

14 April 2009

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Co-operative Bulk Handling Limited

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# Port Terminal Services Access Undertaking

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**Date**

# Port Terminal Services Access Undertaking

**by**

**Co-operative Bulk Handling Limited** ABN 29 256 604 947 of 30 Delhi Street, West Perth, Western Australia (**Port Operator**)

**in favour of**

**Australian Competition and Consumer Commission** being a body corporate established under section 6A of the *Trade Practices Act 1974* (Cth) (**ACCC**)

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## Background

- A The Port Operator operates the Port Terminal Facilities.
- B The Port Terminal Facilities provide services relating to the export of Bulk Wheat and other commodities.
- C The Port Operator has historically provided access to services provided by the Port Terminal Facilities to third parties under open access policies.
- D The Port Operator or its Related Body Corporate has applied to become an Accredited Wheat Exporter under the *Wheat Export Marketing Act 2008* (Cth).
- E Under section 24 of the WEMA, a person who is also the provider of one or more port terminal services (as defined under that Act) must satisfy the 'access test' to be eligible for accreditation to export bulk wheat.
- F The 'access test' under the WEMA requires:
  - (a) the person to comply with the Continuous Disclosure Rules in relation to a port terminal service; and
  - (b) either there is:
    - (i) an access undertaking in operation (under Division 6 Part IIIA of the *Trade Practices Act 1974*) relating to the provision to Accredited Wheat Exporters of access to the port terminal service for purposes relating to export of Bulk Wheat; or
    - (ii) a decision in force that a regime established by a State or Territory for access to the port terminal service is an effective access regime (under Division 2A Part IIIA of the TPA) and under that regime Accredited Wheat Exporters have access to the port terminal service for purposes relating to the export of Bulk Wheat.

- G The Port Operator has submitted this Undertaking to the ACCC for approval under Part IIIA of the TPA for the purpose of satisfying the 'access test'.
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## Agreed terms

### 1 Interpretation

#### 1.1 Definitions

In this Undertaking unless the context otherwise requires:

**Access Agreement** means an agreement between a User and the Port Operator for the provision of Port Terminal Services.

**Access Application** means an application for Port Terminal Services as described in **clause 7.5(a)(i)**.

**Accredited Wheat Exporter** means a person having accreditation as an accredited wheat exporter under the WEAS.

**Applicant** means the person seeking access to Port Terminal Services under **clause 7**.

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

**Business Day** means a day which is not a Saturday, Sunday or public or bank holiday in Western Australia.

**Competition Principles Agreement** means the agreement entered into by the Commonwealth of Australia and each State and Territory of Australia in 1995 to implement the national competition policy of Australia.

**Confidential Information** means information exchanged between the Port Operator and an Applicant or User (or any of their nominated representatives) in relation to the business of any of those persons that:

- (a) is by its nature confidential;
- (b) is specified to be confidential by the person who supplied it; or
- (c) is known, or ought to be known, by a person using or supplying it to be confidential or commercially valuable;

but excludes information that:

- (d) is comprised solely of the name, address and contact details of a person; or
- (e) was in the public domain at the time when it was supplied; or

- (f) subsequently becomes available other than through a breach of confidence or breach of this Undertaking; or
- (g) was in lawful possession of the recipient of the information prior to being provided by the other party; or
- (h) must be disclosed under the Continuous Disclosure Rules under the WEMA; or
- (i) ceases to be confidential in nature by any other lawful means.

**Continuous Disclosure Rules** means the continuous disclosure rules as defined in subsection 24(4) of WEMA.

**Credit Support** means either:

- (a) a Parent Guarantee; or
- (b) Security.

**Dispute** means a bona fide dispute between an Applicant and the Port Operator arising under this Undertaking.

**Dispute Notice** has the meaning given in **clause 8.1(a)**.

**ETA** means expected time of arrival.

**IAMA** has the meaning given in **clause 8.3(c)**.

**Material Default** means any breach of a fundamental or essential term, or repeated breaches of any of the terms of:

- (a) an Access Agreement; or
- (b) any agreement for the provision of services by the Port Operator.

**Negotiation Period** has the meaning given in **clause 7.6(b)**.

**Operational Decisions** has the meaning given in **clause 9.2(a)**.

**Parent Guarantee** means a guarantee given by a Related Body Corporate of the Applicant or User who has an investment grade credit rating or is otherwise acceptable to the Port Operator (acting reasonably).

**Port** means the ports of:

- (a) Albany;
- (b) Esperance;
- (c) Geraldton; and
- (d) Kwinana.

**Port Schedules** means **schedules 3 to 6**.

**Port Terminal Facility** has the meaning given in **clause 5.2(a)**.

**Port Terminal Rules** has the meaning given in **clause 9.1(a)**.

**Port Terminal Service** has the meaning given in **clause 5.1(b)**.

**Prudential Requirements** means the requirements specified in **clause 7.4(b)(iv)**.

**Reference Prices** has the meaning given in **clause 6.1(a)(i)**.

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

**Security** means an unconditional and irrevocable bank guarantee, letter of credit, performance or insurance bond issued by a bank holding an Australian banking licence or such other reputable person or institution accepted by the Port Operator and which is in a form reasonably satisfactory to the Port Operator.

**Solvent** means that, in the last five years:

- (a) the Applicant has been able to pay all its debts as and when they become due and has not failed to comply with a statutory demand under section 459F(1) of the *Corporations Act 2001* (Cth);
- (b) a meeting has not been convened to place the Applicant in voluntary liquidation or to appoint an administrator;
- (c) an application has not been made to a court for the Applicant to be wound up without that application being dismissed within one month;
- (d) a controller (as defined in the *Corporations Act 2001* (Cth)) of any of the Applicant's assets has not been appointed; or
- (e) the Applicant has not proposed to enter into or entered into any form of arrangement with its creditors or any of them, including a deed of company arrangement.

**Standard Terms** has the meaning given in **clause 6.1(a)(ii)**.

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

**Trading Business** means a:

- (a) business unit or division of the Port Operator; or
- (b) Related Body Corporate of the Port Operator, or any business unit or division of the Related Body Corporate,

which has responsibility for the trading and marketing of Bulk Wheat.

**User** means a person who has entered into an Access Agreement with a Port Operator in relation to Bulk Wheat.

**WEAS** means the Wheat Export Accreditation Scheme 2008.

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

## 1.2 Interpretation

In this Undertaking, unless the context otherwise requires:

- (a) singular words will also have their plural meaning and vice versa;
- (b) a reference to a person includes companies and associations;

- (c) a reference to a consent of a party means the prior written consent of that party;
- (d) headings are for convenient reference only and do not affect the interpretation of this Undertaking;
- (e) a reference to a clause or a schedule is a reference to a clause, or schedule of this Undertaking;
- (f) a reference to an item in a schedule is a reference to the items in that schedule;
- (g) a reference to a party includes its successors and permitted assigns;
- (h) notices that are required to be given in writing to Port Operator may, if so agreed by Port Operator, be provided in electronic form;
- (i) a reference to any Act includes all statutes, regulations, codes, by-laws or ordinances and any notice, demand, order, direction, requirement or obligation under that Act (and vice versa) and unless otherwise provided in that Act includes all consolidations, amendments, re-enactments or replacements from time to time of that Act and a reference to “law” includes a reference to any Act and the common law;
- (j) the words “including”, “for example” or “such as” when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and
- (k) a reference to \$ and dollars is to Australian currency.

## 2 Objectives

This Undertaking has the following objectives:

- (a) providing a framework to manage negotiations with Applicants for access to services provided by certain facilities at the Port Terminal Facilities in relation to export of Bulk Wheat;
- (b) establishing a workable, transparent, non-discriminatory and efficient process for lodging and processing Access Applications;
- (c) providing a non-discriminatory approach to pricing under which the Port Operator publishes reference prices and terms and conditions for the provision of certain standard services annually;
- (d) operating consistently with the objectives and principles in Part IIIA of the TPA and the Competition Principles Agreement;
- (e) reaching an appropriate balance between:
  - (i) the legitimate business interests of the Port Operator, including:
    - (A) the recovery of all reasonable costs associated with the granting of access to the Port Terminal Services;



- (B) a fair and reasonable return on the Port Operator's investment in the Port Terminal Facility commensurate with its commercial risk;
  - (C) the Port Operator's business interests relating to the export of grain other than Bulk Wheat and to the export of non-grain commodities using the Port Terminal Facilities; and
  - (D) the Port Operator's ability to meet its own or its Trading Business' reasonably anticipated requirements for Port Terminal Services;
- (ii) the interest of the public, including:
    - (A) ensuring efficient use of resources; and
    - (B) the promotion of economically efficient investment, use and operation of the Port Terminal Facilities; and
  - (iii) the interests of Applicants wanting access to the Port Terminal Services, including providing access to the Port Terminal Services:
    - (A) on non-discriminatory price and non-price terms; and
    - (B) in a transparent, open, efficient and non-discriminatory manner;
  - (f) providing an efficient, effective and binding resolution process in the event that the Port Operator and the Applicant are unable to negotiate a mutually acceptable Access Agreement; and
  - (g) in accordance with the objective in s44AA(b) of the TPA, providing for a uniform approach to access to the Port Terminal Services at the different Port Terminal Facilities to the extent practicable having regard to the different characteristics of the Port Terminal Facilities.

## 3 Structure

### 3.1 Components

- (a) This Undertaking applies in relation to access to Port Terminal Services provided by means of Port Terminal Facilities at the Ports. The Port Terminal Facilities are geographically separate and have different physical and operating characteristics and modes of operation.
- (b) Accordingly, this Undertaking comprises:
  - (i) these General Terms (and schedules) which apply to Port Terminal Services provided by means of each Port Terminal Facility; and
  - (ii) the specific Port Schedules which describe:
    - (A) the Port Terminal Services provided by means of a Port Terminal Facility; and

(B) any specific terms and conditions on which access will be offered to the Port Terminal Services provided by means of that Port Terminal Facility,

and apply only to Port Terminal Services provided by means of that particular Port Terminal Facility.

### **3.2 Priority**

The terms of a Port Schedule will prevail over the General Terms to the extent of any inconsistency between them.

### **3.3 Obligation to procure**

If the performance of an obligation under this Undertaking requires a Related Body Corporate of the Port Operator to take some action or refrain from taking some action, the Port Operator must use reasonable endeavours to procure that Related Body Corporate to take that action or refrain from taking that action.

## **4 Term and variation**

### **4.1 Commencement Date**

This Undertaking commences on 1 October 2009.

### **4.2 Expiry**

This Undertaking expires on the earlier of:

- (a) 30 September 2012; or
- (b) the day the ACCC consents to the Port Operator withdrawing the Undertaking in accordance with Part IIIA of the TPA (including under **clause 4.3**).

### **4.3 Early withdrawal of the Undertaking**

The Port Operator may seek the approval of the ACCC to the withdrawal of this Undertaking on the occurrence of any of the following events:

- (a) the Port Operator or a Related Body Corporate ceases to be an Accredited Wheat Exporter under the WEMA; or
- (b) the WEMA is amended such that an Accredited Wheat Exporter is no longer required to have in place an access undertaking under Part IIIA of the TPA in relation to access to any of the Port Terminal Services for the purposes of obtaining or maintaining accreditation under the WEMA.

### **4.4 Variation for a particular Port**

The Port Operator may seek the approval of the ACCC to the variation of this Undertaking by removing the Port Terminal Services provided at a particular Port on the occurrence of any of the following events:

- (a) the Port Terminal Facility is disposed of to a person who is not a Related Body Corporate of the Port Operator and the Port Operator ceases to operate or control the Port Terminal Facility; or
- (b) there is in force under Division 2A Part IIIA of the TPA a regime established by a State or Territory for access to services provided at the Port Terminal Facility and under that regime Accredited Wheat Exporters have access to Port Terminal Services (or services substantially similar to the Port Terminal Services) for purposes relating to export of Bulk Wheat.

