



**GRAINCORP OPERATIONS LIMITED**

**(ABN: 52 003 875 401)**

**DRAFT WHEAT PORT TERMINAL SERVICES AGREEMENT ("Agreement")**

**2009/2010 SEASON**

Date:

Parties:

**GRAINCORP OPERATIONS LIMITED (ACN 003 875 401)**

of Level 26, 175 Liverpool Street, Sydney, NSW, 2000 ("**GrainCorp**")

and:

Client Name:	
Address 1:	
Address 2:	
ABN / ACN :	
Client Contact:	
Phone:	
Fax:	
Email:	
Client Code:	

**("Client")**

## **1. CONSIDERATION & TERM OF AGREEMENT**

1.1. In consideration of the Client:

- (a) paying to GrainCorp the Fees payable under this Agreement; and
- (b) complying with the terms and conditions of this Agreement,

GrainCorp agrees to provide services to the Client at a nominated Port Terminal owned by GrainCorp for the storage, handling, sampling, testing, weighing and loading to vessel, rail wagon (where available) or road truck of the Client's Wheat ("**Services**") in accordance with the terms and conditions set out in this Agreement.

1.2 This Agreement applies to all Services supplied by GrainCorp for or on behalf of the Client in relation to the Client's Wheat in the period commencing on 1 October 2009 ("**Commencement Date**") and concluding on 30 September 2010 ("**Termination Date**") ("**Term**").

- 1.3 This Agreement shall be deemed to have been accepted by the Client and the Client and GrainCorp will be bound by the terms and conditions of this Agreement from the earlier of:
- (i) the later date of execution of this Agreement by either party; or
  - (ii) the date that GrainCorp provides any Services at a Port Terminal for or on behalf of the Client during the Term.
- 1.4 On and from the Commencement Date, this Agreement supersedes any prior agreement between the parties that relates to the Services.

## **2. SCOPE OF AGREEMENT**

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- 2.1. This Agreement applies to the Services provided by GrainCorp for the Client at a nominated Port Terminal, including in relation to:
- (a) Wheat physically received into the Port Terminal directly from or on behalf of the Client;
  - (b) Wheat which is transferred to the Client where the transferred Wheat was the subject of a Grower Warehouse Agreement; and
  - (c) Wheat which is transferred to the Client where the transferred Wheat was the subject of a Port Terminal Services Agreement or a Storage and Handling Agreement.
- 2.2. During the Term, GrainCorp will sample, provide quality testing services for, weigh, store and load to vessel or (if available) rail or (if available) road transport, all Wheat received by it under the terms of this Agreement.
- 2.3. The terms of this Agreement do not extend to loading Wheat into shipping containers at Port Terminals. Other than as set out here, the terms for loading containers are the subject of separate terms and conditions which may be agreed between the parties.
- 2.4. These terms and conditions do not extend to the importation of Wheat from vessels at the Port Terminal which are subject to separate terms and conditions between the parties.
- 2.5. This Agreement is not an open offer or a representation that GrainCorp will provide the Services to the Client for any minimum or maximum quantity or quality of Wheat, nor is it a representation that GrainCorp will provide the Services for all of the Client's requirements. Where GrainCorp does provide the Services, it does so in compliance with the terms of this Agreement which include the annexures, and both parties commit to the procedures outlined in the Agreement.
- 2.6. The Client acknowledges that Annexure A which forms part of this Agreement may be amended by GrainCorp providing at least 30 days prior written notice to the Client. Following this notice period, the revised Annexure A will form part of the Agreement and shall apply retrospectively unless and to the extent that the amendments relate to pricing for Services.
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### **3. SERVICES PROVIDED BY GRAINCORP UNDER THIS AGREEMENT**

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#### **Receival of Wheat**

- 3.1. During the Term of this Agreement GrainCorp will use its reasonable endeavours to receive Wheat into the Port Terminal in accordance with the Client's request and subject to any restrictions, limitations or other conditions in this Agreement. At all times GrainCorp retains the final discretion as to what specifications and quantities of Wheat it will receive into the Port Terminal.
- 3.2. GrainCorp will only receive Wheat at Port Terminals from sources other than Country Sites where the Client and the Wheat it seeks to deliver, satisfy the terms and conditions specified in Annexure A: *Wheat Port Terminal Services and Fees Schedule* and Annexure B: *Port Terminal Services Protocol*.
- 3.3. Notwithstanding any other provision of this Agreement, the Client acknowledges that:
  - (a) Wheat received and stored by GrainCorp may be stored in common (i.e. commingled) with Wheat received from other GrainCorp clients, and Wheat may be segregated due to, but not limited to, pesticide residues, genetic status and phytosanitary requirements;
  - (b) Wheat received and stored by GrainCorp of Feed Grade for stock feed consumption may be commingled with Wheat of the same type and grade but of a different growing season;
  - (c) it understands and has advised all of its suppliers, that Wheat suspected to contain residues or which may otherwise be contaminated may **not** be delivered to or accepted at any GrainCorp facility. If such delivery is made for or on behalf of the Client, GrainCorp will not be responsible to any party for any Claim of Loss howsoever alleged or suffered; and
  - (d) this Agreement shall not be construed as a lease or licence of any storage facilities or land upon which any storage facility is located.
- 3.4. For the purposes of this Agreement, the grade of Wheat will be determined by GrainCorp in accordance with the Approved Receival Specifications and Sampling Methodology unless otherwise agreed in advance of any testing or sampling by GrainCorp, and in writing between GrainCorp and the Client.

#### **Quality Testing Services**

- 3.5. Where Wheat has been received into Country Sites, the same grade classification of this Wheat given at the Country Site will apply to Wheat being received into the Port Terminals.
- 3.6. GrainCorp will provide protein, moisture, screenings, defective grain and contaminant testing services for Wheat prior to or following receival at Port Terminals. GrainCorp will provide falling number testing of Wheat upon receival at Port Terminals as determined by GrainCorp. Wheat analysis resulting in grade or scale classification will be performed using instruments which comply with the provisions of the Commonwealth Government's National Measurement Act (1960)

and National Measurement Regulations (1999). All other testing will be performed in accordance with the Approved Receival Standards and Sampling Methodology for the relevant Wheat type and grade.

- 3.7. GrainCorp defines "Nil" as less than 0.05% by weight where a Nil tolerance is specified in the Approved Receival Specification.

### **Pest Control**

- 3.8. Unless otherwise agreed in advance by the parties in writing, GrainCorp may treat all Wheat with approved chemicals or treatments as per applicable codes and regulations including the Australian Pesticides and Veterinary Medicines Authority and Food Safety Australia and New Zealand codes. GrainCorp will provide a list of approved chemicals and treatments to the Client on an annual basis.
- 3.9. If the Client requests and GrainCorp agrees to a different chemical or treatment strategy for a specific Port Terminal, an additional fee may be charged by GrainCorp and payable by the Client for the agreed treatment.
- 3.10. Where fumigation or other certificates are required by the Client, GrainCorp will apply a charge for the administration of these certificates. Any certification requirements must be lodged as part of a Cargo Nomination Application.
- 3.11. GrainCorp will regularly inspect Wheat stored for the Client. If infestation is detected in Wheat arriving at the Port Terminal from a Country Site, the Wheat will be disinfested and treated at GrainCorp's cost. If infestation is detected in Wheat arriving at the Port Terminal which is not sourced from a Country Site, the Wheat will be disinfested at the Client's risk and cost. Applicable fees for this service are detailed in Annexure A. GrainCorp is not required to obtain the Client's approval to disinfest Wheat but will advise the Client of the infestation and any disinfestation performed.

### **Outloading of Wheat**

- 3.12. If a Client wishes to remove a tonnage of Wheat (being all or part of its Stock Balance) from a Port Terminal by loading rail or road transport, the Client must complete and execute a GrainCorp approved Grain Stock Order Form and follow the procedure set out in the instructions on that form. GrainCorp is not required to load Wheat until:
- (a) the Grain Stock Order Form has been properly completed and executed by the Client to GrainCorp's satisfaction; and
  - (b) the procedures set out on the Grain Stock Order Form have been followed to GrainCorp's satisfaction.

The minimum period for notifying GrainCorp of rail outloading is 12 noon on Monday (or the next working day if the Monday is a public holiday in the state of Queensland from where GrainCorp manages its company wide logistics operations) in the week prior to the week that the Client requires the outloading services.

The minimum period for notifying GrainCorp for road outloading services, is prior to 3pm on the business day (in the state of Queensland from where GrainCorp manages

it's company wide logistics operations) before the date that the Client requires the outloading Services.

The Client must ensure that its road transport provider advises GrainCorp of vehicle registration details in writing, by 5pm on the business day prior to the date when the outloading services are to be performed. If the Client uses the GrainCorp web truck booking program (available at [www.graincorp.com.au](http://www.graincorp.com.au)) this notice period will be extended to 6:00am on the day of outloading.

The Client must provide destination details for all road orders.

The outloading notification requirement may change from time to time and if so, it will be advised by GrainCorp. The loading out of Wheat is subject to local operating arrangements, availability of rail and road transport, fumigation requirements and periods of non access and prevailing weather conditions.

