

Attachment 4

Standard Terms

[Draft]



CO-OPERATIVE BULK HANDLING LIMITED

(ABN 29 256 604 947)

2009/10 Season

PORT TERMINAL SERVICES AGREEMENT

FOR

Standard Port Terminal Services

PROVIDED TO

XXX

(ABN xxx)

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DRAFT

THIS AGREEMENT dated the

BETWEEN: **CO-OPERATIVE BULK HANDLING LIMITED** (ABN 29 256 604 947) of Gayfer House, 30 Delhi Street, West Perth WA 6005 ("**CBH**")

AND **XXX** (ABN xxx) of 'insert address' ("**Customer**")

RECITALS

- A. CBH operates Port Facilities in Western Australia.
- B. CBH provides Port Terminal Services to Customers for the export of Bulk Wheat under the terms of its Access Undertaking.
- C. The Customer purchases Wheat and wishes to utilise the Services.
- D. CBH has agreed to provide the Customer with the Services pursuant to the terms and conditions of this Agreement.
- E. The Customer has agreed to the terms and conditions of this Agreement and will remunerate CBH in accordance with the terms of this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. Commencement and Termination

1.1 Commencement

- (a) This Agreement will apply to all Services provided by CBH after 1 October 2009 ("**Commencement Date**") unless otherwise agreed in writing between CBH and the Customer.
- (b) The terms and conditions set out in this Agreement shall be deemed to be accepted by the Customer if the Customer utilises any of the Services contained in this Agreement notwithstanding the fact that the Customer has not executed this Agreement.
- (c) This Agreement supersedes any previous agreement between CBH and the Customer.

1.2 General Termination

This Agreement will terminate on 30 September 2010 and the Customer must ensure that prior arrangements are made to Outturn all Wheat held by CBH prior to this date otherwise the Customer will be bound by the terms and conditions of any superseding standard Port Terminal Services Agreement.

1.3 Immediate Termination

CBH may terminate this Agreement by notice with immediate effect if the Customer commits a Material Breach of this Agreement.

If the Agreement is terminated with immediate effect in accordance with clause 1.3, CBH may require that all Wheat must be Outturned as soon as possible, and the terms of this Agreement will continue to apply until all Wheat has been Outturned.

1.4 Survival of Terms

Clauses 6.6, 9, 10, 13, 15, 18, 23 and 25 shall survive the termination of this Agreement.

2. Definitions

In this Agreement:

"**ACCC**" means the Australian Competition and Consumer Commission.

"**Access Undertaking**" means the undertaking provided by CBH to the ACCC under the provisions of the WEMA and Part IIIA of the TPA dated [date] and available on the ACCC website [attach reference].

"**AGC**" means the Australian Grains Centre located at 700 Abernethy Road, Forrestfield WA 6058.

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

"**AQIS**" means the Australian Quarantine Inspection Services.

"Bulk Handling Act" means the Bulk Handling Act 1967 (WA);

"Bulk Handling Regulations" means the Bulk Handling Act Regulations 1967 (WA);

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

"Cargo Outturn Request Form" means the form available from CBH on which all bulk export requests are to be made.

"CDF" means the Carter's Delivery Form as that form stands from time to time.

"Commencement Date" has the meaning set out in clause 1.1.

"Contaminant" means a Level 1 Contaminant, a Level 2 Contaminant or a Level 3 Contaminant as the case requires.

"Corynetoxins Contamination" means contamination by low molecular weight chemicals that cause annual ryegrass toxicity.

"Credit Application Form" means the form available from CBH on which all customers' credit application requests are to be made.

"Customer's Manager" means the Customer's representative who is responsible for the Customer's Wheat as notified in writing to CBH.

"Demurrage" means the defined level of damages paid to a vessel owner for the delays in loading or discharging the vessel after the Laytime has expired. It is customarily expressed in US dollars per day or portion thereof.

"Dispatch" means the money payable by the vessel owner to the charterer if the vessel completes loading within the agreed Laytime. It is customarily expressed in US dollars per day or portion thereof.

"Export Outturn Request" means an export outturn request in relation to Port Outturning Services.

"Fair Market Price" means the average value at the relevant time and place (of the requirement to determine the Fair Market Price) to be derived from the average of three independent broker valuations by broker appointed by the National Agricultural Commodities Marketing Association, with the valuations to take into account the Grade and variety and taking into account the cost of insurance, levies, taxes, charges, Freight and associated costs.

"Force Majeure" has the meaning given in clause 15.1.

"Forfeiture Approval Authority" means an authority issued by the Customer to CBH to forfeit wheat in excess of the Acceptable Vehicle Mass (as that term is defined in the HMMS).

"Fumigation Certificate" means a certificate supplied by CBH declaring that a particular tonnage of Wheat has been fumigated, pursuant to clause 6.5(c).

"Genetically Modified Organism" has the meaning given to that term in the *Gene Technology Act 2000 (Cth)*.

"Good Operating Practices" means the practices, methods and acts engaged in or by a party who, in the conduct of its undertaking, exercises that degree of diligence, prudence and foresight reasonably and ordinarily exercised by skilled and experienced Australian operators engaged in the same type of undertaking under the same or similar circumstances and conditions.

"Grade" means, in relation to Wheat, the grade declared by a Customer to CBH of the Wheat delivered to the Port Terminal Facility.

"Gross Negligence" means, if a duty of care is owed, an act or omission done with reckless disregard, whether consciously or not, for the consequences of the act or omission.

"Freight" means the independent Customer freight charges for delivery of Wheat to a Port Terminal Facility determined or payable by a Customer.

"GST" means any tax imposed by or through the GST Legislation on a supply (without regard to any input tax credit).

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

"Heavy Metal Contamination" means any heavy metal that if it comes into contact with or is contained in Wheat would present, in CBH's reasonable opinion, a health risk to the environment or humans, irrespective of whether that heavy metal is airborne, solid or contained in solution.

"HMMS" is CBH's Harvest Mass Management Scheme.

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

"Laycan" means the earliest date on which Laytime can commence and the latest date, after which the charterer can opt to cancel the charterparty.

"Laytime" means the amount of time that a charterer has to load a vessel before the vessel is deemed to be on Demurrage.

"Level 1 Contaminant" means a contaminant identified as Level 1 in the CBH contaminant list published by CBH for the current Season as amended from time to time, being contaminants that in CBH's opinion cannot be removed and constitute a significant food safety or quality risk

"Level 2 Contaminant" means a contaminant identified as Level 2 in the CBH contaminant list published by CBH for the current Season as amended from time to time, being contaminants that in CBH's opinion pose a food safety or processing hazard and can have a significant impact on the integrity of the supply chain.

"Level 3 Contaminant" means a contaminant identified as Level 3 in the CBH contaminant list published by CBH for the current Season as amended from time to time, being contaminants that in CBH's opinion present a food safety or processing risk and can be managed on-farm.

"Loss or Damage" means all losses, costs or damages (including legal costs on a solicitor client basis) arising in connection with any personal injury, death, damage to property or economic loss.

"Material Breach" means a breach which:

- (a) in the reasonable opinion of CBH, is not capable of being remedied; or
- (b) the Customer has failed to remedy after being given at least 14 days written notice by CBH to do so if the Customer:
 - (i) does not pay its debts as and when they fall due;
 - (ii) commits an act of bankruptcy;
 - (iii) enters into a composition or arrangement with its creditors or calls a meeting of creditors with the view to entering into a composition or arrangement;
 - (iv) has execution levied against it by creditors, debenture holders or trustees under a floating charge;
 - (v) takes or has taken or instituted against it any actions or proceedings, whether voluntary or compulsory, which have the object of or which may result in the winding up or bankruptcy of the Customer (except, in the case of a corporation, for the purposes of a solvent reconstruction);
 - (vi) has a winding up order made against it or (except for the purposes of a solvent reconstruction) passes a resolution for winding up;
 - (vii) is a party to the appointment of or has an administrator, official manager, receiver, receiver/manager, provisional liquidator or liquidator appointed to the whole or part of its property or undertaking; or
 - (viii) repudiates this Agreement.

"Microbial Contamination" means contamination by pathogenic (disease-causing) micro-organisms including *E. coli*, *Cryptosporidium*, *Giardia*, and *Salmonella*.

"NCV" means no commercial value.