#### **4.5 Other variations**

- (a) If, during the term of this Undertaking, the Port Operator is of the opinion that circumstances have changed such that this Undertaking:
  - (i) is no longer commercially viable for the Port Operator or becomes inconsistent with the objectives set out in **clause 2**; or
  - (ii) is no longer consistent with the Continuous Disclosure Rules as a result of changes to the WEMA,the Port Operator may seek the approval of the ACCC to vary this Undertaking.
- (b) Prior to seeking the approval of the ACCC under **clause 4.5(a)**, the Port Operator will first consult with Users and Applicants regarding the proposed variation.

#### **4.6 Extension**

- (a) At least three months before the expiry of this Undertaking, the Port Operator will submit to the ACCC a written statement outlining whether or not it intends to submit a new undertaking to the ACCC for its consideration.
- (b) If the Port Operator intends to submit a new undertaking to the ACCC for its consideration, the Port Operator will also apply to the ACCC for an extension of the expiring Undertaking.
- (c) The application for extension would include a proposed extension period which, in the Port Operator's view, reasonably estimates the time it would take for the Port Operator to formulate a new undertaking and have that undertaking take effect following approval by the ACCC.
- (d) If the Port Operator does not propose to submit to the ACCC a new undertaking then **clauses 4.6(b)** and **4.6(c)** are not applicable.
- (e) Nothing in this clause prevents the Port Operator from proposing a new undertaking to the ACCC for its consideration at any time during the term of this Undertaking.

#### **4.7 Existing agreements**

- (a) This Undertaking applies only to the negotiation of new Access Agreements, and the negotiation of access in addition to access already the subject of an Access Agreement.
- (b) Nothing in this Undertaking can require a party to an existing Access Agreement to vary a term or provision of that agreement.

### **5 Scope**

#### **5.1 Meaning of Port Terminal Services**

- (a) This Undertaking applies only to access to Port Terminal Services.
- (b) **Port Terminal Services** means the services in relation to Bulk Wheat described in the Port Schedules provided by means of a Port Terminal Facility, and includes the use of a Port Terminal Facility.

#### **5.2 Meaning of Port Terminal Facility**

- (a) **Port Terminal Facility** means a ship loader that is:
  - (i) at a Port; and
  - (ii) capable of handling Bulk Wheat;and includes any of the following facilities:
  - (iii) an intake/receival facility;
  - (iv) a grain storage facility;
  - (v) a weighing facility; and
  - (vi) a shipping belt;that is:
  - (vii) at the Port; and
  - (viii) associated with the ship loader; and
  - (ix) capable of dealing with Bulk Wheat.
- (b) The Port Terminal Facilities at each Port are described in the relevant Port Schedules.

#### **5.3 Nature of Port Terminal Services**

Subject to the Port Schedules, the Port Terminal Services may include:

- (a) intake and receival services;
- (b) storage and handling services;
- (c) ship nomination, acceptance, booking, cancellation and cargo accumulation; and
- (d) ship loading.

## 5.4 What this Undertaking does not cover

- (a) The grain supply chain comprises the following activities:
  - (i) intake and receival services;
  - (ii) grain storage and handling (inland);
  - (iii) fumigation of grain;
  - (iv) transportation (from inland facilities to port facilities);
  - (v) services at port terminals (at port); and
  - (vi) shipping services (at port).
- (b) To avoid doubt, this Undertaking does not apply:
  - (i) to access to services not being Port Terminal Services in relation to Bulk Wheat provided by the Port Operator; or
  - (ii) in relation to other facilities owned by the Port Operator which are part of the grain supply chain, such as up country receival and accumulation facilities; or
  - (iii) to fumigation of grain as a preventative measure; or
  - (iv) to the transportation of Bulk Wheat to port; or
  - (v) to grains which are not wheat; or
  - (vi) to wheat which is not Bulk Wheat.
- (c) Nothing in this Undertaking prevents the Port Operator from agreeing with an Applicant or User to provide access to port terminal services for grains other than Bulk Wheat and other services related to port terminal services.
- (d) Nothing in this Undertaking requires the Port Operator or its Related Bodies Corporate to share efficiency savings or benefits from the operation of a separate integrated supply chain service, whether or not the integrated supply chain service utilises the Port Terminal Facilities.

## 6 Price and non-price terms

### 6.1 Obligation to publish price and non-price terms

- (a) By no later than 30 September of each year, the Port Operator must, for access to each Port Terminal Service, publish on the Port Operator's website:
  - (i) reference prices (**Reference Prices**); and
  - (ii) standard offer terms and conditions (**Standard Terms**), which must include an obligation for the Port Operator to comply with the Port Terminal Rules when providing the Port Terminal Services,
- (b) The Reference Prices and Standard Terms must be consistent with **clause 6.4** and the objectives set out in **clause 2**.

- (c) Unless varied in accordance with **clause 6.6**, the Reference Prices and Standard Terms must apply for a period not ending before 30 September of the next year.
- (d) If the Port Operator has not already complied with **clause 6.1(a)** at the commencement of this Undertaking, then it must do so within 15 Business Days of its commencement.
- (e) The Port Operator must give the ACCC copies of Reference Prices and Standard Terms promptly following publication.
- (f) If an Applicant seeks access to services other than the Port Terminal Services, the Port Operator and the Applicant may negotiate prices and non-price terms that are different from the Reference Prices and Standard Terms.

## **6.2 Access to Port Terminal Services**

- (a) The Port Terminal Services for each Port are set out in the relevant Port Schedules.
- (b) Unless otherwise specified in a Port Schedule, access to a Port Terminal Service (and the Port Operator's obligation to enter into an Access Agreement for them) will only be offered for a term expiring no later than 30 September of the year following the year in which the Standard Terms were first published (subject to appropriate 'holding over' provisions).

## **6.3 Standard Terms**

Nothing in this Undertaking prevents the parties agreeing to include terms relating to access to the Port Terminal Services in an agreement also applying to access to other services provided by the Port Operator but, to avoid doubt, this Undertaking (including **clauses 7, 8 and 10**) will only apply to the terms relating to the provision of access to Port Terminal Services.

## **6.4 Non-discriminatory access**

- (a) Subject to **clause 6.5**:
  - (i) if an Applicant requests a Port Terminal Service, the Port Operator must offer the Port Terminal Service on the Standard Terms and at the Reference Prices applicable from time to time to that Port Terminal Service in accordance with **clause 7**;
  - (ii) the Port Operator must not provide access to the Port Terminal Service Applicants or Users (including its own Trading Division) on terms and conditions which are different from:
    - (A) in the case of Port Terminal Services, the Reference Prices or Standard Terms; or
    - (B) in all cases, the price and non-price terms offered to another Applicant or User,unless those different terms are:

- (C) consistent with the objectives of this Undertaking set out in **clause 2**; and
- (D) commercially justifiable taking into account the matters set out in **clause 6.5**; and
- (E) offered on an arms length commercial basis.

## **6.5 Price and non-price terms**

For the purposes of this Undertaking, the price and non-price terms for the provision of access to Port Terminal Services to different Applicants or Users will be determined having regard to:

- (a) the economically efficient operation of the Port Terminal Facilities and the Port;
- (b) the Port Operator's legitimate business interests and investment in the Port Terminal Services, Port Terminal Facilities and the Port;
- (c) all costs that the Port Operator incurs or may incur in providing access, including any costs of extending the Port Terminal Services, but not costs associated with losses arising from increased competition in upstream or downstream markets;
- (d) the economic value to the Port Operator of any additional investment that the Applicant or Port Operator has agreed to undertake;
- (e) the interests of all persons who have rights to use the Port;
- (f) the operational and technical requirements necessary for the safe and reliable operation of the Port Terminal Services, the Port Terminal Facilities and the Port;
- (g) any differences in the costs of providing access to Port Terminal Services to different Applicants or Users;
- (h) the opportunity cost of accommodating the requirements of one Applicant or User compared to the requirements of one or more other Applicants or Users;
- (i) the provision of quality related services reasonably required by the Port Operator in respect of some Applicants or Users but not others, including security of Bulk Wheat integrity, testing of Bulk Wheat or Bulk Wheat classification, fumigation and protection requirements for Bulk Wheat;
- (j) the relative risk related to storing and handling different Bulk Wheat segregations for Applicants and Users;
- (k) available port capacity, including receipt, handling, storage and cargo accumulation capacity;
- (l) differences in types and grades of Applicants' or Users' Bulk Wheat;
- (m) differences in Applicants' or Users' Bulk Wheat volumes;
- (n) differences in periods of time during which access to Port Terminal Services is required by Applicants or Users;

- (o) differences in levels of Applicants' or Users' usage of Port Terminal Services;
- (p) differences in modes of receipt, storage or outturn including different transport modes to receive Bulk Wheat and different ship configurations;
- (q) geographic and seasonal variations;
- (r) minimisation of demurrage at a Port over a given period;
- (s) maximisation of throughput of Bulk Wheat and other commodities at a Port over a given period;
- (t) unless the Port Operator is offering segregated services at a Port, the ability to mix the same grade of Bulk Wheat owned by different owners and / or mix different grades of Bulk Wheat owned by the same or different owners; and
- (u) the credit risk of an Applicant or User.

## **6.6 Variation to Reference Prices and Standard Terms**

- (a) The Port Operator may vary the Reference Prices or the Standard Terms, provided that the amended Reference Prices and Standard Terms are consistent with **clause 6.4** and the objectives in **clause 2**.
- (b) Any variation under **clause 6.6(a)** must be published at least 30 days prior to the date on which it is to become effective in the same locations as it publishes its Reference Prices and Standard Terms.
- (c) The Port Operator must provide the ACCC with copies of variations to the Reference Prices and Standard Terms promptly following publication.
- (d) To avoid doubt, any variations to the Reference Prices or Standard Terms do not automatically override the terms of existing Access Agreements.

## **7 Negotiating for access**

### **7.1 Good faith negotiation**

The Port Operator will negotiate with an Applicant for the provision of access to Port Terminal Services in good faith in accordance with the terms of this Undertaking.

### **7.2 Confidentiality**

- (a) Subject to **clause 7.2(b)**, if a party provides Confidential Information to the other party as part of the negotiation process for access under this Undertaking, the receiver of the Confidential Information will treat that Confidential Information as secret and confidential and the property solely of the provider of the Confidential Information and not use that Confidential Information for any purpose other than that which the provisions of this Undertaking allow.



- (b) A party is permitted to disclose Confidential Information to the extent necessary for the provision of advice from legal advisors, financiers, accountants or other consultants (provided they are under a legal obligation not to disclose the Confidential Information to any third party).

### 7.3 Framework

- (a) This part of the Undertaking outlines the process to be followed for an Applicant to gain access to the Port Terminal Services. It provides for:
  - (i) **Preliminary inquiry:** preliminary exchanges of information and meeting to enable an Access Application to be lodged;
  - (ii) **Access Application:** submission of a formal Access Application by the Applicant;
  - (iii) **Negotiation:** negotiating an Access Agreement; and
  - (iv) **Access Agreement:** acceptance and execution of an Access Agreement.
- (b) The Port Operator and the Applicant must comply with the confidentiality obligations under **clause 7.2** in relation to Confidential Information provided during the process in **clause 7.3(a)**.
- (c) If, at any time during the process described in **clause 7.3(a)**, a Dispute arises between the parties which, after reasonable negotiation, the parties are unable to resolve to their mutual satisfaction, then either party may seek to resolve the Dispute in accordance with the Dispute resolution process outlined in **clause 8**.