- 3.13. If a Client wishes to remove a tonnage of Wheat (being all or part of its Stock Balance) from a Port Terminal by loading to a vessel, the Client and GrainCorp must follow and is bound by the protocols and procedures as outlined in Annexure B of this Agreement.
- 3.14. Once Wheat is removed from a Port Terminal (ordinarily determined as the point where the Wheat passes over the rail of the vessel/ vehicle/rail carriage):
  - (a) As per Clauses 6.1-6.9, the Wheat no longer forms part of the Stored Wheat and the Client becomes the full owner of that Wheat bearing all risk and responsibility; and
  - (b) the GrainCorp Stock Management System will be updated either manually or automatically to reflect the remaining Interest (if any) of the Client.

### **Preconditions to Any Outturning or Outloading Services**

Without limiting any other provision in this Agreement, the following preconditions apply before any outloading or outturning Services are to be provided:

- 3.15. GrainCorp relies on the Client to have in place, and in turn, the Client warrants that it shall have in place and maintain at all times during the Term, an appropriate and unconditional wheat export licence and any accreditation or similar as required under any law or by any government body ("Accreditation Requirements"). The Client undertakes not to request any outturning or outloading Services, or if requested, to cancel such request, unless and until the Accreditation Requirements are complied with. If GrainCorp reasonably suspects or is otherwise notified of the Client's non compliance with the Accreditation Requirements then the Client is in breach of warranty and GrainCorp may at the Client's sole risk and cost, refuse to provide any Services in connection with this Agreement, until the Client proves compliance with these requirements. The Client indemnifies GrainCorp from and against any Loss or Claim arising in connection with any failure to comply, in whole or in part, with any Accreditation Requirements.
- 3.16. GrainCorp is not responsible for the cleanliness, fitness for loading or carriage of Wheat, of any mode of transportation nominated by the Client. If AQIS determines

or if acting reasonably, GrainCorp determines that the Client's selected mode of transportation is not clean, fit for loading or carriage then it may suspend or refuse to provide and outturning or outloading Services and in no circumstances will GrainCorp be liable for any Loss or Claim and the Client shall meet all of GrainCorp's costs, expenses or losses associated with the rejection or cancellation of the scheduled outturning or outloading services.

- 3.17. Prior to physically outturning or outloading any Wheat, GrainCorp reserves the right to invoice the Client and receive payment in full for any related outturning or outloading services, failing which GrainCorp is not required to commence any such outturning or outloading services. On completion of any outturning or outloading services, the Client must within 30 days pay for any additional costs, services and Fees for Wheat outturned or loaded additional to the quantity invoiced. If the quantity outturned or outloaded is less, then GrainCorp will within 30 days refund to the Client the difference.

#### **4. CONDITIONS OF SERVICES PROVIDED BY GRAINCORP UNDER THIS AGREEMENT**

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##### **New Season Agreement & Holding Over**

- 4.1. The parties will be bound by the terms and conditions of the Wheat Port Terminal Services Agreement issued for the 2009/10 grain season (**2009/2010 Agreement**) from the earlier of:
- (i) the date of execution of the 2009/2010 Agreement; or
  - (ii) the date that GrainCorp stores and handles Wheat on behalf of the Client during the 2009/2010 grain season commencing on 1 October 2009.

In the event that such agreement is not published prior to 1 October 2009 or is otherwise delayed, then GrainCorp and the Client continue to be bound by the terms of this Agreement subject to revised Fees that apply for the 2009/10 season, as will be notified to the Client before 1 October 2009.

##### **Hours of Operation**

- 4.2. GrainCorp is only required to provide a single day shift operation at a Port Terminal on any one normal business day, being a day which is a Monday to Friday where banks are open in the state where such Port Terminal is located. GrainCorp and the Client may agree that additional (overtime) shifts will be provided for the handling of the Client's Wheat. This applies to both shipping services and the unloading of road and rail transport. If GrainCorp provides additional overtime shifts the Client must pay:
- (a) the overtime fees as set out in Annexure A;
  - (b) any stevedoring charges or charges required to be paid to the Department of Agriculture Fisheries and Forestry or AQIS and other charges, paid, incurred or required to be paid by GrainCorp in connection with providing the additional overtime shifts.
- 4.3. Where overtime labour has been engaged by GrainCorp to load a vessel or unload road and rail transport in accordance with the Client's request and the vessel is unable to load for any reason, or the transport fails to arrive at the Port Terminal, the overtime charges or related Fees must still be paid by the Client in full.
- 4.4. Notification of a request to load a vessel requiring overtime or weekend shifts must be provided to GrainCorp prior to cut off times as specified from time to time by the Port Terminal. GrainCorp cannot guarantee and does not represent that it will accept any such requests.

##### **Rail Transport Providers**

- 4.5. If GrainCorp receives the Client's Wheat by rail transport or is required to outturn the Client's Wheat to rail transport pursuant to this Agreement the Client must:
- (a) ensure that the Client's rail service provider:

- (1) has all approvals, licences and authorisations required to operate rail services, and has adequate systems to provide the necessary services to the Client in a timely, safe and professional manner;
- (2) provides rail wagons and other related equipment utilised in the transport of Wheat that are clean and empty of any grain residue and/or contaminants, free from defects, well maintained, rail and carriage worthy, and that as far as possible minimise risk of injury to GrainCorp employees, agents and contractors;
- (3) where the train crosses certified rail weighbridges, issues actual weights of tonnage carted for the purpose of determining actual stock outloaded. This information must be forwarded direct to GrainCorp from the rail service provider;
- (4) provides an acceptable audit system for the notification of defects in rail wagons. Any defect reported by GrainCorp will be recorded and the Client must ensure that remedial action taken by the rail service provider or alternative transportation must then be arranged by other means or a different rail service provider. GrainCorp will be advised when corrective action has been completed on the defective rail wagon. The rail service provider will not allow the defective rail wagons to be loaded until the defect has been remedied and confirmed to GrainCorp;
- (5) minimises and avoids all risks including the protection of GrainCorp employees, agents and contractors by providing wagons with top door opening/closing mechanisms which do not require GrainCorp employees to climb onto the wagon to open or close the rail wagon doors; and
- (6) participates in safety audits conducted at or near Country Sites so that risks of injury to GrainCorp employees are identified, and remedies any risks related to rail wagons identified in the course of such safety audit.

The Client shall bear all risk and responsibility for the actions and / or omissions of its rail service provider, including any Loss or claim howsoever connected to their engagement of the rail service provider.

- (b) The Client acknowledges that, unless advised otherwise by GrainCorp, the loading of Wheat into rail wagons by GrainCorp does not include:
  - (1) the movement or shunting of rail wagons by any means; and
  - (2) the opening and closing of wagon lids and discharge hatches on rail wagons.

4.6. GrainCorp does not warrant that the tonnage loaded into rail transport provided by or on behalf of the Client to a Port Terminal will be loaded to the Nominated Capacity.

#### **Road Transport Providers**

4.7. If the Client requires GrainCorp to receive or outturn Wheat by road transport, the Client must:



- (1) ensure that vehicle operators engaged by the Client for the purposes of delivering or outturning Wheat by road to/from the Port Terminal comply with all laws and regulations, including those in respect of safety, the environment, carriage of goods and chain of responsibility, are conversant with site safety procedures and have undergone a site induction program prior to entering the Port Terminal;
  - (2) ensure that vehicle operators are advised that they must not, and thereafter do not, require or request GrainCorp staff to climb on vehicles for any purpose or assist with securing of loads;
  - (3) provide road transport and associated equipment that is registered, insured, operated by licensed and physically capable operators, is clean, safe, and fit for purpose prior to entering the Port Terminal;
  - (4) provide the prescribed minimum business day's notice of the requirement to outturn to road as set out in clause 3.10 above. Notwithstanding this minimum notice period, GrainCorp does not guarantee the availability of outloading operations regardless of the period of notice. GrainCorp may levy additional charges as described in Annexure A where this minimum notice period is not observed; and
  - (5) provide the vehicle registration number of all road transport engaged to load Wheat from the Port Terminal for the purpose of transporting Wheat from the Port Terminal for or on behalf of the Client.
- 4.8. If the Client requires GrainCorp to outturn Wheat by road transport, GrainCorp will not permit loading beyond the legal mass prescribed by the relevant legislation in each state for that road transport configuration, and the Client will have no Claim against GrainCorp for any Loss connected to such directions or restrictions.

## **5. OBLIGATIONS OF THE CLIENT UNDER THIS AGREEMENT FOR PORT TERMINAL OPERATIONS**

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### **Shipping Information**

- 5.1. The parties are bound by the protocols and procedures attached to and forming part of this Agreement as Annexure B.
- 5.2. The Client acknowledges that AQIS may disallow the loading of some portion of the Client's Wheat at the Port Terminal for reasons of non conformance to AQIS export conditions as outlined in the *Export Control Act 1982* (such as, but not limited to, detection of live insects, rodents and rattlepod). GrainCorp is not liable for any Loss incurred by the Client in relation to the failure to load that portion of the Wheat or the replacement of that stock for the completion of loading, including vessel discharge or other post loading mitigation
- 5.3. GrainCorp is not liable for any quality issues derived from Wheat rejected from shipping at the Port Terminal that has been delivered from any site, not being a Country Site. The Client remains the owner of this Wheat at all times until the Wheat

is sold or removed from the Port Terminal. Applicable fees to apply to this Wheat are detailed in Annexure A.

