



# CONTAINER LOADING SERVICES AGREEMENT 2022 to 2023

**CO-OPERATIVE BULK HANDLING LIMITED**

(ABN 29 256 604 947)

**AND**

**XXX**

(ABN xxx)

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**THIS AGREEMENT** dated

**BETWEEN:**

**CO-OPERATIVE BULK HANDLING LIMITED**

(ABN 29 256 604 947)

of Level 6, 240 St Georges Terrace, Perth, Western Australia  
6000 ("CBH")

**AND**

**XXX**

(ACN xxx)

of [insert street address of Customer]

("Customer")

**RECITALS**

- A. CBH operates container loading facilities in Western Australia (among other things) and provides its customers with container loading services.
- B. The Customer owns Grain and wishes to utilise the Services.
- C. CBH has agreed to provide the Customer with the Services pursuant to the terms and conditions of this Agreement.
- D. The Customer has agreed to the terms and conditions of this Agreement and will remunerate CBH in accordance with the terms and conditions of this Agreement.
- E. If the Customer has agreed to acquire Long Term Capacity, it acknowledges that this supplies the Customer with the long term commercial certainty of supply of services and the certainty of use of capacity for CBH in order to make long term infrastructure decisions.

**THE PARTIES AGREE AS FOLLOWS:**

**1 CONDITION PRECEDENT – CURRENT GRAIN SERVICES AGREEMENT**

- (a) It is a condition precedent to using the Services that the Customer has entered into a Grain Services Agreement for the Season commencing on 1 October of the Starting Calendar Year.
- (b) The condition precedent in clause 1(a) is for the benefit of CBH and may only be waived by CBH (in CBH's absolute discretion).

**2 COMMENCEMENT AND TERMINATION**

**2.1 Commencement**

- (a) This Agreement will apply to all Services (except Grain Receival Services) provided by CBH after the Commencement Date unless otherwise agreed in writing between CBH and the Customer. Grain Receival Services are provided by CBH under the Grain Services Agreement.
- (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 under 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 in connection with the Services.

**2.2 General Termination**

Unless terminated sooner, this Agreement will terminate on 30 September of the Ending Calendar Year ("**End Date**").

**2.3 Immediate Termination**

- (a) CBH may terminate this Agreement by notice to the Customer with immediate effect if:
  - (i) the Customer acts in such a way as to bring (or in the reasonable opinion of CBH may bring) CBH into disrepute;
  - (ii) the Customer commits a Material Breach of this Agreement;

- (iii) an Insolvency Event occurs; or
  - (iv) the Customer repudiates this Agreement.
- (b) The termination of the Grain Services Agreement for the Season commencing on 1 October of the Starting Calendar Year will automatically and immediately effect the termination of this Agreement.

#### 2.4 Survival of terms

Clauses 2, 3, 4, 5, 11, 12, 14, 15, 17, 20, 22 to 33 shall survive the termination of this Agreement.

### 3 **THIS AGREEMENT DOES NOT GOVERN GRAIN RECEIVAL OR STORAGE SERVICES**

Nothing in this Agreement governs the provision of Grain quality assessment, receipt, storage segregation assessment, weight measurement and handling services at any Site (these receipt services being governed by the Grain Services Agreement, and any agreement between the Customer and CBH in relation to the provision of services at Port Facilities).

### 4 **Definitions**

In this Agreement:

**"Acquirer"** means the person nominated by a Grower as the buyer of the Grain that has been delivered to a Site.

**"Additional Accumulation and Storage Fee"** has the meaning given in the Fee Schedule.

**"Additional Capacity"** means Capacity that is not Long Term Capacity or Spare Capacity.

**"Agreement"** means this agreement inclusive of any schedules, annexures, attachments or Container Nomination Form issued pursuant to this agreement.

**"BAMA Contributions"** means contributions that CBH deducts and remits to the Western Australian government's Department of Primary Industry and Regional Development (agriculture and food division) on a per tonne basis pursuant to the *Biosecurity and Agriculture Management Act 2007* (WA).

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

**"Capacity"** means the capacity of MGC to load Grain into Standard Containers at MGC during a defined period, measured in number of Standard Containers that may be loaded.

**"Capacity Administration Fee"** has the meaning given in the Fee Schedule.

**"Commencement Date"** means the later of:

- (a) 1 October of the Starting Calendar Year; and
- (b) the date of this Agreement.

**"Common Stack Segregation"** means the CBH system of grain storage whereby grain belonging to different customers is stored in the same grain stack on the basis that the quality of all such grain in that stack conforms to the same Receipt Standard.

**"Container Loading Services"** means the services provided by CBH pursuant to clause 7.

**"Container Terminal"** means either the Fremantle container terminal or Kewdale container terminal or any other container terminal nominated by CBH.

**"Container Nomination Form"** means the form available from CBH or online via LoadNet® for Marketers™ on which Container Loading Services and Grain Bagging Services requests (among other things) can be made.

**"Contaminants"** means:

- (a) 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;

- (b) 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; or
- (c) 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,

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.

**"Department"** means the Australian federal government's Department of Agriculture, Water and the Environment.

**"Department Authorised Officer"** means a person approved by the Department to perform, on behalf of the Australian federal government, export inspection, sampling and testing activities under Australia's export legislation.

**"Direct to Container NGR"** means Grain which is:

- (a) delivered to MGC by or on behalf of the Customer and which is received by CBH in accordance with clause 4.4 of the Grain Services Agreement;
- (b) intended to be the subject of the Container Loading Service within around one week of delivery to MGC; and
- (c) not stored in the Common Stack Segregation.

**"End Date"** has the meaning given in clause 2.2.

**"End User Contract"** means a contract under which Grain that has been or will be loaded into containers by CBH pursuant to this Agreement is sold by the Customer to a third party.

**"Ending Calendar Year"** means the last-mentioned calendar year on the cover page of this Agreement.

**"Excess Direct to Container NGR"** has the meaning given in clause 7.19(a),

**"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, such brokers to be appointed by the Grain Trade Australia, such valuations to take into account the Grade and variety and any transfer to the Site costs and taking into account the cost of insurance, levies, taxes, charges, freight and associated costs.

**"Fee Schedule"** means the document titled 'Container Loading Services Agreement – Fee Schedule' for the Term that applies to Services on and from the Commencement Date, and available on the Website.

**"Fumigation Statement"** means a statement declaring that a particular tonnage of Grain has been fumigated by a licensed fumigator, and that contains the information required by the Department pursuant to Industry Advice Notice No. 2015/51.

**"Force Majeure"** has the meaning given in clause 17.

**"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.

**"Government Agency"** means any applicable Western Australian or Australian Federal Government

department, authority, instrumentality or agency having jurisdiction in respect of any matter relating to this Agreement.

**"Grade"** means:

- (a) in relation to Grain, a quality grade specified in the Receival Standards or Outturning Quality Specifications;
- (b) in relation to Direct to Container NGR, the NGR Outturn Standards or Outturning Quality Specifications,

that is objectively assessable.

**"Grain"** means wheat, barley, canola, oats, lupins, triticale, albus lupins, field peas, millet, chick peas, lentils and faba beans.

**"Grain Bagging Services"** means the services provided by CBH pursuant to clause 9.

**"Grain Entitlement"** has the meaning given in the Grain Services Agreement.

**"Grain Receival Services"** has the meaning given in the Grain Services Agreement.

**"Grain Sample Fee"** has the meaning given in the Fee Schedule.

**"Grain Services Agreement"** means an agreement between the Customer and CBH in relation to the provision of grain storage and handling services.

**"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.

**"Grower"** means the grower of grain who as part of their farming business delivers grain to a Site.

**"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.

**"Harvest Period"** means the period during which harvesting activities take place and where CBH has advertised that Sites will be generally open to receive grain.

**"Heavy Metal Contamination"** means any heavy metal that if it comes into contact with or is contained in grain 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.

**"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 Grain is adversely affected.

**"Insolvency Event"** means where the Customer:

- (a) does not pay its debts as and when they fall due;
- (b) commits an act of bankruptcy;
- (c) 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;
- (d) has execution levied against it by creditors, debenture holders or trustees under a floating charge;
- (e) 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);
- (f) has a winding up order made against it or (except for the purposes of a solvent

reconstruction) passes a resolution for winding up;

- (g) 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.