### 7.4 Preliminary inquiry

- (a) Provision of information
  - (i) Subject to **clause 7.4(a)(ii)**, to assist negotiations the Port Operator will, if requested by an Applicant, provide the Applicant with information related to access to the Port Terminal Services that may be reasonably required by the Applicant in relation to the Access Application.
  - (ii) The Port Operator's obligation under **clause 7.4(a)(i)** is subject to:
    - (A) the Port Operator not disclosing any information which would breach a confidentiality obligation binding on it, or which it considers is commercially sensitive in relation to its own operations; and
    - (B) the Port Operator being able to refuse the request if:
      - (1) it is unduly onerous; or
      - (2) the expense and resources required to provide the information is disproportionate to the benefit to be obtained from the information; and

- (C) the Applicant agreeing to pay the reasonable costs incurred by the Port Operator in obtaining information that is not ordinarily and freely available to the Port Operator.
- (b) Parties to negotiation
- (i) The Port Operator reserves the right to negotiate only with an Applicant who complies with the requirements and processes set out in this Undertaking. If an Applicant does not comply with the relevant obligations and processes, and the Port Operator considers that such non-compliance is material, the Port Operator will not be obliged to continue negotiations regarding the provision of access for that Applicant.
  - (ii) The Applicant must be an Accredited Wheat Exporter. It is the responsibility of the Applicant to ensure that it is in compliance with the relevant legal requirements for wheat export as set out in the WEMA and the WEAS.
  - (iii) At any time, before or during the negotiation process, the Port Operator may require the Applicant to demonstrate to the Port Operator that it is able to meet the Prudential Requirements in **clause 7.4(b)(iv)**. In the event the Applicant cannot meet the Prudential Requirements, the Port Operator may refuse to commence negotiations or may cease negotiations with that Applicant.
  - (iv) For the purposes of **clause 7.4(b)(iii)**, the Applicant will be required to meet the following Prudential Requirements:
    - (A) the Applicant must be Solvent; and
    - (B) the Applicant, or a Related Body Corporate of the Applicant, must not be currently, or have been in the previous two years, in Material Default; and
    - (C) the Applicant must be able to demonstrate to the Port Operator that it has a legal ownership structure with a sufficient capital base and assets of value to meet the actual or potential liabilities under an Access Agreement, including the demonstrated timely payment of access charges and payment of insurance premiums and deductibles under the required policies of insurance, or otherwise provides Credit Support.
  - (v) If the Port Operator refuses to negotiate for any reasons as described in **clauses 7.4(b)(i)** or **7.4(b)(iii)**, it will, within ten Business Days of the decision to refuse to negotiate, explain in writing to the Applicant the reasons for such refusal.
  - (vi) If the Applicant considers that the Port Operator has unreasonably refused to commence or subsequently unreasonably ceased negotiations in breach of this **clause 7.4(b)**, then that matter will constitute a Dispute which must be dealt with in accordance with

**clause 8.** If an arbitrator determines that the Port Operator has unreasonably refused to commence or subsequently unreasonably ceased negotiations, the Port Operator will recommence negotiations immediately.

- (vii) If at any time, the Port Operator is of the view that an Applicant's request for access is frivolous in nature or the Applicant is not negotiating in good faith, the Port Operator may refer the request to the arbitrator in accordance with **clause 8** for determination. If the arbitrator determines that the request is in fact frivolous, then the Port Operator will be entitled to cease negotiations and will not be obliged to comply with this Undertaking in respect of the request and may apply to the arbitrator for an order for the Applicant to pay the Port Operator's reasonable costs incurred in relation to the request for access.

## **7.5 Access Application**

- (a) Application process
  - (i) Requests for access to the Port Terminal Services are to be submitted to the Port Operator in the form of an Access Application and in accordance with the form requirements of **schedule 1**.
  - (ii) Prior to submitting an Access Application, an Applicant may seek initial meetings with the Port Operator to discuss the Access Application and to seek clarification of the process as outlined in this Undertaking and in particular, the information requirements set out in **schedule 1**.
- (b) Acknowledgment
  - (i) Upon receiving an Access Application from an Applicant, the Port Operator will acknowledge receipt of the Access Application in writing (or electronically) to the Applicant within five Business Days of its receipt, or such longer period as specified in accordance with **clause 7.5(b)(iii)**.
  - (ii) Prior to acknowledging the Access Application, the Port Operator may seek:
    - (A) additional information; or
    - (B) clarification of the information that has been provided in the Access Application.
  - (iii) If the Port Operator seeks additional information or clarification in accordance with **clause 7.5(b)(ii)**, it will advise the Applicant of the additional information or the clarification required within five Business Days of receipt of the Access Application.
  - (iv) Upon receiving the required information or clarification from the Applicant, the Port Operator will provide written acknowledgment of the receipt of the completed Access Application within five Business Days.

## 7.6 Negotiation of Access Agreement

- (a) Following the Port Operator's acknowledgment under **clause 7.5(b)**, both parties will commence negotiations as soon as reasonably possible to progress towards an Access Agreement.
- (b) The period during which the parties must negotiate to progress towards an Access Agreement (**Negotiation Period**) will commence upon the Port Operator acknowledging the Access Application under **clause 7.5(b)** and will cease upon any of the following events:
  - (i) execution of an Access Agreement in respect of access sought by the Applicant;
  - (ii) written notification by the Applicant that it no longer wishes to proceed with its Access Application;
  - (iii) the expiration of three months from the commencement of the Negotiation Period, or if both parties agree to extend the Negotiation Period, the expiration of the agreed extended period;
  - (iv) if the Port Operator believes that the negotiations are not progressing in good faith towards the development of an Access Agreement within a reasonable time period; or
  - (v) if the Port Operator receives evidence confirming that the Applicant no longer satisfies the Prudential Requirements. On receiving such evidence the Port Operator will advise the Applicant of such evidence and issue a notice of intent to end the negotiation period, to become effective ten Business Days after the issue of the notice. If the Port Operator issues a notice of intent the Port Operator will provide to the Applicant written reasons for its decision to end the Negotiation Period.
- (c) Subject to **clause 7.6(d)**, upon cessation of the Negotiation Period, the Port Operator will be entitled to cease negotiations with the Applicant.
- (d) Without limiting the definition of Dispute, if both the Port Operator and the Applicant comply with **clause 7.1** but fail to execute an Access Agreement before the cessation of the Negotiation Period under **clause 7.6(b)(iii)**, that matter will constitute a Dispute which either party may refer to arbitration under **clause 8**.

## 7.7 Access Agreement

- (a) The granting of access will be finalised by the execution of an Access Agreement. The parties to the Access Agreement will be the Port Operator and an Accredited Wheat Exporter.
- (b) Subject to **clauses 6.4** and **6.5** the Port Operator:
  - (i) must offer the Standard Terms to the Applicant where the Applicant requests access to a Port Terminal Service, subject to the Applicant satisfying the Prudential Requirements;

- (ii) may offer amended Standard Terms updated to reflect terms which the Port Operator considers reasonably necessary or desirable to accommodate a request for access to a service other than the Port Terminal Services; and
  - (iii) may agree changes to the Standard Terms requested by the Applicant.
- (c) Once the Applicant has notified the Port Operator that it is satisfied with the terms and conditions of the Access Agreement as drafted, the Port Operator will, as soon as reasonably practicable, provide a final Access Agreement (or, if applicable, an amendment to an existing Access Agreement) to the Applicant for execution.
- (d) If the Port Operator offers an Access Agreement and the Applicant accepts the terms and conditions offered in that Access Agreement, both the Port Operator and the Applicant will execute the Access Agreement. The parties will use reasonable endeavours to comply with this clause as soon as practicable.

## 8 Dispute resolution

### 8.1 Disputes

- (a) Any Dispute shall, unless otherwise expressly agreed by both parties, be resolved in accordance with this **clause 8** and either party may give to the other party to the Dispute a notice in writing (**Dispute Notice**) specifying the Dispute and requiring it to be dealt with in the manner set out in this **clause 8**. The parties will use reasonable endeavours acting in good faith to settle the Dispute as soon as is practicable.
- (b) Any disputes in relation to an Access Agreement once executed will be dealt with in accordance with the provisions of that Access Agreement.
- (c) The Port Operator will by 31 July of each year provide a report to the ACCC on any material disputes in relation to an Access Agreement and any material Disputes in the preceding 12 months (except for the first year in which case the report will apply to the period from the commencement of this Undertaking) including the details of any resolutions and the status of unresolved matters.

### 8.2 Negotiation

Within five Business Days of a party giving the other party a Dispute Notice, senior representatives from each party will meet and use reasonable endeavours acting in good faith to resolve the Dispute by joint discussions.

### 8.3 Mediation

- (a) If the Dispute is not resolved under **clause 8.2** within ten Business Days after the date of the Dispute Notice then:
  - (i) if the parties agree, they will attempt to resolve the Dispute by mediation pursuant to this **clause 8.3**; or

- (ii) if the parties do not wish to resolve the Dispute by mediation, either party may by notice in writing to the other and the arbitrator, refer the Dispute to be determined by arbitration under **clause 8.4**.
- (b) If the parties agree to attempt to resolve the Dispute by mediation, the Dispute will be referred to the chief executive officers of both parties who will attempt to resolve the Dispute, including by informal mediation.
- (c) If the Dispute is not resolved within ten Business Days after being referred to the chief executive officers under **clause 8.3(b)**, the Dispute will be referred to formal mediation in Western Australia to be mediated by a single mediator appointed by agreement of the parties or if they fail to agree within ten Business Days, a mediator appointed by the President of the Western Australian Chapter of the Institute of Arbitrators and Mediators of Australia (**IAMA**) acting on the request of either party.
- (d) Unless the parties agree otherwise:
  - (i) the mediation will be conducted by a mediator under the IAMA Mediation Rules (whether or not the mediator is a legal practitioner);
  - (ii) each party may appoint a person, including a legally qualified person to represent it or assist it in the mediation;
  - (iii) each party will bear their own costs relating to the preparation for and attendance at the mediation; and
  - (iv) the costs of the mediator will be borne equally by the parties.

#### **8.4 Referral to arbitration**

- (a) If the Dispute is not resolved under **clause 8.2**, or at any time after the appointment of the mediator (if any) under **clause 8.3(c)**, either party may by notice in writing to the other party and to the mediator terminate the mediation proceedings and give notice that the Dispute must be referred to arbitration under this **clause 8.4**.
- (b) The Port Operator must notify the ACCC of the details of any Dispute which has been referred to arbitration. The Port Operator must provide the arbitrator's final determination to the ACCC.
- (c) If the Applicant serves notice under **clause 8.4(a)**, that notice will also include an agreement by that Applicant to:
  - (i) pay any amounts determined in accordance with **clause 8.10**; and
  - (ii) indemnify the arbitrator from any claims made against the arbitrator arising in connection with the performance by the arbitrator of its duties under this **clause 8**, such indemnity excluding circumstances where the conduct of the arbitrator constitutes wilful negligence, or is dishonest or unlawful conduct.
- (d) The Port Operator must pay any amounts determined in accordance with **clause 8.10** and will indemnify the arbitrator from any claims made against the arbitrator arising in connection with the performance by the

arbitrator of its duties under this **clause 8**, such indemnity excluding circumstances where the conduct of the arbitrator constitutes wilful negligence, or is dishonest or unlawful conduct.