- 5.4. Where contaminated Wheat is received from any site, not being a Country Site, and this Wheat contaminates other stock at the Port Terminal, the owner of the contaminated Wheat assumes responsibility for all costs associated with the contaminated stock.
- 5.5. No mode of transportation can be cleaned at a Port Terminal without GrainCorp's prior written consent. If a vessel cannot be loaded for any reason including for failing to pass any inspection or survey, then GrainCorp is entitled to instruct a vessel to be removed from the berth, including to make way for another vessel to be loaded. GrainCorp will not be liable for any Loss or Claim howsoever suffered or incurred by any party connected to such a direction.

### **Port Charges**

- 5.6. GrainCorp is not liable for any port or related charges in relation to receipt, storage and loading of Wheat at Port Terminals (including vessel, demurrage, stevedoring, Port fees or AQIS fees or charges of any kind), and such charges will be borne by the Client. In addition, any charges that GrainCorp may incur under the Maritime Transport Security Act (2003) or any other applicable act or regulation, shall be passed onto either the vessel agent or Client after consultation.
- 5.7. The Client will be responsible for paying all costs associated with conducting the export inspection of Wheat by AQIS and/or its agent(s) as well as the cost of employing all labour connected with loading, storing, treating and transporting the Wheat for any such inspection.
- 5.8. For vessels at Geelong, upon completion of loading, the vessel must sail within two hours of completing cargo operations (at the Geelong Number Three berth). If the vessel does not sail the following hourly charges will apply after the expiration of the two hours:  
  
\$325.00 per hour for the first hour or part thereof and  
  
\$650.00 per hour for each subsequent hour or part thereof.

This additional fee will be charged to the shipper's agent. If the shipper's agent defaults on this, or any other charge applied by GrainCorp in loading a vessel on behalf of the Client at the Geelong Terminal, GrainCorp may seek payment in full from the Client for any amount outstanding and charged to the agent for the loading of that vessel.

## **6. TITLE TO GRAIN AND GRAIN ACCOUNTING OBLIGATIONS**

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### **Co-ownership**

- 6.1. Notwithstanding any other provision of this Agreement (but subject to **Clause 6.26**), the Client acknowledges that when GrainCorp receives the Client's Wheat and both of the following occur:

- (a) the weighbridge documentation notates the tare weight and the final net mass of the load is known, and
- (b) the Client (or the Client's agent) has signed the Receival Docket,
- then the Client's Wheat becomes Stored Wheat. At this time, full ownership in the Wheat automatically transfers from the Client to the Co-owners, and in return, an Interest transfers from the Co-Owners to the Client. As a result, the Client becomes a Co-owner of all the Stored Wheat.
- 6.2. For the purposes of this Agreement, the percentage of the Stored Wheat which the Wheat makes up, and which therefore constitutes the Client's Interest in the Stored Wheat, will be determined by GrainCorp, using the records GrainCorp is required to keep pursuant to **Clauses 6.39 to 6.41**. For the avoidance of doubt the Client's Interest represents an ownership right to Wheat of the same type and grade of the Wheat that was classified by GrainCorp and delivered by the Client (and not the same physical Wheat that is delivered by the Client).
- 6.3. Each Co-owner holds its Interest as a tenant in common.
- 6.4. If GrainCorp becomes insolvent, each Co-owner will retain ownership of its Interest.
- 6.5. A Co-owner may, subject to the terms and conditions of this Agreement, deal with its Interest as an owner, including:
- (a) transferring all or part of its Interest to another Co-owner;
  - (b) removing Wheat with GrainCorp's approval from the Stored Wheat;
  - (c) transferring all or part of its Interest to a third party;
  - (d) mortgaging or assigning all or part of its Interest by way of security; and
  - (e) granting a fixed or floating charge over all or part of its Interest.
- 6.6. In respect of each Co-owner, provided that the Co-Owner complies with all its obligations under this Agreement, GrainCorp has possession of the Co-owner's Stored Wheat but no legal or equitable title to any part of it, except to the extent that GrainCorp is a Co-owner.
- 6.7. GrainCorp may become a Co-owner by adding Wheat to the Stored Wheat. In accordance with Clause 6.1, full ownership in any Wheat added to the Stored Wheat by GrainCorp is transferred to the Co-owners. In return, the Co-owners transfer to GrainCorp an Interest.
- 6.8. GrainCorp must maintain records in respect of its Interest in accordance with Clauses 6.39 to 6.41.
- 6.9. In respect of each Co-owner, provided that the Co-Owner complies with all its obligations under this Agreement, GrainCorp may only deal as owner of its own Interest and not as the owner of the Interest of the Co-owner. This applies in particular, to the removal of Wheat from the Stored Wheat.

**Transfer of Title**

- 6.10. If a Client (as seller) wishes to transfer a tonnage of Wheat (being all or part of its Stock Balance) to another GrainCorp client (or swap a tonnage of Wheat between the Client and another GrainCorp client), the Client must either:
- (a) complete and execute a Buyer to Buyer Title Transfer Form (or Stock Swap Form) and follow the procedures set out in the instructions on that form. Wheat is not transferred until the Buyer to Buyer Title Transfer Form (or Stock Swap Form) is also executed by both the GrainCorp client receiving the transfer and GrainCorp. The GrainCorp Stock Management System will be updated manually to reflect the revised Interests of the Client and the transferee. The transfer (swap) is effective, after execution by all parties, on the date on which the seller (initiator) signs the Buyer to Buyer Title Transfer Form (Stock Swap Form); or
  - (b) complete and execute the Buyer to Buyer Title Transfer Form on the GrainCorp web page using the GrainCorp Buyer to Buyer Software as per **Clauses 6.11 to 6.23** and follow the procedures as agreed to between the Client and GrainCorp from time to time. Title will transfer in the GrainCorp Stock Management System upon the Client clicking on the 'Confirm' button. The transfer (swap) is effective on the date on which the seller (initiator) processes the transfer of title on the GrainCorp web page.

Wheat may be transferred in accordance with this provision only to another GrainCorp client who has signed a current Wheat Port Terminal Services Agreement or Storage and Handling Agreement.

- 6.11. GrainCorp provides this service to the Client to facilitate the transfer of all or a part of the Stock Balance of Stored Wheat of the Client, as recorded in the GrainCorp Stock Management System, to another client. This service provided by GrainCorp does not constitute or represent the agreement or terms and conditions for the sale of Wheat from the Client to another GrainCorp client.
- 6.12. The Client must regularly update and keep secure the password created by the Client to access the GrainCorp Buyer to Buyer Software. To limit the Client's liability, the Client must notify GrainCorp immediately by telephone on (02) 9325 9191 during business hours in the state of New South Wales if the Client believes that a user's password has become known to anyone other than the intended user.
- 6.13. The Client must provide a minimum of two (2) email addresses for the transmission of confirmation of transfer and it is the Client's responsibility to maintain the email addresses to be used for confirmation of transfers and these email addresses must be kept current. GrainCorp is not liable for any Loss incurred by the Client or any other person arising out of or in connection with the Client's failure to advise GrainCorp of the changes to email addresses.
- 6.14. The Client must advise GrainCorp of all staff who cease employment with the Client and have access to this software. GrainCorp is not liable for any Loss incurred by the Client or any other person arising out of or in connection with the unauthorised use

- of this software by a former staff member of the Client where the Client has failed to advise GrainCorp of changes to staff with access to this software.
- 6.15. GrainCorp may allow any employee of the Client, authorised by the Client in writing, access to this software. More than one user from the Client can have access to the application and password sharing is not required, nor recommended.
- 6.16. The Client must not attempt to transfer to another party more than the Client's Stock Balance at the time of the transfer, as recorded in the GrainCorp Stock Management System. Any attempt to do so will result in the revocation of access rights.
- 6.17. All or a part of a Stock Balance will transfer in the GrainCorp Stock Management System upon the seller clicking on the 'Confirm' button.
- 6.18. All or a part of a Stock Balance may be transferred in accordance with this **Clause 6** only to another GrainCorp client who has signed a current Wheat Port Terminal Services Agreement or Storage and Handling Agreement. The transfer is effective, upon the seller clicking on the 'Confirm' button.
- 6.19. GrainCorp may reverse any transfer if:
- (a) the user is in default of payment of any Fees to GrainCorp; or
  - (b) the user has attempted to transfer more than their Stock Balance at the time of the transfer, as recorded in the GrainCorp Stock Management System; or
  - (c) in GrainCorp's opinion, the security of the Client has been breached; or
  - (d) the user is in breach of any term of this Agreement; or
  - (e) if the user has selected a Buyer who is not a GrainCorp client,
- in which case GrainCorp has no liability to the Client in connection with the reversal.
- 6.20. GrainCorp may at any time add, remove, change or impose restrictions on the functionality of the service without limitation and without recourse by the Client.
- 6.21. The Client acknowledges that GrainCorp will not be liable for any Loss incurred by the Client or any other person arising directly or indirectly by the use of the Buyer to Buyer Software due to:
- (a) any breakdown or interruption to the service that related to circumstances beyond GrainCorp's direct and immediate control; or
  - (b) the buyer of all or part of the Client's Stock Balance failing to honour the contractual agreement between the two parties.
- 6.22. If a tonnage of Wheat is transferred to the Client (as buyer) from another GrainCorp client (as seller) using the Buyer to Buyer Software as set out in this Clause 6, then:
- (a) if the Client rejects all or a part of the Wheat that is transferred by the seller, the Client must transfer that Wheat back to the seller within 5 days of the original transfer. If the Client fails to do so, it will be deemed to have accepted the transfer; and

- (b) the Client acknowledges that the Wheat accepted from the seller may not be at the location agreed on the transfer at the time of outturn.