**"Integrated Entitlement"** has the meaning given in the Grain Services Agreement.

**"LoadNet® for Marketers™"** means CBH's grain management interface for Acquirers which is available to registered users (including the Customer) at [www.cbh.com.au](http://www.cbh.com.au).

**"Long Term Capacity"** means Capacity allocated for one or more Planning Weeks in the Year in accordance with clause 6.1.

**"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.

**"Lost Capacity Fee"** has the meaning given in the Fee Schedule.

**"LTLS"** has the meaning given in clause 6.4.

**"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.

**"MGC"** means CBH's Metro Grain Centre facility at Forrestfield.

**"MGC Blockage"** means the situation where MGC is unable to load Grain into a container due to a delay in the loading of the previous container, caused by circumstances such as the previous container fails regulatory impediments to exports, the grain to be loaded fails or is likely to fail requirements of the Department or a disruption in the CBH supply chain.

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

**"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).

**"NGR Outturn Standards"** means the quality specifications to be applied to Direct to Container NGR on Outturn as set by CBH from time to time and available to the Customer upon request and accepted by the Customer. **"Outturning Quality Specifications"** means the specification for an End User Contract nominated by the Customer on the Container Nomination Form.

**"Outturn"** means to cause Grain to be loaded into either a bag container or bulk container at a Site and is deemed to occur when the Grain exits the delivery spout into either the bag or bulk container.

**"Pesticide Residue Contamination"** means contamination by any substance in grain 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.

**"Planning Week"** means a week beginning on Sunday and ending on the next Saturday.

**"Platform"** means the web-based platform managed by, or on behalf of, CBH which publishes all relevant detail and information in relation to Capacity at MGC, including details of Secondary Capacity, the booking system for Secondary Capacity, details of Surrendered Capacity and details of Capacity available for repositioning.

**"Port Facility"** means a CBH port facility as they are constituted from time to time and at the Commencement Date includes Kwinana, Geraldton, Albany and Esperance Port Terminals.

**"PPSA"** means the Personal Property Securities Act 2009 (Cth) together with any subsidiary legislation or regulations made in relation to that Act.

**"Quality Management Plan"** means a plan agreed between the Customer and CBH in accordance with the relevant provisions of the Grain Services Agreement and designed to assist the Customer in maximising the value of their Grain Entitlement on Outturn whilst taking into account the competing interests of other Acquirers and the physical nature of Grain.

**"Receival Standards"** means the quality specifications to be applied to Grain on delivery as set and agreed by CBH with the major stakeholders based on nationally recognised standards prior to the Harvest Period (and which are available upon request and on LoadNet® for Marketers™).

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

**"Sample Dispatch Fee"** has the meaning given in the Fee Schedule.

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

**"Secondary Capacity"** means Capacity that is not Long Term Capacity.

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

**"Site"** means those sites owned, operated or managed by CBH for the purpose of receiving or storing grain throughout Western Australia or as designated by CBH from time to time and for the avoidance of doubt includes a Port Facility and MGC.

**"Spare Capacity"** means any Capacity in a Planning Week that is unallocated or spare following the completion of negotiations and allocation of Long Term Capacity and any other capacity allocation process and includes Capacity that has been surrendered by a customer and not yet re-allocated.

**"Special Conditions"** means any special conditions set out in Schedule 2.

**"Stage"** means a stage of the Container Loading Services information supply process (as the case requires).

**"Standard Container"** means a standard sea container measuring 20 foot x 8 foot 6 inches.

**"Starting Calendar Year"** means the first-mentioned calendar year on the cover page of this Agreement.

**"Surrendered Capacity"** has the meaning given in clause 8.18.1(a).

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

**"Term"** means the term of this Agreement which commences on the Commencement Date and ends on the End Date, unless terminated earlier in accordance with the terms of this Agreement.

**"Transfer of Entitlement"** means a request via LoadNet® for Marketers™ for Grain Entitlement to be transferred to MGC.

**"User"** means a person that has entered into an agreement with CBH under which CBH supplies Container Loading Services to the person. It includes the Customer.

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

**"Website"** means CBH's website, [www.cbh.com.au](http://www.cbh.com.au).

**"Year"** means 1 October of the Starting Calendar Year to 30 September of the Ending Calendar Year.

## 5 INTERPRETATION

In this Agreement:

### 5.1 Words and Phrases

(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 5.1(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; and
- (g) no provision of this Agreement is to be construed adversely to a party because that party was responsible for the preparation of, or put forward, that provision or this Agreement.

## 5.2 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.

## 5.3 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;

## 5.4 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)*.

## 5.5 Discretions and Approvals

- (a) Whenever CBH or 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 is entitled to have regard to the efficient running of the overall CBH storage network and balancing the interests of all customers of CBH.

## 5.6 Precedence

If there is any inconsistency between any Special Condition and any other term of this Agreement, the Special Condition takes precedence over that other term to the extent of the inconsistency.

# 6 CONTAINER LOADING CAPACITY ALLOCATION

## 6.1 Long Term Capacity

If the Customer has agreed to acquire Long Term Capacity:

- (a) the Customer's Long Term Capacity is as set out in Schedule 1; and
- (b) this Agreement will apply to Services provided by CBH in relation to that Long Term Capacity and any other Capacity acquired for the purposes of loading Grain.

#### 6.2 Spare Capacity

- (a) CBH will publish on the Platform a statement of the total Spare Capacity available in the Year.
- (b) Spare Capacity will become available for booking on a first-in-first-served basis no less than two clear Business Days (or such longer time period notified by CBH) after its availability is published on the Platform.
- (c) CBH will offer, and the Customer will be able to apply for, Spare Capacity via the Platform.

#### 6.3 Additional Capacity

- (a) CBH may from time to time release Additional Capacity.
- (b) CBH will publish on the Platform details of any Additional Capacity that becomes available.
- (c) Additional Capacity will become available for booking on a first-in-first-served basis no less than two clear Business Days (or such longer time period notified by CBH) after its availability is published on the Platform.

#### 6.4 Long term loading schedule

- (a) This clause 6.4 applies if the Customer has agreed to acquire Long Term Capacity.
- (b) If the Customer has not provided a long term loading schedule ("LTLS") to CBH, the Customer must provide a LTLS to CBH at a date notified by CBH, detailing the indicative commodities, grades and destinations that the Customer intends CBH to pack for the Customer's Long Term Capacity.
- (c) The Customer must provide a revised LTLS on or immediately prior to the last day of each month within the Year detailing the information set out in paragraph (b) for any Capacity (other than Capacity that the Customer has in accordance with this Agreement requested to use and that CBH has in accordance with this Agreement confirmed may be used) for the three (3) months following the date of issue of the revised LTLS (for example, a revised LTLS provided on 31 January would set out the required information in respect to the period from 1 February to 30 April of the Year).
- (d) If the Customer fails to:
  - (i) provide a LTLS on a persistent and material basis in accordance with this clause 6.4;
  - (ii) pay any Long Term Capacity deposit that may be required under this Agreement in accordance with invoice terms; or
  - (iii) use a majority of its acquired Long Term Capacity in the Year (and provided the aggregate harvest amount in that Year has not been smaller than the total Long Term Capacity allocated for that Year),CBH may elect to terminate this Agreement, save that nothing will release the Customer from its obligation to pay any Long Term Capacity deposit that may be required under the this Agreement and CBH may elect to terminate this Agreement for a failure to comply with this clause 6.4 notwithstanding that it may have waived one or more previous breaches.
- (e) Each LTLS must nominate the container depot which the Customer intends to use in relation to acquired Long Term Capacity.

## 7 CONTAINER LOADING SERVICES

**Service Description:** This service provides container transport from a nominated container depot, fumigation of Grain if required, Outturning of Grain stored at MGC into containers, sampling, inspection by a Department Authorised Officer, supplying and fitting a standard bulka board, and container transport to a nominated Container Terminal. MGC runs a planning week cycle that commences on a Sunday and finishes on the following Saturday. Each week of the year is referenced by a CBH week number that is listed on the CBH booking calendar which calendar is published on the Platform.