"Natural Toxicant Contamination" means contamination by toxins that are produced by, or naturally occur in, plants or micro-organisms (including, without limitation, mycotoxins produced by fungi, and poisonous low molecular weight substances of plant and bacterial origin).

"Outturn" means to cause Wheat to physically leave CBH's custody at a Port Terminal Facility and is deemed to occur when the Wheat exits the delivery spout into a Wheat shipping vessel at which point physical possession of the Wheat passes from CBH to the Customer or a third party authorised by the Customer

"Outturn Request Form" means the form available from CBH on which all Outturn requests are to be made.

"Pesticide Residue Contamination" means contamination by any substance in wheat resulting from the use of a pesticide. The concept of pesticide residue includes any derivatives of a pesticide, such as conversion products, metabolites, reaction products, and impurities considered to be of potential toxicological significance.

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

"Port Terminal Facility" has the meaning given to that term in the Access Undertaking.

"Port Terminal Rules" means the port terminal rules published from time to time by CBH under clause 9.1(a) of the Access Undertaking.

"Port Outturning Services" means the services provided by CBH pursuant to clause 7.

"Port Facility Stock" means the quantity of Wheat recorded in CBH's systems (in tonnes) delivered by the Customer to a particular Port Terminal Facility.

"Port Terminal Service" has the meaning given to that term in the Access Undertaking.

"Pre-Delivery Sample Analysis Form" means the form available from CBH from time to time.

"Receival Standards" means the quality specifications declared in writing by the Customer at or before the time of delivery of each load of Wheat delivered to the Port Terminal Facility.

"Related Bodies Corporate" has the meaning given to that term in the *Corporations Act 2001 (Cth)*.

"Ring Fencing Rules" means the ring fencing rules in schedule 2 of the Access Undertaking.

"Season" means the period between 1 October of one year and the next 30 September.

"Services" means all of the services provided by CBH to the Customer pursuant to this Agreement.

"Shrinkage" means the allowance for loss in weight of Wheat that occurs during the storage and handling and transport process.

"Stack" means the segregated load of Wheat delivered to the Port Terminal Facility for export accumulation and loading to a ship.

"Stack Segregation" means the CBH system of Wheat storage whereby Wheat is stored at the Port Terminal Facility for the purpose of export accumulation.

"Storage" means the silo, bin, Stack or other storage area in which Wheat is accumulated for loading to an export wheat shipping vessel.

"Taxable Supply" has the meaning given in the GST Legislation.

"Tax Invoice" has the meaning given in the GST Legislation.

"Third Party Test Facility" has the meaning given in item 1.2.2(1) of Schedule 2.

"Ticket Amendment Policy" means the CBH policy regarding the amendment of details of Customer deliveries to CBH, as amended from time to time.

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

"Varietal Purity" refers to the consistency in the genetic make-up of seed wheats, and is determined by measuring the percentage of seed in the sample of the declared variety.

"Vessel Notification Fee" means the fee set out in Item 8 of Schedule 1.

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

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

"Wheat Entitlement" has the meaning set out in clause 6.4.

"Wheat Receival Services" means the Wheat receival services described in the Port Schedules.

"Wheat Storage Services" means the services provided by CBH pursuant to clause 6.

"Wilful Misconduct" means an intentional and conscious disregard of any material provision of this Agreement, but does not include any error of judgment or mistake made by the person alleged to be culpable or by any director, employee, agent or contractor of that person in the exercise, in good faith, of any function, power, authority or discretion conferred on that person under this Agreement or under any law.

3. Interpretation

In this Agreement:

3.1 Interpretation

- (a) headings, sub-headings, captions and service descriptions do not affect the construction or interpretation of this Agreement;
- (b) a word in the singular includes the plural of that word and vice versa;
- (c) a word of any gender includes the corresponding words of each other gender and a reference to one sex includes a reference to all sexes;
- (d) "including" means "including, but not limited to";
- (e) where any word or phrase is given a defined meaning in this Agreement, any part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (f) a reference in this Agreement to a thing (including an amount) is a reference to the whole and each part of it (but nothing in this clause 3.1(f) implies that performance of part of an obligation is the performance of the whole) and a reference to a group of persons is a reference to all of them collectively, to any 2 or more of them collectively and to each of them individually;

3.2 Documents and Parts of Documents

- (a) a reference to any Law, document, instrument or agreement, including this Agreement, includes a reference to that Law, document, instrument or agreement as amended, novated, supplemented, varied or replaced from time to time; and
- (b) a reference to a clause or annexure or attachment is (unless the context requires otherwise) a reference to a clause or annexure or attachment to this Agreement;

3.3 Persons and Corporations

- (a) a reference to a person includes a body politic, corporation, partnership, limited partnership, association or joint venture (whether incorporated or not) whatsoever and wheresoever formed and howsoever described and also a government, governmental or semi-governmental agency or local authority;
- (b) a reference to a person includes that person's successors and permitted assigns and, in the case of a natural person, that person's legal personal representatives;

3.4 Time, Money and Measurement

- (a) a reference to an amount of money is a reference to the amount in the lawful currency of Australia;
- (b) a reference to time is a reference to the local time in Perth, Western Australia (unless otherwise stated);
- (c) where any matter or thing is required to be attended to or done on a day which is not a Business Day, it will be attended to or done on the first day thereafter which is a Business Day; and
- (d) measurements of physical quantities are in Australian legal units of measurement within the meaning of the *National Measurement Act 1960* (Cth).

3.5 Discretions and Approvals

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

4. Service Overview

To assist Customers deliver Wheat into a CBH Port Terminal Facility following the successful acquisition of a Shipping Window in accordance with the Port Terminal Rules, receivals are assessed on a case-by-case basis with initial discussions about the following information being discussed with a CBH Customer Account Manager.

- (a) Total tonnage
- (b) Pre-delivery sampling requirements

- (c) Grade and variety details
- (d) Storage requirements
- (e) Fumigation and chemical treatment details
- (f) Timing of deliveries
- (g) Charges applicable

4.2 Before Delivery

- (a) CBH requires a representative sample of the wheat intended for delivery to minimise the risk of insect and chemical residue contaminated Wheat being received into the Port Terminal Facility.
- (b) Customers must complete a Pre-Delivery Sample Analysis Form paying particular attention to completing the section marked 'Treatment'.
- (c) A one kilogram representative sample from each Storage that deliveries will be made from must be collected. If the Wheat is from more than one storage type, the Storage identification must be clearly marked on each sample.
- (d) The Pre-Delivery Sample Analysis Form with the sample/s for chemical analysis must be couriered direct to:

"Australian Grains Centre (AGC), 700 Abernethy Road, Forrestfield WA 6058"
- (e) Customers are contacted with the sample results within 2 business days of the sample being received.
- (f) Each acceptable sample analysis will certify the Customer to deliver for 14 days from when the results are reported. If deliveries carry over 14 days additional samples must be provided for testing.
- (g) If the sample contains any manageable Contaminates, the Wheat must be treated before a new sample is presented for testing.
- (h) After loading, trucks are to be weighed on a registered weighbridge. Weighbridge tickets from the registered weighbridge are to be presented at the Port Terminal Facility upon arrival. CBH will not accept overloaded vehicles and it is the responsibility of the Customer to ensure that all vehicles are loaded within their legal limit.

4.3 During Delivery

- (a) Upon arrival, CBH staff will assess the VRL of the truck delivering loads to the Port Facility. Each truck is to have a valid permit to meet the presented combination and the gross weight tendered. Unloading of non compliant vehicles will be refused and offending vehicles will be required to leave the Port Terminal Facility.
- (b) The grade, variety and other characteristics of the Wheat delivered are to be declared in writing by the Customer by no later than the time of delivery and CBH takes no responsibility for the accuracy, completeness or veracity of the information relating to the Wheat declared by the Customer. If the load is found to be contaminated or showing signs of insect infestation or activity for any reason the load will be rejected.
- (c) If a load is found to be contaminated the Customer will not be permitted to deliver to CBH Port Terminal Facilities until the Customer has provided CBH with evidence in the form of independent expert verification that there is no further risk of contamination. If the Contaminant is manageable and removed then the Customer must produce a new sample for testing prior to delivery.
- (d) All wheat delivered into the CBH Port Terminal Facility will be received into a segregated stack.

