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draft

2009/2010 Season Port Terminal Services Agreement for Standard Port Terminal Services

AusBulk Limited (Company)

[] (Client)

2009/2010 Season Port Terminal Services Agreement for Standard Port Terminal Services

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Details

Date

2009

Parties

Name **AusBulk Limited**
 ABN 88 007 556 256
 Short form name **Company**
 Address Grain House 124 –130 South Terrace, Adelaide, SA 5000

Name [REDACTED]
 ABN [REDACTED]
 Short form name **Client**
 Address [REDACTED]

Background

- A The Company is:
- (i) the operator of the Port Terminal Facilities;
 - (ii) the provider of Port Terminal Services; and
 - (iii) an Associated Entity of ABB Grain.
- B ABB Grain is an Accredited Wheat Exporter.
- C For ABB Grain to be an Accredited Wheat Exporter, ABB Grain was required to provide the Access Undertaking.
- D Pursuant to the Access Undertaking:
- (i) access to Port Terminal Services is required to be provided to Accredited Wheat Exporters; and
 - (ii) that access is required to be offered on standard terms and conditions (**Standard Terms**).
- E This Agreement is the Standard Terms.
- F The Client, being an Accredited Wheat Exporter, wishes to be provided by the Company with Port Terminal Services on the Standard Terms, and the Parties have accordingly entered into this Agreement.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this Agreement:

ABB Grain means ABB Grain Ltd (ABN 59 084 962 130).

ABB Group Companies means ABB Grain, Ausmalt Pty Ltd ACN 096 519 658, Southern Wharf Services Pty Ltd ACN 094 879 508, ABB Grain Export Ltd ACN 084 962 112, Joe White Malting Pty Ltd ACN 004 287 352, other Associated Entities and Related Bodies Corporate and, where applicable, their successors and permitted assigns.

ACCC means the Australian Competition and Consumer Commission.

Access Undertaking means the undertaking provided by ABB Grain to the ACCC pursuant to the WEMA and Part IIIA of the TPA dated [*insert date*] and available on the ACCC website at [*insert reference*].

Accidental Loss or Damage means loss or damage to the Client's Bulk Wheat caused or occasioned by events not reasonably within the control of the Company.

Accredited Wheat Exporter has the meaning given to that term in the Access Undertaking.

Agreement means this agreement and all schedules, annexures and attachments.

Approved Third Party Store means a grain storage and handling facility owned by a person other than the Company or an ABB Group Company, which has been approved by the Company for the purposes of this Agreement.

AQIS means Australian Quarantine Inspection Services.

Associated Entity has the meaning given to that term by the Corporations Act.

Binned Grade means the Grade of Bulk Wheat stored in a Cell.

Bulk Wheat has the meaning given to that term in the Access Undertaking.

Business Day means a day that is not a Saturday, Sunday or gazetted public holiday in South Australia.

Cell means a single unit of storage of Bulk Wheat.

Client's Bulk Wheat means that quantity of Bulk Wheat held by the Company on behalf of the Client within a Port Terminal Facility, as adjusted for Shrinkage and other matters allowed or required under this Agreement.

Commencement Date has the meaning given to that term in clause 2.1.

Common Stock has the meaning given to that term in clause 6.2.

Company Facility means any facility owned or operated by the Company or any ABB Group Company for the receipt and storage of grain, and may include a Port Terminal Facility.

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

Damaged Bulk Wheat means Bulk Wheat that has been damaged in an unusual 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.

Dust means Bulk Wheat dust attributable to the Client's Bulk Wheat extracted from dust collection plants in the Company's Facilities, but excluding Damaged Bulk Wheat. Dust is not included as part of Shrinkage.

Expiry Date has the meaning given to that term in clause 2.1.

Export Select means the bundled system operated by the Company under which the Client elects to buy grain at, or deliver grain to, a Company Facility in a Port Zone and to have equivalent grain (but not necessarily the same grain) Outturned by the Company to the Client at the Port Terminal Facility for that Port Zone.

Export Select Grain means, at any time, grain that is the subject of a written election by the Client to participate in Export Select that has not been revoked by notice in writing to the Company at that time.

Export Standard means an unbundled system of receipt, storage, handling and Outturn of the Client's grain.

Force Majeure has the meaning given to that term in clause 15.1.

Grade means a grade of grain of a given Season specified in the Receipt (Classification) Standards and Outturn standards of that same Season, or any other grade agreed by the Parties.

Gross Negligence means conduct (by act or omission) which falls outside the generally applicable practices of Bulk Wheat handlers in Australia and allowing for the limitations of the age, nature and state of the equipment and storage premises available for use by the Company at the time of storing and handling the Client's Bulk Wheat.

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

GST Legislation means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and any related tax imposition act (whether imposing tax as a duty of customs excise or otherwise) and includes any legislation which is enacted to validate recapture or recoup the tax imposed by any of such acts.

Indirect or Consequential Loss means indirect, consequential or remote loss or any loss in the nature of compensation for loss of production, loss of profit, loss of opportunity, loss of markets, loss of use of money, goods or other property or loss of goodwill or business reputation, including any losses that the Client may suffer in the event that the ability to resell Bulk Wheat is adversely affected.

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;
- (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 and, except in the case of an appointment by the Party or its directors, is not withdrawn or removed within 14 days.

In-Store Transfer means the transfer of ownership of Bulk Wheat held at a Port Terminal Facility from the Client to another person, or vice versa, as recorded in the Company's stock systems.

Other Client means a person that is provided with a storage service at a Port Terminal Facility (other than a Grower). For avoidance of doubt, the Company, both in its own capacity and as the custodian of Export Select wheat, may be an Other Client.

Outturn means to cause Bulk Wheat to physically leave the custody of the Company at a Port Terminal Facility, and is taken to occur when the Bulk Wheat exits the delivery spout into a shipping vessel at which point physical custody of the Bulk Wheat passes from the Company to the Client or a third party authorised by the Client.

Outturn Entitlement has the meaning given to that term in clause 7.2.

Party means, depending on the context, the Company or the Client.

Port Terminal means, depending on the context, the Company's seaboard terminal at:

- (a) Port Adelaide, South Australia;
- (b) Outer Harbour, South Australia;
- (c) Port Giles, South Australia;
- (d) Wallaroo, South Australia;
- (e) Port Lincoln, South Australia; or
- (f) Thevenard, South Australia.

Port Loading Protocols means the 'Port Loading Protocols' as defined in the Access Undertaking, as amended from time to time in accordance with the procedures prescribed by the Access Undertaking.

Port Schedules has the meaning given to that term in the Access Undertaking.