## 7.1 Service Availability and Terms

- (a) Container Loading Services are only provided at MGC, unless the Customer is notified in writing by CBH of alternative locations.
- (b) Prior to requesting Container Loading Services, the Customer must acquire Capacity.
- (c) All bookings of Container Loading Services which are made prior to the Commencement Date for performance after the Commencement Date will be completed in accordance with the process set out in the document titled 'Container Loading Services Agreement' for the Season which concluded on 30 September of the Starting Calendar Year, but in accordance with the charges set out in the Fee Schedule to this Agreement.
- (d) All new bookings of Container Loading Services following the Commencement Date will be made in accordance with the process set out in this Agreement.

## 7.2 Container Work Instruction

- (a) The Customer must request any Container Loading Services and use their Capacity by submitting a Container Nomination Form to CBH in accordance with this clause 7.2.
- (b) The Container Nomination Form comprises two Stages of information, with the information required for each Stage to be submitted on or before the required date, which date is to be determined as follows:
  - (i) Stage 1 information (which consists of all mandatory stage 1 information fields required by the Container Nomination Form) is required at least 14 days before the commencement of the relevant Planning Week; and
  - (ii) Stage 2 information (which consists of all mandatory stage 2 information fields required by the Container Nomination Form) is required at least 5 days before the commencement of the relevant Planning Week.
- (c) The Customer must, in addition to providing the information required under clause 7.2(b), provide to CBH at least 5 days before the commencement of the relevant Planning Week any document required by the Department or a Department Authorised Officer.
- (d) On receipt of a Container Nomination Form or any amendment to a Container Nomination Form, CBH will determine its ability to meet the request and advise the Customer if CBH has:
  - (i) accepted the Container Nomination Form; or
  - (ii) rejected the Container Nomination Form.
- (e) If CBH considers that:
  - (i) any information supplied by the Customer in relation to a Stage is not acceptable; or
  - (ii) that the Container Nomination Form cannot be complied with for any of the following reasons:
    - (A) the Customer has insufficient Capacity;
    - (B) the Customer has insufficient Grain Entitlement at MGC;
    - (C) the Container Nomination Form contains inadequate or inaccurate information;
    - (D) CBH has or will have insufficient Grain at MGC to meet the request in the Container Nomination Form;
    - (E) the required logistics solution to ensure that Grain is available at MGC is not available;
    - (F) the Customer does not or will not meet all of the Department's or a Department Authorised Officer's requirements;
    - (G) the Grain is unavailable as a result of fumigation activities pursuant to clause 7.16; or
    - (H) an event of Force Majeure prevents the scheduling or performance of Container Loading Services,

CBH will:

- (iii) in the case of insufficient Grain Entitlement at MGC, request that the Customer submit a Transfer of Entitlement to CBH in which case the Transfer of Entitlement must be submitted by the Customer on or before the required date for the Stage 1 information,

otherwise the Customer is deemed to have not provided the relevant Stage-related information;

- (iv) at CBH's discretion request the Customer to update inadequate or inaccurate information in a manner acceptable to CBH in which case suitable information must be supplied by the Customer within one Business Day of the request, otherwise CBH may, at its discretion, deem the Customer not to have provided the relevant Stage-related information and the Customer will still be required to comply with the relevant time periods set out in paragraph (b); or
  - (v) provide alternatives (if any) that may be of interest to the Customer to meet their requirements.
- (f) If the relevant Stage-related information is not provided to CBH by the required date, the Customer will be deemed to have surrendered the Capacity and the Customer will be required to pay the Lost Capacity Fee in respect of that surrendered Capacity.

### 7.3 CBH's Service Obligations

Once all Stage information has been provided on a Container Nomination Form and in a Transfer of Entitlement in accordance with this Agreement, CBH shall arrange for the Customer's sea containers to be:

- (a) picked up from the Customer's nominated container depot and delivered to the MGC;
- (b) inspected by a Department Authorised Officer prior to loading;
- (c) installed with a standard bulkhead board to IPSPM 15 Standard;
- (d) loaded with the Grain in accordance with this clause 7;
- (e) securely closed and sealed; and
- (f) transported to the nominated Container Terminal,

the charge for which will be the applicable container loading fee in the Fee Schedule.

### 7.4 Customer's containers not available

If the Customer's containers are not available for pick up from the Customer's nominated container depot at least 5 days before the commencement of the relevant Planning Week:

- (a) the Customer will be deemed to have surrendered the Capacity and the Customer will be required to pay the Lost Capacity Fee in respect of that surrendered Capacity;
- (b) CBH will invoice the Customer for all Grain relocation, carry and fumigation costs reasonably incurred by CBH in connection with the unavailability of the containers; and
- (c) CBH will consult with the Customer about the removal of the Grain from MGC and, if no agreement is reached within seven days, CBH may remove the Grain at its discretion and the Customer shall pay all costs reasonably incurred by CBH (in addition to the Lost Capacity Fee).

### 7.5 Customer failure to comply with Department Requirements with Direct to Container NGR

For Direct to Container NGR only, if:

- (a) the Customer fails to provide to CBH at least one Business Day before the commencement of the relevant Planning Week any document required by the Department or a Department Authorised Officer; or
  - (b) the Direct to Container NGR is rejected by a Department Authorised Officer,
- then
- (c) the Customer will be deemed to have surrendered the Capacity and the Customer will be required to pay the Lost Capacity Fee in respect of that surrendered Capacity;
  - (d) CBH will invoice the Customer for all Direct to Container NGR relocation, carry and fumigation costs reasonably incurred by CBH in connection with the failure to provide documents or the rejection; and
  - (e) CBH will consult with the Customer about the removal of the Direct to Container NGR from MGC and, if no agreement is reached within seven days, CBH may remove the Direct to Container NGR at its discretion and the Customer shall pay all costs reasonably incurred by CBH (in addition to the Lost Capacity Fee).

## 7.6 Outturn Standard for Grain other than Direct to Container NGR

- (a) This clause 7.5 applies to Grain other than Direct to Container NGR.
- (b) CBH is obliged to Outturn Grain stored at MGC, in bulk, into sea containers to a standard not less than the Receival Standard applicable to the Common Stack Segregation unless CBH is permitted by the *Bulk Handling Act 1967 (WA)* or the *Bulk Handling Act Regulations 1967 (WA)* to Outturn Grain to a standard that is less than the Receival Standard applicable to the Common Stack Segregation.
- (c) CBH will outturn field peas to no less than the export standard farmer dressed as set by the current Australian Pulse Standards as published by Pulse Australia or the CBH Receival Standards as applicable below:
  - (i) PKA1/PEA1: CSP 10.1.2 as set out in the Australian Pulse Standards;
  - (ii) PEA2: CSP 10.2.2 as set out in the Australian Pulse Standards; and
  - (iii) PEAMIL/PFED1: as per CBH Receival Standards,unless the Customer agrees to pay the fees advised by CBH that relate to or are in any way connected with the cleaning of the field peas.
- (d) If an export licence or permit requires Grain to a standard that exceeds the relevant minimum Receival Standard, cleaning of the Grain may be required. The Customer agrees to pay the charges applicable to clean the Grain to the standard required by the export licence or permit as quoted.
- (e) To the extent that outturn to a higher standard than that provided under clause 7.5(b) is required by the Customer:
  - (i) the Customer must notify CBH in writing of the relevant outturn standard; and
  - (ii) CBH may assess whether additional charges will be applicable.
- (f) To the extent that the Outturning Quality Specifications differ from the Receival Standard, CBH will, subject to clause 7.5(g), use reasonable endeavours to meet the Outturning Quality Specification provided that the Customer has worked with CBH in accordance with clause 8 of the Grain Services Agreement to develop a Quality Management Plan.
- (g) The determination of whether CBH has met the Outturning Quality Specification will be made:
  - (i) based on the aggregate quality specification of all Grain loaded by CBH in connection with the End User Contract; and
  - (ii) after CBH has loaded all Grain in connection with the End User Contract.For the avoidance of doubt, in respect of Grain loaded into a container, CBH will not, subject to the requirements of the *Bulk Handling Act 1967 (WA)* and the *Bulk Handling Act Regulations 1967 (WA)*, be taken to have failed to meet the Outturning Quality Specification for the Grain even if the Grain fails to meet the Outturning Quality Specification provided that the aggregate quality specification of all Grain loaded in connection with the End User Contract meets the Outturning Quality Specification.