## **8.5 Selection of arbitrator**

- (a) The arbitration is to be conducted by an arbitrator appointed by agreement of the parties.
- (b) Within two Business Days of the parties agreeing an arbitrator, the Port Operator must notify the ACCC of the identity and qualifications of the arbitrator.
- (c) Within five Business Days of the parties giving notice of the arbitrator's appointment, the ACCC may give a notice to the parties objecting to the arbitrator if the ACCC forms the view on reasonable grounds that the original arbitrator appointed by the parties is either not independent or appropriately qualified. If the ACCC issues such a notice, the parties must nominate an alternative arbitrator and notify the ACCC of the identity and qualifications of the arbitrator within two Business Days of the parties agreeing an arbitrator.. If the ACCC does not provide a notice within five Business Days of the parties giving notice of the substituted arbitrator's appointment, the parties' appointment of that arbitrator stands.
- (d) If the parties fail to agree an arbitrator within the later of:
  - (i) ten Business Days of the Dispute referral under **clause 8.4(a)**; and
  - (ii) ten Business Days of the ACCC giving notice of its objection to the choice of the arbitrator;either party may request the ACCC to appoint an arbitrator, which must not be the ACCC.
- (e) The arbitrator will not proceed with the arbitration unless and until the Applicant has agreed to pay the arbitrator's costs as determined under **clause 8.10**.

## **8.6 Arbitration procedure**

- (a) Subject to the involvement of and disclosures to the ACCC, unless the Port Operator and the Applicant agree otherwise, the arbitration must be conducted in private.
- (b) A party may appoint a person, including a legally qualified person, to represent it or assist it in the arbitration.
- (c) The arbitrator will when conducting the arbitration:
  - (i) observe the rules of natural justice but is not required to observe the rules of evidence;
  - (ii) proceed as quickly as is possible and consistent with a fair and proper assessment of the matter;

- (iii) while having the right to decide on the form of presentations, encourage a written presentation by each party with exchange and with rebuttal opportunities and questioning by the arbitrator;
  - (iv) call on any party the arbitrator believes necessary to give evidence;
  - (v) permit the ACCC, on request, to make submissions to the arbitrator on matters relevant to the Dispute;
  - (vi) decide how to receive evidence and consider the need to keep evidence confidential and the need to protect the confidentiality of the arbitration process;
  - (vii) present its determination in a draft form to the parties and hear argument from the parties before making a final determination; and
  - (viii) hand down a final determination in writing which includes all its reasons for making the determination and findings on material questions of law and fact, including references to evidence on which the findings of fact were based.
- (d) The arbitrator may at any time terminate arbitration (without making an award) if it thinks that:
- (i) the notification of the Dispute is vexatious;
  - (ii) the subject matter of the Dispute is trivial, misconceived or lacking in substance; or
  - (iii) the party who notified the Dispute has not engaged in negotiations in good faith.

## **8.7 Matters which arbitrator must take into account**

- (a) In deciding a Dispute the arbitrator will take into account:
- (i) the principles, methodologies and provisions set out in this Undertaking, in particular **clauses 6.4** and **6.5**;
  - (ii) the objectives and principles in Part IIIA of the TPA and the Competition Principles Agreement;
  - (iii) the benefit to the public of having competitive markets;
  - (iv) any guidance published by the ACCC;
  - (v) any submissions provided by the ACCC; and
  - (vi) any other matters that the arbitrator thinks are appropriate to have regard to.
- (b) In making its determination, the arbitrator:
- (i) may deal with any matters referred to in section 44V of the TPA;
  - (ii) will not make a determination that would have any of the effects described in section 44W of the TPA; and



- (iii) will take into account the matters referred to in section 44X of the TPA.

## **8.8 Confidentiality**

- (a) The arbitrator must take all reasonable steps to protect the confidentiality of information that a party has identified is confidential or commercially sensitive.
- (b) The arbitrator may require the parties to comply with rules and orders aimed at protecting the confidentiality of information provided by the parties, including:
  - (i) requiring each party to give confidentiality undertakings to the other party and their external advisers; and
  - (ii) limiting access to confidential information to specified individuals subject to confidentiality undertakings provided by those individuals.
- (c) The arbitrator may make confidential and non-confidential versions of its determination and limit access to the confidential versions to specific individuals.
- (d) For the purpose of clarity, the entire dispute resolution process outlined in this **clause 8** remains subject to **clause 7.2**.

## **8.9 Effect of arbitrator's determination**

- (a) The determination of the arbitrator will be final and binding subject to any rights of review by a court of law.
- (b) Except where the determination or direction is subject to a review by a court of law, if an Applicant does not comply with a determination or direction of the arbitrator, then the Port Operator will no longer be obliged to continue negotiations regarding the provision of access for that Applicant.
- (c) Except where the determination or direction is subject to a review by a court of law, the Port Operator will comply with the lawful directions or determinations of the arbitrator.

## **8.10 Arbitrator's costs**

The arbitrator's costs and the costs of the parties to the arbitration will be borne by the parties in such proportions as the arbitrator determines. Each party may make submissions to the arbitrator on the issue of costs at any time prior to that determination.

# **9 Capacity management**

## **9.1 Continuous Disclosure Rules**

- (a) The Port Operator will from time to time publish on its website in relation to Port Terminal Services a statement setting out the Port Operator's

policies and procedures for managing demand for the Port Terminal Service (including the Port Operator's policies and procedures relating to the nomination and acceptance of ships to be loaded using the Port Terminal Service), which must be consistent with **clause 6.4** and the objectives set out in **clause 2 (Port Terminal Rules)**.

- (b) The current Port Terminal Rules are available at [www.cbhoperations.com.au](http://www.cbhoperations.com.au)
- (c) The Port Operator may vary the Port Terminal Rules, provided that they are consistent with **clause 6.4** and the objectives set out in **clause 2**.
- (d) Any variation under **clause 9.1(c)** must be published at least 30 days prior to the date on which it is to become effective in the same locations as it publishes its Port Terminal Rules.
- (e) The Port Operator must provide the ACCC with copies of variations to the Port Terminal Rules promptly following publication.

## 9.2 Operational Decisions

- (a) **Operational Decisions** means decisions made in the course of providing the Port Terminal Services including day to day decisions concerning scheduling, cargo accumulation decisions and ship loading.
- (b) In making Operational Decisions relating to the provision of access to the Port Terminal Services, the Port Operator must:
  - (i) make decisions:
    - (A) in a manner consistent the objects of this Undertaking;
    - (B) that are commercially justifiable, taking into account the matters referred to in **clause 9.2(c)**; and
  - (ii) subject to **clause 9.2(c)**, must not discriminate between Users or in favour of its Trading Business in providing Port Terminal Services.
- (c) The Port Operator's obligations under **clause 9.2(b)** will be read subject to the qualification that many Operational Decisions made relating to the provision of Port Terminal Services will necessarily involve conflicts of interests of users of the Port. Particularly when viewed in isolation, some decisions necessarily confer a relative disadvantage on one user of the Port and an advantage on others. The fact that an individual Operational Decision confers a relative disadvantage on one user of the Port or an advantage on another does not, of itself, mean that the Port Operator has breached this Undertaking..
- (d) Without limiting **clause 9.2(c)** or **clause 6.5**, the Port Operator may in making Operational Decisions:
  - (i) give priority to vessels based on the lead time given between nomination and vessel ETA, the likely availability of sufficient Bulk Wheat at the Port prior to vessel ETA, the likely uncommitted storage capacity at the Port Terminal Facility and the uncommitted

- inloading capacity necessary to make a nominated vessel's nominated cargo tonnage;
- (ii) take into account in particular the objectives of:
    - (A) minimising demurrage at the Port over a given period; and
    - (B) maximising throughput of Bulk Wheat and other commodities at the Port over a given period; and
  - (iii) vary a cargo assembly plan or queuing order for vessels as a result of:
    - (A) insufficient Bulk Wheat at the Port accumulated by the User necessary to make a User's nominated vessel's nominated cargo tonnage;
    - (B) variations in vessel arrival times;
    - (C) failure of vessels to pass surveys;
    - (D) stability and ship worthiness inspections;
    - (E) vessel congestion;
    - (F) variation in cargo requirements;
    - (G) lack of performance of freight providers;
    - (H) equipment failure;
    - (I) maintenance outages;
    - (J) weather preventing relevant activities at the Port Terminal Facilities;
    - (K) embargo, strike, lockout, or labour conditions impacting on the provision of the Port Terminal Services;
    - (L) any material breach by the user of the Port Terminal Services of the Access Agreement;
    - (M) the status of the accreditation of the user of the Port Terminal Services under the Access Agreement;
    - (N) contamination of accumulated cargoes or contamination of loads; or
    - (O) a User not working a vessel or accumulating a cargo on a 24 hour/7 day basis where another User is able to do so.

### **9.3 No hindering access**

The Port Operator must not engage in conduct having a purpose of hindering access to the Port Terminal Services by any User in the exercise of a reasonable right of access.

## 10 Ring fencing

The Port Operator must comply with the ring fencing rules set out in **schedule 2**.

## 11 Contact details

- (a) Persons wishing to contact the Port Operator for further information or to apply for access to the Port Terminal Services should contact the Port Operator at the following address:

Customer Account Manager  
Grain Operations  
Co-operative Bulk Handling Limited  
Gayfer House, 30 Delhi Street  
West Perth WA 6005

- (b) Applicants are also encouraged to review the Port Operator's web site at [www.cbhoperations.com.au](http://www.cbhoperations.com.au) which includes information relevant to the Port Terminal Services.

**Executed by Co-operative Bulk Handling Limited** )  
)

.....  
Company Secretary/Director

.....  
Director

.....  
Name of Company Secretary/Director  
(print)

.....  
Name of Director (print)

# Schedule 1

## Access Application information

### 1 Request details

#### 1.1 Season

#### 1.2 Applicant's Application Type

#### 1.3 Business Category

### 2 Applicant details

#### 2.1 Company name

#### 2.2 ABN/ACN

#### 2.3 Website

#### 2.4 Address

#### 2.5 Contact details

#### 2.6 Details of authorised company representative (including authorisation)

#### 2.7 Duration of the Access Agreement sought

### 3 Indicative Export Tonnage

# Schedule 2

## Information and Operational Segregation Rules (ring fencing rules)

### 1 Definitions

The following defined terms apply in this schedule, in addition to the terms defined in **clause 1.1** of the Undertaking unless the context otherwise requires:

**Operations Business** means the Port Operator's Other Business Unit which manages the operation of its storage and handling business.

**Other Business Units** means the divisions, departments, branches, groups, teams and other units of the Port Operator and its Related Bodies Corporate, other than its Trading Business.

**Port Operator Group** means the Port Operator and any body corporate, joint venture, partnership, unincorporated body or other legal entity in which the Port Operator has an equity interest (direct or indirect) of 50.01% or more.

**Receival Specific Information** has the meaning given in **item 8(c)(ii)**.

**Support Services Staff** means:

- (a) employees involved only in corporate administrative functions or services, human resources, legal, risk, insurance, corporate affairs, grower services, accounting, corporate finance or information technology support services; and
- (b) the executive officer or officers to whom employees report either directly or indirectly.

**Third Party** means an Applicant or a User.

**Third Party Confidential Information** means information exchanged between a Third Party and the Operations Business (or any of their nominated representatives) that:

- (a) is information of the Third Party which is by its nature confidential or which is designated by the Third Party as being confidential;
- (b) relates to a Third Party's entitlement to or interest in any Bulk Wheat delivered to or held in the custody of the Port Operator, unless authorised to be disclosed by the Third Party;
- (c) relates to the origin, grade, quality, quantity, location or attributes of Bulk Wheat owned by the Third Party;

but excludes information that:

- (d) is required to be disclosed under the WEMA;

- (e) is comprised solely of the name, address and contact details of a person; or
- (f) at the time it was disclosed by the Third Party to the Operations Business:
  - (i) was generally and publicly available, or subsequently becomes so available other than by breach of any duty or obligation; or
  - (ii) was in the possession of the Operations Business lawfully and without breach of any duty or obligation;
- (g) the Operations Business can demonstrate was developed independently of the Third Party Confidential Information; or
- (h) ceases to be confidential in nature by any other lawful means.