### Stock Swaps

- 6.23. The Client acknowledges that for Operational Reasons, GrainCorp can swap a grade of Wheat with the same grade of Wheat between Country Sites in the Natural Port Zone, and by entering into this Agreement the Client consents to any such stock swap occurring. GrainCorp will affect these swaps by filling out a Stock Swap Form, forwarding this form to the Client and amending the location of the Client's Accounting Stocks in the GrainCorp Stock System.
- 6.24. For each stock swap effected under **Clause 6.23**, GrainCorp will advise the Client of the price differential in the applicable GTA location differential to the relevant Port Terminal. Where a payment is to be made by GrainCorp a Recipient Created Tax Invoice (as required under the relevant GST legislation) and a payment by electronic funds transfer will be sent to the Client within 21 days of the transaction. The Client has the option of providing GrainCorp an invoice in lieu of a GrainCorp produced Recipient Created Tax Invoice. Where an invoice is to be sent to the Client the invoice will form a part of the Client's normal GrainCorp monthly invoice as per **Clauses 7.1 and 7.2**.

### Shrinkage

- 6.25. GrainCorp will reduce the recorded tonnage of Wheat by a shrinkage allowance of 0.5% from each load of Wheat delivered into the Client's name into the Port Terminal. This includes Grower deliveries, Receival Docket transfers from Grower Warehousing and road and rail receipts from any site, not being a Country Site. This excludes Wheat which has been delivered to the Client by Title Transfer from another client in the Port Terminal and Wheat delivered to the Port Terminal from Country Sites.
- 6.26. A further 0.25% shrink by weight will be applied to all grain exported from the Port Terminals where dust extraction facilities are in operation. The Client may claim the dust extracted from the Port Terminal during the export of the Client's Wheat. If the Client waives the right to claim the dust, GrainCorp will dispose of the dust in accordance with local environmental guidelines.
- 6.27. These deductions will be applied such that the quantity of Wheat available to the Client for Outloading or Title Transfer will be the reduced quantity. Where a shrinkage allowance is deducted under **Clause 6.25** and **6.26** title in the shrinkage residue (being a volume of Wheat representing the amount deducted) will transfer to GrainCorp (and not the Co-Owners pursuant to **Clause 6.1**). After the Client's Stock Balance (which for the purpose of this **Clause 6.27** is taken to represent the Interest of the Client) as recorded in the GrainCorp Stock Management System has been outloaded, any shrinkage residue will be available for sale by GrainCorp as it sees fits. GrainCorp will retain all proceeds from the sale of any shrinkage residue.
- 6.28. Receival fees will be levied against the delivered tonnage. All other charges will be levied against the shrunk tonnage. Any dust and damaged Wheat disposed of by

GrainCorp will be to the account of GrainCorp and will not be considered to be outloaded on behalf of the Client.

- 6.29. If the actual outloading (after the deduction of shrink) of a particular type and grade of Wheat is less than the Accounting Stock Tonnage, GrainCorp will in its discretion either:
- (a) provide sufficient additional Wheat of the same type and grade from any GrainCorp Storage site to ensure that the net outloading of Wheat to the Client is equivalent to the Accounting Stock Tonnage for the Client; or
  - (b) provide financial compensation to the Client for the shortfall in the net outloading. The financial compensation will be based on the fair market price for Wheat of the relevant type and grade for the applicable season at the time of the last outloading.
- 6.30. If the actual outloading (after the deduction of shrink) of a particular type and grade of Wheat is more than the Accounting Stock Tonnage, GrainCorp will at its discretion either:
- (a) transfer the Client's Wheat of the same type and grade from a previous season or subsequent season to ensure that the net outloading of Wheat to the Client is equivalent to the Accounting Stock for the Client, or
  - (b) receive financial compensation from the Client for the excess in the net outloading. The financial compensation will be based on the fair market price for Wheat of the relevant type and grade for the applicable season.
- 6.31. Where the Accounting Stock Tonnage of a particular type and grade of Wheat at the Port Terminal is between the values  $-1.00$  and  $+1.00$  tonne, the Accounting Stock Tonnage of that particular type and grade of Wheat at the Port Terminal will be deemed to have no value and will be removed from the GrainCorp Stock Management System and neither party will have any liability to the other for that amount of Wheat.

### **Documentation and Weights**

- 6.32. For receipt from and loading to road transport, GrainCorp weighbridges at the Port Terminal will be used to determine the Receipt and Outloading Tonnage.
- 6.33. For receipt from and loading to rail transport, the following will apply:
- (a) for rail movements from GrainCorp Country Sites to the Port Terminal, and for the receipt, by rail, at the Port Terminals of rail movements originating from a source other than a GrainCorp facility, GrainCorp's certified weighers at the unloading destination will be used to determine the final Receipt and Outloading Tonnage;
  - (b) the Client must ensure the currency of certification and compliance with the various state Trade Measurement Acts and Regulations of all end-user rail weighbridges providing final Outloading Weights;

- (c) GrainCorp must ensure the currency of certification of the Port Terminal and compliance with the various state Trade Measurement Acts and Regulations; and
  - (d) the Client acknowledges that GrainCorp has the right to refuse to either load Wheat to rail or receive Wheat by rail if it believes that if in doing so there is not a certified weighing mechanism in operation.
- 6.34. If GrainCorp determines that the Client or the domestic end-user has not declared detailed weights in a timely manner GrainCorp may use appropriate GrainCorp average weights to determine the Outloading Tonnage until the Client provides details of weights.
- 6.35. GrainCorp may dispute at any time any weights declared to GrainCorp by the Client or the domestic end-user. If there is a dispute about declared weights, GrainCorp may substitute appropriate State-wide average weights in place of any weight declared by the Client or the domestic end-user.
- 6.36. The Client acknowledges that as a result of variances between weighing devices, the actual Outloading Tonnage for a Country Site or Port Terminal may be more or less than the tonnage received at that Country Site or Port Terminal. The resulting negative or positive stock-on-hand at that Country Site or Port Terminal, subject to **Clause 6.31**, will still form a part of the Accounting Stock Tonnages for invoicing purposes and will still be subject to the shrinkage outloading adjustment provisions in **Clauses 6.29 to 6.30**.
- 6.37. If a variance occurs between Port Terminals and Country Sites as per **Clause 6.36**, GrainCorp may adjust Accounting Stock Tonnages to resolve the variances provided that the Client's total Accounting Stock Tonnages is unchanged and any GrainCorp fees pertinent to the transaction are reconciled.

#### **Record-keeping**

- 6.38. GrainCorp will keep separate records for the Client, of the Receival Tonnage and Outloading Tonnage determined pursuant to **Clauses 6.32 to 6.37** for each type and grade of Wheat received or outloaded.
- 6.39. GrainCorp will keep daily records of the total amount of Stored Wheat in its possession and where the Stored Wheat is stored.
- 6.40. The Client warrants that all and any information or documentation it provides to, or arranges to be provided to GrainCorp including all shipping or other documents which contain details of grade, origin, location, treatment and type of Wheat ("Client Documents"), will contain accurate and truthful statements and descriptions. The Client indemnifies GrainCorp from and against any Loss or Claim suffered, threatened, or commenced in connection with any misrepresentation or error.

#### **Provision of Stock Information**

- 6.41. Upon request by the Client, GrainCorp will supply the Client with particulars of Wheat received, held in storage and outturned on behalf of the Client (**Stock Information**) in the manner agreed between the parties from time to time.



GrainCorp will act with best endeavours and in the interest of the Client in providing the Stock Information in as timely and accurate manner as the available technology allows. The Client acknowledges that the Stock Information may be subject to further update upon the availability of additional Stock Information that may affect the Accounting Stock Tonnage of the Client. GrainCorp is not liable to the Client or any other person for any Claim or Loss arising out of or in connection with the supply of Stock Information. The Client expressly indemnifies and releases GrainCorp and its employees, agents and contractors for any Loss suffered or incurred by them in connection with any Claims.