## 7.7 Outturn Standard for Direct to Container NGR

- (a) This clause 7.7 applies to Direct to Container NGR.
- (b) CBH is obliged to Outturn Direct to Container NGR stored at MGC, in bulk, into sea containers to a standard not less than the NGR Outturn Standards.
- (c) If an export licence or permit requires Direct to Container NGR to a standard that exceeds the relevant minimum NGR Outturn Standards, cleaning of the Direct to Container NGR may be required. The Customer agrees to pay the charges applicable to clean Direct to Container NGR to the standard required by the export licence or permit as quoted.
- (d) To the extent that outturn to a higher standard than that provided under clause 7.7(b) is required by the Customer:
  - (i) the Customer must notify CBH in writing of the relevant outturn standard; and
  - (ii) CBH may assess whether additional charges will be applicable.

- (e) To the extent that the Outturning Quality Specifications differ from the NGR Outturn Standards, CBH will, subject to clause 7.7(f), use reasonable endeavours to meet the Outturning Quality Specification provided that the Customer has worked with CBH in accordance with clause 8 of the Grain Services Agreement to develop a Quality Management Plan.
- (f) The determination of whether CBH has met the Outturning Quality Specification will be made:
  - (i) based on the aggregate quality specification of all Grain loaded by CBH in connection with the End User Contract; and
  - (ii) after CBH has loaded all Grain in connection with the End User Contract.
- (g) For the avoidance of doubt, in respect of Direct to Container NGR loaded into a container, CBH will not, subject to the requirements of the *Bulk Handling Act 1967 (WA)* and the *Bulk Handling Act Regulations 1967 (WA)*, be taken to have failed to meet the Outturning Quality Specification for the Grain even if the Grain fails to meet the Outturning Quality Specification provided that the aggregate quality specification of all Direct to Container NGR loaded in connection with the End User Contract meets the Outturning Quality Specification.
- (h) If the Customer makes a claim against CBH for any Loss or Damage incurred by the Customer as a result of CBH Outturning Direct to Container NGR to the NGR Outturn Standards rather than the Receival Standards, the Customer agrees to pay to CBH financial compensation for the difference in Fair Market Price between the lower Grade and the higher Grade.

#### 7.8 Weigh

CBH will weigh all Grain Outturned utilising batch weighers, weighbridges or load cells (as CBH considers appropriate). In the absence of manifest error or fraud, the CBH weight measurement will be final.

#### 7.9 Minimum Packing Weights

CBH will use reasonable endeavours to load containers to the minimum weight by grade as listed below. These weights are subject to change after a bulk density test is done at the time of packing.

- (a) Wheat 24.5M/T
- (b) Canola 20M/T (unlined)
- (c) Canola 19M/T (lined)
- (d) Oats 18M/T
- (e) Lupins 24.5M/T
- (f) Barley 21.5M/T

#### 7.10 Sampling

- (a) CBH will sample the Grain and Direct to Container NGR in accordance with CBH's standard sampling methods to determine, in accordance with clauses 7.6(f) and (g) (in the case of Grain) and clauses 7.7(f) and (g) (in the case of Direct to Container NGR), whether the Grain loaded in connection with an End User Contract meets the Outturning Quality Specifications.
- (b) If the Customer requests that CBH sample Grain and CBH agrees to the request, the Customer must pay the applicable Grain Sample Fee.
- (c) Container samples can either be collected from MGC, or CBH will dispatch on the Customer's behalf using supplied pre-paid and pre-filled courier con-notes and satchels in which case the Customer must pay the Sample Dispatch Fee.

#### 7.11 Cleanliness

- (a) The Customer is responsible for ensuring that all containers picked up by CBH are in a condition approved by the relevant statutory authorities for the loading of grain, and in a clean, empty and well maintained state and free from any Contaminants or residue.
- (b) CBH is not obliged to inspect any container for cleanliness but if it does inspect then CBH, acting reasonably at all times, is entitled to reject the container as unfit for the transportation of Grain and to refuse to load the container.
- (c) If CBH refuses to load a container, the Customer, will be deemed to have surrendered the Capacity and the Customer will be required to pay the Lost Capacity Fee in respect of that



surrendered Capacity.

- (d) CBH is not liable for any Loss or Damage caused as a result of a refusal to load a container.

#### 7.12 Notification of Service performance

- (a) CBH will notify the Customer by email following completion of the Services and will provide to the Customer the CBH packing systems list of the loaded containers (this list showing the CBH grain code used, seal number and weights (including gross mass) for each container).
- (b) If containers are not delivered to the nominated Container Terminal, CBH will communicate this to the Customer within 1 Business Day.

#### 7.13 Service Charges

The Customer agrees to pay the charges applicable as set out in the Fee Schedule, as modified from time to time by CBH, unless a written quotation has been provided by CBH and accepted by the Customer, in which case charging shall be in accordance with the relevant written quotation.

#### 7.14 Right to invoice prior to Outturning

If Grain is scheduled to be Outturned into a container at MGC, CBH reserves the right to invoice the Customer and receive payment for the Container Loading Services charges prescribed in the Fee Schedule prior to the Grain being Outturned into a container. Where there are variations in respect of the amount of Grain actually Outturned and the costs incurred in Outturning, CBH and the Customer agree that:

- (a) within 30 days of the Grain being Outturned into a container, CBH will, subject to clause 11.2(d), refund any amounts paid by the Customer under this clause 7.12 in respect of Container Loading Services charges invoiced by CBH relating to Grain that was not Outturned into a container; and
- (b) CBH is entitled to invoice the Customer for any additional charges prescribed in the Fee Schedule for Grain Outturned by CBH as a direct result of the actions of the Customer or the Customer's agent.

#### 7.15 Grain Export Licence

The Customer warrants that an appropriate grain export licence or accreditation (if applicable) is held and continues to be held prior to requesting Container Loading Services and until the Container Loading Services are finalised, and that the request is within the terms of the licence. CBH reserves the right to request details of the relevant export licence or accreditation, at any time, and the Customer agrees to provide a copy of the licence or accreditation to CBH within twenty four (24) hours of any such request.

#### 7.16 Grain fumigation

- (a) CBH will not fumigate Grain at MGC under this Agreement unless:
  - (i) the Customer requests in a Container Nomination Form that CBH carry out fumigation of Grain which request must:
    - (A) state the Customer's nominated representative who is available on a 24/7 basis to discuss fumigation with CBH; and
    - (B) be included with the Stage 1 information; or
  - (ii) insect activity is detected by either or both CBH and the Department in which case CBH will carry out fumigation of the Grain to the protect the Grain.
- (b) CBH will use methyl bromide for fumigation unless CBH and the Customer agree an alternative type of fumigant and the CBH charge for the alternative type of fumigant.
- (c) Notwithstanding anything expressed in or implied by this Agreement, CBH has no obligation to carry out fumigation of Grain or provide Fumigation Statements during the Harvest Period.
- (d) Any fumigation services performed under this Agreement will limit availability of the Grain in accordance with standard CBH Grain protection practices.
- (e) The Customer will be responsible for all charges for fumigation services incurred pursuant to this clause 7.16 at the rates prescribed in the Fee Schedule for the total capacity of the storage in which the Grain is held (measured in wheat tonnes equivalent), unless an

alternative fumigant and rate is agreed.

- (f) Where Grain has been fumigated at MGC by CBH:
  - (i) CBH shall have no liability for any delays in loading the Customer's containers as a result of the unavailability of the Grain under fumigation; and
  - (ii) CBH shall only provide a Fumigation Statement detailing the information in relation to any Grain treatment applied by CBH within 3 Business Days of receiving a written request from the Customer.
- (g) Where the Grain delivered by the Customer to a Site has been fumigated prior to delivery, the Customer must provide CBH with a Fumigation Statement detailing all chemicals applied to the Grain prior to delivery at the Site, in relation to:
  - (i) all Grain delivered after 1 February in a Season; and
  - (ii) all Grain that is not of the current Season.

#### 7.17 Misrepresentation

- (a) The Customer warrants that the type and/or variety of Grain 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 Grain quality resulting from CBH complying with a Container Nomination Form provided by the Customer.