**Third Party Traders** means any entity involved in the trading and marketing of Western Australian Bulk Wheat, other than a Trading Business.

## 2 **Application of rules**

These rules apply in substitution for the ringfencing arrangements referred to in the Port Operator's Grain Express notification to the ACCC.

## 3 **Organizational structure**

- (a) The Port Operator organisational structure includes its:
  - (i) Chief Executive Officer (**CEO**), Chief Operating Officer (if any) and Board;
  - (ii) Operations Business; and
  - (iii) Support Services Staff.
- (b) Any Trading Business must be operationally distinct from the Port Operator and its Other Business Units, and must be managed by its own Board and management structure.
- (c) Each of the General Managers of the Operations Business and the Trading Business may report directly to the CEO (or COO) and Board, but the Operations Business and the Trading Business shall otherwise be operated as distinct businesses.
- (d) The functions and responsibilities of the Operations Business include:
  - (i) planning, maintenance and operations of upcountry receival and storage facilities;
  - (ii) management of road and rail freight contracts and arrangements;
  - (iii) gathering and managing information on grain quality, quantity and grade;
  - (iv) negotiation and management of storage and handling agreements with marketers;
  - (v) management and operation of the Metro Grain Centre;



- (vi) management, maintenance and operation of port storage and ship loading facilities; and
- (vii) provision of crop forecasting and information services to growers.

**4 Separation of business units**

The Port Operator must implement measures to ensure that:

- (a) its Trading Business is organisationally and operationally separate from its Other Business Units; and
- (b) its Trading Business does not carry out any Port Terminal Services.

**5 Separation of work areas**

The Port Operator must ensure that its Trading Business and its Other Business Units have separate work areas. The Port Operator must not permit employees of its Trading Business (other than Support Services Staff) to enter a work area of the Operations Business Unit except where such access is for the purpose of arm's length dealings regarding the provision of services to the Trading Business.

**6 Separation of employees**

- (a) The Port Operator must ensure that employees, other than Support Services Staff, who are involved in the operations of the:
  - (i) Operations Business are not also simultaneously involved in the operations of the Trading Business; and
  - (ii) Trading Business are not also simultaneously involved in the operations of the Operations Business.
- (b) In respect of:
  - (i) a previous Trading Business employee (other than Support Services Staff); and
  - (ii) a previous Third Party Trader employee,
 

who was involved in any trading or marketing of Bulk Wheat and who commences employment with the Operations Business, the Port Operator must not permit that person to be involved in any activities regarding an Access Application by the Trading Business or the Third Party Trader respectively:

    - (iii) for a period of three months commencing on the date that person ceases employment with the Trading Business or the Third Party Trader; or
    - (iv) if at the date of that person ceasing employment with the Trading Business or the Third Party Trader, the Operation Business was considering an Access Application by the Trading Business or the Third Party Trader, until the later of either the Access Application being withdrawn, an Access Agreement being executed, or the making of an arbitration determination regarding the Access Application,

whichever is the later.

- (c) A previous Operations Business employee (other than Support Services Staff) who commences employment with the Trading Business must not be involved in any activities regarding an Access Application for a period of three months commencing on the date that person ceased employment with the Operations Business.

## **7 Accounting separation**

- (a) The Port Operator must make arrangements, including the preparation of procedures and policies, to effectively ensure that it maintains audited separate accounts and accounting arrangements for the Trading Business, so as to give a true and fair view of the costs relating to the Trading Business as distinct from other costs incurred by the Port Operator.
- (b) Without limiting **item 7(a)**, the accounts and records of the Trading Business must be kept in a way that enables all income, expenditure, assets and liabilities relating to the carrying out of its business activities and operations to be properly recorded and distinguished from the other income, expenditure, assets and liabilities of the Port Operator and its Related Bodies Corporate.
- (c) Without limiting the ACCC's powers under these ring fencing rules or otherwise, the Port Operator must provide the ACCC with such documents, including copies of the procedures and policies described in this **item 7**, as the ACCC may reasonably request when directing an audit under **item 13**, for the purpose of ascertaining whether the Port Operator is complying with its obligations under this **item 7**.

## **8 Information technology access controls and information flows**

- (a) The Port Operator must establish, maintain and enforce appropriate controls regarding access to information technology systems, such that Third Party Confidential Information may be accessed only by:
  - (i) employees of the Operations Business; and
  - (ii) Support Service Staff.
- (b) Subject to **item 8(c)**, the Operations Business must not:
  - (i) disclose Third Party Confidential Information to other entities, including its own Related Bodies Corporate and their employees;
  - (ii) use Third Party Confidential Information for the purpose of substantially damaging the Third Party to whom the Third Party Confidential Information relates or conferring upon the Trading Business an unfair competitive advantage over any Third Party in the marketing of Bulk Wheat; or
  - (iii) allow other entities, including its own Related Bodies Corporate and their employees, to access Third Party Confidential Information in the Port Operator's possession.

- (c) The Operations Business may disclose:
  - (i) to a Third Party, Third Party Confidential Information that solely relates to that Third Party's Bulk Wheat; or
  - (ii) subject to **item 8(d)**, to any person, information concerning the grade, quality, quantity, location or attributes of Bulk Wheat received by the Port Operator (**Receival Specific Information**), provided that the Receival Specific Information is either aggregated to such an extent that, or stripped of the identity of the parties to which the information relates so that, the recipient of the aggregated or deidentified information without access to the pre-aggregated or pre-deidentified Receival Specific Information would not be capable of identifying information specific to any particular Third Party.
- (d) **Item 8(c)(ii)** shall not apply to prohibit the Operations Business from disclosing Third Party Confidential Information amongst its employees, advisors and contractors on a need to know basis.
- (e) The Operations Business must maintain a current register of all persons who use its Bulk Wheat management database.
- (f) The Operations Business must not allow the Trading Business' employees to access Third Party Confidential Information through Operations Business' databases

## 9 **Outsourcing**

If the Operations Business or the Trading Business arranges for another entity to perform any of its functions or operations, it must ensure that the entity complies with these ring fencing rules as if it were the Operations Business or the Trading Business, as the case may be.

## 10 **Policies, procedures and systems**

- (a) The Port Operator must establish, maintain and comply with auditable policies, procedures and systems for the purpose of ensuring compliance with the Port Operator's obligations under these ring fencing rules.
- (b) The policies, procedures and systems must include, without limitation, policies, procedures and systems:
  - (i) for the maintenance of a register and records of the Port Operator's employees which must identify the name of each employee (including the executive officer or officers to whom employees report either directly or indirectly), their position, and confirmation of whether they are Support Services Staff, employees involved in the Operations Business, or employees involved in the conduct of any Trading Business;
  - (ii) for the transfer of employees between the Trading Business and the Other Business Units which complies with **items 6(b)** and **6(c)**;

- (iii) governing access to the information technology systems of and information about the Operations Business;
- (iv) for the flow of information between the Operations Business and the Trading Business, and from the Operations Business and the Trading Business to the Port Operator's directors, officers and senior management;
- (v) for the treatment of Third Party Confidential Information;
- (vi) for the outsourcing of any functions or operations of the Operations Business;
- (vii) for the training of employees about the obligations imposed on the Port Operator and under these ring fencing rules; and
- (viii) for dealing with any complaints made by a Third Party in connection with a reasonably founded and credible belief that the Port Operator has not complied with these ring fencing rules.

**11 Employee training**

- (a) The Port Operator's employees will be made aware that:
  - (i) a failure to comply with the Port Operator's obligations under these ring fencing rules may constitute a disciplinary offence and expose both the employee and the Port Operator to penalties for a breach of the TPA or WEMA; and
  - (ii) they should contact the Port Operator's legal department if they have any concerns regarding these ring fencing rules, including their application to any particular conduct, or the employee's adherence to them.
- (b) The Port Operator will provide and publish information and guidance to its employees to ensure, so far as is reasonably practicable, that they are made aware of their obligations under these ring fencing rules.
- (c) The Port Operator will provide training to its employees who:
  - (i) deal directly with Third Parties;
  - (ii) are involved directly in providing Third Parties with access to Port Terminal Services; and
  - (iii) have access to Receiving Specific Information;
 to ensure, so far as is reasonably practicable, that they are made aware of their obligations under these ring fencing rules.
- (d) If any Port Operator employee is knowingly involved in conduct that breaches these ring fencing rules, or any specific process created to implement these ring fencing rules, then without prejudice to any other action that the Port Operator may be required by law to take, or shall otherwise think appropriate:
  - (i) the conduct of that employee will be taken into account in relation to their performance appraisal and remuneration review; and

- (ii) that employee shall receive such training as determined by the Port Operator's compliance manager.
- (e) The Port Operator will make its employees aware that engaging in deliberate conduct in repeated or serious breach of these ring fencing rules will be grounds for dismissal.

## 12 **Complaints handling**

- (a) If a Third Party considers on reasonable and credible grounds that the Port Operator has not complied with these ring fencing rules, they may lodge a written complaint (including detailed grounds and supporting evidence for the complaint) with the CEO of the Port Operator Group.
- (b) A complaint must be referred to:
  - (i) the Operations Business' General Manager;
  - (ii) the Port Operator Group General Counsel; or
  - (iii) the Port Operator's compliance officer.
- (c) The Port Operator must conduct an internal investigation of the complaint, to determine whether there has been a compliance failure by the Port Operator.
- (d) If that investigation concludes that the Port Operator has committed a breach of these ring fencing rules, the Port Operator must:
  - (i) inform the complainant of that finding; and
  - (ii) if the Port Operator (acting reasonably) considers that the breach has:
    - (A) given rise to substantial financial loss to the complainant; or
    - (B) conferred an unfair substantial competitive advantage on any User; or
    - (C) occurred more than once in any three year period;
 the Port Operator must appoint an appropriately qualified external auditor to conduct a review of the breach and an investigation of the Port Operator's compliance with the relevant ring fencing rules.
- (e) The auditor will compile a report identifying:
  - (i) whether the Port Operator has complied with the ring fencing rules that were the subject of the investigations described in **items 12(c) and 12(d)(ii)**;
  - (ii) if the auditor determines that the Port Operator has not complied with these ring fencing rules, state the particulars of the non-compliance;
  - (iii) state the process adopted for the review; and
  - (iv) provide recommendations for appropriately addressing the compliance failure.

13      **Audit**

- (a) The Port Operator's compliance with these ring fencing rules, and the Port Operator's related processes and procedures, must be audited by an independent auditor at such times as the ACCC may reasonably direct, but not more than once in any 12 month period.
- (b) The Port Operator must select the independent auditor and must notify the ACCC of the appointment (including the auditor's name and qualifications).
- (c) The auditor shall review:
  - (i) records of any complaints;
  - (ii) the Port Operator's compliance with these ring fencing rules;
  - (iii) all relevant policies or procedures implemented under or otherwise relating to these ring fencing rules; and
  - (iv) any other issues relevant to the Port Operator's compliance with the principles and obligations under these ring fencing rules.
- (d) The auditor's report must be provided to the ACCC and include:
  - (i) recommendations for any necessary improvements in the Port Operator's policies or processes and any response by the Port Operator to those recommendations; and
  - (ii) a report on the Port Operator's past compliance with any recommendations previously made by an auditor in respect of these ring fencing rules.

