- (a) the arbitrator must observe the rules of natural justice but is not required to observe the rules of evidence;
- (b) a party may have legal representation; and
- (c) the arbitrator must apportion costs of the arbitration and each party's costs of and incidental to the arbitration as the arbitrator sees fit.

21.3 During any dispute resolution process, the pre-dispute status quo will continue. Accordingly:

- (a) each party will comply with its obligations, and may exercise its rights under this Agreement; and
- (b) the fact that a party ceases to do anything in dispute will not be taken to be an admission by that party that it had breached, or had been in breach of, this Agreement.

22. Notices

Any notice to be served under this Agreement will be sufficiently served personally or if delivered or left addressed to the relevant party at or forwarded by pre-paid post to its registered office for the time being or last known place of business and a notice sent by post will be deemed to have been given at the time when it ought to have been delivered in the ordinary course of post.

23. Assignment

The Client must not assign or novate this Agreement or any part of it. The Company may assign this Agreement or any part of it or otherwise delegate all or any of its rights and obligations under this agreement upon notice to the Client.

24. Costs

The Company and the Client must pay their own cost of preparation of this Agreement. The Client must pay any stamp duty and other taxes payable in respect of this Agreement or anything arising under it.

25. Compliance with Laws

25.1 The Company will at its cost (with the Client's assistance if necessary):

- (a) obtain and maintain any necessary licenses and approvals; and
- (b) comply with all Acts, Regulations, By-laws and other Legislation; and
- (c) comply with all lawful restrictions, directions, orders, notices or instructions given or made by any Body, Authority, Port Authority or the like acting under any Acts, Regulations, By-laws or other Legislation,

relating to the provision of Services by the Company, including any requirements relating to any environmental risk or damage or contamination of land that may be caused by or relate to the storage or loading of the Grain under this Agreement.

25.2 The Client will at the Client's cost (with the Company's assistance if necessary);

- (a) obtain and maintain any necessary licenses and approvals; and
- (b) comply with all Acts, Regulations, By-laws and other Legislation; and
- (c) comply with all lawful restrictions, directions, orders, notices or instructions given or made by any Body, Authority, Port Authority or the like acting under any Acts, Regulations, By-laws or other Legislation, relating specifically to the Grain and the export of the Grain.

26. Governing Law

This Agreement and the rights and liabilities of the parties under this Agreement will be governed by the law of the State of Victoria. The courts of Melbourne will possess territorial jurisdiction to hear and determine any cause of action arising under this Agreement.

27. No Endorsement

27.1 The Client must not (without the prior written consent of the Company):

- (a) make any reference, comment or statement either written or oral, that could be construed as an endorsement by the Company of the Client or of the Client's products or services; or
- (b) refer to the Company or the services provided by the Company to the Client in any publication, promotional or advertising material.

27.2 The Client acknowledges that:

- (a) the Company will treat the obligation provided by the Client to the Company in clause 27.1 as a serious undertaking; and
- (b) it is aware that any breach of this serious undertaking may result in the Company suffering damage.

28. Severability

Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

29. Waiver

29.1 The failure by any Party at any time to enforce any of its powers, remedies or rights under this Agreement will not constitute a waiver of those powers, remedies or rights or affect the Party's rights to enforce those powers, remedies or rights at any time.

29.2 Any single or partial exercise of any power, remedy or right does not preclude any other or further exercise or partial exercise of any other power, remedy or right under this Agreement.

30. No Partnership

This Agreement does not create a partnership, agency, fiduciary or any other relationship, except the relationship of contracting parties, between the Parties.

Schedule A –
2014~~3~~/15~~4~~ Storage and Handling Charges

Schedule B –Port Terminal Services

Services means the services provided by means of the Port Terminal which enable the export of Bulk Wheat through the Port Terminal Facility, including:

1. unloading and receipt by the Company of a Client's Bulk Wheat at the Port Terminal Facility;
2. sampling and classification by the Company of a Client's Bulk Wheat received at the Port Terminal Facility;
3. weighing by the Company of a Client's Bulk Wheat using the Company's weighing facilities;
4. transfer of a Client's Bulk Wheat to storage and storage of a Client's Bulk at the Port Terminal;
5. administrative and logistics services required for shipping nomination, acceptance, booking and cancellation;
6. wheat hygiene and quality management, including access to inspectors from the Australian Quarantine and Inspection Service for inspection of a Client's Bulk Wheat received and held at the Port Terminal;
7. vessel loading;
8. shipping stem maintenance;
9. out-turning by the Company of a Client's Bulk Wheat received at the Port Terminal and loading onto the Client's nominated vessel; and
10. insurance for all general physical risk (i.e. fire, flood, storm, etc.).