5. Wheat Receival Services

Service Description: *This service provides Wheat, storage assessment, weight measurement and Wheat handling at the point of receival into a Port Terminal Facility.*

5.1 Service Availability

- (a) Wheat Receival Services are provided by CBH under this Agreement for the purpose of export accumulation only.
- (b) CBH agrees to make Wheat Receival Services available at the Port Terminal Facilities in accordance with the terms and conditions of this Agreement. Some Wheat Receival Services may not be available at all Port Terminal Facilities at all times.

- (c) The Customer agrees that Wheat Receiving Services cannot commence before the Customer has booked a Shipping Window, made a nomination for that Shipping Window, provided a compliant pre-delivery sample and in any event no sooner than 21 days before the estimate time of arrival listed on the nomination.
- (d) CBH must comply with the Port Terminal Rules in providing services under this Agreement.

5.2 Receiving Procedures

Where CBH receives a load of Wheat (whether delivered by the Customer), CBH will at the time CBH receives the Wheat:

- (a) record the running Grade of the Wheat delivered to the Port Terminal Facility declared by the Customer;
- (b) determine the Storage into which the Wheat will be placed;
- (c) weigh the Wheat delivered;
- (d) store the Wheat in accordance with the Wheat Storage Services and any specific additional storage and handling requirements as agreed to in writing between the Customer and CBH;
- (e) furnish to the Customer a weighbridge ticket or a statement that specifies wheat type, running Grade, weight and any other relevant details or specifications; and
- (f) the person tendering a load of Wheat to CBH at the Port Terminal Facility shall deliver to CBH a written statement declaring:
 - (i) the date of delivery;
 - (ii) the place of delivery;
 - (iii) the approximate quantity tendered; and
 - (iv) the type and variety of Wheat.

5.3 Warranties

- (a) The Customer represents and warrants that:
 - (i) it owns any wheat tendered for delivery by or on behalf of it;
 - (ii) the full particulars of the variety of the wheat disclosed on any form is true and correct;
 - (iii) it has not manipulated or loaded any delivery in any way to prevent the making of an accurate assessment by CBH of the quality of the wheat using CBH's standard sampling procedures;
 - (iv) wheat being tendered for delivery will not:
 - A) include any Contaminant ; or
 - B) be in breach of the Bulk Handling Act or the Bulk Handling Regulations;
 - (v) all of the wheat was grown between the May and September immediately prior to the current Season;
 - (vi) all of the wheat in a delivery has been or is only contained in equipment, bags, farm implements, farm storages and bulk wheat motor bodies that have:
 - A) not contained any wheat product prior to the containing wheat of this current Season and are free from insects and vermin; or
 - B) previously contained a wheat product, but have been freed of all such wheat product and is free from insects and vermin;
 - (vii) any vehicle that has previously transported non-wheat or contaminated wheat products:
 - A) is clean, dry and free of any remaining materials and odours from previous loads;
 - B) has been washed under high pressure prior to delivering any wheat; and
 - C) has the details of previous loads disclosed on the relevant form;
 - (viii) if any of the Wheat has been treated with substances for the control of insects, details of the substances and the application of those substances has been provided in writing to CBH on the relevant form and the use of any other chemical in the process of planting, growing and storage of wheat has been in accordance with the levels

prescribed in any relevant legislation and also in accordance with the usage instructions;

- (ix) none of the Wheat in a delivery is a Genetically Modified Organism (unless declared in writing to, and approved in writing by, CBH before the delivery enters the Port Terminal Facility);
- (x) any information it provides to CBH is true and correct and not misleading or deceptive or likely to mislead or deceive.

5.4 HMMS

Subclauses 5.4(a) to 5.4(d) inclusive apply in relation to any deliveries by the Customer or its agent.

- (a) The HMMS is incorporated as part of these Terms in respect of any non Grower receivals that may occur.
- (b) If as part of CBH's HMMS the Customer gives CBH a Forfeiture Approval Authority to forfeit wheat in excess of the Acceptable Vehicle Mass (as that term is defined in the HMMS), CBH is entitled to deduct, in accordance with the HMMS and the Forfeiture Approval Authority, the relevant tonnage from the delivered wheat when calculating the Customer's Wheat Entitlement in accordance with clause 6.4. Title to any wheat deducted under this clause vests in CBH and CBH may donate the wheat or the proceeds from its sale to a charity or local government at CBH's discretion.
- (c) A Forfeiture Approval Authority:
 - (i) is valid and binding on the Customer and CBH acknowledges receipt of an instruction to vary it; and
 - (ii) may be varied on an individual delivery basis by signing a contrary instruction on the CDF.
- (d) Notwithstanding anything in the HMMS, the Customer agrees:
 - (i) that it is solely responsible for ensuring that it or its carrier/agent comply with all relevant mass limits prescribed by legislation or regulation for the vehicle used;
 - (ii) it will take all necessary steps (including unloading of any mass in excess of those prescribed limits) to ensure compliance; and
 - (iii) to indemnify and keep CBH indemnified against all expenses, Loss or Damage incurred by CBH and its actions, claims and demands which may be made against CBH, that arise in relation to the Customer's non-compliance with any maximum mass limits prescribed by legislation or regulation for the vehicles used by it or its carrier/agent to deliver Wheat to a CBH Port Terminal Facility.

6. Wheat Storage Services

Service Description: *This service involves storage of Wheat at Port Terminal Facilities.*

6.1 Service Availability

- (a) Wheat Storage Services are provided by CBH under this Agreement for the purpose of export accumulation only.
- (b) The Wheat Storage Services are provided at a Port Terminal Facility if the relevant Storage is available.

6.2 No Common Stack Storage

All Wheat will be stored by CBH in Stack Segregations in which the Customer's Wheat will be separated from Wheat owned by other Customers.

6.3 Outturn Specifications

Subject to clauses 6.6 and 6.7, the loads of Wheat delivered to CBH and stored in a Stack Segregation will be Outturned by CBH upon request from the Customer, subject to the terms of this Agreement.

6.4 Wheat Entitlement

- (a) CBH will maintain a register of the Customer's entitlement to Wheat stored at CBH Port Facilities (the "**Wheat Entitlement**"). A certificate by an officer of CBH as to the Wheat Entitlement shall be prima facie evidence of the loads of Wheat that have been delivered to

CBH and which the Customer is entitled to have Outturned from the the CBH Port Terminal Facility, subject always to the terms and conditions of this Agreement.

- (b) Upon request and subject always to clause 6.4(d), CBH will provide the Customer with information regarding the Wheat held at the Port Terminal Facility and delivered to the Port Terminal Facility by the Customer .
- (c) The Wheat Entitlement of the Customer is calculated at any particular point in time by aggregating the weight of the loads of Wheat received by CBH at the Port Terminal Facility on behalf of the Customer or transferred to the Customer:
 - (i) less the relevant Shrinkage factor (0.50%) specified in clause 5.6,
 - (ii) less the relevant Wheat Dust Deduction (0.25%) in clause 5.7 where the Wheat is Outturned via the Port Terminal Facility into a vessel;
 - (iii) less the weight of any Wheat that is damaged or destroyed as a result of a riot, industrial dispute, civil commotion, war, act of God or any unforeseen cause not attributable to the negligence of CBH;
 - (iv) less the weight of any NCV Wheat or damaged Wheat in respect of which an insurance claim has been made and paid to the Customer in accordance with clauses 13.1 and 14.1;
 - (v) less the weight of any Outturned Wheat.
- (d) CBH does not warrant the correctness or completeness of data that has been supplied by the Customer provided in relation to loads of wheat..

6.5 Wheat Fumigation

- (a) CBH shall not fumigate wheat delivered to the Port Terminal facility except where insect activity is detected by either or both CBH and AQIS.
- (b) Fumigation services will be carried out by CBH on all wheat where required in its Port Terminal Facility to protect the Wheat. The application of fumigation services will limit availability of the Wheat in accordance with standard CBH Wheat protection practices.
- (c) Where the Wheat delivered by a Customer to a Port Terminal Facility has been fumigated prior to delivery, the Customer shall provide a Fumigation Certificate detailing any Wheat treatment information following a written request from CBH. Fumigation Certificates shall be in the form adopted by CBH from time to time.
- (d) Where Wheat has been fumigated at the Port Terminal Facility by CBH, CBH shall provide a Fumigation Certificate detailing any Wheat treatment information following a written request from the Customer. Fumigation Certificates shall be in the form adopted by CBH from time to time.