Port Terminal Facility, in respect of a Port Terminal, means those facilities listed and described in the applicable Port Schedule in the Access Undertaking as being the 'Port Terminal Facility' for that Port Terminal.

Port Terminal Services, in relation to a Port Terminal, means those of the Wheat Reveal Services, Wheat Storage Services and Wheat Ship Loading Services that the Company provides by using one or more of the Port Terminal Facilities at that Port Terminal.

Port Zone means a geographical grouping of Company Facilities that includes a Port Terminal Facility as nominated and published by the Company for each Season. For clarification the Port Zone may, at the Company's discretion, include Company Facilities that are not freight advantaged to the Port Terminal Facility in that Port Zone.

Purchase Options means the various alternative products offered or to be offered to Growers by the Client for the purchase of Bulk Wheat as submitted to and displayed by the Company, subject to and in accordance with such procedures and requirements as the Company may, in its sole discretion, produce and publish from time to time.

Receival (Classification) Standards means standards that either:

- (a) accord with the industry benchmarks established for Bulk Wheat and published by the Company prior to the receival of that Bulk Wheat into a Company Facility, or
- (b) are otherwise agreed with the Client.

Related Bodies Corporate has the meaning given to that term in the Corporations Act.

Reserve a Cell means prohibiting the Company, without the Client's consent, from moving the quantity of Bulk Wheat owned by the Client in a Cell specified by the Client in a notice of Cell reservation provided all applicable charges have been paid.

Season means the period in which most of the Bulk Wheat is harvested and delivered to Company Facilities, 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 Bulk Wheat by type, Grade, variety or such other distinguishing quality as may be determined by the Company.

Shipping Stem has the meaning given to that term in the Access Undertaking.

Shrinkage means loss in the normal storage and handling process, including loss of mass through changes in moisture content, loss in handling, and Waste. Shrinkage however, does not include Bulk Wheat lost as Dust.

Tax Invoice has the meaning given in the GST Legislation.

Taxable Supply has the meaning given in the GST Legislation.

TPA means the *Trade Practices Act 1974 (Cth)*.

Up-Country Receival Facility has the meaning given to that term in clause 3.

Waste means Bulk Wheat that, as a result of the normal handling process, has been downgraded to Bulk Wheat of no commercial value (for example mouldy Bulk Wheat, or Bulk Wheat mixed with dirt and stones).

WEMA means the *Wheat Export Marketing Act 2008 (Cth)*.

Wheat Receival Services means the receival of Bulk Wheat for export from Australia at a Port Terminal by using one or more of the Port Terminal Facilities at that Port Terminal, and involves:

- (a) sampling, testing and classification on delivery;
- (b) weighing on delivery;
- (c) tipping and inward elevation;
- (d) Segregation;
- (e) placing into storage; and
- (f) recording of relevant information.

Wheat Ship Loading Services means the Outturn of Bulk Wheat to a shipping vessel at a Port Terminal for export from Australia by using one or more of the Port Terminal Facilities at that Port Terminal and involves:

- (a) monitoring quality against the Outturn standard;
- (b) blending;
- (c) weighing;

- (d) outward elevation to the ship loader; and
- (e) recording of relevant information.

Wheat Storage Services means the storage of Bulk Wheat for export from Australia at a Port Terminal by using one or more of the Port Terminal Facilities at that Port Terminal and involves:

- (a) storage;
- (b) standard grain protection and maintenance;
- (c) dis-infestation; and
- (d) recording of relevant information.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a *person* includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (e) A reference to a clause is a reference to a clause of this Agreement.
- (f) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, supplemented, novated or replaced.
- (g) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form but excludes a communication by electronic mail.
- (h) A reference to a party to this Agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (i) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (j) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (k) A reference to an *agreement* includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a *document* includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (l) A reference to *dollars* and \$ is to Australian currency.
- (m) Mentioning anything after *includes, including, for example*, or similar expressions, does not limit what else might be included.
- (n) A reference to time is a reference to the local time in Adelaide, South Australia (unless otherwise stated).

- (o) Where any matter or thing is required to be attended to or done on a day which is not a Business Day, it will be attended to or done on the next Business Day.
- (p) Measurements of physical quantities are in Australian legal units of measurement within the meaning of the *National Measurement Act 1960 (Cth)*.
- (q) Nothing in this Agreement is to be interpreted against a Party solely on the ground that the Party put forward this Agreement or a relevant part of it.

1.3 Discretions and Approvals

- (a) Whenever the Client is required to form an opinion, give approval, exercise a discretion or perform any act under this Agreement, it must be done reasonably in the circumstances and based on reasonable grounds, and not capriciously, or arbitrarily refused or unduly delayed.
- (b) In making any decision pursuant to this Agreement, the Company will have regard to the efficient running of the relevant Port Terminal Facility and the balancing of the interests of all users of that Port Terminal Facility.
- (c) Any refusal by the Company to accept a request for a Port Terminal Service will not be a breach of this Agreement for making a decision which in its reasonable opinion is in the best interests of the overall performance of the Port Terminal Facility and the Bulk Wheat export market as a whole.

2. Term and application of Agreement

2.1 Commencement, duration and application

- (a) This Agreement:
 - (i) commences on 1 October 2009 (**Commencement Date**);
 - (ii) unless terminated earlier under clause 17, but subject to clause 2.2, ends on 30 September 2010 (**Expiry Date**); and
 - (iii) applies to all Port Terminal Services provided, or deemed to have been provided, by the Company under this Agreement.
- (b) If the Client:
 - (i) is provided with any Port Terminal Services on or after the Commencement Date; but
 - (ii) has not executed this Agreement,
 the Client will be deemed to have:
 - (iii) accepted the terms and conditions set out in this Agreement; and
 - (iv) all such Port Terminal Services will be deemed to have been provided by the Company under this Agreement.

2.2 Continued application

- (a) If the Company continues to provide Port Terminal Services to the Client after the Expiry Date, then the terms and conditions of this Agreement will continue to apply until this Agreement is cancelled by either Party. If the Company issues the Client with a new agreement for the provision of Port Terminal Services for the Season following the Expiry Date, then the date of issuing the new agreement will be the effective date of the Company's notice of cancellation of this Agreement. Further, any such new agreement

issued by the Company after the Expiry Date will also apply to Bulk Wheat of prior Seasons remaining within the Company's Port Terminal Facilities.

- (b) For the avoidance of doubt, if Bulk Wheat of Seasons prior to the 2009/2010 Season is held in the Company's storage facilities as at the Commencement Date, the terms and conditions in this Agreement will apply to the prior Seasons' Bulk Wheat unless the context requires otherwise or until these terms and conditions are replaced in accordance with clause 2.2(a).
- (c) This Agreement supersedes any previous agreement between the Company and the Client for the provision of Port Terminal Services.