#### 7.18 Structurally defective containers

- (a) CBH is not obliged to inspect any container for structural soundness but if it does inspect then CBH, acting reasonably at all times, is entitled to reject the container as unfit for the transportation of Grain and to refuse to load the container.
- (b) If, before a loaded container is transported to the nominated Container Terminal, the Customer notifies CBH in writing that the container is structurally defective (**Customer Withdrawn Container**), CBH will arrange the:
  - (i) transportation of the Customer Withdrawn Container from its current location to MGC;
  - (ii) unloading of the Grain from the Customer Withdrawn Container; and
  - (iii) transportation of the Customer Withdrawn Container to the Customer's nominated container depot.
- (c) The Customer must pay CBH for the costs reasonably incurred by CBH:
  - (i) for transportation of the Customer Withdrawn Container from the Customer's nominated container depot to MGC; and
  - (ii) under clause 7.18(b).
- (d) If the operator of the nominated Container Terminal refuses to accept or load a loaded container (**Terminal Rejected Container**) on the basis that the container is structurally defective, CBH will arrange the:
  - (i) transportation of the Rejected Container from the nominated Container Terminal to MGC;
  - (ii) unloading of the Grain from the Rejected Container;
  - (iii) transportation of the Rejected Container to a location nominated by CBH;
  - (iv) inspection of the Rejected Container by an independent surveyor (agreed to by the parties) to determine the cause of the structural defect; and
  - (v) transportation of the Rejected Container to the Customer's nominated container depot.
- (e) If the independent surveyor determines that:
  - (i) the structural defect most likely arose due to the way in which the container was handled after the container was picked up from the Customer's nominated container depot, CBH must bear;
  - (ii) the structural defect most likely arose due to a defect in the container that existed at the time the container was picked up from the Customer's nominated container depot, the Customer pay CBH for; or



(iii) it is impossible to determine the most likely cause of the structural defect, CBH must bear 50% and the Customer must pay CBH for 50% of,

the costs incurred reasonably by CBH under clause 7.18(d).

- (f) Other than as expressly provided under clause 7.18(d), CBH is not liable for any Loss or Damage caused as a result of a nominated Container Terminal refusing to accept or load a container on the basis that the container is structurally defective.

#### 7.19 Excess Direct to Container NGR

- (a) If any excess Direct to Container NGR remains at MGC following the loading of the Direct to Container NGR into containers in accordance with a Container Nomination Form (**Excess Direct to Container NGR**), CBH will notify the Customer of the quantity of the Excess Direct to Container NGR.
- (b) If CBH gives notice to the Customer under clause 7.19(a), the Customer must Outturn all of the Excess Direct to Container NGR from MGC in accordance with the Grain Services Agreement within 7 days of the end of the relevant Planning Week for that Container Nomination Form (unless CBH agrees in its discretion for the Excess Direct to Container NGR to be transferred to Integrated Entitlement).

#### 7.20 Storage of Direct to Container NGR

- (a) CBH will not charge the Customer any storage fees for Direct to Container NGR being loaded into containers in accordance with a Container Nomination Form provided that:
- (i) the Direct to Container NGR is not delivered to MGC more than 7 days before the commencement of the relevant Planning Week for that Container Nomination Form; and
- (ii) any Excess Direct to Container NGR is Outturned in accordance with clause 7.19(b).
- (b) If the Customer fails to comply with:
- (i) clause 7.20(a)(i), the Customer must pay the Additional Accumulation and Storage Fee for the quantity stated on the Container Nomination Form; and
- (ii) clause 7.20(a)(ii), the Customer must pay the Additional Accumulation and Storage Fee for the Excess Direct to Container NGR,
- for each day more than the permitted 7 day period.

## 8 CAPACITY SURRENDER, REPOSITIONING AND MINOR REDUCTIONS, AND CBH ACQUIRING ALLOCATED CAPACITY

### 8.1 Surrendered Capacity

- (a) If, by notice in writing to CBH:
- (i) the Customer surrenders Capacity; and
- (ii) that notice is given no later than 21 days before the commencement of the relevant Planning Week,
- then,
- (iii) CBH will amend the Platform as at the date the Capacity is surrendered to reflect the Surrendered Capacity; and
- (iv) following the date that Capacity is surrendered, the Port Operator may update the Platform to reflect the increase in Spare Capacity.
- (b) If, following the date that Capacity is surrendered, CBH does not receive any new request to book Capacity by a User at least 14 days before the commencement of the Planning Week in which the Surrendered Capacity relates, that is for a quantity of Capacity that is (in whole or in part) the subject of the Surrendered Capacity, then the Customer will be required to pay the Lost Capacity Fee in respect of that Surrendered Capacity.
- (c) Where multiple Users have surrendered Capacity, CBH will allocate the benefit of new requests for Capacity against the first surrendered Capacity until that has been fully refunded prior to making any refund against any later in time surrendered Capacity.
- (d) If, following the date that Capacity is surrendered the Port Operator does not update the Platform to reflect the increase in Spare Capacity, then the Customer will not be required to

pay the Lost Capacity Fee in respect of that Surrendered Capacity.

## 8.2 Repositioning Capacity

- (a) The Customer may reposition any Capacity acquired in a Planning Week to a new Planning Week provided that:
  - (i) the relevant reposition of Capacity request and detail is received from the Customer via the Platform;
  - (ii) the Customer's request is provided with at least 21 days' written notice prior to the commencement of the original Planning Week; and
  - (iii) there is sufficient Spare Capacity in the new Planning Week for all Capacity being repositioned.
- (b) If the Customer wants to reposition capacity, the Customer must complete the relevant reposition of Capacity request, provide it to CBH via the Platform and pay the Capacity Administration Fee.
- (c) Subject to the Customer's request being provided with at least 21 days' written notice prior to the commencement of the original Planning Week, CBH may permit the Customer to submit an additional request in relation to Capacity that has previously been repositioned.
- (d) For the avoidance of doubt, no reposition will be effective until approved by CBH and CBH may exercise its discretion to approve a reposition, or an additional request in relation to Capacity that has previously been repositioned pursuant to paragraph (c), on less than 21 days' notice.

## 8.3 Minor reduction in Capacity

if:

- (a) the Customer requests a reduction in Capacity for a Planning Week before CBH accepts the Customer's Stage 1 information; and
- (b) the reduction is 10% or less of the Capacity acquired in the Planning Week,

CBH will not charge a Lost Capacity Fee for that Planning Week.

## 8.4 CBH acquiring allocated Capacity

CBH may agree with the Customer to acquire allocated Capacity from the Customer provided that CBH considers on reasonable grounds that the decision to acquire the allocated Capacity:

- (a) is for the purpose of conducting preventative maintenance, alterations or capital works at MGC, which will be likely to significantly impact the operation of MGC;
- (b) is for the purpose of materially reducing forecast congestion at MGC at a future date; or
- (c) is based on the operation of MGC being significantly impacted due to one or more of the following operational factors or supply chain disruptions:
  - (i) the disruption of rail services to MGC;
  - (ii) the closure of MGC due to mechanical breakdown;
  - (iii) a closure of MGC due to a direction from any authority; or
  - (iv) an MGC Blockage.

## 9 GRAIN BAGGING SERVICES

**Service Description:** This service involves the provision of Outturning of Grain stored at MGC, sampling, bagging, container transport from a nominated container depot, inspection by Department Authorised Officers, placing of bags into containers, and container transport to a nominated Container Terminal by CBH.

### 9.1 Service Availability and Terms

- (a) Grain Bagging Services are only provided at MGC unless the Customer is notified in writing by CBH of alternative locations.
- (b) Clause 7 shall apply, with the necessary amendments, for Grain Bagging Services, in addition to this clause 9.

## 9.2 CBH's Service Obligations

Upon acceptance of a Container Nomination Form for Grain Bagging Services, CBH shall, in accordance with the Container Nomination Form and all other provisions in this Agreement, Outturn Grain stored at MGC, in bags provided by the Customer.

## 9.3 Bag Content Statement

- (a) CBH reserves the right to refuse to pack Grain into bags provided by the Customer if CBH believes that the bag markings misrepresent the Grain specifications in the Container Nomination Form advised by the Customer.
- (b) The Customer indemnifies CBH against all Loss or Damage incurred by CBH in any dispute over bag markings and agrees that CBH has the right to provide a copy of the Container Nomination Form to the receiver of the goods if a dispute arises regarding the Grain quality specifications and bag markings.

## 9.4 Language of Contents

Where the statement as to the intended contents of the bags is to be provided in a language other than English, the Customer must provide a certified translation of the statement into English.