6.6 Shrinkage

Notwithstanding any other clause in this Agreement, CBH will apply a Shrinkage factor of 0.50% to all Wheat delivered by the Customer to the Port Terminal Facility to determine the quantity of Wheat that CBH is obliged to Outturn on behalf of the Customer.

6.7 Wheat Dust

Dust, chaff or fines removed at any stage of the handling process into a CBH dust extraction system is considered be NCV dust and CBH is entitled to dispose of NCV dust as it sees fit. CBH will apply a Wheat Dust Deduction of 0.25% from a Customer's Wheat Entitlement when the relevant Wheat type is Outturned from a Port Terminal Facility into a vessel.

6.8 Title to surplus wheat

Title in any wheat remaining in the CBH system which is surplus to the Customer's Wheat Entitlement shall transfer to CBH and CBH shall be entitled to sell or dispose of any surplus wheat as it sees fit and retain any proceeds.

7. Port Outturning Services

Service Description: *This service provides bulk Outturning of Wheat at a Port Terminal Facility into a ship's hold.*

7.1 Service Availability

- (a) Port Outturning Services are provided by CBH under this Agreement for the purpose of export accumulation only.

- (b) Port Outturning Services are offered at all Port Facilities in accordance with the terms and conditions contained in this Agreement.
- (c) Port Outturning Service charges do not include any rail or road transportation costs to the relevant Port Terminal Facility.

7.2 Outturn Requests

The Customer must request any Port Outturning Services required on a Outturn Request Form.

7.3 Export Outturn Request Form

On receipt of a Export Outturn Request, CBH will determine its ability to meet the request and advise the Customer if CBH has:

- (a) accepted the Outturn Request; or
- (b) rejected the Outturn Request.
- (c) In making any decision to accept or reject the Outturn Request, CBH shall make its determination in accordance with the terms of the Undertaking and in particular having regard to the following:
 - (i) that in making decisions relating to the provision of access to the Port Terminal Services, CBH must balance conflicts of interests of users of the Port Terminal Facilities;
 - (ii) the application by CBH of objective commercial criteria and practices and policies to promote fair, reasonable and non-discriminatory Operational Decision making;
 - (iii) giving priority to vessels based on the lead time given between nomination and vessel ETA, and 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;
 - (iv) taking 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
 - (v) 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) contamination of accumulated cargoes or contamination of loads; or
 - K) a Material Breach;
 - L) 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.
 - (vi) the Wheat is unavailable as a result of fumigation activities pursuant to clause 6.5;
 - (vii) the Export Outturn Request contains inadequate or inaccurate information;
 - (viii) the Customer fails to satisfy the requirements of clause 6.12; or
 - (ix) an event of Force Majeure prevents the scheduling of Port Outturning Services.

7.4 Acceptance of Outturn Request

Upon acceptance of an Outturn Request, CBH shall Outturn the Wheat in accordance with the Cargo Outturn Request Form and all other provisions of this Agreement.

7.5 Outturn Standard

CBH is obliged to Outturn the Wheat delivered to the Port Terminal Facility by the Customer and held in Storage

7.6 Weigh

CBH shall weigh all Wheat Outturned using its certified batch weighers. In the absence of manifest error or fraud the CBH weight measurement will be final.

7.7 AQIS Sampling

Wheat will be made available for inspection by AQIS inspectors at the Customer's cost prior to Outturning the Wheat onto the nominated ship.

7.8 Non Shipment

If the Wheat is not shipped from the Port Terminal Facility as detailed in an accepted Cargo Outturn Request Form due to no fault of CBH, the Customer must pay any costs incurred by CBH to reposition Wheat within the Port Terminal Facility or to remove the Wheat from the Port Terminal Facility.

7.9 Notice

- (a) The Customer must provide CBH with a minimum of 30 consecutive clear days notice of an intended shipment.
- (b) The Customer must provide CBH with the vessel name and firm estimated time of arrival of the vessel no later than 21 consecutive clear days prior to the firm ETA date. CBH will accept a substitute vessel provided that
 - (i) the substitute vessel has same Laycan window (or will arrive in the overlap of Laycan windows);
 - (ii) the firm ETA date of the substitute vessel is not before the firm ETA date of the original vessel; and
 - (iii) the firm ETA date of the substitute vessel is still within the original vessel's Laycan window.
- (c) If the Customer fails to provide the required notice pursuant to clauses 7.9(a) and 7.9(b), CBH may, in its absolute discretion, elect to Outturn the Wheat for shipping and charge the Customer the Vessel Notification Fee.

7.10 Right to Invoice Prior to Outturning

If Wheat is scheduled to be Outturned into a ship's hold from a Port Terminal Facility, CBH reserves the right to invoice the Customer and receive payment for the Port Outturning Service charges prior to the Wheat being Outturned onto a ship. Where there are variations in respect of the amount of Wheat actually Outturned and the costs incurred in Outturning, CBH and the Customer agree that:

- (a) within 30 days of the Wheat being Outturned onto a ship, CBH will refund any amounts paid by the Customer under this clause in respect of Outturning charges invoiced by CBH relating to Wheat that was not Outturned onto a ship; and
- (b) CBH is entitled to invoice the Customer for any additional Wheat Outturned plus costs incurred by CBH as a direct result of the actions of the Customer or the Customer's agent.

7.11 Wheat Export Licence

The Customer warrants that the appropriate wheat export licence or accreditation (if applicable) continues to be held prior to requesting Port Outturning Services and that the request is within the terms of the licence. CBH reserves the right to request details of the wheat export licence or accreditation, at any time, and the Customer agrees to provide a copy of the licence to CBH within twenty-four (24) hours of any such request.

7.12 Misrepresentation

- (a) The Customer warrants that the Wheat and its Grade will not be misrepresented to third parties or incorrectly recorded on commercial or shipping documents.
- (b) The Customer indemnifies CBH against all Loss or Damage incurred in any dispute over Wheat quality arising from such misrepresentation or incorrect recording of the Grade on commercial or shipping documents.

7.13 Cleanliness

- (a) The Customer is responsible for ensuring that all vessels arrive at a Port Terminal Facility in a clean, empty and well maintained state free from any Contaminants or residue.
- (b) CBH is not obliged to inspect any vessel for cleanliness but if it does inspect then CBH, acting reasonably at all times, is entitled to reject the vessel as unfit for the transportation of wheat and to refuse to load the vessel.
- (c) CBH is not liable for any Loss or Damage caused as a result of a rejection of the vessel.
- (d) The Customer agrees to pay CBH for any costs incurred by CBH as a result of the rejection of a vessel by CBH or AQIS.
- (e) Vessels are not permitted to be cleaned at any Port Terminal Facility without CBH's consent. If CBH consents, if a vessel fails inspection, CBH can instruct a vessel to be removed from the berth if it is preventing another vessel from loading at the same berth.

7.14 Stevedoring

If the Customer requests, CBH is willing to arrange stevedoring services for the Customer's vessels when they are loaded at Port Facilities. Upon request CBH will provide the Customer with the necessary terms and conditions (including charges) for CBH's provision of stevedoring services.

8. Additional Information and Services

Service Description: *CBH may also provide additional information or services over and above the standard information and services that CBH has agreed to provide under this Agreement.*

8.1 Information and Service Requests

- (a) CBH will provide the Customer with an estimate of its costs and any additional terms and conditions required in order to provide additional information or services. Costs may either be a lump sum or in accordance with normal hourly rates.
- (b) The Customer agrees to pay CBH's costs in providing any additional information or services requested by the Customer.
- (c) The decision of CBH whether to provide any additional information or services requested by the Customer will be at CBH's absolute discretion unless it is required to provide such additional information by any law.

9. Remuneration

In consideration for any Services provided by CBH to the Customer under this Agreement, the Customer agrees to pay CBH for all Services rendered in accordance with the charges set out in Schedule 1.

9.1 Application for credit terms

- (a) If the Customer does not have an existing credit arrangement with CBH the Customer must provide CBH with a completed Credit Application Form at the same time as it executes this Agreement.
- (b) The Customer agrees that any credit provided by CBH is for business or investment purposes only and not for personal, domestic or household purposes.