3. Acknowledgement of limited application

Despite anything to the contrary contained in, or which in the absence of this clause 3 may be implied into, this Agreement:

- (a) this Agreement applies only to the provision of Port Terminal Services in respect of Bulk Wheat and to the extent regulated by the Access Undertaking;
- (b) where Bulk Wheat is received by the Company at a Company Facility that is not a Port Terminal Facility (**Up-Country Receival Facility**), the services provided by the Company in respect of that Bulk Wheat before it reaches the Port Terminal Facility will not be governed by this Agreement;
- (c) if the Client elects to have Export Select in respect of Bulk Wheat that is received by the Company at an Up-Country Receival Facility, then for the purposes of determining when this Agreement applies, the Bulk Wheat will be taken to have been received at the applicable Port Terminal Facility on the day following either:
 - (i) the day on which it is received at the Up-Country Receival Facility; or
 - (ii) the day on which the Client makes the election,
 whichever is the later; and
- (d) if, for any Season, the Client engages the Company to provide receival, transport, storage or outturn services that are not Port Terminal Services (whether because those services are not provided at a Port Terminal Facility, or because they are provided at a Port Terminal Facility but in respect of grain that is not Bulk Wheat) (**Unregulated Services**), then the Unregulated Services will be provided either:
 - (i) under any separate agreement that the Company and the Client make for the provision of the Unregulated Services; or
 - (ii) otherwise, under the standard terms and conditions that are published by the Company for the provision of Unregulated Services for that Season.

4. Port Terminal Services

4.1 Primary obligation of the Company

The Company will provide such of the Port Terminal Services at those of the Port Terminals as the Client may require, on and subject to:

- (a) the terms and conditions of this Agreement;
- (b) the Port Loading Protocols; and
- (c) the Shipping Stem.

4.2 Availability

Subject to clause 4.3, the Company's obligation to provide a particular Port Terminal Service at a Port Terminal at a point in time is subject to the availability of the Port Terminal Facility required for that Port Terminal Service at that time.

4.3 Capacity management undertakings

In managing demand for, and in making operational decisions in the course of providing, Port Terminal Services, the Company will comply with the capacity management undertakings set out in clause 8 of the Access Undertaking.

5. Wheat Receiving Services

5.1 Application of clause

This clause 5 applies in relation to the provision of Wheat Receiving Services.

5.2 Receiving standards and classification

All Bulk Wheat that is to be received and stored by the Company for the Client must comply with the Receiving (Classification) Standards. If Bulk Wheat has characteristics for which a receiving standard is neither published nor agreed, the Company may refuse to receive that Bulk Wheat. The Company will make available the 2009/2010 Commodity Classification Manual to the Client via www.ezigrain.com.au.

5.3 Acceptance of Bulk Wheat from third parties on behalf of the Client

- (a) Before accepting Bulk Wheat at a Port Terminal Facility from a third party for sale to the Client and subsequent storage at the Port Terminal Facility on the Client's behalf, the Company will assess and classify the Bulk Wheat and require the person who has tendered the Bulk Wheat to sign a receiving docket setting out, amongst other things, the origin, weight, variety, quality, payment grade, the Purchase Option selected by the person and (if applicable) the price payable by the Client.
- (b) The Company is entitled to treat Bulk Wheat to which clause 5.3(a) applies, as the property of the person who tendered it and has no obligation to the Client in respect of it until the person who has tendered the Bulk Wheat has signed or otherwise signified acceptance of the receiving docket.

5.4 Nomination

- (a) The Client must ensure that, whenever Bulk Wheat is delivered by a third party on behalf of the Client, the third party nominates the Client as the owner of the Bulk Wheat and acknowledges that all the third party's right, title and interest to and in the Bulk Wheat is transferred to the Client. The nomination and acknowledgement must be made in writing at the time of the delivery and, once made, it binds the Client and the third party.
- (b) Thereafter, on production of the original of the weighnotes upon which is entered the name of the Client, the Company will enter the name of the Client in its records as owner of the Bulk Wheat without any enquiry as to the title of the Client and will hold the Bulk Wheat for the Client subject to the terms of this Agreement.

5.5 Weighing

- (a) For receiving from road transport at a Port Terminal Facility, the Client authorises the Company to use Company weighbridges to determine the receiving tonnage.
- (b) For receiving from rail transport at a Port Terminal Facility, the Client authorises the Company to use the Company's or the rail service provider's weighbridges (if available), to determine the receiving tonnage.

- (c) The Company will use the receival weights of site to site movements on all stock records of the Client.
- (d) The Client is bound by the determinations made under clauses 5.5(a) and 5.5(b), and the records of those determinations.

5.6 Contaminants

- (a) The Client must ensure that all of its suppliers are advised that Bulk Wheat known or suspected to contain chemical contaminants or residues or both must not be delivered to any Port Terminal Facility.
- (b) If any load of Bulk Wheat is found to be contaminated, the Client will not be permitted to deliver to the Port Terminal facility until the Client has provided the Company with evidence in the form of independent expert verification that there is no further risk of contamination. If the contaminant is manageable and removed then the Client must produce a new sample for testing prior to any further deliveries.
- (c) Where Bulk Wheat of any person other than the Client is affected by a contaminant or residue but is nevertheless delivered to a Port Terminal Facility (**Contaminated Delivery**), the Company will not be liable to the Client or to any other person for any loss (including Indirect or Consequential loss), cost, damage or expense suffered or incurred directly or indirectly as a result of that Contaminated Delivery.

5.7 No capacity

Subject to its obligations under clause 4.3, the Company may decline to receive Bulk Wheat for storage on behalf of the Client in a Port Terminal Facility if:

- (a) the capacity in that Port Terminal Facility allocated to a particular Binned Grade fills; and
- (b) the Client is unable to make additional space available for that Binned Grade by either movement of the Bulk Wheat to another Company Facility or by Outturn of the Bulk Wheat.

5.8 Reservation of Cell

- (a) Subject to prior Company approval and agreement between either the Company's Logistics Manager or the Company's Client Services Manager (or their nominated delegate) and the Client, the Client may request the Company to Reserve a Cell.
- (b) The Company has no obligation to accede to a request to Reserve a Cell for the Client, but if it does, then the Company is entitled to charge the Client a Cell reservation fee (with price on application).

6. Wheat Storage Services

6.1 Application of clause

This clause 6 applies in relation to the provision of Wheat Storage Services.