- 6.42. If any documents issued to the Client contain incorrect information as to the quantity or other particulars of Wheat, then GrainCorp must promptly notify the Client by sending a new or amended version of the document.
- 6.43. If an error is not ascertained until after the complete outturn of the Client's Wheat, and it results in the Client receiving Wheat in excess of the Accounting Stock Tonnage, then the Client must either:
- (a) pay to GrainCorp an amount equal to the market value of the excess quantity of Wheat at the date of outturn, within 21 days of the date of invoice; or
  - (b) replace the Wheat with wheat of the same type and quality and in the quantity exactly equal to the surplus volume provided in excess to the Client's Accounting Stock Tonnage.

## **7. PAYMENT OF FEES, CHARGES AND OTHER MONEYS**

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### **Invoices**

- 7.1. The Client agrees to pay all Fees to GrainCorp in accordance with the terms of this Agreement and all other amounts claimed by GrainCorp.
- 7.2. Fees payable under this Agreement will be invoiced (other than amounts payable on demand by GrainCorp under this Agreement) after the end of the month or other period during which or in respect of which the Fees were incurred. Fees for the receipt of Wheat during the period September 2009 (August 2009 for Queensland sites) to January 2010 inclusive may be invoiced every 7 days during this period at the discretion of GrainCorp.

The Outloading to Vessel Fee, Minimum Cargo Lift Fee (if applicable), Shipping Overtime Fee (if applicable), the Geelong Wharf Facility Hire Fee (if applicable) Wheat Blending Fee and any other applicable vessel loading charges will be invoiced on the completion of loading each vessel.

Subject to **Clause 7.10**, all Fees, charges and other moneys payable which are invoiced must be paid within 21 days of the date of the invoice. GrainCorp may amend these credit terms at any time if the Client does not strictly adhere to these payment terms, and may reject Wheat from any party where they have outstanding accounts under this Agreement or any other agreement the Client has with

GrainCorp or its Related Bodies Corporate which breach the terms of credit of the relevant agreement.

GrainCorp reserves the right to make adjustments for any error in the calculation of Fees in one invoice in any subsequently issued claim for payment.

### **Goods and Services Tax**

- 7.3. If GST applies to any supply made under this Agreement, GrainCorp will, in addition to the Fees or any other consideration expressed as payable in this Agreement, subject to issuing a valid tax invoice, recover from the Client an additional amount on account of GST, such amount to be calculated by multiplying the fee or any other amount or consideration payable by the Client for the supply by the prevailing GST rate.
- 7.4. If it is determined on reasonable grounds that the amount of GST paid or payable on any supply made under this Agreement differs for any reason from the amount of GST recovered from the Client including by reason of:
- (a) an alteration in the GST law;
  - (b) the issue of or an alteration in a ruling or advice of the Commissioner of Taxation;
  - (c) the allowance to the Client of a refund of GST in respect of any supply made under this Agreement; or
  - (d) a decision of the Administrative Appeals Tribunal (or its equivalent) or a court,
- then the amount of GST recovered or recoverable from the Client shall be adjusted accordingly.

### **Information**

- 7.5. GrainCorp does not represent, warrant or guarantee, whether expressly or impliedly, that the information provided by third parties (e.g. NGR) under or in connection with this Agreement, is complete, sufficient or accurate. To the fullest extent permitted by law, GrainCorp accepts no responsibility for any inaccuracies in or omissions from this information, or any other information or matter arising or coming to its notice which may affect this information.

### **Payment**

- 7.6. If a tonnage of Wheat is transferred to the Client (as buyer) from another GrainCorp client (as seller) where the transferred Wheat was the subject of a Grower Warehouse Agreement, then:
- (a) the Client must pay to GrainCorp under this Agreement all Country Receival Fees or Direct to Port Receival Fees and accumulated Storage Fees in respect of the transferred Wheat relating to the period before and on the date of transfer as shown on the Grower Warehouse Grain Title Transfer Form. The Client acknowledges that these fees, shown on that Grower Warehouse Grain Title Transfer Form, are payable by the Client as Fees under this Agreement.

- (b) If the warehoused Wheat has been moved by rail as part of an overflow movement during the harvest period, the Client must pay GrainCorp the country outloading fee as prescribed in GrainCorp's Country Price Schedule and the net difference in the location differentials as published by GTA between the GrainCorp storage at which the warehoused Wheat was received and the Port Terminal.
- 7.7. Under a Buyer to Buyer Title Transfer form or Grower Warehouse Grain Title Transfer form, if Wheat which is stored by GrainCorp is transferred to the Client (as buyer) by another GrainCorp client or Grower (as seller), the Client must pay under this Agreement:
- (a) Storage Fees; and
  - (b) Outloading Fees; and
  - (c) all other fees, charges and other moneys payable to GrainCorp,
- in respect of the transferred Wheat relating to the period after the date of transfer.
- 7.8. Under a Buyer to Buyer Title Transfer form, if Wheat which is stored by GrainCorp is transferred by the Client (as seller) to another GrainCorp client (as buyer), the Client must pay under this Agreement and before the Wheat is transferred:
- (a) all unpaid Receival Fees; and
  - (b) Storage Fees; and
  - (c) all other unpaid fees, charges and other moneys payable to GrainCorp,
- in respect of the transferred Wheat relating to the period up to and including the date of transfer.

#### **Interest on Overdue Accounts**

- 7.9. Subject to **Clause 7.10**, the Client will be liable for interest on overdue amounts due and payable under this Agreement from the date on which payment was due to the date on which payment is made. The interest rate applicable under this **Clause 7.9** is the rate which is 6% above the bank bill buying rate for bills with a tenor of 90 days quoted from time to time by National Australia Bank. The initial interest rate will be based on the average of the relevant bank bill rates quoted by National Australia Bank on the second last business day of the month before the date interest begins to accrue. The interest rate will be adjusted on the first day of every calendar month based on the average of the relevant bank bill rates quoted by National Australia Bank on the second last business day of the immediately preceding month. Interest will be calculated on a daily basis on the outstanding amount.

#### **Credit Facilities and Requirements**

- 7.10. In order to receive the Services from GrainCorp under this Agreement, the Client must comply with one or more of the following requirements, at GrainCorp's discretion, namely –
- (a) the Client will have the benefit of the 21-day payment terms for the payment of Fees in **Clause 7.2**, provided that prior to the Service commencing the Client

shall provide to GrainCorp, in a form approved by GrainCorp, an irrevocable, unconditional and continuing bank guarantee or security deposit to be maintained and available at all times for the amount agreed prior to the commencement of this Agreement. GrainCorp may from time to time and at its sole discretion apply some or all of the bank guarantee or security deposit in respect of any service charges or any other moneys which may from time to time be due and payable by the Client to GrainCorp. The amount of the bank guarantee or security deposit may be reduced if GrainCorp so agrees and must be increased should GrainCorp so require. If the Client has an obligation to provide a bank guarantee or security deposit under more than one agreement with GrainCorp, it may provide the one bank guarantee or security deposit to meet the requirements of all agreements it has with GrainCorp, so long as the total security provided is sufficient to cover the amounts required in each of the agreements.

- (b) the Client will have the benefit of the 21-day payment terms for the payment of Fees in **Clause 7.2**, provided that the Client otherwise complies with all of its obligations pursuant to this Agreement and any other agreement with GrainCorp or its Related Bodies Corporate and makes payment to GrainCorp in respect of any service charges or any other moneys which may from time to time be due and payable by the Client to GrainCorp under this or any other Agreement with GrainCorp or its Related Bodies Corporate. It is further agreed and acknowledged that the Client shall make immediate payment of all moneys owing by the Client at any time upon written demand from GrainCorp in accordance with **Clause 7.10(c)**.
- (c) GrainCorp may require the Client to pay the Fees prior to providing the Services in which event notification of the amount to be paid shall be provided to the Client and paid by the Client, prior to provision of the Services.
- (d) Notwithstanding **Clause 7.10(a)** and **(c)**, GrainCorp will require the Client to pay in advance for Services in those circumstances where, taking into account the quantity to be loaded, the loading of the vessel would reduce the total Accounting Stock Tonnage of the Client in GrainCorp facilities of all Wheat to less than 1,000 tonnes.

### **Costs**

- 7.11. The Client indemnifies, releases and holds harmless GrainCorp from and against all Loss incurred by GrainCorp which may result from or be connected to the Client's failure to pay any Fees, charges and other moneys due and payable in accordance with this or any other agreement.

### **Set-off**

- 7.12. At its sole discretion, GrainCorp may apply any amounts whatsoever then due and payable by it to the Client in satisfaction of any amounts whatsoever then due and payable by the Client to GrainCorp under this or any other agreement between the Client and GrainCorp or its Related Bodies Corporate.

**Amounts Owing**

- 7.13. In addition to any rights of GrainCorp under **Clause 7.10**, if any amount is owed to GrainCorp by the Client for any reason and on any account whatsoever (whether or not directly in connection with this Agreement or the Wheat) then GrainCorp may:
- (a) execute a Grain Stock Order Form or load Wheat under **Clause 3.12**; or
  - (b) execute a Buyer to Buyer Title Transfer Form (or Stock Swap Form) or transfer Wheat under **Clause 6.10**,

in which case GrainCorp will instead retain possession of the Wheat that the Client would otherwise be entitled to and, on 30 days notice to the Client, may sell the Wheat (in a manner determined at the sole discretion of GrainCorp) and apply the sale proceeds to the amount owed by the Client to GrainCorp with any surplus to be paid to the Client. The rights of lien granted to GrainCorp under this **Clause** are in addition to any other rights of lien it has under statute or common law.