9.2 Credit terms

- (a) If CBH agrees to provide credit terms to the Customer, then CBH reserves the right, in its absolute discretion, to:
 - (i) place or vary a limit on the amount allowed to be outstanding by the Customer at any time;
 - (ii) vary the credit terms by providing not less than 60 days' written notice of the new or varied credit terms;
 - (iii) refuse to extend further credit terms to the Customer; or
 - (iv) withdraw the Customer's credit terms.
- (b) It is the Customer's responsibility to request a credit limit increase if it is going to exceed the approved credit limit. Any refusal, withdrawal or exceeding of credit terms will result in the Services being provided on a prepaid basis.

- (c) If CBH has agreed to provide credit terms prior to the Commencement Date and has not withdrawn them prior to this Agreement then those credit terms will be deemed to continue on the terms and conditions set out in this clause 9.

9.3 Credit information

The Customer authorises CBH to provide information contained in the Credit Application Form and acquired as a result of the Customer's performance of this Agreement to any bank, credit reporting agency, debt collection agency, trade reference and any other person, business or company.

9.4 Invoicing

- (a) CBH will invoice the Customer for all charges payable in providing Services under this Agreement.
- (b) CBH will endeavour to issue invoices pertaining to bulk vessel shipments within 14 days of the vessel departure.
- (c) If GST is payable by CBH in respect of any Taxable Supply to the Customer under this Agreement, the Customer must pay any such GST (in addition to any other amounts payable under this Agreement).
- (d) CBH will provide the Customer with a tax invoice that complies with the GST Legislation.
- (e) All charges in this Agreement are expressed exclusive of GST.

9.5 Payment terms

- (a) If credit terms are made available by CBH at its discretion, then the Customer must pay the amount set out in any invoice provided by CBH within 14 days of the date of the invoice.
- (b) If:
- (i) credit terms are not made available to the Customer; or
 - (ii) the Customer fails to make payment of an invoice in accordance with clause 9.5(a); or
 - (iii) CBH withdraws the provision of the credit terms to the Customer,
- then all existing invoices shall become immediately due and payable and the Customer must tender to CBH the charges for any Service prior to the performance of that Service.
- (c) CBH may, in its absolute discretion, suspend the provision of the Services (including credit) if the Customer fails to pay an invoice in accordance with clauses 7.10 and 9.5. The suspension of the Services is not a breach by CBH of its obligations under this Agreement and CBH may continue to suspend the Services until such time as the invoice has been paid.

9.6 Certificates

A certificate signed by an authorised representative of CBH stating the amount owing to CBH by the Customer on any account whatsoever and all interest in respect thereof shall be a prima facie evidence of the amount owed to CBH by the Customer at the date of the certificate and shall be deemed correct unless the Customer proves otherwise.

9.7 Interest on late payments

- (a) The Customer must pay interest on all amounts owing to CBH on any invoice that remains outstanding upon expiration of the due date expressed in the invoice at a rate 5% above the 90 day Bank bill rate offered by the Commonwealth Bank of Australia as at 31st October each year or as otherwise amended and notified to the Customer if there is a significant rise in this rate.
- (b) Interest will be calculated daily from the due date expressed in the invoice, until all amounts owing on the invoice, including interest, have been paid.
- (c) Payments by the Customer marked specifically for a particular invoice will be applied by CBH firstly in reduction of the interest outstanding and accruing on the invoice and then on any amount outstanding on the invoice.

9.8 Cost recoverable

Any Loss or Damage incurred by CBH in recovering any outstanding monies shall be paid in full by the Customer prior to CBH resuming the provision of the Services.

9.9 Notice

CBH shall provide the Customer with at least sixty (60) days' written notice of any changes to the charges specified in Schedule 1.

9.10 Set off

- (a) Any amounts owing by CBH or any of its Related Bodies Corporate to the Customer whether under this Agreement or otherwise, may, at the election of CBH, be set off (without prior notice) against any amounts owing by the Customer to CBH or any of its Related Bodies Corporate, whether under this Agreement or otherwise.
- (b) CBH holds the benefit of this clause and may exercise the rights under this clause on its own behalf and for and on behalf of each of its Related Bodies Corporate but nothing in this clause obliges such Related Bodies Corporate to perform any of the obligations of CBH under this Agreement.
- (c) CBH will give notice to the Customer of any set off performed under this clause.
- (d) The Customer is not entitled to set off amounts owing to CBH or any of its Related Bodies Corporate.

9.11 Security

The Customer shall provide such security to CBH as CBH reasonably requires (including the execution of personal guarantees by the Customer's signatories to this Agreement, directors, shareholders or beneficiaries of the Customer).

10. Lien and Right to Withhold Wheat

10.1 Statutory Lien

CBH has a lien, in priority to all other claims, liens or security, over any Wheat received by it, in respect of any charges payable to CBH in respect of that Wheat.

10.2 Right to withhold Wheat

Notwithstanding any other term of this Agreement, CBH may, at its sole discretion, refuse to Outturn the Customer's Wheat if the Customer has not paid any amounts owing to CBH pursuant to clauses 7.10 and 9.5.

11. Due Care and Diligence

- (a) CBH will comply with Good Operating Practices in the carrying out of its obligations under this Agreement.
- (b) The Customer will comply with Good Operating Practices in the carrying out of its obligations under this Agreement.

12. Appointment of an Agent

12.1 Notice and Obligations

The Customer may appoint an agent to undertake the day to day co-ordination of its operational Service requirements. The Customer must notify CBH immediately in writing upon the appointment of any such agent. Any such appointment will not in any way relieve the Customer of its obligations under this Agreement and accordingly any instruction from the appointed agent is, and will be deemed to be, an instruction of the Customer.

12.2 Liability for Agent's Actions

The Customer agrees to accept full responsibility and to indemnify CBH for all actions, decisions and costs incurred or authorised by any agent appointed pursuant to clause 12.1 above when performing Services on behalf of the Customer under this Agreement.

13. CBH Liability

13.1 Liability for Shortfall

- (a) Subject always to clauses 13.1(b) and 13.8, CBH will be responsible and liable for any shortfall if it cannot Outturn the Customer's Grain Entitlement for the relevant Grade and season of grain.
- (b) CBH's liability for a shortfall in Grain Entitlement pursuant to clause 13.1(a) will only extend:
 - (i) (in the case of a shortfall in quantity), at the election of CBH, to either the:
 - A) provision of sufficient grain of the same type, variety and Grade from any Site to ensure the Customer's Grain Entitlement is not diminished; or

- B) provision of financial compensation for the value of the Grain shortfall to be determined at the Fair Market Price for such Grain.

13.2 Damage for Gross Negligence or Wilful Misconduct

Other than as set out in clause 13.7 and subject always to clauses 13.3, 13.4 and 13.8, CBH will only be liable for loss and/or damage, which is caused by the Gross Negligence or Wilful Misconduct of CBH, its officers, employees or contractors.

13.3 Liability Cap

Other than as set out in clauses 13.1 and 13.7, CBH's maximum liability to the Customer howsoever arising shall be limited to \$100,000 for any single event and limited to a maximum in aggregate of \$250,000 for the term of this agreement, however caused including Loss or Damage resulting from:

- (a) the negligence of CBH, its servants or agents; or
- (b) the breach of this Agreement by CBH, its servants or agents.

13.4 Limitation of Wheat Loss and Damage

Except as provided for in clauses 13.1, 13.2 and 13.7, CBH will not be liable or responsible for any Loss or Damage (including Indirect or Consequential Loss) to the Wheat resulting from:

- (a) any variation in the quality of the Wheat resulting from:
 - (i) the natural deterioration of Wheat over time;
 - (ii) the loss of germinative capacity of Wheat; and
 - (iii) the effects of the normal handling process on the Wheat held at, or transported within Port Terminal Facility.

13.5 Limitation of Loss or Damage for delay

In the event of:

- (a) delays incurred in CBH Outturning the Wheat;
- (b) delays due to the actions of third parties which are beyond the reasonable control of CBH;
- (c) delays in respect of the provision of information by CBH to the Customer pursuant to clauses 6.4(a) and 6.4(b),

and such delay causes any shortfall in Wheat Entitlement, then CBH's liability will only extend to the remedies provided in clause 6.1(b). CBH will not be liable for any other Loss or Damage caused by such delay.