6.2 Common stock

Unless specifically agreed otherwise, the Company reserves the right to mix (**Common Stock**) the whole or any part of the Client's Bulk Wheat with wheat of the same specification stored on behalf of any Other Clients or other users in a Port Terminal Facility.

6.3 Title

- (a) Subject to clause 6.3(b), where the Client's Bulk Wheat is Common Stocked, title to the Common Stocked wheat is held jointly by the Client and the Other Clients and other users

whose wheat forms part of the Common Stocked wheat at the applicable Port Terminal Facility.

- (b) If and to the extent that the Client has committed Bulk Wheat to Export Select, title to the Export Select wheat in a Port Zone is held jointly by the Client and Other Clients and users whose wheat forms part of the Export Select wheat in that Port Zone.

6.4 Client's interest

- (a) For the purposes of clause 6.3(a), at any time the Client's interest in the Common Stocked wheat will be equal to that proportion which the quantity of the Client's Bulk Wheat at the time bears to the quantity of that Common Stocked wheat at that time.
- (b) For the purposes of clause 6.3(b), at any time the Client's interest in Export Select wheat will be equal to that proportion which the quantity of the Client's Export Select wheat at the time bears to the quantity of all Export Select wheat in the relevant Port Zone.
- (c) Subject to clause 9.3, the Client does not have the right to nominate any particular parcel or Cell of wheat that is Common Stocked, as being owned by the Client.

6.5 Right to move Bulk Wheat

- (a) The Company reserves the right to either move or swap Bulk Wheat either within a Port Terminal Facility or to another Company Facility if:
 - (i) sufficient evidence exists to indicate the quality of the Bulk Wheat or Port Terminal Facility may be adversely affected if the Bulk Wheat remains in any particular location;
 - (ii) the Port Terminal Facility fills (or is expected to fill during the Season); or
 - (iii) the Company determines (in the Company's reasonable opinion) that it is operationally efficient to move the Bulk Wheat.
- (b) Any movements described in clause (a) will be at the expense of the Client. The Company will use freight rates published by the Company prior to the commencement of the Season in order to charge the Client for the movement (and fuel variations may apply).
- (c) Without limiting clause 6.5(a), the Company may, at its discretion, overflow Bulk Wheat from any Port Terminal Facility, or swap Bulk Wheat to an alternative Company Facility provided that the Client is compensated for any freight differential.

6.6 Treated Bulk Wheat

The Company will advise the Client, in writing, by the last day of January 2010 of all Cells storing the Client's Bulk Wheat that have been treated with a contact insecticide and that cannot be subsequently fumigated in situ. The Company reserves the right to charge the Client for all costs incurred in undertaking either an intra or inter site movement of such Bulk Wheat, after 30 June 2010 in order to place that Bulk Wheat into a position for fumigation. If Bulk Wheat so notified by the Company is included in an In-Store Transfer, the Client agrees to advise the Other Client that purchases the Bulk Wheat that the Bulk Wheat may be subject to the additional intra or inter site movement charges.

7. Wheat Ship Loading Services

7.1 Application of clause

This clause 7 applies in relation to the provision of Wheat Ship Loading Services.

7.2 Shrinkage, Dust & Outturn Entitlement

- (a) The Client acknowledges and agrees that Bulk Wheat will always suffer Shrinkage and loss from Dust.
- (b) Subject to clause 13, the Client will be entitled to an Outturn expressed by weight of the quantity and grade of Bulk Wheat initially received on behalf of the Client (**Received Quantity**) after a deduction:
- (i) for Shrinkage, of:
- (A) 0.35% of the Received Quantity, where the Bulk Wheat was delivered to the Port Terminal Facility directly from an Approved Third Party Store after first having been received at that Approved Third Party Store; or
- (B) in any other case, a quantity equal to the Shrinkage Factor; and
- (ii) for Dust, of 0.1% of the Received Quantity after adjusting that Received Quantity for Shrinkage,

such net quantity being the **Outturn Entitlement**.

- (c) For the purposes of clause 7.2(b)(i)(B), the **Shrinkage Factor** is the amount determined as follows:

0.6% – AFS

where **AFS** is the standard allowance (expressed as a percentage) made for Shrinkage at a Company Facility in respect of the Received Quantity before it reached the Port Terminal Facility as set and published by the Company on an annual basis.

7.3 Client's obligation to Outturn

The Client must use its best endeavours to Outturn all Bulk Wheat from a Port Terminal Facility by no later than the 10th September following the date the Bulk Wheat was received at that Port Terminal Facility.

7.4 Outturn standards

- (a) Subject to clause 7.4(b), Bulk Wheat will be Outturned to the standards prescribed by the Receival (Classification) Standards.
- (b) The Company may agree to Outturn to a more stringent standard than the applicable outturn standard, but a charge may be applied for this service. The Company will not warrant that either Bulk Wheat Outturned to a more stringent standard than the applicable outturn standard or Bulk Wheat Outturned to the specifications of the Receival (Classification) Standards will meet any export standards imposed by AQIS or standards imposed by an importing country. At no time will the Company be required to meet any standards which are not measured by the Company at the time of receival or are an inherent component of the Bulk Wheat which deteriorates with time based storage.
- (c) Without limiting clause 18, the Client indemnifies the Company against all costs, losses, damages and expenses the Company or the Client incurs or sustains as a direct or indirect result of Bulk Wheat being Outturned by the Company which is a more stringent standard than the applicable outturn standard, yet fails to meet any export standards imposed by AQIS or standards imposed by an importing country.
- (d) If, at the request of the Client, the Company undertakes any classification testing at the time of Outturn which is over and above that normally conducted by the Company to ensure Outturned Bulk Wheat meets the minimum standard for the Binned Grade stored, the Company may charge the Client for that classification testing.

7.5 Weighing

- (a) The Client authorises the Company to use batch weighers at the Port Terminal Facility to determine the Outturned tonnage of Bulk Wheat.
- (b) The Client is bound by the determinations made under clause 7.5(a), and the records of those determinations.

7.6 AQIS sampling

Bulk Wheat will be made available for inspection by AQIS inspectors at the Client's cost prior to Outturning Bulk Wheat onto a nominated shipping vessel.

7.7 Delays

Factors outside the control of the Company (such as variation in vessel arrival times; failure of vessel to pass quarantine; stability and ship worthiness inspections; vessel congestion; variation in cargo requirements; lack of performance of freight providers) mean the Company cannot guarantee all of the Bulk Wheat will be available for loading when the vessel berths and is ready to commence loading. The Company will make reasonable efforts to ensure the Bulk Wheat is available to load without delay and will advise the Client of any potential delays.