This **Clause 7.13** applies irrespective of the capacity in which the Client owes any amount to GrainCorp, whether or not the Client is liable as principal or surety, and whether or not the Client is liable alone, or jointly or jointly and severally with another person.

**8. DAMAGES**

- 8.1. Unless otherwise agreed in writing with the Client, GrainCorp will not be liable to the Client for any Claims or Loss including in relation to any alleged or actual reduction in standard or quality of Wheat where:
- (a) the reduction in quality or standard of Wheat has not resulted in the downgrading of the Wheat from the grade to which the Wheat was classified on receipt by GrainCorp; and/or
  - (b) GrainCorp has received and loaded the Wheat in accordance with the Approved Receival Specifications and Sampling Methodology or other minimum receival specifications and sampling methodology agreed in writing between GrainCorp and the Client under this Agreement; and/or
  - (c) the Client has requested GrainCorp to blend two or more grades of Wheat into one grade of Wheat and the blended Wheat is at least the same quality of the lower Grade; and/or
  - (d) the moisture content of the representative sample for all grades loaded to road, rail, or vessel is within 0.3% of the maximum allowable under the Approved Receival Specifications and Sampling Methodology; and/or
  - (e) the Client has not provided notification of the road outloading destination.
- 8.2. If the Approved Receival Specifications and Sampling Methodology or the minimum receival specifications and sampling methodology as the case may be referred to in **Clause 8.1** are not met, any Claims made by the Client against GrainCorp in respect of downgraded Wheat will be limited to:  $T \times (P - V)$  where: T is the quantity in tonnes of Wheat downgraded from one grade to a lower grade; and P is the fair market

- value of the non downgraded Wheat on the date at which the Claim was made by the client; and V is the fair market value of the downgraded Wheat on the date at which the Claim was made by the Client.
- 8.3. Where a Claim is recognised by GrainCorp to be valid and GrainCorp agrees to compensate the Client or, in any other event where GrainCorp is liable to compensate or indemnify the Client, then GrainCorp's maximum liability in respect of any Claim shall not exceed \$500,000 for Wheat outloaded on any shipping vessel and \$10,000 for Wheat outloaded on to rail or road trucks on any one day for the Port Terminal.
- 8.4. GrainCorp's liability for a Claim under this **Clause 8** is subject to the Client:
- (a) advising GrainCorp immediately of suspecting downgraded Wheat, cease discharging suspected loads, and allow GrainCorp to inspect suspected downgraded Wheat.
  - (b) allowing GrainCorp every possible opportunity to mitigate all actual or potential losses.
  - (c) informing GrainCorp of any potential Claim which it has against GrainCorp in respect of downgraded Wheat received by the Client within 2 business days of receiving the Wheat; and
  - (d) providing GrainCorp with a sample of the downgraded Wheat subject to the Claim; and
  - (e) allowing GrainCorp to test this sample and compare this sample with sample of Wheat retained by GrainCorp on the outloading of Wheat from the Country Site or the Port Terminal.
- 8.5. GrainCorp may, in its discretion, mitigate or satisfy a Claim in respect of downgraded Wheat by:
- (a) averaging the quality parameters of the downgraded Wheat with other road or rail trucks outloaded to the Client on the same day provided that:
    - (1) the protein, moisture and screening parameters of the downgraded load of Wheat are within 0.3% of the minimum protein and maximum moisture and 1.0% of the maximum screening of the grade's Approved Receival Specification; and
    - (2) no more than two road or rail trucks have downgraded Wheat; and/or
  - (b) blending a sufficient quantity of other Wheat so as to upgrade the Client's Wheat; and/or
  - (c) substituting (at GrainCorp's expense) other Wheat of the same type of the required grade and quantity; and/or
  - (d) retaining the downgraded Wheat and providing for the Claim as part of the outload adjustment under **Clauses 6.29** and **6.30**.
- 8.6. GrainCorp is not liable for any Consequential Loss relating to downgraded Wheat, or any claim made by or through the Client.

- 8.7. The Client acknowledges that GrainCorp cannot guarantee complete freedom from Wheat defects and contaminants listed with a nil tolerance in the Approved Receival Specifications and Sampling Methodology, and is not liable for any quality Claims resulting from the detection of defects and contaminants whenever detected at levels of 0.05% by weight or less.
- 8.8. GrainCorp does not take responsibility for chemical residues in Wheat detected at levels below 0.1mg/kg. This is regardless of whether the chemicals were applied as part of GrainCorp's pest control program, or were received from grower deliveries or any other source.
- 8.9. The Client acknowledges that GrainCorp, while using best endeavours to outturn Wheat in accordance with the Approved Receival Specifications and Sampling Methodology, is not liable for any non conformance to the specification where the attribute does not form part of the original testing procedure or cannot be comprehensively determined by GrainCorp at the time of Receival. This includes, but is not limited to varietal purity, falling number, vitreous kernel in Durum Wheat, and the presence of objectionable, toxic and chemical residues.

## **9. EXCLUSION OF LIABILITY**

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- 9.1. Unless specifically provided otherwise in this Agreement, GrainCorp is not liable for any Loss or Claim including damage, destruction, contamination or loss of Wheat unless and then only to the extent such is caused directly by the negligence of GrainCorp or its employees.
- 9.2. The Client acknowledges that GrainCorp is unable to test Wheat on receival (whether received from the Client or from another person) for toxic or other chemical residues, genetically modified seed or other contamination. GrainCorp is not liable for any direct or Consequential Loss suffered or incurred by the Client caused by or otherwise relating to the storage or handling of contaminated Wheat at the Port Terminal.
- 9.3. The Client acknowledges that any transportation of Wheat is at the Client's risk, including transportation of Wheat arranged by or on behalf of or at the request of either the Client or GrainCorp. To the fullest extent permitted by law, GrainCorp is not liable for any direct or Consequential Loss incurred by the Client caused by or otherwise relating to the transportation of Wheat.
- 9.4. The Client acknowledges that GrainCorp can remove and dispose of dust or downgraded Wheat generated from the Client's Wheat in any manner its sees fit.

### **Insurance**

- 9.5. GrainCorp will take out and keep in force an insurance policy, and may by prior written agreement jointly insure with the Client, in respect of loss or damage to the Wheat whilst it is held in the Port Terminal.
- 9.6. If GrainCorp makes a claim under the insurance policy then in relation to determining the fair market price for the purposes of any shortfall liability under **Clause 6.30**, the Client:

- (a) authorises GrainCorp to:
  - (1) receive and give good discharge for all monies payable under the insurance policy;
  - (2) settle, adjust and compromise all claims under the insurance policy; and
  - (3) determine, by agreement with the insurer, the time of loss; and
- (b) will not make any claim against GrainCorp, nor contest or dispute any GrainCorp decision, in relation to any action by GrainCorp in accordance with this **Clause 9.6** unless GrainCorp acts fraudulently or in bad faith.

### **Force Majeure**

- 9.7. In this Agreement 'Force Majeure Event' means any event which is beyond the reasonable control of GrainCorp, including:
- (a) acts of God, fire, storm, lightning, floods, earthquakes, epidemic;
  - (b) acts of the public enemy, war, rebellion, insurrection, terrorist act, sabotage;
  - (c) materials shortages, utility failures, adverse effects of weather or weather related events; and
  - (d) blockade, embargo, strikes, lockouts, labour disputes or disturbances on a State wide or nation wide basis.
- 9.8. GrainCorp will not be liable to the Client or any other person for any delay in performance or inability to perform any of its obligations under this Agreement to the extent that such failure is caused or contributed to by a Force Majeure Event. If GrainCorp's performance is delayed by a Force Majeure Event, the time for performance will be extended for at least the time and to the extent that such performance is prevented by the Force Majeure Event.

## **10. TERMINATION**

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- 10.1. Further to Clause 1, GrainCorp may terminate this Agreement:
- (a) immediately upon written notice to the Client if the Client:
    - (i) fails to pay any amount that is due and payable under this Agreement or any other agreement between the Client and GrainCorp or its Related Bodies Corporate;
    - (ii) breaches a warranty as set out in this Agreement or any other agreement between the Client and GrainCorp or its Related Bodies Corporate;
    - (iii) fails to follow a direction of GrainCorp made reasonably and lawfully;
    - (iv) commits an act or omission which compromises the safety of any person or brings GrainCorp in to disrepute; or
    - (v) fails to have in place or accurately declare the status of an Accreditation Requirements as set out in this Agreement.



- (b) upon 14 days written notice to the Client if the Client breaches any other provision of this Agreement or any other agreement between the Client and GrainCorp or its Related Bodies Corporate, and does not remedy the breach to GrainCorp's satisfaction within GrainCorp's stipulated time frame.