13.6 Contribution to loss

Where any express or implied term of this Agreement places on any Party (in this clause 13.6 "Party A") any duty of care the breach of which would, if the duty of care were imposed by the general law rather than by such express or implied term, constitute an actionable tort against any other Party (in this clause "Party B"):

- (a) Party B has an obligation not to commit any negligent act or omission which contributes to any Loss or Damage it suffers or may suffer as a result by any breach by Party A of such express or implied terms; and
- (b) the liability of Party A for any such breach is limited to the direct and proximate Loss or Damage of Party B arising out of such breach, less the proportion of such Loss or Damage attributable to any breach by Party B of its obligations under clause 13.6(a).

The obligations imposed on a Party in this clause 13.6 in relation to any breach by Party A of the kind the subject to this clause are additional to, and not in derogation of, any obligation of Party B to mitigate its Loss or Damage in relation to such breach.

13.7 Conditional exclusion of Statutory Liability

This Agreement excludes to the maximum extent permitted by law any warranty or condition implied by common law, practice or statute. However in the case of those warranties under statute which may not be excluded, including the *Trade Practices Act 1974 (Cth)*, CBH's liability for breach of such conditions or warranties shall, to the maximum extent permitted by law, be limited, in the sole discretion of CBH, to the lesser of:

- (a) in the case of Services:
 - (i) the re-supply of the relevant Service; or
 - (ii) the payment of the cost of re-supply of the relevant Service; and
- (b) in the case of goods (including wheat provided under clause 13.1):

- (i) the replacement of the goods or the supply of equivalent goods;
- (ii) the repair of the goods;
- (iii) the payment of the cost of replacing the goods or of acquiring replacement goods; or
- (iv) the payment of the cost of having the goods repaired.

For the purposes of this clause 13.7, "relevant Service" shall mean the Service in relation to the quantity of affected Wheat only and does not mean the aggregate value of the relevant Service provided to the Customer.

13.8 No Indirect or Consequential Loss

Notwithstanding anything else in this Agreement, CBH will not be liable to the Customer for any Indirect or Consequential Loss arising out of or in relation to the provision of Services by CBH pursuant to this Agreement.

13.9 Indemnity and Release

The Customer hereby releases and indemnifies CBH in respect of all actions, claims and demands which may be instituted by the Customer against CBH in respect of the matters dealt with under clauses 13.4 and 13.8.

13.10 Exclusion of warranties

CBH does not represent, warrant or guarantee that any Wheat received, acquired or Outturned for the Customer:

- (a) conforms to any specification as to Varietal Purity;
- (b) is free from the presence, at any level or concentration, of Pesticide Residue Contamination, Corynetoxins Contamination, Microbial Contamination, Heavy Metal Contamination or Natural Toxicant Contamination; or
- (c) is free from the presence, at any level or concentration, of Genetically Modified Organisms.

13.11 Exclusion Clauses

Notwithstanding anything expressed or implied by this Agreement, to the extent permitted by law CBH will not be liable to the Customer for any and all Loss or Damage caused by the negligence, breach of contract, breach of statutory duty or any other legal or equitable obligation of CBH, or otherwise howsoever arising in connection with this Agreement from:

- (a) any variance in any specification as to Varietal Purity from the actual Varietal Purity of Wheat received or Outturned for the Customer;
- (b) the presence, in any Wheat received or Outturned for the Customer, at any level or concentration, of any Pesticide Residue Contamination, Corynetoxins Contamination, Microbial Contamination, Heavy Metal Contamination or Natural Toxicant Contamination; or
- (c) the presence, in any Wheat received or Outturned for the Customer, at any level or concentration of any Genetically Modified Organisms.

13.12 Indemnity

Notwithstanding anything expressed in or implied by this Agreement, to the extent permitted by law the Customer shall indemnify, keep indemnified and hold harmless CBH from any and all Loss or Damage suffered by or claimed from CBH, whether caused by the negligence, breach of contract, breach of statutory duty or any other legal or equitable obligation of CBH, or otherwise howsoever arising in connection with this Agreement from:

- (a) any variance in any specification as to Varietal Purity from the actual Varietal Purity of Wheat received or Outturned for the Customer;
- (b) the presence, in any Wheat received or Outturned for the Customer, at any level or concentration, of any Pesticide Residue Contamination, Corynetoxins Contamination, Microbial Contamination, Heavy Metal Contamination or Natural Toxicant Contamination; or
- (c) the presence, in any Wheat received or Outturned for the Customer, at any level or concentration of any Genetically Modified Organisms.

14. Insurance and Risk

14.1 Insurance

- (a) CBH will, to the extent that it is reasonably practicable, take out and keep in force an insurance policy in respect to the risk of loss or damage to the Wheat whilst:
 - (i) it is held in the Port Facilities; and

- (ii) during transit organised by CBH within the Port Terminal Facility.
- (b) CBH will advise the Customer if it cannot gain insurance coverage as detail above.

14.2 Transfer of risk

Subject to clause 13, the risk of loss or damage to Wheat is transferred to the Customer at the point in time when the Wheat exits the Outturning spout of a Port Terminal Facility into a form of a Wheat transportation vessel.

15. Force Majeure Event

15.1 Definition

An event of "**Force Majeure**" is any event or circumstance not within the reasonable control of the party affected by it (the "**Affected Party**"), including:

- (a) acts of God, including storms or cyclones, action of the elements, epidemics, landslides, earthquakes, floods, fire, road or rail closures due to washouts or impassability and natural disaster;
- (b) strikes, stoppages, restraints of labour, or other industrial disturbances;
- (c) acts of the public enemy, including wars which are declared or undeclared, blockades and insurrections;
- (d) riots, malicious damage, sabotage and civil disturbance;
- (e) accident (including accidental emissions of pollutants or hazardous substances), fire, explosion, radioactive contamination and toxic or dangerous chemical contamination;
- (f) the adverse application of any Australian laws or enforcement actions of any Commonwealth or State court or governmental agency not resulting from any wrongful act or omission of the Affected Party;
- (g) the refusal of or delay in obtaining any necessary consents from any government agency, provided that the Affected Party has acted in a timely manner in endeavouring to secure them;
- (h) the failure of, or the breakdown of or accident to, plant or machinery of any kind other than breakdowns or damage caused by the Gross Negligence of CBH;
- (i) the breach by any third party supplier of its obligations to supply goods or services to the Affected Party, provided that the Affected Party has acted in a timely manner in endeavouring to secure such supply, and provided that the Affected Party itself is not in breach of any relevant obligation; and
- (j) any production shutdown or interruption which is validly required or directed by the Commonwealth or State government or any governmental agency which is not due to the act or default of the Affected Party,

and which the Affected Party is not reasonably able to prevent or overcome, or the effects of which the Affected Party is not reasonably able to predict and take measures to avoid, by the exercise of reasonable technical and commercial diligence and prudence.

15.2 Exemption from Force Majeure

The lack of funds or inability to use any funds will not constitute Force Majeure.

15.3 Relief from performance and liability

Subject to clause 15.6, an Affected Party will be excused from performance of and will not be liable to the other party for any failure in carrying out any of its obligations under this Agreement if and only to the extent and for the time that it is prevented in whole or in part from doing so by Force Majeure.

15.4 Actions during Force Majeure Events

An Affected Party claiming the benefit or protection of Force Majeure will:

- (a) promptly give written notice to the other party of the occurrence and circumstances in respect of which the claim of Force Majeure arises;
- (b) take all reasonable steps to ameliorate and remedy the consequences of that occurrence without delay;
- (c) maintain regular communication with the other party to describe what is being done to remedy the Force Majeure; and
- (d) resume performance in full of its obligations under this Agreement as soon as reasonably practicable,

but the settlement of strikes, lockouts, or other industrial disputes or disturbances which constitute Force Majeure will be entirely within the discretion of the Affected Party and the Affected Party may refrain from settling the strike, lockout or dispute or may settle it at such time and on such terms as it considers to be in its best interests.

15.5 Termination

If the Affected Party is relieved from performance and liability in accordance with clause 15.3 due to Force Majeure for a period exceeding 60 days, either party may terminate this Agreement with immediate effect by written notice to the other party.