7.8 Cleanliness

- (a) The Client is responsible for ensuring that all of its nominated vessels arrive at a Port Terminal Facility in a clean, empty and well maintained state free from any contaminants or residue.
- (b) The Company has no obligation to inspect any vessel for cleanliness, but if it does inspect, then the Company, acting reasonably at all times, is entitled to reject the vessel as unfit for the transportation of Bulk Wheat and to refuse to load the vessel.
- (c) The Company is not liable for any loss, cost, damage or expense (including Indirect or Consequential Loss) caused as a result of a rejection of the vessel.
- (d) The Client agrees to pay the Company for any costs incurred by the Company as a result of the rejection of a vessel by the Company, AQIS or a marine surveyor.
- (e) Vessels are not permitted to be cleaned at any Port Terminal Facility without the Company's prior written consent. If a vessel fails inspection, the Company may instruct a vessel to be removed from the berth if it is preventing another vessel from loading at the same berth.

7.9 Port Loading Protocols

- (a) The Port Loading Protocols apply to all nominated (or requested) Outturns of Bulk Wheat, and contain other information in relation to shipping services and requirements in relation to shipping nominations.
- (b) The Port Loading Protocols are available at www.abb.com.au.

7.10 Non-shipment

If Bulk Wheat is not shipped from a Port Terminal Facility as detailed in an accepted nomination (or request) for Outturn due to no fault on the part of the Company, the Client must pay:

- (a) all costs incurred by the Company to reposition Bulk Wheat within the Port Terminal Facility or to remove the Bulk Wheat from the Port Terminal Facility; and
- (b) all vessel variation or cancellation fees and all shipping re-positioning fees.

7.11 Company's right to move Bulk Wheat

Notwithstanding anything to the contrary contained in, or which in the absence of this clause would be implied into, this Agreement, the Company reserves the right to move any Export Select Grain within a Port Zone to any Company Facility within that Port Zone at any time and without the requirement for authorisation from the Client.

7.12 Transfers of title

- (a) The Client may elect, by prior written (or electronic) notice to the Company, to effect an In-Store Transfer of all or part of its Outturn Entitlement.
- (b) Subject to clause 7.13(c), the transferee under an In-Store Transfer of an Outturn Entitlement will be entitled to an Outturn without any further reduction for Shrinkage.
- (c) If an In-Store Transfer involves Bulk Wheat being pre-weighed as part of the transfer terms and conditions, an additional Shrinkage amount must be agreed between the parties involved prior to the Company processing the In-Store Transfer. That additional Shrinkage amount will be transferred to the Company's ownership.
- (d) For removal of doubt, the transferor under an In-Store Transfer will remain responsible for payment of all fees and charges in respect of Port Terminal Services provided up until the effective date of transfer.
- (e) The Company may require In-Store Transfers to take place at an individual weighnote level, thus allowing calculations of the value of the Bulk Wheat to be ascertained between the transferor and transferee.
- (f) The Company may refuse to process an In-Store Transfer if the In-Store Transfer results in the transferor's Outturn Entitlement going into a negative position at any particular Company Facility.
- (g) For the purposes of accepting or rejecting an In-Store Transfer, the Company is entitled to rely on orders/instructions:
 - (i) issued by e-mail transmitted from the Client's domain address and purporting to have been sent by an officer of the Client (or such named officers as the Client may from time to time advise the Company in writing); or
 - (ii) executed via the ezigrain™ web site as accessed through entry of the Client's security setting.
- (h) If the Company has acted in accordance with the protocols set out above in this clause 7.12, the Client releases and holds the Company harmless against any claim that a communication was not issued by the Client either at all or without authority and indemnifies the Company against any losses, costs, damages and costs arising therefrom.

7.13 Security interests

- (a) If the Company receives notice from a person claiming to hold a security interest over the Client's wheat, the Company is not required to Outturn that wheat until:
 - (i) the person holding the security interest has consented to that Outturn; or
 - (ii) the Company receives a court order requiring it to Outturn that affected wheat.
- (b) The Company reserves the right to charge the Client all reasonable costs associated with tracking and maintaining records related to security interests held (or claimed) over wheat.
- (c) The Client will indemnify the Company against all costs, losses, damages and expenses (including without limitation legal costs) the Company incurs or sustains as a result of a

claim made against the Company by any person holding a security interest over wheat held by the Company on behalf of the Client relating to that wheat.

7.14 Non-grain commodities

- (a) The Client acknowledges and accepts that the Company may load non-grain commodities at its Port Terminals using the same ship loading facilities as it uses to provide Wheat Ship Loading Services for Bulk Wheat.
- (b) The Company will use reasonable endeavours to ensure that contamination of Bulk Wheat does not occur.
- (c) The Client must liaise with the Company to nominate vessels to arrange for grain based commodities to load sequentially.

7.15 Reconciliation and adjustment

- (a) This clause 7.15 applies if, after the Outturn of all Bulk Wheat of a Season from all Company Facilities, there is a difference between the Client's Outturn Entitlement and the tonnage actually Outturned to the Client.
- (b) For all Bulk Wheat, unless otherwise agreed, a Season average price will be calculated based on weighted Season average cash prices posted by the Client and all Other Clients over harvest at all Company Facilities. If cash prices are not posted at particular Company Facilities, or are posted with such irregularity that they do not represent the market price (in the opinion of the Company in its sole discretion), then the Company will use the weighted average (major grade and average freight) estimated silo return (ESR) of three pool providers for the Season of delivery as its financial washout value.
- (c) If the actual tonnage Outturned to the Client exceeds the Client's Outturn Entitlement, the Client must pay the Company for the excess at the average price calculated under clause 7.16(b) (**Washout Price**).
- (d) 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 Bulk Wheat shortfall in the Client's Outturn Entitlement, or pay the Client for the deficiency in the Outturn Entitlement at the Washout Price.

8. Charges and payment

8.1 Charges

The charges of the Company for the provision of Port Terminal Services will be as set out in, or as determined in the manner described in, Schedule 1.

8.2 Invoicing

The Company will invoice the Client for Port Terminal Services as follows:

- (a) for Wheat Ship Loading Services, in advance of providing those services; and
- (b) for all other Port Terminal Services, in arrears.

8.3 Payment

The Client must pay the Company the full amount of an invoice within 14 days after receipt of that invoice.

8.4 No obligation

Whether the amount of an invoice for Wheat Ship Loading Services has fallen due for payment under clause 8.3 or not, the Client is not entitled to be provided with those Wheat Ship Loading Services until that invoice is paid in full.

8.5 No set off

The Client is not entitled to withhold payment of any disputed amount the subject of an invoice issued by the Company, or to set off against the amount of an invoice any other claim that it has against the Company.