# Schedule 3

## Port Terminal Facility - Geraldton

### 1 Port Terminal Facilities

#### 1.1 Location

The Geraldton port terminal is located in the Western Australian city of Geraldton, which is approximately 428km north of Perth. The port terminal address is Corner Marine Terrace and Crowther Street, Geraldton WA 6530.

#### 1.2 Port Terminal Facilities

- (a) The Port Terminal Facilities consist of the conveyors, elevators, sample rooms, grids, batch weighers, ship loaders and site roads owned by the Port Operator and contained in the shaded areas below.



(b) Grain receipt

- (i) 1 x 200 tonne weighbridge and 2 x 120 tonne weighbridges (located at west end depot).
- (ii) 1 x 1,000 tonne per hour road receipt bin and 4 x 500 tonne per hour road receipt bins across the port facility.
- (iii) 1 x 1,000 tonne per hour rail receipt station with associated rail line.
- (iv) 2 sampling stations.

- (v) 17 dust control systems.
  - (vi) 55 grain conveyors with 7 associated grain elevators.
- (c) Grain storage
- (i) The total grain storage capacity is 295,000 tonnes.
  - (ii) 24 x 2,200 tonne reinforced concrete vertical cells (current capacity is 1400 tonnes, until cell restoration is complete in 2011).
  - (iii) 14 x 500 tonne star cells with associated working house.
  - (iv) 14 x 10,000 tonne steel silos with self-discharging base and associated working house.
  - (v) 1 x 95,200 tonne capacity reinforced concrete horizontal storage cell.
- (d) Inload capacity
- (i) Rail
    - (A) The port terminal has one rail receipt station, which can also be used for road receipts when it is not being used by rail. The rail receipt station is rated to receive grain at 1,000 tonnes per hour by rail or by road.
    - (B) The grid into which the grain is received can discharge at a minimum of 400 tonnes per hour, up to 1,000 tonnes per hour. The rate of discharge is dependent upon the silo to which the grain is to be discharged.
    - (C) Various factors reduce the ability of the rail receipt station to receive grain at its rated capacity. These include:
      - (1) operational constraints and the need to handle multiple segregations, which adds time when changing between grains and grades;
      - (2) the physical configuration of rail wagons moving into the port terminal;
      - (3) external factors beyond the Port Operator's control, for example a rail provider's locomotive breakdown; and
      - (4) the Port Operator having to weigh grain on receipt using its batch weighers.
  - (ii) Road
    - (A) The port terminal has 5 road receipt stations. One is rated to receive grain at 1,000 tonnes per hour. The other 4 receipt stations are rated to receive grain at 500 tonnes per hour. In total, the Geraldton port terminal can receive grain by road at a maximum of 3,000 tonnes per hour.
    - (B) The 1,000 tonne per hour grid can discharge grain at a minimum of 400 tonnes per hour, up to 1,000 tonnes per



hour. The other 4 receival stations operate on a grid valve system, and can discharge grain at between 400 and 450 tonnes per hour.

(e) Ship loading capacity

The Geraldton port terminal has 2 luffing ship loaders, each rated to a loading capacity of 1,000 tonnes per hour. The operational capacity of the ship loaders averages between 950 and 1,400 tonnes per hour, depending on the following factors:

- (i) hatch changes – changing from one hatch to another affects loading rates, because of the time required to raise, move and lower the ship loaders into the required hatch. Hatch changes are necessary to keep the vessel stable during loading;
- (ii) trimming hatches – loading rates are reduced to ‘half feed’ when the grain comes close to filling a hatch. This is to prevent over-filling and allow instead for hatches to be level filled;
- (iii) filling weep holes and bulkheads – loading rates are also reduced to half feed when filling weep holes to allow flow to fill these areas. Due to the relatively light weight of grain (as compared with iron ore, for example) hatches must be filled to the highest level to achieve the maximum weight, and ensure there is no wasted space in the hatch;
- (iv) ballast discharge – some ships are not designed to discharge stabilising water tanks at the same rate as the ship loaders can load grain. In these cases, grain loading stops to allow the ship time to discharge ballast;
- (v) draught surveys – towards the end of the ship loading, grain flow from the loaders is stopped to allow the ship’s captain to check the ship’s draught. This is to ensure that the tonnage being loaded will allow the ship to sail and arrive at the discharge port;
- (vi) initial loading of large ships – due to the steep angle and height of the ship loaders which is necessary when loading larger ships, there is a reduced feed rate to avoid spillage. As the ship loading continues and the ship becomes lower in the water, the ship loaders can be lowered and feed rates increased;
- (vii) grain changes and separations in hatches – when changing from loading one grain type to another, all weighers, belts and loaders must be cleaned before the second grain type can be loaded. Loading will also stop if a physical separation of grain is required in the ship’s hatches; and
- (viii) weather – grain cannot be loaded on ships in rain or high winds.

- (f) Associated system control and communication networks, Site office, ablution and workshop facilities.
- (g) The port terminal is accredited to the international standard ISO 9001 and HACCP Codex Alimentarius.

## 2 Port Terminal Services

The Port Operator will provide the following Port Terminal Services.

### 2.1 Receival

The Port Operator will receive the User's Bulk Wheat by rail and road on a 24 hours per day/7 days per week basis, for the purpose of export accumulation for loading onto vessels at the Port Terminal Facility.

### 2.2 Sampling

When receiving the User's Bulk Wheat, the Port Operator will sample the Bulk Wheat to check for visible evidence of the presence of chemical residue, insect activity and live insects or other contaminants, for the purpose of minimising the risk of the User's Bulk Wheat contaminating any other grain held at the Port Terminal Facility. Sampling will be conducted by automated equipment attached to the elevator and will be delivered to the Port Operator's sample room.

### 2.3 Weighing

When the User's Bulk Wheat is received it will be weighed using the Port Operator's weighing facilities (comprising truck weighbridge and batch weighers), and the Port Operator will provide the User with a weighbridge ticket or other statement certifying the weight and quantity of wheat delivered. The batch weigher throughput is 600 tonnes per hour, however it cannot be used while grain is being loaded onto a vessel.

### 2.4 Storage

The User's Bulk Wheat will be stored at the Port Terminal Facility in segregation from all other Bulk Wheat and other grain at the Port Terminal Facility, for the purpose of export accumulation and loading onto vessels at the Port Terminal Facility.

### 2.5 Out-turning

The User's Bulk Wheat received at the Port Terminal Facility will be out-turned and loaded onto the User's nominated vessel. The Port Operator will weigh all the User's out-turned Bulk Wheat using its certified batch weighers.

### 2.6 AQIS

The Port Operator will make the User's Bulk Wheat held at the Port Terminal Facility available for inspection by AQIS inspectors during the vessel loading process.

## **2.7 Loading sampling**

The Port Operator will provide a composite shipping sample of the User's Bulk Wheat, which the User must collect.

# Schedule 4

## Port Terminal Facility - Kwinana

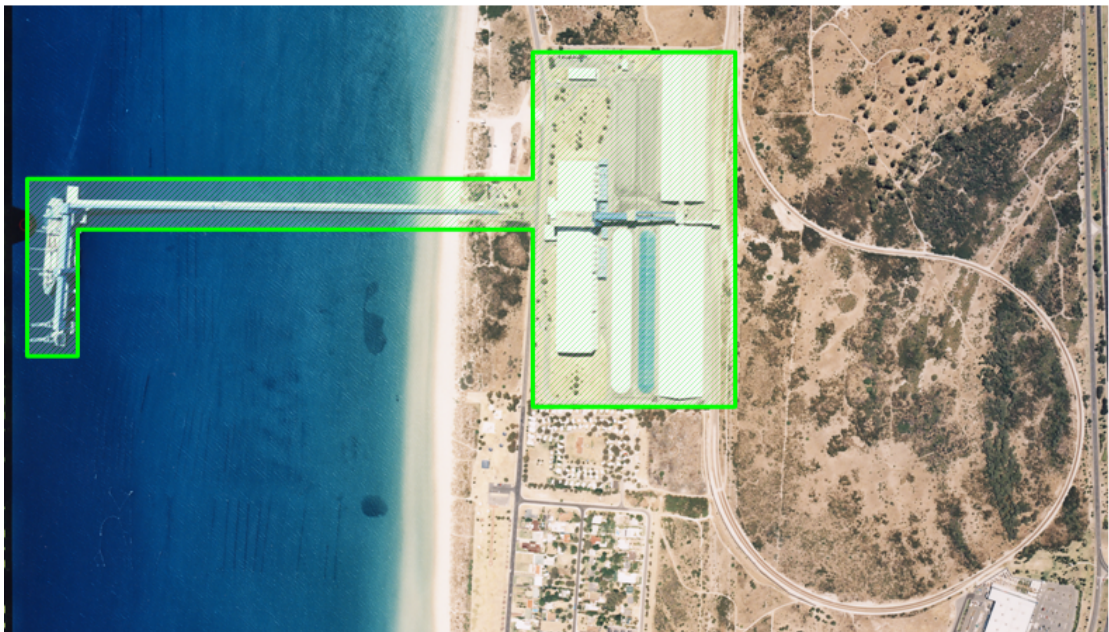
### 1 Port Terminal Facilities

#### 1.1 Location

The Kwinana port terminal is located in the Kwinana industrial area of Western Australia, approximately 40km south Perth. The port terminal address is Rockingham Beach Road, Kwinana Beach WA 6167.

#### 1.2 Port Terminal Facilities

- (a) The Port Terminal Facilities consist of the conveyors, elevators, sample rooms, grids, batch weighers, ship loaders and site roads owned by the Port Operator and contained in the shaded areas below. The rail loop is also included, but not the land surrounding the loop.



(b) Grain receival

- (i) 1 x 4,000 tonne per hour rail receival station with associated rail loop.
- (ii) 76 grain conveyors with 14 associated grain elevators.
- (iii) 34 x dust control systems.

- (iv) 1 x 160 tonne certified weighbridge.
- (c) Grain storage
  - (i) The total grain storage capacity is 1,013,900 tonnes.
  - (ii) 144 x 2,350 tonne reinforced concrete vertical cells with associated working house (due to high level sensors and purge capacity, the operational capacity of these cells is 2,200 tonnes each).
  - (iii) 104 x 500 tonne star cells with associated working house (due to high level sensors and purge capacity, the operational capacity of these cells is 450 tonnes each).
  - (iv) 1 x 285,800 tonne and 1 x 238,100 tonne capacity reinforced concrete horizontal storage cells with associated working house (the capacity of these cells is based on one grain type – when segregated, storage capacity in these cells is reduced).
  - (v) 4 x corrugated galvanised steel open bulkheads with a total capacity of 120,100 tonnes, comprised of:
    - (A) O1: 30,100 tonnes
    - (B) O2: 40,000 tonnes;
    - (C) O3: 23,000 tonnes;
    - (D) O4: 27,000 tonnes.
- (d) Inload capacity
  - (i) Rail
    - (A) The port terminal has 1 rail receival station, which is comprised of 2 receival grids. The rail receival grids can also be used for road receivals. When shipping demand requires, rail accumulation tonnage is supplemented with road receivals. The receival grids are rated to receive grain at 4,000 tonnes per hour by rail, and 700 tonnes per hour by road.
    - (B) Operational constraints and the need to handle multiple grain segregations severely impact the port terminal's ability to achieve the rated rail receival capacity of 4,000 tonnes per hour. For example, changing the receival facilities to swap between receiving two grades of wheat takes 15-30 minutes. The process involves emptying the receival grid, purging the receival lines and moving trippers in the seventh floor workhouse. Changing the receival facilities to swap from receiving wheat to lupins can take 20-40 minutes, as this process additionally requires the grid to be blown down and the receival elevators to be air blasted.
    - (C) The physical configuration of rail wagons for discharge can also affect the ability of the receival station to operate at maximum capacity. This is because the grain discharges

from the wagons into the grid at a slower pace than the conveyors are able to remove it. The trains move slowly for set ups and the train must be stationary to allow the Port Operator to open wagons with the rail gun.