15.6 Payments by the Customer

Despite any other provision of this Agreement, the occurrence of Force Majeure affecting the Customer will not relieve the Customer of the obligation to pay any amounts owing under this Agreement in relation to Services performed by CBH prior to notice being given in accordance with clause 15.4(a), including but not limited to the payment of the charges set out in Schedule 1 as modified from time to time by CBH.

16. Title to Wheat

- (a) Subject always to the terms of this Agreement, CBH is a bailee for reward of any Wheat received from, on behalf of, or for the account of, the Customer, that is within CBH's power, possession, custody or control.
- (b) Subject to clause 10, the proprietary interest in Wheat is vested in the person who, for the time being, is entitled to obtain it from the stocks held by CBH or under CBH's control.

17. Port Terminal Facility Access

17.1 Access Procedure

In order to protect the safety of the Customer's employees, agents or contractors and that of CBH's employees, agents, contractors and invitees:

- (a) if the Customer wishes to visit a Port Terminal Facility, then the Customer must give a minimum of 2 Business Days notice to the CBH Customer Account Manager stating the date the Customer wishes to attend, the identity of the Customer's representative and the purpose of the visit;
- (b) CBH may, in its absolute discretion, refuse or reject any visitation request or propose alternative times and/or places for the visit; and
- (c) subject to clause 17.2, the Customer shall not attend at any CBH Port Terminal Facility without receiving the prior consent of the Customer Account Manager for each visit and shall not enter or stay on the Port Terminal Facility without appropriate CBH supervision.

17.2 Public Reception

If a CBH Port Terminal Facility has a public reception, then clause 17.1(c) is modified to the extent necessary to allow the Customer to proceed directly following the commonly accepted route to the public reception but does not allow the Customer to proceed to any other part of the Port Terminal Facility without appropriate supervision.

17.3 Port Terminal Facility Safety

Whilst on a Port Terminal Facility, the Customer agrees to:

- (a) follow all reasonably necessary directions of CBH personnel, including departure from the Port Terminal Facility;
- (b) not create any hazard, or cause any contamination, on the Port Terminal Facility; and
- (c) procure that its employees, agents or contractors comply with this clause 17.3.

18. Confidentiality

18.1 General obligation

Subject to clauses 18.2 and 19.3, this Agreement and all information exchanged between the parties under this Agreement or during the negotiations preceding the signing of this Agreement is confidential to the party which provided it and may not be disclosed to any person except:

- (a) by a party to the legal and other professional advisers, auditors and other consultants ("**Consultants**") and employees of:
 - (i) that party; or

- (ii) that party's Related Bodies Corporate.
- (b) to another party with the consent of the party which first supplied the information;
- (c) if the information is at the time lawfully in the possession of the proposed recipient of the information through sources other than a party;
- (d) to the extent required by any law or by the lawful requirement of any governmental agency having jurisdiction over the party or its Related Bodies Corporate;
- (e) to the extent required by a lawful requirement of any stock exchange having jurisdiction over a party or its Related Bodies Corporate;
- (f) if necessary or commercially desirable to be disclosed in any prospectus or information memorandum to investors or proposed or prospective investors:
 - (i) for an issue or disposal of any shares in a party or its Related Bodies Corporate;
 - (ii) for an issue of debt instruments of a party or a party's Related Body Corporate; or
 - (iii) for the purposes of a party obtaining a listing on Australian Stock Exchange Limited of any shares;
- (g) if the information is at the time generally and publicly available other than as a result of breach of confidence by the party wishing to disclose the information or those to whom it proposes to disclose it;
- (h) if necessary or commercially desirable to be disclosed to an existing, or bona fide proposed or bona fide prospective:
 - (i) financier;
 - (ii) financier of a party or of any of its Related Bodies Corporate; or
 - (iii) rating agency in respect of a party or of any of its Related Bodies Corporate;
- (i) if necessary or commercially desirable to be disclosed to any bona fide proposed or prospective:
 - (i) transferee of an interest in any asset;
 - (ii) financier of such transferee providing or proposing or considering whether to provide relevant financial accommodation; or
- (j) if necessary or commercially desirable to be disclosed to consultants or employees of any of the persons referred to in clause 18.1(h) or 18.1(i).

18.2 Conditions

- (a) In the case of a disclosure under clause 18.1(a) or 18.1(b) and, where appropriate, under clause 18.1(d), 18.1(e) or 18.1(f), the party wishing to make the disclosure must inform the proposed recipient of the confidentiality of the information and the party must take customary precautions to ensure that the proposed recipient keeps the information confidential.
- (b) In the case of a disclosure under clause 18.1(h), 18.1(i) or 18.1(j) (in the case of consultants only), the party wishing to make the disclosure must not make any disclosure unless:
 - (i) in the case of a disclosure under clause 18.1(h) or 18.1(i), the proposed recipient has first entered into and delivered to the parties a confidentiality undertaking in a form acceptable to all parties; and
 - (ii) in the case of a disclosure under clause 18.1(j), the principal or employer of the proposed recipient has first entered into and delivered to the parties a confidentiality undertaking in a form acceptable to all parties which shall incorporate a warranty by the principal or employer of the proposed recipient that the proposed recipient is under an obligation of confidentiality to the principal or employer and that the principal or employer will enforce that obligation to the fullest extent that the law allows upon being called upon to do so by any of the parties.
 - (iii) -

18.3 Notice to other Parties

Each party must:

- (a) promptly inform all other parties of any request received by that party from any person described in clause 18.1(d) to disclose information under clause 18.1(d);

- (b) inform all other parties as soon as reasonably practicable after information is disclosed by the party under clause 18.1(d); and
- (c) not disclose any information under clause 18.1(e) unless all other parties have been informed of the proposed disclosure.

18.4 Indemnities

Subject to clause 13, each party indemnifies each other party against any costs, losses or damages suffered by that other party arising out of or in connection with any disclosure by the first-mentioned party of information in contravention of this clause 18.

18.5 Survival of confidentiality obligations

The obligations of confidentiality imposed by this clause 18 survive the termination of this Agreement and any person who ceases to be a party continues to be bound by those obligations.

19. Dispute Resolution

19.1 Disputes

If a dispute arises in relation to the Customer's Wheat, the dispute shall be referred to the Customer's Manager and the CBH Operations Manager - Logistics for resolution. The CBH Operations Manager - Logistics and the Customer's Manager shall meet or confer at least once within 24 hours of the notification of the dispute to discuss the dispute and attempt to resolve the dispute.

Where the dispute relates to invoiced Services, the Customer is to inform the CBH Operations Manager - Logistics immediately, and before the due date of that invoice.

19.2 Escalation of Dispute – Executive Panel

If no resolution of the dispute can be reached in accordance with clause 19.1, within seven (7) days of the dispute being notified to the other party, each party shall refer the dispute to the General Manager - Operations of CBH and the CEO of the Customer (or such person designated by the Customer as having authority equivalent to that of a CEO) (the "**Executive Panel**"). The Executive Panel:

- (a) will meet at least once at a time mutually convenient no later than 2 Business Days after the dispute has been referred to it; and
- (b) may decide on the methods and procedure by which it will resolve the dispute, which may include the obtaining of expert advice.

19.3 Payment of invoices pending resolution of a dispute

Notwithstanding anything in this Agreement, the Customer is not entitled to withhold payment of the undisputed amount of any invoice. If the Customer cannot provide a reasonable estimate of the disputed amount the Customer will not be entitled to withhold any payment.

20. Entire Agreement

- (a) This Agreement constitutes the entire Agreement between the parties. Each party warrants and covenants to the other that there are no written or oral statements, representations, undertakings, covenants or agreements between the parties, express or implied, except as provided for in this Agreement.
- (b) This Agreement may only be amended or varied by Agreement in writing signed by both parties expressly amending this Agreement and unless the context otherwise requires, a reference to this Agreement shall include a reference to this Agreement as amended or varied from time to time.
- (c) Notwithstanding that CBH from time to time produces operational guidelines to assist customers, nothing in those guidelines shall be deemed to impliedly or expressly amend anything in this Agreement and if there is any inconsistency between any guidelines and a term of this Agreement, the terms of this Agreement shall prevail.