8.6 Transfer of liability

If the Client purchases Bulk Wheat which is already warehoused or is or has been stored, handled or treated by the Company, and there are unbilled and/or unpaid fees and charges in respect of the Bulk Wheat for any period or for anything done prior to the purchase, then the Client is liable for these fees and charges and must pay them to the Company, unless otherwise agreed with the Company.

8.7 GST

- (a) If GST is payable by the Company in respect of any Taxable Supply to the Client under this Agreement, the Client must pay any such GST (in addition to any other amounts payable under this Agreement).
- (b) The Company will provide the Client with a tax invoice that complies with the GST Legislation.
- (c) All fees and charges in this Agreement are expressed exclusive of GST.

8.8 Default in payment

If the Client fails to make payment of an invoice in accordance with this clause 8, then:

- (a) all existing invoices will become immediately due and payable; and
- (b) the Company may, in its absolute discretion, suspend the provision of any or all Port Terminal Services until such time as all outstanding invoices have been paid.

8.9 Interest on late payments

If default is made by the Client in the due payment of any monies payable under this Agreement, then although no demand for payment may have been made, the amount in respect of which such default is made or so much thereof as may from time to time remain unpaid, will bear simple interest at the rate of interest being 3% higher than the Commonwealth Bank's Corporate Overdraft Reference Rate from time to time, calculated on a daily basis from the due date to the date of actual payment in full.

8.10 Security

- (a) The Client will, if required by the Company:
 - (i) arrange for its directors and/or shareholders to personally guarantee the Client's performance under this Agreement by signing a written guarantee in a form and on conditions specified by the Company (**Guarantee**); or
 - (ii) obtain or deposit with the Company an unconditional bank guarantee or bond in a form and for an amount required, and given by a bank or insurer approved, by the Company by way of guarantee for the performance by the Client of its obligations under this Agreement (**Security**).
- (b) Any Guarantee or Security required by the Company must be established:

- (i) prior to the Company receiving Bulk Wheat from the Client; and
 - (ii) within 7 days after it has been requested by the Company.
- (c) If the Client defaults, 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:
- (i) 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
 - (ii) if the Security or any part of it is used or appropriated by the Company, the Client must within 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.
- (d) 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.

9. Title to Wheat

9.1 Bailment

Unless specifically agreed otherwise, the Company acts as a bailee of the Client's Bulk Wheat and does not have any title or ownership in that Bulk Wheat.

9.2 Company's right

Subject to clause 9.3, where the Client's Bulk Wheat is Common Stocked, the Company may nominate and identify any particular quantity of Bulk Wheat within a site comprising the Common Stocked Bulk Wheat as being the Client's Bulk Wheat for the purposes of this Agreement, including, for the purposes of Outturn at the direction of the Client, sale by the Company in exercise of its lien over the Bulk Wheat, allocation of Accidental Loss or Damage between the Client and Other Clients, and the payment of compensation for Accidental Loss or Damage.

9.3 Insolvency

- (a) Where the Company suffers an Insolvent Event the Client will be entitled, upon reasonable notice and subject to the provisions of this Agreement relating to Common Stock, to re-take possession of the Client's Bulk Wheat:
 - (i) if and to the extent that the Client has Bulk Wheat in Export Select, from the Export Select Grain at the Port Terminal in the relevant Port Zone, or if there is insufficient Bulk Wheat to satisfy the Client and all Other Clients of Export Select from the Export Select Grain at the Port Terminal, then from the Receival Station closest to the Port Terminal and if there is insufficient Export Select Grain at that Receival Station then from the next closest Receival Station and so on until the Client's entitlement is satisfied; and
 - (ii) in all other cases, from the site at which the Client's Bulk Wheat is located.
- (b) Nothing in this clause 9.3 will be taken as limiting the Client's rights to the Outturn of the Client's Bulk Wheat in accordance with this Agreement.

10. Lien

10.1 Company's lien

The Company will have a first and paramount lien on the Client's Bulk Wheat for all monies due and payable (on any account whatsoever) by the Client to the Company under this Agreement or otherwise, or to any other ABB Group Company.

10.2 Common stock

Where the Client's Bulk Wheat is Common Stocked with other wheat, the Company may nominate and identify any particular quantity of wheat comprising the Common Stocked wheat as being the Client's Bulk Wheat for the purposes of enforcing its lien.

10.3 Retention of possession

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's Bulk Wheat until all amounts due and payable are paid, or to sell all or any of the Client's Bulk Wheat 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's Bulk Wheat for the purpose of enforcing its lien, the Client irrevocably appoints the Company as its agent and attorney.

10.4 Enforcement against others

In enforcing a lien in respect of any Other Client's Bulk Wheat, the Company will ensure that its actions do not affect the right of the Client to receive the Outturn Entitlement under this Agreement.

11. Compliance with operational protocols

11.1 Obligation of Client

- (a) The Client must comply at all times with all policies, procedures and induction requirements published by the Company from time to time in respect of the operation, management and control of its facilities, including those in relation to:
- (i) health, safety and environment;
 - (ii) site rules;
 - (iii) labour ordering conditions for shipping;
 - (iv) operating conditions for the Company's rail facilities; and
 - (v) access and operating conditions for road movements at Company facilities,
- and must comply with all reasonable directions of the Company.
- (b) Whilst on a Company site, the Client (and its agents) must comply with all directions given by the Company's representative, and not create or bring on site any hazard or contamination.

11.2 Publication

For the purpose of clause 11.1, the Company may publish a policy, procedure or induction requirement, or any direction, by placing it on its website.

12. Information

12.1 Company's information

- (a) The Company will keep at its principal place of business proper complete and up to date records, books of account and documents relating to transactions in the Client's Bulk Wheat, and such books of account records and documents will be available for inspection by officers of the Client at any reasonable time upon request in writing. Nothing in this clause 12.1(a) will be taken as requiring the Company to disclose the identity, transactions or ownership interests of Other Clients.
- (b) All information provided to the Client will be treated as conclusive evidence of the correctness of the details set out in that information unless:
- (i) the Client notifies the Company in writing within 14 days of receipt of that information that there exists a bona fide dispute concerning the correctness of that information; or
 - (ii) it is demonstrated at any time that there is a clear and manifest error in that information.

A notice served by the Client under paragraph (i) above, must set out in detail the reasons why the Client believes the information is incorrect and the basis for holding that belief.

12.2 Client's information

- (a) The Client must provide the Company with all information that the Company reasonably requires for the Company to properly record the receipt of Bulk Wheat from, or to the account of, the Client, including information relating to:
- (i) origin, quality, quantity, weight, type and variety; and
 - (ii) anticipated time and place of delivery.
- (b) If required by the Company, the Client must provide the information in writing and in the form (if any) required by the Company.