- (D) Various other factors reduce the ability of the rail receipt station to receive grain at its rated capacity. These include:
- (1) operational constraints and the need to handle multiple segregations, which adds time when changing between grains and grades;
  - (2) the physical configuration of rail wagons moving into the port terminal;
  - (3) external factors beyond the Port Operator's control, for example a rail provider's locomotive breakdown; and
  - (4) the Port Operator having to weigh grain on receipt using its batch weighers.

(ii) Road

The port terminal does not have permanent dedicated road inloading facilities but may employ temporary drive-over grids in dry weather. Road receipts made through the rail receipt station reduce rail discharge rates by 25% to 50%. As a result of reducing the available discharge conveyors for the discharge of rail, they are discharged using the same conveyor belts and cannot be run together.

(e) Ship loading capacity

- (i) Ship loading occurs between 0730 and 2230, because :
- (A) ships need time to empty their ballast. Due to the fast loading rate at Kwinana, some ships cannot empty their ballast tanks fast enough, so they are allocated time from 2230 and 0730 to catch up; and
  - (B) as part of the Port Operator's environmental commitments to keep dust and noise to a minimum for residents, the Port Operator does not load ships at the port terminal 24 hours per day.
- (ii) 4 x 2,500 tonne per hour travelling and luffing ship loaders (only 2 can be used simultaneously) with associated batch weighing and sampling systems. The ship loaders are fed by 4 conveyor belts, each with a loading capacity of 1,250 tonnes per hour. Because the ship loaders are dual fed (that is, 2 conveyors feed 1 loader), ships can be loaded at full capacity through less infrastructure.
- (iii) 291 metre long ship loading berth with associated access jetty.

- (iv) A number of factors influence the port terminal's ability to achieve its maximum shipping capacity of 5,000 tonnes per hour. These include:
  - (A) hatch changes – changing from one hatch to another affects loading rates, because of the time required to raise, move and lower the ship loaders into the required hatch. Hatch changes are necessary to keep the vessel stable during loading;
  - (B) trimming hatches – loading rates are reduced to 'half feed' when the grain comes close to filling a hatch. This is to prevent over-filling and allow instead for hatches to be level filled;
  - (C) filling weep holes and bulkheads – loading rates are also reduced to half feed when filling weep holes to allow flow to fill these areas. Due to the relatively light weight of grain (as compared with iron ore, for example) hatches must be filled to the highest level to achieve the maximum weight, and ensure there is no wasted space in the hatch;
  - (D) ballast discharge – some ships are not designed to discharge stabilising water tanks at the same rate as the ship loaders can load grain. In these cases, grain loading stops to allow the ship time to discharge ballast;
  - (E) draught surveys – towards the end of the ship loading, grain flow from the loaders is stopped to allow the ship's captain to check the ship's draught. This is to ensure that the tonnage being loaded will allow the ship to sail and arrive at the discharge port;
  - (F) initial loading of large ships – due to the steep angle and height of the ship loaders which is necessary when loading larger ships, there is a reduced feed rate to avoid spillage. As the ship loading continues and the ship becomes lower in the water, the ship loaders can be lowered and feed rates increased;
  - (G) grain changes and separations in hatches – when changing from loading one grain type to another, all weighers, belts and loaders must be cleaned before the second grain type can be loaded. Loading will also stop if a physical separation of grain is required in the ship's hatches; and
  - (H) weather – grain cannot be loaded on ships in rain or high winds.
- (f) Associated system control and communication networks, Site office, ablution and workshop facilities.
- (g) The port terminal is accredited to the international standard ISO 9001 and HACCP Codex Alimentarius.

## **2 Port Terminal Services**

The Port Operator will provide the following Port Terminal Services.

### **2.1 Receival**

The Port Operator will receive the User's Bulk Wheat by rail and road on a 24 hours per day/7 days per week basis, for the purpose of export accumulation for loading onto vessels at the Port Terminal Facility.

### **2.2 Sampling**

When receiving the User's Bulk Wheat, the Port Operator will sample the Bulk Wheat to check for visible evidence of the presence of chemical residue, insect activity and live insects or other contaminants, for the purpose of minimising the risk of the User's Bulk Wheat contaminating any other grain held at the Port Terminal Facility. Sampling will be conducted by automated equipment attached to the elevator and will be delivered to the Port Operator's sample room.

### **2.3 Weighing**

When the User's Bulk Wheat is received it will be weighed using the Port Operator's weighing facilities (comprising truck weighbridge and batch weighers), and the Port Operator will provide the User with a weighbridge ticket or other statement certifying the weight and quantity of wheat delivered. The batch weigher throughput is 1,000 tonnes per hour, however it cannot be used while grain is being loaded onto a vessel.

### **2.4 Storage**

The User's Bulk Wheat will be stored at the Port Terminal Facility in segregation from all other Bulk Wheat and other grain at the Port Terminal Facility, for the purpose of export accumulation and loading onto vessels at the Port Terminal Facility.

### **2.5 Out-turning**

The User's Bulk Wheat received at the Port Terminal Facility will be out-turned and loaded onto the User's nominated vessel. The Port Operator will weigh all the User's out-turned Bulk Wheat using its certified batch weighers.

### **2.6 AQIS**

The Port Operator will make the User's Bulk Wheat held at the Port Terminal Facility available for inspection by AQIS inspectors during the vessel loading process.

### **2.7 Loading sampling**

The Port Operator will provide a composite shipping sample of the User's Bulk Wheat, which the User must collect.



# Schedule 5

## Port Terminal Facility - Albany

### 1 Description of Port

#### 1.1 Location

The Albany port terminal is located in the Western Australian city of Albany, which is approximately 420km south east of Perth. The port terminal address is Princess Royal Drive, Albany WA 6330.

#### 1.2 Port Terminal Facilities

- (a) The Port Terminal Facilities consist of the conveyors, elevators, sample rooms, grids, batch weighers, ship loaders and site roads owned by the Port Operator and contained in the shaded areas below. The sample sheds related to harvest activity are within the shaded area, but are not included in the Port Terminal Facilities.



(b) Grain receival

- (i) 2 x 140 tonne weighbridges with associated hut.
- (ii) 2 x 700 tonne per hour and 3 x 400 tonne per hour road receival grids.
- (iii) 1 x 700 tonne per hour road receival grid (which only services one particular 113,000 tonne capacity storage cell).

- (iv) 1 x 2000 tonne per hour rail receipt station with associated rail line.
  - (v) 12 x dust control systems.
  - (vi) 59 grain conveyors with 16 associated grain elevators (some are task specific, such as for discharging by rail or shipping).
- (c) Grain storage
- (i) The port terminal's total storage capacity is 474,000 tonnes.
  - (ii) 2 x 2,200 tonne and 5 x 1300 reinforced concrete vertical cells and 6 x 500 tonne star cells with associated working house.
  - (iii) 24 x 2,300 tonne reinforced concrete vertical cells.
  - (iv) 12 x 500 tonne star cells.
  - (v) 10 x 10,000 tonne reinforced concrete silos with bottom rake discharge.
  - (vi) 10 x 6,000 tonne steel silos with self discharge base.
  - (vii) 1 x 120,000 tonne and 1 x 113,000 tonne capacity reinforced concrete horizontal storage cells.
- (d) Inload capacity
- (i) Rail
    - (A) The port terminal has 1 rail receipt station, which can also be used for road receipts (when not in use for rail receipts). The rail receipt station is rated to receive grain at 2,000 tonnes per hour by rail, and 1,000 tonnes per hour by road.
    - (B) To receive grain by rail at 2,000 tonnes per hour, the rail receipt station must have two lines and two storage cells available for use. Additional staff are also required to discharge at this maximum rate. The rate of discharge is also dependent upon the silo to which the grain is to be discharged. For example, if the grain is to be discharged to either the 500 or 2,000 tonne cells, the discharge rate from the rail receipt station is only 400 tonnes per hour. On average, wheat is discharged from the rail receipt station at around 1,300 tonnes per hour
    - (C) Various factors reduce the ability of the rail receipt station to receive grain at its rated capacity. These include:
      - (1) operational constraints and the need to handle multiple segregations, which adds time when changing between grains and grades;
      - (2) the physical configuration of rail wagons moving into the port terminal;

- (3) external factors beyond the Port Operator's control, for example a rail provider's locomotive breakdown; and
  - (4) the Port Operator having to weigh grain on receipt using its batch weighers.
- (ii) Road
  - (A) The port terminal has 6 road receipt stations. There are 2 stations rated to receive grain at 700 tonnes per hour, 3 stations rated to receive grain at 400 tonnes per hour and 1 station rated to receive grain at 700 tonnes per hour (this station is at Annexe 2, which is a different area of the port).
  - (B) The number of grids that can be used simultaneously largely depends on the rail, shipping and transferring activities being carried out at the same time. The control system only allows a set number of grain flows to be set up at once. For example, if shipping a 4-way blend of grain, 8 flows are required (4 flowing into the weigher, 4 flowing out) leaving only 4 flows for other activities.
  - (C) Once storage space begins to reach its capacity, both storage options and flow path options reduce. The number of road pits available for use may also reduce. Segregating grain will increase the likelihood of this.
  - (D) The rail grid is rated at 1000 tonnes per hour for road discharge. The 3 road grids are rated at 700 tonnes per hour. However, the actual discharge rate achieved is around 500 tonnes per hour, which is the maximum rate at which a truck can discharge 3 trailers.
- (e) Ship loading capacity
  - (i) The Albany port terminal has 3 luff and swing ship loaders with associated batch weighing and sampling systems, each with a rated loading capacity of 1,000 tonnes per hour. While any 2 ship loaders can be used simultaneously, the actual load rate achieved is on average 1,500 tonnes per hour.
  - (ii) A number of factors influence the port terminal's ability to achieve its maximum shipping capacity of 2,000 tonnes per hour. These include:
    - (A) hatch changes – changing from one hatch to another affects loading rates, because of the time required to raise, move and lower the ship loaders into the required hatch. Hatch changes are necessary to keep the vessel stable during loading;
    - (B) trimming hatches – loading rates are reduced to 'half feed' when the grain comes close to filling a hatch. This is to

prevent over-filling and allow instead for hatches to be level filled;

- (C) filling weep holes and bulkheads – loading rates are also reduced to half feed when filling weep holes to allow flow to fill these areas. Due to the relatively light weight of grain (as compared with iron ore, for example) hatches must be filled to the highest level to achieve the maximum weight, and ensure there is no wasted space in the hatch;
  - (D) ballast discharge – some ships are not designed to discharge stabilising water tanks at the same rate as the ship loaders can load grain. In these cases, grain loading stops to allow the ship time to discharge ballast;
  - (E) draught surveys – towards the end of the ship loading, grain flow from the loaders is stopped to allow the ship's captain to check the ship's draught. This is to ensure that the tonnage being loaded will allow the ship to sail and arrive at the discharge port;
  - (F) initial loading of large ships – due to the steep angle and height of the ship loaders which is necessary when loading larger ships, there is a reduced feed rate to avoid spillage. As the ship loading continues and the ship becomes lower in the water, the ship loaders can be lowered and feed rates increased;
  - (G) grain changes and separations in hatches – when changing from loading one grain type to another, all weighers, belts and loaders must be cleaned before the second grain type can be loaded. Loading will also stop if a physical separation of grain is required in the ship's hatches; and
  - (H) weather – grain cannot be loaded on ships in rain or high winds.
- (f) Associated system control and communication networks, Site office, ablution and workshop facilities.
  - (g) The port terminal is accreditation to the international standard ISO 9001 and HACCP Codex Alimentarius.