21. Notices

21.1 Types of Notices

Except as provided in clause 21.2, all notices of any kind and all statements, forecasts, advices, policy statements, procedures manuals, guidelines and the like, and all invoices given or made under this Agreement (each a "**Communication**") shall be:

- (a) in writing in the English language;

- (b) marked for the attention of the appropriate person; and
- (c) delivered by hand to the address of the addressee, or sent by ordinary letter post (airmail if posted to or from a place outside Australia) or hand delivery by a reputable courier service to the address of the addressee, or sent by facsimile to the facsimile number of the addressee.

21.2 Operational and Urgent Notices

Where this Agreement expressly so provides, and in those cases or categories of cases where the parties agree in writing, notices of a day to day operational nature or notices given in an operational emergency may be given orally and confirmed in writing. The parties shall also agree upon protocols, contact points and contact telephone numbers for dealing with matters which require urgent action in the administration of this Agreement, and shall ensure that lists of up-to-date contact points and telephone numbers are exchanged as and when required to ensure the currency of those lists.

21.3 Notice Takes Effect

Subject to clause 21.4, a Communication takes effect from the later of:

- (a) the time it is actually received; and
- (b) any later time specified in the Communication.

21.4 Deemed Receipt

For the purposes of this Agreement:

- (a) a Communication delivered by hand to the address of a party shall be deemed to be received if it is handed (with or without acknowledgment of delivery) to any person at that address who, in the reasonable judgment of the person making the delivery (upon making appropriate enquiries), appears to be and represents himself as a manager or officer of the party to whom the Communication is addressed;
- (b) a Communication which is posted is deemed to be received by the party to whom the Communication is addressed on the second Business Day after the day of posting;
- (c) a Communication sent by facsimile transmission which is transmitted:
 - (i) prior to 4 p.m. on a Business Day shall be deemed to have been received by the party to whom it is addressed on that Business Day; and
 - (ii) after 4 p.m. on a Business Day shall be deemed to have been received by the party to whom it is addressed on the first Business Day following the date of transmission; and
 - (iii) the production of the transmission report or a printout of a transmission log generated by the sender's facsimile machine (or other facsimile transmission device) showing successful uninterrupted facsimile transmission of all pages of the relevant Communication to the facsimile number of the party to whom it is addressed and proof of confirmation by physical delivery or mailing as provided above shall constitute evidence of receipt of that facsimile transmission; and
- (d) a Communication given orally under clause 21.2 shall be deemed to have been received when first given orally.

21.5 Change of Address

A party may at any time, by notice given to the other parties to this Agreement, designate a different person, street address, postal address, electronic mail address or facsimile number for the purpose of Communications pursuant to this clause 21.

21.6 Electronic Mail

- (a) The parties agree, that in the absence of evidence to the contrary, an electronic mail message sent by a party to the electronic mail addresses notified by the parties shall be deemed to be received on the day after the day that the electronic mail message is recorded as having been sent by the sender's computer server.
- (b) Messages relating to the following subjects will not be valid if sent by electronic mail:
 - (i) termination of this Agreement;
 - (ii) disputes;
 - (iii) change of address, phone number, fax number or electronic mail address; and
 - (iv) Entitlement Transfer Requests.

22. Assignment

22.1 General Prohibition

Neither party may assign, transfer or otherwise dispose of all or any part of its rights or obligations under this Agreement without the prior written consent of the other party.

22.2 Deed of Covenant

The assignee must enter into a deed of covenant with the party whose consent is sought, acknowledging that party's rights under this Agreement and undertaking by way of novation to observe and perform all the assignor's obligations under this Agreement. Such deed of covenant shall be prepared by the party whose consent is sought in such reasonable form as that party requires, but at the expense of the assignor. The deed shall be stamped by and at the expense of the assignor.

23. Waiver

- (a) No right under this Agreement shall be deemed to be waived except by notice in writing signed by each party.
- (b) No default or delay on the part of any party exercising any of its rights or obligations under this Agreement shall operate as a waiver of any such right or obligation under this Agreement.

24. No Partnership

- (a) Nothing contained in this Agreement will be deemed or construed by the Customer or CBH or by any third party as creating the relationship of partnership, principal and agent, or joint venture.
- (b) No relationship between the Customer and CBH other than that of bailor and bailee upon the conditions and provisions in this Agreement will be created by the payment of any money under this Agreement, any other conditions or provision in this Agreement or any act of the Customer or CBH.

25. Governing Law and Jurisdiction

25.1 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Western Australia.

25.2 Jurisdiction

Each Party irrevocably submits to and accepts generally and unconditionally the non-exclusive jurisdiction of the courts and appellate courts of Western Australia with respect to any legal action or proceedings which may be brought at any time relating in any way to this Agreement.

26. Attorneys

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.

27. Sub-Contracting

CBH may in its sole and absolute discretion:

- (a) sub-contract the whole or any part of the Services; or
- (b) otherwise engage any person to undertake any part of the Services on CBH's behalf, without notice to the Customer.

28. Severance

If any term or other part of this Agreement is or becomes for any reason invalid or unenforceable at law, the remainder of this Agreement shall continue to be valid and enforceable and such term or other part of this Agreement shall be severed or modified without affecting the remainder of this Agreement.

DRAFT

Signed for and on behalf of **Co-operative Bulk Handling Limited** (ABN 29 256 604 947) in the presence of:

Signature

Name

Position

Signature of Witness

Name of Witness in full

Signed for and on behalf of **xxx** (ABN xxx) in the presence of:

Signature of authorised representative

Name

Position

Signature of Witness

Name of Witness in full

DRAFT

SCHEDULE 1

Remuneration

All charges payable pursuant to this Agreement are to be paid in accordance with clause 9 of the Agreement. As set out in clause 10, CBH has the discretion not to Outturn Wheat until all outstanding charges have been paid.

Attached: [Standard Port Terminal Services (SPTS) 2009/10Wheat]

DRAFT

SCHEDULE 2

Load Rejection Dispute Procedure

1 DISPUTE PROCEDURE

- 1.1 If there is any dispute in respect of a load of Wheat presented for delivery at a Port Terminal Facility on the basis that the load is contaminated or shows signs of insect infestation or activity, then the Customer must cease delivery and hold the vehicle and any wheat at the point of detection.
- 1.2 The Customer must contact the Customer Account Manager within normal business hours who will co-ordinate the procedure as below.
- 1.2.1 a CBH representative will attend at the point of delivery to perform possible analysis of the load in question and work with the Customer to resolve the issue on site. The CBH representative will confirm sampling and testing procedures in use by the end user are relevant and comparable to those used by CBH.
- 1.2.2 If the dispute cannot be resolved on site then CBH will obtain three representative samples of the load for further analysis. The CBH representative is to collect the samples as follows:
- 1) one sample is to be sealed. This sample will be available for testing by a mutually agreed third party ("Third Party Test Facility") if the results from AGC are disputed;
 - 2) a second sample is to be collected for testing at AGC; and
 - 3) a third representative sample is to be left with the Customer.
- 1.2.3 The Wheat must be removed from the Port Terminal Facility on the basis that costs will be allocated to the Party at fault when the result is determined.
- 1.2.4 The second sample referred to in item 1) of Schedule 2 will be sent by CBH to AGC for testing. If the Customer disputes AGC's test results, the Customer must give notice to CBH within 15 Business Days of the date the results were issued by AGC. If the Customer does not give notice within 15 Business Days, then the load will be deemed to have failed and the Customer will be liable to CBH for the costs set out in item 1.2.5 of Schedule 2. If the Customer gives notice within 15 Business Days, CBH will send the first sample to the Third Party Test Facility for testing. The test results of the Third Party Test Facility will be final and binding on CBH and the Customer, except in the case of fraud or manifest error on the part of the Third Party Test Facility. If results obtained from the Third Party Test Facility show that the Wheat has not failed, CBH will be liable for the costs set out in item 1.2.4 of Schedule 2.
- 1.2.5 If the Wheat has failed as determined in accordance with item 1.2.4 of Schedule 2, the Customer is responsible for all reasonable costs incurred by or on behalf of CBH, including the Freight, storage, Outturn, time and travel expenses of the CBH representatives involved in resolving the dispute and costs of additional testing.
- 1.3 A load can only be validly rejected on the basis that it is contaminated or shows signs of insect infestation or activity.