Regardless of whether Termination arises under **Clause 1**, expiry of the Term or under this clause 10, the Client must ensure that prior arrangements are made to outturn and / or outload any Wheat held by GrainCorp prior to termination; otherwise the Client shall be bound by the terms of the new season Wheat Port Terminal Services Agreement.

Termination of this Agreement shall not prejudice any rights of either party that have accrued prior to the date of termination and the provisions set out in Clauses 7, 8, 9, 12.5, 12.6, 12.7 shall survive termination of this Agreement.

## **11. DISPUTES**

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- 11.1. Any dispute concerning the grade, quality, sampling, testing or classification of Wheat which GrainCorp and the Client cannot resolve themselves after using reasonable endeavours to do so may be referred to a mutually agreed independent testing facility for resolution in accordance with the provisions of this Agreement. GrainCorp and the Client agree to be bound by the decision of the mutually agreed independent testing facility. GrainCorp and the Client shall bear their own costs in determining the resolution to the dispute.
- 11.2. If any dispute between the parties however relates to access to the Port Terminal and arises in connection with the protocols and procedures set out in Annexure B, then the parties shall resolve such disputes in accordance with the dispute resolution provisions contained in Annexure B.

## **12. MISCELLANEOUS**

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### **Legal Operation**

- 12.1. GrainCorp is not required to perform any obligation under this Agreement if, in GrainCorp's opinion, it would contravene or might contravene any Commonwealth, State, Territory or Local Government statute, code or other law, including any condition of accreditation or access or under any government scheme.

### **Notices**

- 12.2. Any notice or other communication in connection with this Agreement (unless specifically permitted by e-mail):
  - (a) is effectively signed by or on behalf of a party if it is executed by that party, any of that party's officers or that party's solicitor or attorney;
  - (b) may be served on a party by being:
    - (1) sent by post in a pre-paid envelope to;
    - (2) sent by facsimile transmission to; or

- (3) personally delivered to or left at that party's registered office, address specified;

if the notice is served by GrainCorp on the Client, then the details for the purposes of **Clause 12.2(b)** will be specified on page 1 of this Agreement. If the notice is served by the Client on GrainCorp then that notice for the purposes of Clause 12.2 (b) will be served to the GrainCorp Company Secretary.

- 12.3. Any notice or other communication in connection with this Agreement will:
  - (a) if posted, be taken to be served two business days after the date of posting; and
  - (b) if sent by facsimile transmission, be taken to be served on conclusion of successful transmission.
- 12.4. Service by any of the methods referred to in **Clause 12.2** will be valid and effective even though a party does not receive the document or if the document is returned to a party through the post unclaimed.

#### **Exercise of Rights**

- 12.5. A party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or an exercise of any other right, power or remedy. Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise. A party is not liable for any loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising the right, power or remedy.

#### **Remedies Cumulative**

- 12.6. The rights, powers and remedies provided in this Agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this Agreement.

#### **Governing Law**

- 12.7. This Agreement is governed by and shall be construed in accordance with the laws for the time being in force in the State of New South Wales and the parties agreed to submit to the non-exclusive jurisdiction of the courts of that State.

#### **Assignment & Privacy**

- 12.8. This Agreement:
  - (a) may be assigned by GrainCorp to any of its Related Bodies Corporate without the consent of the Client; and
  - (b) subject to **paragraph (a)**, must not be assigned by either party to this Agreement to any third party without the written consent of the other party, which may not unreasonably be withheld.
- 12.9. The Client acknowledges the right of GrainCorp to access information pursuant to this Agreement in line with the Privacy Act. The Client agrees that any information

related to the performance of this Agreement may be collected, held and used by GrainCorp as follows:

- (a) for any purpose required or permitted by law;
- (b) in order to maintain stock records and administer grower payments on behalf of Clients;
- (c) used by GrainCorp for purposes connected with the provision of products or services by GrainCorp which the Client has agreed to obtain from GrainCorp;
- (d) used by GrainCorp and disclosed to GrainCorp's Related Bodies Corporate to market other products and services to the Client; and
- (e) disclosed by GrainCorp to any party for the purpose of enforcing any rights that party may have in connection with the stated Wheat or commodity or variety.

### **Site Access**

12.10. GrainCorp regards the health safety of all persons, and protection of property and the environment at or about all GrainCorp facilities as paramount. In order to protect people, property and the environment, the Client must, and must also ensure that the Client's employees, agents, contractors and invitees comply with all procedures, policies and instructions of GrainCorp representatives prior to entering, while visiting and while leaving any GrainCorp facility or site. The Client must also provide prior advance written notice to GrainCorp if they are to attend any GrainCorp facility, stating the date they wish to attend, the identity of the Client's representative and the purpose of the visit.

GrainCorp may, in its absolute discretion, refuse or reject a visitation request or propose alternative times and/or places for the visit and the Client shall not attend at any GrainCorp site without receiving the prior consent of GrainCorp for each visit and shall not enter or stay on any GrainCorp site without appropriate GrainCorp supervision.

The Client is responsible for ensuring that it and the Client's employees, agents, contractors and invitees comply with this clause and all GrainCorp's site and access/ egress requirements and they that do not cause and risk of harm, damage, injury, hazard, or cause any contamination, on or about any GrainCorp facility or site;

### **Confidentiality & Endorsement**

12.11 The parties agree not to disclose the contents of this Agreement to any other party except for the purposes of professional or financial advice or as required by law. Further the Client shall not unless it has received GrainCorp's express prior written approval, make any statements or authorise or publish any material in relation to any GrainCorp personnel, site, facility or any matter connected to the Services or this Agreement, and in no circumstance will the Client make any statements or authorise or publish any material which may be construed as having been approved by or endorsed by GrainCorp.

**Legal advice and costs**

- 12.12 Each party agrees that it has had an opportunity to obtain its own legal advice. Each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Agreement.

**Amendment**

- 12.13 This document may only be varied or replaced by a document executed by the parties.

**Counterparts**

- 12.14 This document may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

**Entire understanding**

- 12.15 This Agreement contains the entire understanding between the parties as to the subject matter of this document. All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this document are merged in and superseded by this document and are of no effect. No party is liable to any other party in respect of those matters.

No oral explanation or information provided by any party to another affects the meaning or interpretation of this document; or constitutes any collateral agreement, warranty or understanding between any of the parties.

**Interaction with Access Undertaking**

- 12.16 To avoid doubt, not all Services provided under this Agreement constitute Port Terminal Services for the purpose of any access undertaking provided by GrainCorp to the Australian Competition & Consumer Commission under section 44ZZA of the *Trade Practices Act 1974 (Cth)*. Services which are not Port Terminal Services include:
- (a) Services relating to Wheat which is not Bulk Wheat;
  - (b) loading Wheat to rail or road truck;
  - (c) services relating to Stock Swaps or the transfer of title of all or part of the Stock Balance of Stored Wheat between GrainCorp Clients, including the Client;
  - (d) supply chain management from Country Sites to Port Terminals including liaison with the Client's freight provider.

**13. INTERPRETATION & DEFINITIONS**

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**Interpretation**

- 13.1. In this Agreement unless the contrary intention appears:

- (a) a reference to this Agreement or another instrument includes any variation or replacement of any of them;
- (b) a reference to laws, any statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements;
- (c) the singular includes the plural and vice versa;
- (d) the word "person" includes a firm, a body corporate, an unincorporated association or an authority;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (f) the use of the words "including", "includes", "for example" or "such as" does not limit the meaning of the words to which the list relates, to those items or to items of a similar kind;
- (g) headings are inserted for convenience and do not affect the interpretation of this Agreement.
- (h) a reference to a Clause, schedule, annexure or appendix is a reference to a Clause, schedule, annexure or appendix to this Agreement and references to this Agreement include any recital, schedule, annexure or appendix, unless otherwise indicated.
- (i) except as otherwise provided expressly in this Agreement, a reference to a business day or working day is any day on which the Port Terminal is open for business in the relevant state or territory where the relevant services and activities in connection with this Agreement are occurring.

13.2. The following words have the corresponding following meanings in this Agreement unless a contrary intention appears.

**Accounting Stock Tonnage** means, in respect of a period, the quantity of each type and grade of Wheat in, or which was in, a Country Site or Port Terminal Site in the GrainCorp System during that period as shown in GrainCorp's accounting records and is calculated as follows:

- (a) Receival Tonnage (including transfers from Grower Warehousing), less,
- (b) Shrinkage Allowance in accordance with **Clauses 6.25 and 6.26**], plus,
- (c) Tonnage title transferred to the Client, less,
- (d) Tonnage title transferred from the Client, plus,
- (e) The net of seasonal or grade reclassification in proportion to the Client's interest, plus,
- (f) The net of Wheat moved as site to site movements in proportion to the Client's interest, less,

- (g) Wheat outloaded from the GrainCorp System at any time during the period in proportion to the Client's interest.

**Accreditation Requirements** has the meaning set out in **Clause 3.13** of this Agreement, and includes any amendment or re-enactment of any legal or regulatory requirement which may apply to Client in connection with the Services.