13. Company's Liability

13.1 Acknowledgement

The Client acknowledges that the only warranties provided by the Company under or in respect of this Agreement are those expressly set out in this Agreement. To the maximum extent permitted by law, all other conditions implied by custom, general law or statute are excluded.

13.2 Non-excludable warranties

The Company's liability for breach of implied warranties or conditions not permitted at law to be excluded, will be limited to the cost of re-supplying the relevant service again.

13.3 Limitations on Company's liability

The Company's obligation to Outturn the Client's Bulk Wheat is modified by the following provisions of this clause:

- (a) the Company is only liable for damage, destruction or contamination by the Company of the Client's Bulk Wheat if caused by the Gross Negligence or wilful default of the Company or its employees, contractors or agents;
- (b) the liability of the Company to the Client for any such damage, destruction or contamination of Bulk Wheat, if caused by Gross Negligence will not exceed the sum of

\$250,000 (two hundred and fifty thousand dollars) per event or per series of related events;

- (c) the Company's liability to compensate the Client for Accidental Loss or Damage to the Client's Bulk Wheat (other than Export Select Grain) is limited to the Client's proportion (based on ownership of the Common Stock) of the proceeds of insurance recovered by the Company in respect of such event;
- (d) notwithstanding any other provision of this Agreement, but subject to any extraneous agreement in writing between the Parties to the contrary, the Company will not be liable for any of the following:
 - (i) claims for Indirect or Consequential Loss;
 - (ii) quality claims arising in respect of Bulk Wheat transferred into the Company's storage system from another storage system;
 - (iii) defects that:
 - (A) are required to be examined by the responsible authority under the provisions of the *Export Control Act 1982 (Cth)*; or
 - (B) the Client has taken responsibility for testing prior to shipment, and are not discovered until after the departure of the ship;
 - (iv) failure by the Company to detect toxic residues, other chemical residues, genetically modified Bulk Wheat or any other contamination, the tests for detection of which are not in general use by the Company or have been advised by the Company to be unreliable relative to the required tolerances;
 - (v) downgrading claims in respect of Bulk Wheat blended by the Company at the request of the Client, provided the quality meets the outturn standards of the lowest value grade represented in the blend;
 - (vi) quality or quantity claims in respect of a shipment arising upon outturn at a vessel's destination, if the claims are inconsistent with the records of quantity and quality at the load port and there is no conclusive evidence that such load port records are incorrect or, by exception, unreliable.

13.4 Multiple caps on liability

If the Company is liable to the Client in relation to an event or a series of related events in respect of which the Company's liability is capped:

- (a) under this Agreement; and
- (b) under one or more other agreements made between the Company and the Client,

then the Company's liability in aggregate under all of the agreements described in paragraphs (a) and (b) above (**Capped Agreements**) is capped at the greatest amount at which liability is capped under any one of the Capped Agreements.

13.5 Mitigation

The Company may, in its discretion, mitigate or satisfy any liability it may have to the Client in respect of downgraded Bulk Wheat (ie Bulk Wheat that does meet the Outturn standard required under this Agreement) by whatever means the Company considers appropriate, including:

- (a) blending (at the Company's expense) a sufficient quantity of other wheat so as to upgrade the Client's Bulk Wheat to meet the Outturn standard; and/or

- (b) substituting (at the Company's expense) other wheat of the same quality and quantity; and/or
- (c) retaining the downgraded Bulk Wheat and providing for the claim as part of the Outturn adjustment under clause 7.15.

14. Insurance and Risk

14.1 Maintenance of insurance

The Company will at all times during the Term maintain an insurance policy covering the common insurable risks of Accidental Loss or Damage to Bulk Wheat in the Company's care and control.

14.2 Inspection

A summary of the policy and certification of currency will be available for inspection by the Client upon request.

14.3 Risk

- (a) For Bulk Wheat which is not Export Select Grain, the risk of Accidental Loss or Damage to the Client's Bulk Wheat to the extent that such risks are covered by the Company's insurance will be borne by the Company and all other risks of Accidental Loss or Damage to the Client's Bulk Wheat will be borne by the Client.
- (b) For the Client's Export Select Grain, the risk of Accidental Loss or Damage will be borne by the Company, irrespective of whether or not such risks are covered by the Company's insurance.

14.4 Transfer of Risk

Subject to clauses 13 and 14.3(a), the risk of loss or damage to Wheat is transferred to the Client at the point in time when the Wheat exits the Outturning spout of a Port Terminal Facility into a shipping vessel.

15. Force Majeure

15.1 Definition

For the purpose of this Agreement, a '**Force Majeure Event**' affecting a Party means anything outside that Party's reasonable control including the following events or circumstances (provided they are beyond the Party's reasonable control):

- (a) accident, fire, adverse weather conditions, flood, tidal conditions, earthquake, explosion, or like natural disasters, 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, stopworks, lockouts, boycotts or any other form of industrial dispute or labour shortage;
- (c) breakdown, accidental or malicious damage or destruction of any of the Company's Port Terminal Facilities or other Company Facilities;
- (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 customers).

15.2 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 14 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. (As per clause 15.6, the payment of money is not an obligation that can be suspended by a Force Majeure Event under this Agreement.)

15.3 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 15 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.

15.4 Minimisation of Impact

Upon receiving a notice under clause 15.3 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.

15.5 Obligation to Mitigate

The Affected Party must:

- (a) keep the other Party fully informed of its plans to minimise the effect of the Force Majeure Event; and
- (b) subject to reaching agreement concerning any modifications or additions required to give effect to any proposal to minimise the effect of the Force Majeure Event:

- (i) 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
- (ii) use all reasonable endeavours to resolve, and minimise the impact of, the Force Majeure Event.

15.6 Payments

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

15.7 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.

16. Dispute Resolution

16.1 Endeavour to resolve

The Parties will endeavour to resolve between themselves any dispute concerning the terms of this Agreement (**Dispute**), including, where necessary, by escalating the dispute for negotiation between both Parties' chief executives. A Party must not start court proceedings in respect of the Dispute unless it has complied with this clause.

16.2 Arbitration

- (a) If the Parties cannot resolve a Dispute themselves within 30 days of one Party giving notice of the Dispute to the other Party, they will immediately:
 - (i) appoint an arbitrator to determine the dispute within the following 30 day period; or
 - (ii) if the Parties are unable to agree upon an arbitrator, either Party may refer the Dispute for arbitration by an arbitrator nominated by the then President of the Law Society of South Australia.
- (b) Any arbitration will be conducted in Adelaide in accordance with the *Commercial Arbitration Act 1986 (SA)* except that:
 - (i) the arbitrator must observe the rules of natural justice but is not required to observe the rules of evidence;
 - (ii) a Party may have legal representation; and
 - (iii) the arbitrator must apportion costs of the arbitration and each Party's costs of and incidental to the arbitration as the arbitrator sees fit.