# 10 ADDITIONAL INFORMATION SERVICES

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

## 10.1 Information 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. 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 requested by the Customer.
- (c) The decision of CBH whether to provide any additional information requested by the Customer will be at CBH's absolute discretion unless it is required to provide such additional information by any law.

# 11 REMUNERATION

## 11.1 Fees and Charges

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 the Fee Schedule.

## 11.2 Payment of certain fees

The Customer acknowledges that:

- (a) the charges set out in the Fee Schedule are a realistic assessment of the loss and damage that CBH will suffer as a result of the failure by the Customer to comply with their obligations under this Agreement;
- (b) CBH is entitled to retain the fees paid or to levy the charges payable as compensation by way of liquidated damages as a result of a failure by the Customer to comply with their obligations under this Agreement;
- (c) CBH is entitled to invoice the Customer for any additional charges prescribed in the Fee Schedule for Grain Outturned by CBH as a direct result of the actions of the Customer or the Customer's agent;
- (d) if Long Term Capacity has been acquired, CBH may at any time reasonably require a deposit against the container loading services fees for each tonne of Long Term Capacity acquired, which must be paid by the Customer in accordance with CBH's invoice; and
- (e) CBH has complete discretion as to whether to waive any of the fees set out in the Fee

Schedule.

### 11.3 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 (available on the Website) 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.

### 11.4 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 the Commencement Date then those credit terms will be deemed to continue on the terms and conditions set out in this clause 11.

### 11.5 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.

### 11.6 Invoicing

- (a) CBH will invoice the Customer for all charges payable in providing Services under this Agreement.
- (b) CBH will provide the Customer with a tax invoice that complies with the GST Legislation.
- (c) All fees and charges in this Agreement are expressed exclusive of GST.
- (d) If GST is or will be imposed on a supply made under or in connection with this Agreement, the supplier may, to the extent that the consideration otherwise provided for that supply under this Agreement is not stated to include an amount in respect of GST on the supply:
  - (i) increase the consideration otherwise provided for that supply under this Agreement by the amount of that GST; or
  - (ii) otherwise recover from the recipient the amount of that GST.
- (e) The right of the supplier to recover any amount in respect of GST under this Agreement on a supply is subject to the issuing of the relevant tax invoice or adjustment note to the recipient. Subject to any other provision of this Agreement, the recipient must pay any amount in respect of GST within 14 days of the issuing of the relevant tax invoice or adjustment note to the recipient.
- (f) Subject to a recipient created tax invoice ("**RCTI**") agreement being in place between CBH and the Customer, CBH will issue:
  - (i) if the Customer has provided a valid ABN and is registered for GST, a valid RCTI that states the amount of GST the Customer is liable to pay to the Australian Taxation Office, at the same time that CBH is obliged to pay the Customer;

- (ii) if the Customer has provided a valid ABN but is not registered for GST, a payment advice setting out the amount paid to the Customer excluding GST; or
  - (iii) if the Customer has not provided a valid ABN, a payment advice setting out the amount paid to the Customer excluding GST and subject to any withholding tax in accordance with clause 11.6(i).
- (g) If there is an adjustment event in relation to a supply which results in the amount of GST on a supply being different from the amount in respect of GST recovered by the supplier, as appropriate, the supplier:
- (i) may recover from the recipient the amount by which the amount of GST on the supply exceeds the amount recovered; or
  - (ii) must refund to the recipient the amount by which the amount recovered exceeds the amount of GST on the supply.
- (h) Costs required to be reimbursed or indemnified under this Agreement must exclude any amount in respect of GST included in the costs for which an entitlement arises to claim an input tax credit.
- (i) If the Customer:
- (i) does not have an ABN or do not provide a valid ABN to CBH; and
  - (ii) does not provide an executed Australian Taxation issued 'Statement by a Supplier' form to CBH,
- CBH may be required by the Australian Taxation Office to withhold 49.5% (or such rate as is prevailing at the time) of the gross supply value.

#### 11.7 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;
  - (ii) the Customer fails to make payment of an invoice in accordance with clause 11.7(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 this clause 11.7. 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.

#### 11.8 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 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.

#### 11.9 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.

#### 11.10 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.

#### 11.11 Notice

- (a) Subject to clause 11.11(b), CBH shall provide the Customer with at least sixty (60) days' written notice of any changes to the Fee Schedule.
- (b) If CBH gives written notice to the Customer of a change to a third party fee (which includes the container chain booking fees, container rejection fees, container storage fees, Patricks landside terminal fees, Patricks 'VBS' booking fees, DPW terminal access fees, or DPW 'VBS' booking fees), the change to the third party fee will take effect from the date stated in the written notice given by CBH under this clause 11.11(b).

#### 11.12 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 11.12.
- (d) The Customer is not entitled to set off amounts owing to CBH or any of its Related Bodies Corporate.

#### 11.13 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).

## 12 LIEN AND RIGHT TO WITHHOLD GRAIN

### 12.1 Statutory lien

CBH has, in priority to all other claims, liens or security, a lien over any Grain received by it, in respect of any fees and charges payable to CBH in respect of that Grain and the Customer grants a security interest to CBH over the Customer's Grain Entitlement and proceeds of sale thereof as security for the payment of all monies now or hereafter due and payable (on any account whatsoever) by the Customer to CBH and its Related Bodies Corporate.

### 12.2 Right to withhold Grain

Notwithstanding any other term of this Agreement, CBH may, at its sole discretion, refuse to Outturn the Customer's Grain if the Customer has not paid any amounts owing to CBH pursuant to clause 9.

### 12.3 Personal property securities law

- (a) The Customer acknowledges and agrees that CBH has control of the Customer's Grain for the purposes of the PPSA and for the exercise of CBH's rights under this clause 12.
- (b) The Customer agrees, at its cost in all things, to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Company asks and considers necessary for the purposes of:
  - (i) ensuring that the security interest is enforceable, perfected and otherwise effective;
  - (ii) enabling CBH to apply for any registration, complete any financing statement or give any notification, in connection with the security interest so that CBH has the priority it requires; or

- (iii) enabling CBH to exercise rights in connection with the security interest.
- (c) The Customer agrees to pay or reimburse the reasonable costs of CBH in connection with anything done by CBH in connection with the registration of any security interest created under this Agreement and the enforcement of any such security interest or of any lien over the Customer's Grain Entitlement.
- (d) CBH need not give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and the requirement to give it cannot be excluded.
- (e) Subject to section 275(7) of the PPSA, CBH and the Customer agree that the parties are not required to disclose any information of the kind referred to in section 275(1) of the PPSA.
- (f) To the extent of any inconsistency between CBH's rights under this clause 12 and its rights under Chapter 4 of the PPSA, this clause 12 prevails.
- (g) Terms used in this clause 12 have the same meaning as in the PPSA

## 13 DUE CARE AND DILIGENCE

### 13.1 CBH

CBH will comply with Good Operating Practices in the carrying out of its obligations under this Agreement.

### 13.2 Customer

The Customer will comply with Good Operating Practices in the carrying out of its obligations under this Agreement.

## 14 APPOINTMENT OF AN AGENT

### 14.1 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.

### 14.2 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 14.1 when performing Services on behalf of the Customer under this Agreement.

## 15 CBH liability

### 15.1 Liability for Shortfall

- (a) Subject always to clauses 15.1(b), 15.1(d), and 15.9, 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 15.1(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;
  - (ii) (in the case of shortfall in Grade):
    - (A) if the Grain has not been Outturned, at the election of CBH, to either:
      - ┆ offer the Customer lower Grade grain together with the provision of financial compensation for the difference in Fair Market Price between the relevant lower Grade grain and the equivalent Grade grain to which the Customer was entitled; or



- ii the provision of financial compensation for the value of the Grain shortfall to be determined at the Fair Market Price for such Grain; or
  - (B) subject to clause 15.1(c), if the Grain has been Outturned, at the election of CBH, to either the:
    - i replacement of the relevant Outturned grain with grain of the same type, variety and Grade to the Customer's Grain Entitlement; or
    - ii provision of financial compensation for the difference in Fair Market Price between the relevant Outturned grain and the equivalent Grade grain to which the Customer was entitled; or

(iii) For the avoidance of doubt, there is no shortfall in the Customer's Grain Entitlement if CBH is able to provide sufficient grain of the same type, variety and Grade from any Site to ensure that the Customer's Grain Entitlement is not diminished.