## 2 Port Terminal Services

The Port Operator will provide the following Port Terminal Services.

### 2.1 Receival

The Port Operator will receive the User's Bulk Wheat by rail and road on a 24 hours per day/7 days per week basis, for the purpose of export accumulation for loading onto vessels at the Port Terminal Facility.

## **2.2 Sampling**

When receiving the User's Bulk Wheat, the Port Operator will sample the Bulk Wheat to check for visible evidence of the presence of chemical residue, insect activity and live insects or other contaminants, for the purpose of minimising the risk of the User's Bulk Wheat contaminating any other grain held at the Port Terminal Facility. Sampling will be conducted by automated equipment attached to the elevator and will be delivered to the Port Operator's sample room.

## **2.3 Weighing**

When the User's Bulk Wheat is received it will be weighed using the Port Operator's weighing facilities (comprising truck weighbridge and batch weighers), and the Port Operator will provide the User with a weighbridge ticket or other statement certifying the weight and quantity of wheat delivered. The batch weigher throughput is 400 tonnes per hour, however it cannot be used while grain is being loaded onto a vessel.

## **2.4 Storage**

The User's Bulk Wheat will be stored at the Port Terminal Facility in segregation from all other Bulk Wheat and other grain at the Port Terminal Facility, for the purpose of export accumulation and loading onto vessels at the Port Terminal Facility.

## **2.5 Out-turning**

The User's Bulk Wheat received at the Port Terminal Facility will be out-turned and loaded onto the User's nominated vessel. The Port Operator will weigh all the User's out-turned Bulk Wheat using its certified batch weighers.

## **2.6 AQIS**

The Port Operator will make the User's Bulk Wheat held at the Port Terminal Facility available for inspection by AQIS inspectors during the vessel loading process.

## **2.7 Loading sampling**

The Port Operator will provide a composite shipping sample of the User's Bulk Wheat, which the User must collect.

# Schedule 6

## Port Terminal Facility - Esperance

### 1 Description of Port

#### 1.1 Location

The Esperance port terminal is located in the Western Australian city of Esperance, which is approximately 721km south-east of Perth. The port terminal address is Corner Harbour Road and Esplanade, Esperance WA 6450.

#### 1.2 Port Terminal Facilities

- (a) The Port Terminal Facilities consist of the conveyors, elevators, sample rooms, grids, batch weighers, ship loaders and site roads owned by the Port Operator and contained in the shaded area in figure 1 below.
- (b) The weighbridge and access roads at Chadwick, approximately 3km from the Esperance port terminal, also form part of the Port Terminal Facilities, and are contained in the shaded area in figure 2 below.

Figure 1

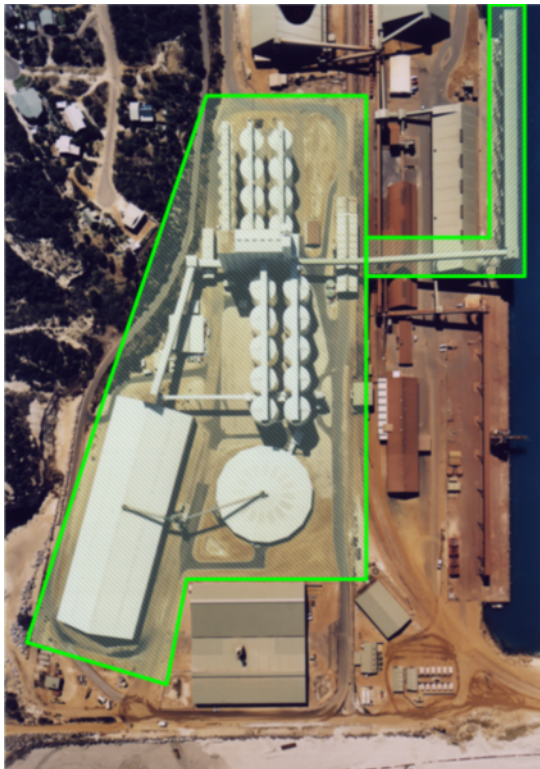


Figure 2



- (c) Grain receipt
  - (i) 5 road receipt bins:
    - (A) 2 x 800 tonne per hour;
    - (B) 2 x 200 tonne per hour; and
    - (C) 1 x 500 tonne per hour.
  - (ii) 1 x 800 tonne per hour rail receipt station with associated rail line.
  - (iii) 15 dust control systems.
  - (iv) 47 grain conveyors with 12 associated grain elevators,
  - (v) 1 sampling station located at the Chadwick depot.
  - (vi) 1 x 180 tonne weighbridge located at the Chadwick depot.
- (d) Grain storage
  - (i) The port terminal's total storage capacity is 249,400 tonnes.
  - (ii) 8 x 5,000 tonne steel silos.
  - (iii) 8 x 2,100 tonne concrete silos.
  - (iv) 10 x 6,000 tonne steel silos with self discharging base and associated working house.
  - (v) 101,600 tonne capacity reinforced concrete horizontal storage cell.
  - (vi) 31,000 tonne capacity corrugated galvanized steel circular storage cell.
- (e) Inload capacity
  - (i) Rail
    - (A) The port terminal has 1 rail receipt grid, which can also be used for road receipts. The rail receipt grid is rated to receive grain at 800 tonnes per hour by rail and by road.
    - (B) The operational capacity of the rail receipt grid, and the rate at which it is able to receive grain, depends upon the type of grain being received and the destination silo of that grain. The following rates are based on wheat receipts:
      - (1) 800 tonnes per hour when grain moving to 10 x 6,000 tonne cells;
      - (2) 400 tonnes per hour when grain moving to 8 x 5,000 tonne cells;
      - (3) 250 tonnes per hour when grain moving to 8 x 2,100 tonne cells;
      - (4) 500 tonnes per hour when grain moving to horizontal storage; and

- (5) 500 tonnes per hour when grain moving to circular storage.
- (C) Various factors reduce the ability of the rail receipt station to receive grain at its rated capacity. These include:
  - (1) operational constraints and the need to handle multiple segregations, which adds time when changing between grains and grades;
  - (2) the physical configuration of rail wagons moving into the port terminal;
  - (3) external factors beyond the Port Operator's control, for example a rail provider's locomotive breakdown; and
  - (4) the Port Operator having to weigh grain on receipt using its batch weighers.
- (ii) Road
  - (A) The port terminal has 5 road receipt stations:
    - (1) Grids 1 & 2 can receive grain at 800 tonnes per hour;
    - (2) Grids 3 & 4 can receive grain at 200 tonnes per hour; and
    - (3) Grid 5 can receive grain at 500 tonnes per hour.
  - (B) The road receipt grids are limited to servicing specific storages within the port terminal:
    - (1) Grids 1 & 2 fill can fill anywhere within the terminal and are used as the main discharge grids;
    - (2) Grids 3 & 4 are used to fill the small concrete cells and annexe; and
    - (3) Grid 5 fills part of the annexe and circular storage.
- (f) Ship loading capacity
  - (i) The Esperance port terminal has 7 fixed shipping spouts, with a combined total rated loading capacity of 2,500 tonnes per hour, with associated batch weighing and sampling systems. The port terminal has the ability to load ships using 2 spouts loading into 2 hatches simultaneously, with each being able to load 1,250 tonnes per hour (depending on grain type and cargo position in the terminal). The Port Operator endeavours to position cargo so that ships can be loaded at the maximum rate. However, vessel requirements and weather delays must be taken into account. Given these restrictions, the port terminal aims to achieve an overall 1,800 tonnes per hour loading rate.
  - (ii) Ship loading rates at the port terminal are affected by the following factors:



- (A) hatch changes – changing from one hatch to another affects loading rates, because of the time required to raise, move and lower the ship loaders into the required hatch. Hatch changes are necessary to keep the vessel stable during loading;
  - (B) trimming hatches – loading rates are reduced to ‘half feed’ when the grain comes close to filling a hatch. This is to prevent over-filling and allow instead for hatches to be level filled;
  - (C) filling weep holes and bulkheads – loading rates are also reduced to half feed when filling weep holes to allow flow to fill these areas. Due to the relatively light weight of grain (as compared with iron ore, for example) hatches must be filled to the highest level to achieve the maximum weight, and ensure there is no wasted space in the hatch;
  - (D) ballast discharge – some ships are not designed to discharge stabilising water tanks at the same rate as the ship loaders can load grain. In these cases, grain loading stops to allow the ship time to discharge ballast;
  - (E) draught surveys – towards the end of the ship loading, grain flow from the loaders is stopped to allow the ship’s captain to check the ship’s draught. This is to ensure that the tonnage being loaded will allow the ship to sail and arrive at the discharge port;
  - (F) initial loading of large ships – due to the steep angle and height of the ship loaders which is necessary when loading larger ships, there is a reduced feed rate to avoid spillage. As the ship loading continues and the ship becomes lower in the water, the ship loaders can be lowered and feed rates increased;
  - (G) grain changes and separations in hatches – when changing from loading one grain type to another, all weighers, belts and loaders must be cleaned before the second grain type can be loaded. Loading will also stop if a physical separation of grain is required in the ship’s hatches; and
  - (H) weather – grain cannot be loaded on ships in rain or high winds.
- (g) Associated system control and communication networks, Site office, ablution and workshop facilities.
  - (h) The port terminal is accreditation to the international standard ISO 9001 and HACCP Codex Alimentarius.

## **2 Port Terminal Services**

The Port Operator will provide the following Port Terminal Services.

### **2.1 Receival**

The Port Operator will receive the User's Bulk Wheat by rail and road on a 24 hours per day/7 days per week basis, for the purpose of export accumulation for loading onto vessels at the Port Terminal Facility.

### **2.2 Sampling**

When receiving the User's Bulk Wheat, the Port Operator will sample the Bulk Wheat to check for visible evidence of the presence of chemical residue, insect activity and live insects or other contaminants, for the purpose of minimising the risk of the User's Bulk Wheat contaminating any other grain held at the Port Terminal Facility. Sampling will be conducted by automated equipment attached to the elevator and will be delivered to the Port Operator's sample room.

### **2.3 Weighing**

When the User's Bulk Wheat is received it will be weighed using the Port Operator's weighing facilities (comprising truck weighbridge and batch weighers), and the Port Operator will provide the User with a weighbridge ticket or other statement certifying the weight and quantity of wheat delivered. The batch weigher throughput is 400 tonnes per hour, however it cannot be used while grain is being loaded onto a vessel.

### **2.4 Storage**

The User's Bulk Wheat will be stored at the Port Terminal Facility in segregation from all other Bulk Wheat and other grain at the Port Terminal Facility, for the purpose of export accumulation and loading onto vessels at the Port Terminal Facility.

### **2.5 Out-turning**

The User's Bulk Wheat received at the Port Terminal Facility will be out-turned and loaded onto the User's nominated vessel. The Port Operator will weigh all the User's out-turned Bulk Wheat using its certified batch weighers.

### **2.6 AQIS**

The Port Operator will make the User's Bulk Wheat held at the Port Terminal Facility available for inspection by AQIS inspectors during the vessel loading process.

### **2.7 Loading sampling**

The Port Operator will provide a composite shipping sample of the User's Bulk Wheat, which the User must collect.