16.3 Status quo

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.

17. Termination

17.1 Right to terminate

This Agreement may be terminated by either Party giving to the other at least 3 months prior written notice (**Notice**) in that regard.

17.2 Effect

- (a) Where a Notice is given by the Client, the Notice will not take effect unless and until the Client has:
- (i) Outturned all Bulk Wheat stored by the Company on behalf of the Client under this Agreement; and
 - (ii) paid all moneys payable by the Client to the Company under this Agreement.
- (b) Where a Notice is given by the Company and, as at that date the Notice is to take effect, the Client has not Outturned all Bulk Wheat stored by the Company on behalf of the Client under this Agreement, then the Company will be entitled to exercise the rights conferred on it by clause 10 of this Agreement.

17.3 By Company

- (a) The Company may terminate this Agreement immediately upon giving written notice in that regard to the Client if the Client causes an Insolvency Event to occur.
- (b) If the Client commits a serious or persistent breach or breaches of any terms of this Agreement, provided the Company presents the Client with a written notice specifying the breach or breaches and requires the Client to remedy it within a period of not less than 30 days, then if the Client does not remedy the breach or breaches within the time period stipulated in this clause, the Company may terminate this Agreement at any time by notice in writing to the Client.

17.4 No prejudice

Termination of this Agreement under this clause 17 is without prejudice to the rights of either Party that have accrued prior to the date of termination.

18. Indemnity

18.1 By Client

The Client will indemnify the Company and keep the Company indemnified from and against all actions, claims, demands, proceedings, losses, costs and expenses 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 Bulk Wheat;
- (c) any claim by a third party relating to the operation of the Purchase Options or the involvement of the Company in relation to the Purchase Options, including claims arising out of the failure of the Client to provide information or the inaccuracy of information supplied by the Client in relation to the Purchase Options; or
- (d) any claim in relation to the admixture of Bulk Wheat with any other commodity loaded by the Company at any one of its Port Terminals where the Client has acknowledged and accepted that the Company will load non-grain commodities at its Port Terminals.

18.2 Application

Clause 18.1 will not apply where and to the extent that explicit written service guarantees have been given by the Company to the Client, or the losses or damages arose as a direct result of any negligence on the part of the Company or any wilful or deliberate failure by the Company to comply with its obligations under this Agreement.

19. Notices

19.1 How to Give a Notice

A notice, consent or other communication under this Agreement is only effective if it is:

- (a) in writing, signed by or on behalf of the Party giving it;
- (b) addressed to the Party to whom it is to be given; and
- (c) either:
 - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that Party's address;
 - (ii) sent by fax to that Party's fax number and the machine from which it is sent produces a report that states that it was sent in full; or
 - (iii) by e-mail addressed to the person for the time being occupying the position with the receiving Party specified in clause 19.3.

19.2 When a Notice is Given

A notice, consent or other communication that complies with this clause is regarded as given and received:

- (a) if it is sent by mail, on the third Business Day after posting;
- (b) if it is delivered or sent by fax:
 - (i) by 5.00 pm (local time in the place of receipt) on a Business Day, on that day; or
 - (ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day, on the next Business Day; and
- (c) if it is sent by e-mail, on the day of receipt by the recipient and, if the recipient is absent from his or her usual place of work for more than one day after the date of transmission, the day that the recipient returns to work.

19.3 Address for Notices

A Party's address and fax number are those set out below, or as amended at any time by notice given in accordance with this clause 19:

Company

Address: Grain House 124 –130 South Terrace, Adelaide, SA 5000
 Postal: GPO Box 1169, Adelaide, SA 5001
 Fax Number: (08) 8212 1723
 Attention: Urgent: Client Services Manager

Client

Address: _____

Postal: _____

Fax Number: _____

Attention: _____

20. No endorsement**20.1 Prohibition**

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.

20.2 Acknowledgements

The Client acknowledges that:

- (a) the Company will treat the obligation of the Client under clause 20.1 as a serious undertaking; and
- (b) it is aware that any breach of this serious undertaking may result in the Company suffering damage.

21. No assignment

The Client may not assign, transfer or otherwise dispose of all or any part of its rights or obligations under this Agreement without the prior written consent of the Company which, if given, may be given on such conditions as the Company considers to be appropriate.

22. Waiver**22.1 No impact**

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

22.2 Further exercise

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.

23. No Partnership**23.1 Relationship**

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

23.2 No liability

No Party is liable for an act or omission of another Party, except to the extent set out in this Agreement.

24. Governing Law and Jurisdiction

24.1 Governing law

This Agreement and the rights and liabilities of the Parties under this Agreement will be governed by the law of South Australia.

24.2 Jurisdiction

The courts of South Australia will possess territorial jurisdiction to hear and determine any cause of action arising under this Agreement.

25. Sub-Contracting

The Company may in its sole and absolute discretion:

- (a) sub-contract the provision of the whole or any part of the Port Terminal Services; or
- (b) otherwise engage any person to undertake the provision of any part of the Port Terminal Services on the Company's behalf,

without notice to the Client.

26. Severance

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.

27. Entire agreement, etc

27.1 Entire agreement

This Agreement constitutes the entire Agreement between the Parties.

27.2 No representations, etc

Each Party warrants and covenants to the other that there are no written or oral statements, representations, undertakings, covenants or agreements between the Parties, express or implied, except as provided for in this Agreement.

27.3 Variations

This Agreement may only be amended or varied by agreement in writing signed by both Parties expressly amending this Agreement and unless the context otherwise requires, a reference to this Agreement will include a reference to this Agreement as amended or varied from time to time.

27.4 Guidelines, etc

Notwithstanding that the Company may from time to time produce operational guidelines to assist clients, nothing in those guidelines will be deemed to impliedly or expressly amend anything in this Agreement and if there is any inconsistency between any guidelines and a term of this Agreement, the terms of this Agreement will prevail.

Schedule 1 - Charges and Fees

draft

Signing page

EXECUTED as an agreement.

Signed for and on behalf of
AusBulk Limited by its authorised
representative in the presence of:

Witness

Authorised Representative

Name of witness (print)

Name of authorised representative (print)

Executed by [Client] ACN [xxx xxx xxx]
pursuant to section 127 of the *Corporations Act*
2001

Signature of director

Signature of director/company secretary
(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)