- (c) Unless the Customer notifies CBH within 72 hours of Outturn of Grain of any shortfall in quality or contamination CBH shall be deemed to have complied with its Outturn obligation.
- (d) The Customer will not be entitled to any Loss or Damage or to enforce any remedy in the event of a shortfall in Grain Entitlement caused by an event of Force Majeure.

#### 15.2 Damage for Gross Negligence or Wilful Misconduct

15.3 Other than as set out in clause 15.1 and in clause 15.8 and subject always to clauses 15.4, 15.5 and 15.9, 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.

#### 15.4 Liability Cap

Other than as set out in clauses 15.1 and 15.8, 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 officers, employees, contractors, servants or agents; or
- (b) the breach of this Agreement by CBH, its officers, employees, contractors, servants or agents.

#### 15.5 Limitation of Grain Loss and Damage

Except as provided for in clauses 15.1, 15.2 and 15.8, CBH will not be liable or responsible for any Loss or Damage (including Indirect or Consequential Loss) to the Grain resulting from any variation in the quality of the Grain resulting from:

- (a) the natural deterioration of Grain over time;
- (b) the loss of germinative capacity of Grain;
- (c) the effects of the normal handling process on the Grain held at, or transported within or between Sites, keeping in mind that some commodities such as peas are more brittle than others;
- (d) variations within the generally accepted standard deviation error of Grain sampling equipment, between the time of sampling under clause 4.2(a) of the Grain Services Agreement and Outturning taking into account the accuracy of the equipment or method; or
- (e) for container shipments, quality or quantity deficiencies that may arise between the time of CBH Outturning the Grain into the Customer's sea containers and the Outturn of such containers at the time of delivery at the destination (this includes both export and domestic use of sea containers).

#### 15.6 Limitation of Loss or Damage for delay

In the event of:

- (a) delays incurred in CBH Outturning and/or transporting the Grain by way of road or rail that is not caused by the Gross Negligence or Wilful Misconduct of CBH, its officers, employees or contractors;
- (b) delays due to the actions of third parties which are beyond the reasonable control of CBH;

and such delay causes any shortfall in Grain Entitlement, then CBH's liability will only extend to the remedies provided in clause 15.1(b). CBH will not be liable for any other Loss or Damage caused by such delay.



#### 15.7 Contribution to loss

Where any express or implied term of this Agreement places on any Party (in this clause 15.7 "**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 paragraph (a).

The obligations imposed on a Party in this clause 15.7 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.

#### 15.8 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 *Competition and Consumer Act 2010* (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 grain provided under clause 15.1):
  - (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 15.8, "relevant Service" shall mean the Service in relation to the quantity of affected Grain only and does not mean the aggregate value of the relevant Service provided to the Customer.

#### 15.9 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.

#### 15.10 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 15.5 and 15.9.

#### 15.11 Exclusion of warranties

CBH does not represent, warrant or guarantee that any Grain 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.

#### 15.12 Exclusion Clauses

Notwithstanding anything expressed in 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 Grain Outturned for the Customer;
- (b) any information or advice provided by CBH in relation to whether the Outturning Quality Specifications are sufficient for any purpose including meeting any Grain quality requirements of the Customer or its customers (including under any End User Contract);
- (c) the presence, in any Grain 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
- (d) the presence, in any Grain Outturned for the Customer, at any level or concentration of any Genetically Modified Organisms.

#### 15.13 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 Grain Outturned for the Customer;
- (b) any information or advice provided by CBH in relation to whether the Outturning Quality Specifications are sufficient for any purpose including meeting any Grain quality requirements of the Customer or its customers (including under any End User Contract);
- (c) the presence, in any Grain 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
- (d) the presence, in any Grain Outturned for the Customer, at any level or concentration of any Genetically Modified Organisms.

#### 15.14 Disclaimer regarding Outturning Quality Specifications

- (a) Without limiting clauses 15.12 and 15.13, the Customer acknowledges that:
  - (i) the Services do not include any information or advice as to the suitability of the Outturning Quality Specifications for any purpose; and
  - (ii) it is exclusively the Customer's responsibility to ensure the suitability of the Outturning Quality Specifications and the quality of any Grain in any container for the Customer's purposes, including meeting any Grain quality requirements of the Customer or its customers (including under any End User Contract).
- (b) The Customer must not rely on any information or advice provided by CBH as to the suitability of the Outturning Quality Specifications for any purpose, including whether the Outturning Quality Specifications meet any Grain quality requirements of the Customer or its customers (including under any End User Contract) and, to the extent permitted by law, CBH disclaims all liability for such information or advice.

## 16 **INSURANCE AND RISK**

### 16.1 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 Grain whilst:
  - (i) it is held at MGC; and
  - (ii) during transit organised by CBH between Sites.
- (b) CBH will advise the Customer if it cannot gain insurance coverage as detailed above.

### 16.2 Transfer of risk

Subject to clause 15, if the Customer has Grain loaded into:

- (a) containers pursuant to the Container Loading Services, then risk of Grain loss or damage is

transferred to the Customer immediately upon delivery of the container at the nominated Container Terminal;

(b) bags and then containers pursuant to the Grain Bagging Services, then the risk of loss or damage to the Grain is transferred to the Customer immediately upon delivery of the container at the nominated Container Terminal; or

(c) bags only pursuant to the Grain Bagging Services,

then the risk of Grain loss or damage is transferred to the Customer immediately upon loading the bags at MGC into a form of a Grain transportation vehicle;

## 17 FORCE MAJEURE EVENT

### 17.1 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, terrorism, 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.

### 17.2 Exemption from Force Majeure

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

### 17.3 Relief from performance and liability

Subject to clause 17.6, 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.

### 17.4 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.

#### 17.5 Termination

If the Affected Party is relieved from performance and liability in accordance with clause 17.3 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.

#### 17.6 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 11.4(a), including but not limited to the payment of the charges set out in the Fee Schedule as modified from time to time by CBH.

### 18 TITLE TO GRAIN

- (a) Subject always to the terms of this Agreement, CBH is a bailee for reward of any Grain 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 12, the proprietary interest in Grain is vested in the person who, for the time being, is entitled to obtain it from the bulk stocks held by CBH or under CBH's control.

### 19 SITE ACCESS

#### 19.1 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 Site, then the Customer must give a minimum of 2 Business Days' notice to the CBH Logistics Customer Service 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 19.2, the Customer shall not attend at any Site without receiving the prior consent of the CBH Logistics Customer Service Manager for each visit and shall not enter or stay on the Site without appropriate CBH supervision.

#### 19.2 Public Reception

If a Site has a public reception, then clause 19.1(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 Site without appropriate supervision.

#### 19.3 Site Safety

Whilst on a Site, the Customer agrees to:

- (a) follow all reasonably necessary directions of CBH personnel, including departure from the Site;
- (b) not create any hazard, or cause any contamination, on the Site; and
- (c) procure that its employees, agents or contractors comply with this clause 19.3.

### 20 CONFIDENTIALITY

#### 20.1 General obligation

Subject to clause 20.2, 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 Grain;
  - (ii) financier of such transferee providing or proposing or considering whether to provide relevant financial accommodation;
- (j) if necessary or commercially desirable to be disclosed to consultants or employees of any of the persons referred to in paragraph (h) or (i); or

## 20.2 Conditions

- (a) In the case of a disclosure under clause 20.1(a) or 20.1(b) and, where appropriate, under clause 20.1(d), 20.1(e) or 20.1(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 20.1(h), 20.1(i) or 20.1(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 20.1(h) or 20.1(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 20.1(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.

### 20.3 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 20.1(d) to disclose information under clause 20.1(d);
- (b) inform all other parties as soon as reasonably practicable after information is disclosed by the party under clause 20.1(d); and
- (c) not disclose any information under clause 20.1(e) unless all other parties have been informed of the proposed disclosure.

### 20.4 Indemnities

Subject to clause 15, 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 20.

### 20.5 Survival of confidentiality obligations

The obligations of confidentiality imposed by this clause 20 survive the termination of this Agreement and any person who ceases to be a party continues to be bound by those obligations.