**Agreement** means this document and all schedules and annexures attached to it, as may be amended from time to time.

**Approved Bulk Handling Company** means those silos, not operated by GrainCorp, that have ISO 9001 or similarly acceptable accreditation for the storage, handling, and transportation of export quality Wheat and GrainCorp has formally recognised that company by exchange of relevant correspondence.

**Approved Receival Specifications and Sampling Methodology** means the receival specifications by the relevant body set out below and sampling methodology as detailed within the GrainCorp Sample Stand Manual:

- (a) for Wheat, by GTA and the GrainCorp Sample Stand Manual.

**AQIS** means Australian Quarantine and Inspection Service (ABN 24 113 085 695) of 2 Hayes Road, Rosebery, NSW, 2018

**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

**Buyer to Buyer Title Transfer Form** means the form for the Title Transfer of Grain entitled "Buyer to Buyer Title Transfer Form" available from GrainCorp.

**Claim** means any allegation, demand, claim, suit, action, proceeding, damage, Loss, cost, expense or liability incurred by or made or recovered by or against a person, however arising, whether present, immediate, actual, contingent or future.

**Commencement Date** has the meaning given in **Clause 1.1**.

**Consequential Loss** means any indirect, special, incidental or consequential loss including loss of profits, loss of revenue, loss of opportunity, loss of anticipated savings and any increased operating costs suffered by or incurred by any person, whether arising in contract or tort (including negligence) or under any statute, arising out of or in connection with this Agreement.

**Co-owner** means, in respect of a particular type and grade of Wheat, each client of GrainCorp who has delivered wheat of that type and grade to GrainCorp and for whom GrainCorp has stored, handled or is storing or handling wheat of that type and grade at any particular time, pursuant to a Wheat Port Terminal Services Agreement or Storage and Handling Agreement. For the avoidance of doubt, GrainCorp may also be a Co-owner as contemplated in **Clause 6.7** of this Agreement

**Country Sites** means the grain storage facilities operated from time to time by GrainCorp except the Port Terminals.

**Downgraded Wheat** means Wheat that has previously been classified by GrainCorp but has subsequently been transferred out of or into GrainCorp facilities and tested and found to be below the original grade standard.

**Feed Grade** means Grain specifically for the purpose of non-human animal stock feed consumption. For Wheat it means FED1 and other grades as advised by GrainCorp from time to time.

**Fees** means the fees and charges that are payable under this Agreement as set out in **Annexure A: Port Terminal Services Fees Schedule**.

**Grain Stock Order Form** means the form for the outloading of Wheat entitled "Grain Stock Order Form" available from or approved by GrainCorp.

**GrainCorp** means GrainCorp Operations Limited (ABN 52 003 875 401) of Level 26, 175 Liverpool Street, Sydney, NSW, 2000.

**GrainCorp Stock Management System** means the computer based software operated by GrainCorp for the purposes of recording the transactions that affect the Client's Accounting Stock Tonnage.

**GrainCorp Storage / GrainCorp System** means the grain receipt, storage and handling facilities operated from time to time by GrainCorp, including the Country Sites, Metropolitan Terminals and Port Terminals.

**GTA means Grain Trade Australia Incorporated** PO Box R1829 Royal Exchange NSW 1225.

**Grower** means any entity registered by AWB or NGR pursuant to a Grower Registration Form.

**Grower Warehouse Agreement** means an agreement entitled "Grower Warehouse Agreement" between GrainCorp and client being a Grower.

**Grower Warehouse Grain Title Transfer Form** means the form for Title Transfer of grain entitled "Grower Warehouse Grain Title Transfer Form" pursuant to which grain is transferred out of Grower Warehousing.

**Grower Warehousing** means storage of grain with GrainCorp pursuant to a Grower Warehouse Agreement.

**GST** means the tax imposed by the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and the related imposition Acts of the Commonwealth.

**Interest** means, in respect of a Co-owner, the portion of the Stored Wheat to which legal title as Co-owner is held, and which is equivalent to the percentage the Wheat of the relevant type and grade received from that Co-owner makes up of the total Stored Wheat.

**Load Date** means the date assigned by GrainCorp to a vessel nominated by the Client and at which date GrainCorp reasonably expects that vessel to be placed on a shipping berth for the commencement of loading.

**Loss** means any loss (including Consequential Loss), liability, damage, cost (including full legal costs of recovery), charge, expense, diminution in value or deficiency of any kind or character which a party pays, suffers or incurs or is liable for.

**Natural Port Zone** means Country Sites that lie in geographical area bounded by the normal movement of trains to GrainCorp Port Terminals.

**NGR** means National Grower Register (NGR Pty Ltd) of PO Box 3526, Toowoomba Village Fair, QLD, 4350.

**Nominated Capacity** means the total mass weight of Wheat of a particular type that can be loaded into a given rail wagon class that does not exceed the legal loading limits as set by the relevant authority. These nominated capacities may change from time to time as advised by GrainCorp. The Nominated Capacity as at August 1<sup>st</sup>, 2009 is as per the following table:

Wagon Type	CGDY	NGDX	NGHF	NGIF	NGKF	NGPF	NGVF	NGXH	VGK	VHGF	VHHF	XGAY
Wheat Tonnes	52.73	49.43	44.87	47.37	54.21	54.03	43.64	46.74	45.91	50.64	49.73	49.89

**Operational Reasons** means delays or Wheat unavailability due to weather problems, grain infestation or fumigation, grain quality problems, inaccessible Wheat, mechanical failure, rail availability or rail delays and last of grain in storage being outloaded.

**Outloading Tonnage / Outloading** means tonnage of Wheat removed from a Port Terminal to the Client's rail, road or shipping transport.

**Port Terminals** means GrainCorp's seaboard terminals at Gladstone, Mackay, Pinkenba, Fisherman Islands, Newcastle, Kooragang, Port Kembla, Geelong and Portland.

**Port Terminal Services Agreement** means any prior agreement which applied prior to the Term for services similar to the Services, as between the Client and GrainCorp.

**Port Terminal Services Price Schedule** means the fees and charges for the loading of Wheat to the vessel's side as detailed in Annexure A, which may be varied with at least 30 days prior notice to the Client.

**Queensland Sites** means sites operating within the Northern Division of GrainCorp.

**Queuing Order** means the position assigned by GrainCorp to a cargo nominated by a client in relation to all other nominated cargo at the same port at and around the same time queuing for access to the port berth.

**Receival Docket** means grain receipts issued by GrainCorp on receipt of Grain by GrainCorp from or on behalf of the Client or pursuant to Grower Warehousing.



**Receival Tonnage** means tonnage of Wheat delivered to the Client from Growers on a Receival Docket, or transfers of Receival Dockets from Grower Warehousing or other deliveries from outside of the GrainCorp System.

**Related Bodies Corporate** has the meaning given to it in the *Corporations Act 2001 (Cth)*

**Specification to Load Advice** means the form provided to GrainCorp by the Client specifying the Wheat to be loaded to the nominated vessel.

**Stock Balance** means in relation to a Client, the tonnage representing the Client's Interest in the Stored Wheat (being Wheat of the same type and grade as that received by GrainCorp from the Client) to which a client holds legal title as a Co-owner in accordance with this Agreement.

**Stock Swap** means where the Stock Balances, or parts thereof, of two Co-owners (which, for the purposes of this definition, are taken to represent the respective Interests of the two Co-owners) at two specific Country Sites or Port Terminals, as recorded in the GrainCorp Stock Management System, are transferred between the two Co-owners.

**Stock Swap Form** means the form for the Stock Swap of Grain entitled "Stock Swap Form" available from GrainCorp.

**Storage and Handling Agreement** means any agreement in the same or similar form to this Agreement between GrainCorp and another GrainCorp client but does not include a Grower Warehouse Agreement or Grower Storage and Handling Agreement.

**Stored Wheat** means, in respect of a particular type and grade of Wheat, all of the wheat of that type and grade received by GrainCorp for storage and/or handling at any particular time pursuant to a Wheat Port Terminal Services Agreement or Storage and Handling Agreement and which the Co-owners collectively own.

**Term** has the meaning given in **Clause 1.1(b)**.

**Title Transfer** means where the Stock Balance, or part thereof, of the Client (which, for the purposes of this definition, is taken to represent the Client's Interest) at a specific Country Site or Port Terminal, as recorded in GrainCorp Stock Management Systems, is transferred to another GrainCorp client.

**Vessel Loading Fee** means the fee as listed for the relevant GrainCorp Port Terminal in the **Port Terminal Services Price Schedule**

**Wheat** means *Triticum aestivum*, *Triticum duri*, (Durum)

Each individual signing this Agreement on behalf of a party warrants that the individual has been duly authorised to execute this Agreement and to bind that party on whose behalf the individual is signing.

**SIGNED** on behalf of **GRAINCORP**

**OPERATIONS LIMITED** in the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name of signatory (block letters)

\_\_\_\_\_  
Name of witness (block letters)

\_\_\_\_\_  
Date

Signed by [**INSERT CONSULTANT CLIENT** )  
**COMPANY NAME**]-in accordance with Sec  
127 (1) of the Corporations Act, 2001 )

)

)

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

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

(Please delete as applicable)

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director/company secretary (print)

Date