## 21 DISPUTE RESOLUTION

### 21.1 Disputes

- (a) All disputes arising out of or in connection with this Agreement shall be dealt with in accordance with the provisions of this clause 21.
- (b) A dispute shall be referred to the Customer's Manager and the CBH Head of Logistics for resolution. The CBH Head of 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.
- (c) Where the dispute relates to invoiced Services, the Customer is to inform the CBH Head of Logistics immediately, and before the due date of that invoice.

### 21.2 Escalation of Dispute – Executive Panel

If no resolution of the dispute can be reached in accordance with clause 21.1 within seven (7) days of the dispute being notified to the other party, each party shall refer the dispute to the Chief Operations Officer 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.

### 21.3 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.

## 22 ANTI-BRIBERY AND CORRUPTION

- (a) Neither party (the applicable party being referred to in this clause 22(a) as "Party A"), nor any person acting for or on its behalf, shall pay or accept any commissions or fees, or make or accept any payments or rebates to or from any employee or officer of the other party (referred to in this clause 22(a) as "Party B") or of any subcontractor of Party B other than as set out in this Agreement, or favour any of those persons with gifts or entertainment of unusual or substantial value, or enter into any business arrangements with any of those persons, that would result in a detriment to Party B or in a conflict of interest for Party A in its fair dealing with Party B under this Agreement. Party A shall immediately report to Party B any payments or rebates of the kind referred to in this clause 22(a) received by it from



any employee or officer of Party B or from any person it knows to be a subcontractor of Party B.

- (b) Each of the parties acknowledges that it is familiar with the provisions of the Foreign Corrupt Practices Act (15 USCA 78dd-1 and 2) of the United States of America, the UK Bribery Act 2010 and Chapter 4, Division 70 of the Criminal Code 1995 (Cth) (collectively referred to as the "FCP Acts"), warrants that it and its officers, directors and employees comply with the provisions of the FCP Acts and any other applicable law relating to anti-bribery and anti-corruption from time to time ("FCP Legislation"), and undertakes that it will, and will procure that its officers, directors and employees will, at all times remain in compliance with the FCP Legislation.
- (c) Each party acknowledges that each of them is required to conduct its business activities in compliance with the FCP Legislation.
- (d) No party will make payments to foreign officials, directly or indirectly, which would violate the FCP Legislation, nor will any party condone or tolerate the making of such payments by its subcontractors or by any other party.
- (e) Failure to comply with the FCP Legislation by a party shall constitute a default by that party under this Agreement.
- (f) Each party shall take all such action as is reasonably available to it to ensure compliance by each of its subcontractors with obligations equivalent to those in clause 22(a) and with the FCP Legislation. If a Party becomes aware of any conduct on the part of any of its subcontractors which is inconsistent with the requirements of clause 22(a) or in violation of the FCP Legislation, it shall take all actions reasonably available to it as are necessary to ensure that any such subcontractor returns to compliance with the requirements of clause 22(a) or the FCP Legislation, as the case requires.
- (g) Subject to clause 15, 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 contravention of this clause 22. This indemnification obligation of a party shall extend to any anti-bribery laws and regulations enacted by the country or countries in which any act is to be performed under this Agreement.
- (h) The Customer acknowledges that CBH has a policy aimed at allowing employees, contractors and agents to confidentially disclose concerns relating to the conduct of CBH's directors, managers, employees and agents without fear of repercussions.

## 23 PREVENTION OF MODERN SLAVERY

- (a) CBH works to comply with the requirements of the Modern Slavery Act 2018 (Cth) and expects the same of its customers.
- (b) Each party warrants that:
  - (i) in performing its obligations under this Agreement, it will comply with any requirements of the Modern Slavery Act 2018 (Cth) and Division 270 and 271 of the Criminal Code Act 1995 (Cth) as they apply to the party;
  - (ii) it investigates the risk of Modern Slavery within its operations and suppliers to it;
  - (iii) it assesses and addresses risks regarding Modern Slavery, including implementing appropriate due diligence and remediation programs;
  - (iv) it has all the necessary processes, procedures, investigations and compliance systems in place to perform the actions in clauses 23(b)(i) to (iii); and
  - (v) upon request, it will provide evidence to the other party's reasonable satisfaction which demonstrates the party's compliance with this clause 23.
- (c) Failure to comply with this clause 23 by a party shall constitute a default by that party under this Agreement.
- (d) Subject to clause 15, 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 contravention of this clause 23.
- (e) In this Agreement, "Modern Slavery" has the meaning given in section 4 of the Modern Slavery Act 2018 (Cth).

## 24 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.

## 25 NOTICES

### 25.1 Types of Notices

Except as provided in clause 23.2, 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 email to the email of the addressee.

### 25.2 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.

### 25.3 Notice Takes Effect

Subject to clause 23.4, a Communication takes effect from the later of:

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

### 25.4 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) in the absence of evidence to the contrary, an email sent by a party to the email 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; and
- (d) a Communication given orally under clause 23.2 shall be deemed to have been received when first given orally.

### 25.5 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 or email address for the purpose of Communications



pursuant to this clause 23.

25.6 Email

Messages relating to the following subjects will not be valid if sent by email:

- (a) termination of this Agreement;
- (b) change of address, phone number or email address; and
- (c) Entitlement Transfer Requests.

26 **ASSIGNMENT**

26.1 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.

26.2 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.

27 **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.

28 **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.

29 **GOVERNING LAW AND JURISDICTION**

29.1 Governing Law

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

29.2 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.

30 **AUTHORITY TO SIGN**

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.

31 **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.

## 32 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.

## 33 COUNTERPARTS

- (a) The parties agree that this Agreement may be signed and delivered electronically. The words "execute," "execution," "signed," "signature," and similar words used in this Agreement will be deemed to include electronic signatures, and electronic signatures will be of the same legal effect, validity or enforceability as provided for in any applicable law.
- (b) This Agreement may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes an original of the Agreement, and all together constitutes one Agreement.
- (c) The counterparts of this Agreement may be signed and delivered electronically in accordance with clause 33(b).

## 34 RE-NEGOTIATION OF TERMS

### 34.1 Change in Law

- (a) Subject to clauses 31.1(b) and 31.2, if at any time during the Term:
  - (i) the costs to CBH of operating and maintaining its Sites for the purposes of supplying the Services under this Agreement and otherwise complying with its obligations under this Agreement are increased to a material extent ("**Increased Costs**"); and
  - (ii) the Increased Costs are a result of the enactment or promulgation of any new Act of Parliament or regulation or the amendment of any existing Act or regulation by a Government Agency relating to the management or protection of the environment or the health and safety of workers, including any tax on the emission of carbon, sulphur or nitrogen compounds (a "**Change in Law**"),  
  
then CBH shall be entitled to increase the price paid by the Customer under this Agreement for the provision of the Services as may be necessary to offset those Increased Costs. In any such case, CBH shall provide the Customer with a statement providing such information as is necessary to demonstrate:
    - (iii) the causal relationship between the Change in Law and the Increased Costs referred to;
    - (iv) the reasonableness and necessity of the measures taken by CBH to comply with the Change in Law; and
    - (v) the nature and extent of any increase in the price paid by the Customer under this Agreement for Services necessary to offset the Increased Costs referred to.
- (b) CBH shall not be entitled to seek any increase under clause 31.1(a) in the price paid by the Customer under this Agreement for the provision of the Services to the extent that the Increased Costs are a consequence in whole or in part of a failure by CBH to operate and maintain any Site in accordance with Good Operating Practices.

### 34.2 Income and payroll taxes

Each Party shall be liable for its own income tax and payroll tax levied now or at any time in the future by any Government Agency, whether or not they affect the cost to that Party of complying with its obligations under this Agreement.

## Schedule 1 – Long Term Capacity allocated

[Not applicable] **Note** – if there is a Long Term Capacity agreement, the words in square brackets must be deleted and the Long Term Capacity Agreement details inserted. If there is no Long Term Capacity agreement, the square brackets must be deleted and the words 'Not applicable' are to be retained.]

## **Schedule 2 – Special Conditions**

There are no Special Conditions.

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

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness in full

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

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness in full

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Position

\_\_\_\_\_  
Date CBH's authorised representative signed this Agreement

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Name

\_\_\_\_\_  
Position

\_\_\_\_\_  
Date Customer's authorised representative signed this Agreement